

PLANNING COMMISSION MINUTES OF JANUARY 11, 2010

2009-0753: Appeal of the conditions imposed by the Administrative Hearing Officer in approving a Use Permit to allow a fence over 7' tall (approximately 7'1") in the front yard of a site located at **805 Devonshire Way**. (APN: 309-28-027) MH

Trudi Ryan, Planning Officer, presented the staff report correcting the title on the agenda saying the fence height indicated is 7 feet tall, not 7 inches tall. She said staff is recommending the Planning Commission deny the appeal and approve the Use Permit with the conditions imposed by the Administrative Hearing Officer. Ms. Ryan said additional information has been provided to the Commission this evening including a revised Attachment B and a copy of two letters received at the Administrative Hearing from neighbors in support of allowing the fence to remain as is.

Comm. Rowe referred to page 3 of the report and discussed with staff the timeline for this project as the fence was built prior to approval. She discussed with staff that the decision of the Planning Commission from June 8, 2009 was never complied with and asked staff what the timeline requirement was for the applicant to comply. Staff said there was no timeline provided to the applicant to complete the modifications to the fence, however the current application's recommended conditions would require the applicant to comply within 30 days. Staff explained the Neighborhood Preservation (NP) division allowed the delay of the compliance as the applicant applied for a new permit. Comm. Rowe discussed with staff the Eichler guidelines and how the guidelines affect existing fencing in the neighborhoods, including that the applicant's fence was approved with modifications in June of 2009, and the guidelines since then are stricter.

Comm. Sulser discussed with staff the process of this appeal and said that it is confusing that the appellant is able to apply for a new Use Permit when the Commission already considered this fence in June of 2009. Ms. Ryan said one of the options that NP gave the applicant, rather than to comply with the previous decision, was to apply for a new Use Permit and that the current application is for a slightly taller fence than was considered in the previous application.

Chair Chang opened the public hearing.

Bret Flesner, appellant, presented a PowerPoint presentation. He discussed the Project Goals, provided pictures of the existing fence, discussed Eichler design elements included in the design, and said that the most of his neighbors support the allowance of this fence except the neighbor across the street. He discussed standards used in the City of Sunnyvale and other properties in the

neighborhood that have front yard fences. He mentioned other Eichler home approved projects that he thinks different standards were applied to including a project on Pome Avenue. He said this project is beneficial to the homeowner and to the neighborhood, that the design elements embrace numerous Eichler elements, and discussed different options offered to him. He encouraged the City to administer permits ensuring equal protection for property owners, adherence to code, and support the intent of supplemental guidelines.

Barbara Pease, a Sunnyvale resident and neighbor, spoke in support of approving the appeal and said this fence is an absolute improvement, that it is well constructed, and that she has no complaints about it.

Charles Fogle, a Sunnyvale resident and neighbor, spoke against the approval of the appeal and said he thinks the fence extends too far out towards the sidewalk. He said if this fence is approved then others will also want to have their fences close to the sidewalk which would negatively affect the neighborhood by taking away the open feel of the street.

Raymond Heller, a Sunnyvale resident and neighbor, spoke in support of approving the appeal. He said he finds the fence modern, majestic, an improvement to the neighborhood, and it protects Mr. Flesner's children. He said the fence is good looking and well done.

Mr. Flesner said this situation is about regulating looks, feels, and fits. He said this needs to be done on a uniform basis and the guidelines need to account for that. He said that other homes are being built and other standards are being used regarding "fit". He said the existing fence has no detrimental impact on others or the neighborhood, and the fence cannot even be seen from down the street. He said the City needs to look at property rights and make sure we are all treated the same way with the same standards as far as visual impact.

Chair Chang closed the public hearing.

Comm. Rowe asked staff to address the Eichler home on Pome Avenue mentioned by the appellant with Ms. Ryan saying she does not know the situation with the Pome Avenue project at this time.

Vice Chair Travis asked staff where the recently approved Eichler Design Guidelines would place the fence. Ms. Ryan said the current Eichler guidelines encourage that taller fences be setback 15 feet. She said staff went with the original recommendation from the previous application which would allow the fence at the current height with a 19 foot setback or a shorter fence with an 11 foot setback which would be similar to the fence across the street.

Comm. Rowe moved for Alternative 1, to deny the appeal and approve the Use Permit with the conditions imposed by the Administrative Hearing Officer shown in attachment B. Vice Chair Travis seconded the motion.

Comm. Rowe said that the appellant is concerned about privacy and the front windows which could be handled with curtains. She said she has no problem with the fence design, only with the setback. She said this motion is to preserve a neighborhood not just an individual's house. She said the previous decision was a compromise and she said she would like to see the compromise worked out. Comm. Rowe said Mr. Fogel wrote a compelling letter regarding Eichler homes and retaining the open feel of the streets. She said she agrees the fence is consistent with the Eichler design, except for the setback. She said homeowners have to think more of the neighborhood. She said the design of the fence and landscaping are fine, however the fence is too close to the sidewalk.

Vice Chair Travis said he likes the design of fence, and was a little confused as to why the Planning Commission was seeing this project again. He said this situation has become less of a compromise and more of an awkward negotiation, where the City and the appellant are going in opposite directions. He said he looks at the recent Eichler Design Guidelines and thinks the fence should have to comply with them, however he is willing to stick with the original compromise.

Comm. Klein said he would be supporting the motion. He said the appellant is asking for adherence to the code, and if the code were truly adhered to, any fence over 6 feet would have to have a 15 foot setback. He said he understands there are other fences in the community that do not meet current standards, however fences built today must be built by today's codes. He said he agrees with the neighbors that the appearance of the fence is lovely, and ultimately the issue is the setback. He said the code is meant to maintain balance throughout the City adding that the decision made last June was more lenient than the current Eichler Design Guidelines would allow.

ACTION: Comm. Rowe made a motion on 2009-0753 to deny the appeal and approve the Use Permit with the conditions imposed by the Administrative Hearing Officer (see attachment B of the report). Vice Chair Travis seconded. Motion carried, 7-0.

APPEAL OPTIONS: This action is final unless appealed to City Council no later than January 26, 2010.