

PLANNING COMMISSION MINUTES OF FEBRUARY 25, 2008

2007-0975 - Appeal of a decision by the Director of Community Development denying a Miscellaneous Plan Permit to allow a five and a half foot fence in the front yard. Application located at **149 West Arques Avenue** (near Stowell Ave.) in an R-0 (Low Density Residential) Zoning District. (204-30-008) SB

Gerri Caruso, Principal Planner, presented the staff report. She said staff is recommending that the Commission deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit for the fence as proposed by the applicant. Ms. Caruso said if the Commission chooses to approve the fence, and is able to make the findings in Attachment A, that staff would recommend that it be approved subject to the Conditions of Approval in Attachment B.

Comm. Hungerford asked staff for clarification about the appearance of the fence subject to the conditions of approval. He asked about the picket fence in the front yard confirming with Ms. Caruso that the end result would be that all the fencing would be painted one uniform color, and that either the gate across the driveway be removed or a gate be installed that it could be remotely controlled. Comm. Hungerford confirmed with staff that the front part of fence in the front yard would remain the same height, and the stepped up portion of the fence on the side yards would begin at 3 feet in height and be stepped up to 5 feet.

Vice Chair Rowe asked staff about the trailer parked in front of the garage and asked if the trailer and other items in the driveway need to be moved so there is access to the garage. Ms. Caruso said there are code provisions to allow storage of some types of RVs (Recreational Vehicles) that are licensed so it may not be necessary that the RV be moved. She said the code requires that an RV be parked perpendicular to the house, be licensed and parked on an appropriate surface. Ms. Caruso said that staff is recommending that the gate be modified so it is easier to park a car in the driveway. Vice Chair Rowe said that she was more concerned about the trailer being parked preventing the use of the garage and asked if it is a requirement that the driveway be available for parking. Ms. Caruso said a driveway is a requirement and it is allowed under some circumstances that an RV can be parked in the driveway blocking the garage.

Comm. Simons commented about the requirement of a mechanical gate and expressed his concern about broken gates and how the requirement of a functional gate would be enforceable for the long term. Ms. Caruso agreed that fences can be damaged, and Neighborhood Preservation could step in and require a mechanical fence be maintained. She conceded that the only way to make sure that a fence does not get damaged and there is accessibility to the driveway, is to require the fence be removed. Comm. Simons further asked what

happens if a required mechanical gate becomes non-functional. Ms. Caruso said if a gate becomes non-functional and it was a requirement that it is a working mechanical gate, then action could be taken to require it be maintained. Comm. Simons confirmed with staff that most code enforcement is driven by a complaint.

Chair Sulser opened the public hearing.

Jason Pintar, attorney for the applicant, said that this complaint was driven by a neighbor that his client has had several problems with and explained the nature of the problems. He said, in order to make peace, the applicant constructed a common fence between the properties. Mr. Pintar referred to Attachment D, page 1, the top photograph that shows the fence and said the fence is about 5 feet in height. He said there is a large hedge in the neighbor's yard along the fence making the fence not visible from the neighbor's property. He said the fence is barely visible from the front sidewalk. He said the reason the applicant put the fence in is because they have two large dogs and the neighbor has tried to provoke the dogs. He said the fence was to help prevent any problems with the dogs. He added that the neighbor complained about the fence, which led to this hearing. Mr. Pintar confirmed that the applicant has put in a temporary chain link fence in the front yard and the plan is to replace the picket fence in the front yard with a wooden fence that matches the side fences on both sides. He said the applicant is requesting that the wooden fence be allowed to be 4 feet in height. He said, regarding the gateway to the driveway and the corner on the other side of the house, that the applicant has no objection to the staff recommendation. He said the applicant requests that the fence on other side of the yard be allowed to be as high as possible to match the neighbor's fence. He said the applicants do not object to a sliding gateway and feel the mechanical gate is more than is needed. He commented that the applicant does not use the driveway or garage for cars and that the site is located on a street with very little traffic so if someone needed to pull into the driveway that they would not block traffic while sliding the gate.

Vice Chair Rowe asked how long the client has lived in this house. Mr. Pintar said the applicant has lived in this house 13 years and commented that the neighbor is a renter and owner of the neighbor's house has no problem with the actions of the applicants.

Comm. Klein asked Mr. Pintar about the long term plans for the location of the dogs. Mr. Pintar said that the plan is to move the dogs from the front yard back to the backyard.

Mr. Pintar concluded that the fence in question can barely be seen because of the neighbor's large hedge and asked that the Commission approve his client's request for a Miscellaneous Plan Permit.

Chair Sulser closed the public hearing.

Vice Chair Rowe commented that the City has strict guidelines for new developers who are building homes requiring that garages must be cleared enough so they can be used for parking. She asked staff when these guidelines came into affect. Ms. Caruso said that staff started using the guidelines routinely several years ago with townhome developments and small lot single family homes and developments that have restrictions on parking around the development. Ms. Caruso said that the condition of approval has not been used on standard single family lots within the City confirming that the guidelines are not a requirement in the Municipal Code.

Comm. Babcock moved in accordance with the staff recommendation **to deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit. Comm. Simons seconded the motion.**

Comm. Babcock said that she feels the staff report says it all and the fence guidelines are set for the entire city not just neighbor by neighbor. She commented that she does not think the front yard is a safe place for large dogs. She said that she hopes the applicant can work with staff to put the picket fence in at the correct height, the correct setback and with the driveway open.

Comm. Simons commented that even if there are high hedges in the neighbor's yard, the Commission has to approve what can be done with the site while landscaping is allowed. He said the Commission reviews land use decisions and the decisions are made for the permanent long term use. He said that the fence should be the height that is consistent with what is required for the city.

Vice Chair Rowe said she would be supporting the motion as she agrees with Comm. Babcock and Comm. Simons. She said that it is important to provide equitable enforcement and that fencing has been a problem in Sunnyvale. She said fences are sometimes built inappropriately after being modeled after other fences in the neighborhood that were possibly built before the city code changed. She said some of the older fences were grandfathered-in.

ACTION: Comm. Babcock made a motion on 2007-0975 to deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit. Comm. Simons seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This action is final. There are no further appeals available.