

**PLANNING COMMISSION MINUTES OF APRIL 27, 2009**

**2008-1240** – Appeal by the applicant of a decision of the Director of Community Development of a Condition of Approval of a Miscellaneous Plan Permit for a 3-foot front yard fence located at **1384 La Bella Ave.** (APN: 323-08-019) RK  
*(Continued from April 13, 2009.)*

**Gerri Caruso**, Principal Planner, presented the staff report. She said staff recommends to deny the appeal and uphold the approval of the Miscellaneous Plan Permit including the Conditions of Approval to require the fence to be located entirely on private property.

**Vice Chair Chang opened the public hearing.**

**Janet George**, appellant, said the original permit was not included in the staff report and provided a copy for the Commissioners to view. Ms. George discussed the application and appeal process. She said the City issued her a permit and her drawings showed exactly where she was going to build the concrete structure. She said she built the structure and the City changed the conditions of approval. She presented a PowerPoint presentation. She said there was destruction caused to her property. Ms. George said the report indicates that the Commission cannot approve a fence in the public right of way and said this is not a fence. She asked, if the Commission cannot approve the structure in the public right of way and change the outcome, why did the City collect her appeal fees, and have her talk with the Planning Division. She said she has already built the structure, so who is responsible to remove the structure. She said no one has told her the exact nature of the right of way. She said that she feels the City is targeting her because of a neighbor complaint. She said there is concrete destruction. She said that she thinks the City is selective in enforcement as she says the neighbor has an iron fence in the right of way. Ms. George showed examples of public right of way violations in the neighborhood.

**Comm. Sulser** discussed with the appellant the PowerPoint presentation. Comm. Sulser discussed with staff about a sign in the public right of way.

**Comm. Klein** discussed with staff what the neighborhood public right of way is. **Trudi Ryan**, Planning Officer, explained that the public right of way is typically 11 feet from the face of the curb and that would be where you measured the distance back to the property line.

**Comm. Travis** asked staff what a citizen's recourse is if a permit is approved and a structure built and the City advises that it has been constructed in the

public right of way. Ms. Ryan said that staff did not believe that the site plan provided represented that there would be a fence in the public right of way, and the permit that was approved was intended only to permit a fence on private property. She said that staff understood that the line at the bottom of the page was the property line. Ms. Ryan said staff tries to work with applicants, but it is both parties responsibility to comply with the regulations. Comm. Travis confirmed with staff that a portion of the fence is in the public right of way. Ms. Ryan said that it is staff's recollection that when the applicant came to the City that she was referred to the Public Works staff so there could be a discussion about where the property line is located.

**Michael Trapp**, a Sunnyvale resident, said he agrees with the staff recommendation and distributed a rebuttal to the appeal to the Commission. He discussed the details of the rebuttal and claimed the appellant knew she was building in the public right of way. He said a private sign mentioned earlier that was in the right of way has been removed.

**Ms. George** commented that Mr. Trapp's comments are misrepresented. She said the damages to her property are still being reviewed and refuted other items discussed by Mr. Trapp.

**Vice Chair Chang closed the public hearing.**

**Comm. McKenna** confirmed with staff that the Commission cannot approve the fence in the public right of way and that the only thing the Commission can do is give additional time to the appellant. Ms. Ryan said the Planning permit is only for the private property and the revised approval was provided to the applicant to clarify that the permit applied to the private property. Ms. Ryan said staff thought they had explained that to the applicant and clearly there was some misunderstanding about what the appeal would allow. Comm. McKenna confirmed with staff that the appellant was given 15 days to remove the portion of the structure and the removal requirement was stayed by the appeal until the hearing could be held.

**Comm. McKenna moved for Alternative 1 to deny the appeal, uphold the approval of the Miscellaneous Plan Permit including the Conditions of Approval to require the fence to be located entirely on private property, modifying the conditions to allow the applicant 30 days to remove the portion of the fence in the public right of way. Comm. Sulser seconded the motion.**

**Comm. McKenna** said that she agrees with staff that the right of way be maintained for pedestrian and public use. She said she was wondering why the

Commission was dealing with this project. She said the misunderstanding regarding the applicant's appeal is regrettable and that modifying the condition allowing 30 days to remove the portion of fence might help the appellant to accomplish the goal of removing the fence portion.

**Comm. Sulser** said that it is unfortunate there has been a misunderstanding between the applicant and staff. He said the public right of way cannot be given away to a private property owner.

**ACTION: Comm. McKenna made a motion on 2008-1240 to deny the appeal and uphold the approval of the Miscellaneous Plan Permit including the Condition of Approval to require the fence to be located entirely on private property, and to modify condition 1.B that any portion of the fence located within the public right of way shall be removed within 30 days. Comm. Sulser seconded. Motion carried 6-0, with Chair Rowe absent.**

**APPEAL OPTIONS: This decision is final.**