

PLANNING COMMISSION MINUTES OF JUNE 8, 2009

2009-0156: Appeal by the applicant of a Miscellaneous Plan Permit to allow a 6' 10" wood and concrete fence in the front yard for a site located at **805 Devonshire Way** (APN:309-28-027) RK

Trudi Ryan, Planning Officer, presented the staff report and said an additional letter received this afternoon from the applicant has been provided on the dais.

Comm. Klein discussed with staff the fence composition with staff commenting that the material used is consistent with other fences in the neighborhood.

Comm. Travis discussed with staff the options available to the applicant regarding the setback and height of the fence as shown in the conditions.

Comm. Sulser asked staff to clarify the staff recommendation to reduce the fence to 4'6" as he thought fences in the front yard were not be over 3' in height.

Comm. Hungerford discussed with staff the current height of the fence and the three fence modification options listed in the conditions. Staff discussed how the fence height is measured and other fences in the neighborhood.

Comm. McKenna said she thought there was a rule that fences could not be higher than 6' with staff explaining that side and rear properties can exceed 6' if the neighbors agree, however a permit is required. Comm. McKenna confirmed with staff that there is no maximum front yard fence height listed in the code.

Chair Rowe discussed with staff a fence appeal at a different address. Staff explained that the applicant was previously provided with two options to bring the fence in compliance and as the appeal report was being written a third option was added. Ms. Ryan said the applicant wants to keep what has been built. Chair Rowe expressed concern and some confusion on what is allowed for fences with staff saying that some fences were built without permits. Ms. Ryan said the code does not provide explicit direction and staff is trying to develop standards for fences. Chair Rowe discussed with staff a fence she saw that was being used to screen Recreational Vehicle parking.

Chair Rowe opened the public hearing.

Bret Flesner, appellant, explained his reasons for the appeal. He commented that there seems to be variations on what is allowed with a fence in the front yard and also upcoming variations on what would be allowed when modifying an Eichler home. He discussed his Eichler home layout, neighboring fences, and that he wanted to increase the useable space in his front yard. He discussed the existing fence, commenting that a

lot of thought was put into the design. He discussed neighboring fences, some that are permitted and some not. He said one of the nearby fences was omitted from the report which he thinks creates a bias in the report. He discussed the options provided by staff and the affect of the options if the fence were modified. He further discussed the Eichler style home and problems with modifying the fence. He said the original fence was higher than the one they have constructed. Mr. Flesner said demolition of this fence will be very expensive, discussed findings in the appeal, and said he does not think the findings are flexible. He said there is a timing issue with some of the information in the report. He said he is within code, and that the guidelines are not clear. He referred to Eichler Design guidelines being considered soon and said that the fence issue is confusing in these guidelines also.

Comm. McKenna discussed with the appellant the style of his courtyard Eichler and that it originally had a front fence. **Ms. Ryan** referred to attachment G, page two which shows an Eichler that is similar to Mr. Flesner's model, showing a courtyard with a cinder block wall.

Comm. Hungerford discussed with the appellant that without the fence there are large windows facing the street. Ms. Ryan added that that with the original design of the Eichler, the window looks into the courtyard, and if the wall down is removed you can see to the street.

Charles Fogle, a Sunnyvale resident and neighbor, said that he thinks the fence extends too far out, leaves very little front yard, and that the wood fence will weather and look ugly.

Raymond Hiller, a Sunnyvale resident and neighbor, said he finds the fence agreeable to the eye, and that it will protect Mr. Flezner's children and provide a safe place for them to play. He said lowering the fence makes the area less safe for the children.

Arthur Schwartz, a Sunnyvale resident, said that he does not think the fence fits with the Eichler design, and that the new fence is too close to the street and reduces the open feeling when walking through the neighborhood.

Mr. Flesner addressed the comments of public. He said the wood is preserved and he will maintain it. He discussed the other comments, adding that only 20 to 30% of the homes in the neighborhood retain the original Eichler design. He said the homes are about 50 years old and it is unrealistic to expect the neighborhood to not have some change. He said he thinks as homeowners there should be freedom to add value, and increase usability of their homes.

Chair Rowe closed the public hearing.

Comm. Klein made a motion to deny the appeal and uphold the decision of the Director of Community Development to approve the Miscellaneous Plan Permit including the Condition of Approval as recommended by staff to require the fence to either be built two feet beyond the plane of the garage wall or be reduced to four feet, six inches as measured from top of curb at the current location, or be built at 11' from the property line (as constructed at 814 Devonshire Way). Comm. Hungerford seconded the motion.

Comm. Klein said he understands the appellant's concerns about the City's rules regarding fences. Comm. Klein said the most critical thing with a fence is the setback from the street to prevent the walled-in feeling. He said he thinks staff's alternatives give the appellant some flexibility to resolve the issue and that the fence having already been built cannot be a consideration on whether the appeal is granted.

Comm. Hungerford said that the Eichler designed homes tend to turn their backs on the street. He said on his site visit he saw different kinds of Eichler homes and that many of the homes on this street are cut-off from the street, and have wall extensions. He said for this neighborhood a wall is not a totally bad idea. He said he considered this home as if it were any other neighborhood, and thinks that staff's alternatives come up with a balance. He said agrees with the staff recommendation.

Comm. Travis said he would be supporting the motion.

Chair Rowe said that the neighbor across the street is the neighbor that has to view the fence. She said too many fences too close to the sidewalk develop a corridor. She said the Commission is asking for consistency in neighborhood and she feels this motion is equitable enforcement, a compromise, and provides the appellant three options to choose from.

ACTION: Comm. Klein made a motion on 2009-0156 to deny the appeal and uphold the decision of the Director of Community Development to approve the Miscellaneous Plan Permit including the Condition of Approval as recommended by staff to require the fence to either be built two feet beyond the plane of the garage wall or be reduced to four feet, six inches as measured from top of curb at the current location, or be built at 11' from the property line (as constructed at 814 Devonshire Way). Comm. Hungerford seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This decision is final.