PLANNING COMMISSION MEETING MINUTES OF MAY 10, 2010

2008-0294: Appeal by the applicant of the conditions imposed by the Director of Community Development in approving a Miscellaneous Plan Permit for a fence in the front yard at 1190 Silverlake Drive. (APN:110-23-088) SB

Trudi Ryan, Planning Officer, presented the staff report. She said supplemental information from the applicant has been provided on the dais showing photographs of their property and other properties in the neighborhood. She said the staff recommendation is to deny the appeal and uphold the amended decision unless the Commission can make the findings and approve an alternate fence design, or approve the fence that is proposed by the applicant.

Comm. Rowe discussed with staff that a permit was never applied for for the existing fence and the applicant purchased the home with the fence already in place not knowing the permit was required for the fence. The applicant was contacted by staff and advised that a permit was needed and they applied for a permit. Comm. Rowe discussed with staff fences in this neighborhood, that this fence makes no additional visual impacts, and changes in the guidelines and regulations.

Comm. McKenna asked staff to clarify if the applicant had been granted the Use Permit when they originally applied for one, would they have been allowed to put the fence at the existing height. Ms. Ryan confirmed that by right the applicant could not have obtained approval for a 6-foot fence in the existing location when originally applied for. Ms. Ryan added that the newer regulations are somewhat more lenient, however the application process would not have been the same before and after the new regulations went into effect. Comm. McKenna confirmed with staff that the appeal being considered this evening only involves 1190 Silverlake Drive.

Comm. Hungerford confirmed with staff that this fence was never considered a legal non-conforming use even though the fence has been in place for a long time. Comm. Hungerford discussed with staff the fence code and the proposed fence, and whether this fence is part of the front yard setback. Comm. Hungerford commented and confirmed with staff that a factor in these deliberations are not so much the height of the fence, but more the location of the fence being setback from the sidewalk. Ms. Ryan said if the Commission feels the fence is appropriate in this location, the fence can be approved. Ms. Ryan confirmed that the staff recommendation applies to any part of the fence that is within the first 15 feet of the front yard.

Comm. Rowe discussed with staff the front yards of 1190 and 1198 Silverlake Drive.

Chair Chang opened the public hearing.
Laural and John Wanninger, appellants, said they have provided photographs on the dais showing their property. Ms. Wanninger said they have lived in Sunnyvale for many years and needed more space for their family. She said the neighbors next door were moving and rather than move to a larger house, they bought the one next door and now live in both houses located at 1190 and 1198 Silverlake Drive. She discussed the fence location, landscaping, and how they use the property. She said when they found out the fence was not permitted they corrected the vision triangle issue and applied for a permit. She said a complaint was made by someone who does not live in the neighborhood. She said her neighbors, without her asking, collected signatures in support of allowing the fence and landscaping to remain. She asked that the Commission grant the appeal and allow them to retain the fence as is.

Fred Fowler, a Sunnyvale resident and neighbor, spoke in support of the appeal. He strongly urged the Commission to let the fence stay. Mr. Fowler presented a map of the streets in the neighborhood and said that front and side yards are technically defined by the code, however that definition is ambiguous for some of the properties in their neighborhood. He said the existing fence is in effect a side yard fence for the Wanninger’s property and serves a useful purpose. He said the letter of regulations might state other wise, but the intent of the law would recognize that this fence is serving as a side yard fence.

Mr. Wanninger thanked his neighbors for their support.

Comm. McKenna discussed with Mr. Wanninger how his family uses the 1190 and 1198 Silverlake properties and how they access the homes. Mr. Wanninger said they live primarily in 1198, no one uses the front door of the 1190 property, and they access 1190 from the backyard of the two properties as the fence between the two houses has been removed. He said the 1190 property allows them to have additional needed space.

Comm. Hungerford discussed with the applicant, that the front doors of both 1190 and 1198 face Silverlake Drive.

Chair Chang closed the public hearing.

Comm. Hungerford discussed with staff what findings would need to be made if the Commission made a motion for something other than the staff recommendation with staff referring to the findings in Attachment A.

Comm. McKenna asked staff if the Commission could condition a fence until the sale of the property with staff confirming yes. Comm. McKenna said this is a unique situation as the owner lives in both parcels, which makes the use of the property unique, the fence has been on the site for a long time, and the neighbors appear to
accept and support the retaining of the fence. **Comm. McKenna moved for Alternative 2, to grant the appeal and approve the MPP (Miscellaneous Plan Permit) with modified conditions: to add a condition that the fence be made to conform to the fence rules when the two adjacent properties are no longer under single ownership. Kathryn Berry, Senior Assistant City Attorney, assisted in the wording of the condition at Comm. McKenna’s request. Ms. Ryan recommended that the motion clearly state the objectives so the requirements are clear to future property owners. Ms. Berry added that a future owner could apply for a permit if they chose. **Comm. Hungerford seconded the motion.**

**Comm. McKenna** said this property is unique in the way it is used, and the motion seems to be the best alternative granting the owners the use of the property until one property is sold.

**Comm. Hungerford** said this situation is unique enough that he can make the finding to allow the fence to remain as long as the properties are under one owner. He said he was also swayed to support the motion as across the street some of the front yard fences seem to also be treated as side yard fences.

**Comm. Rowe** said this was a difficult decision as she does not want bad precedence being set. She said there is no question that what the appellants have is beautiful, however she sees these properties as two lots. She said it is unique that the appellants own both homes. She said she has a problem with equitable enforcement and though she would like to support the motion, she will not be supporting the motion. She said the character of neighborhoods needs to be protected and compromise in this case would set precedence.

**Comm. Sulser** said he shares the same concerns as Comm. Rowe, however he will be supporting motion. He said with the addition of the condition of approval he can support the motion.

**ACTION:** Comm. McKenna made a motion on 2008-0294 to grant the appeal and approve the MPP (Miscellaneous Plan Permit) with modified conditions: to add a condition that the fence be made to conform to the fence rules when the two adjacent properties are no longer under single ownership. Motion carried 5-1, with Comm. Rowe dissenting and Comm. Klein absent.

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