



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 17-0058, Version: 1

REPORT TO PLANNING COMMISSION

SUBJECT

File #: 2016-7685

Location: 484 East Duane Avenue (APN: 204-15-015)

Zoning: R-0

Proposed Project: **APPEAL** by the applicant of the Zoning Administrator's decision to deny a Variance for 5 feet 8-inch fence where a maximum 3 feet 6-inch high fence is allowed within the corner and driveway vision triangle areas.

Applicant / Owner: Treeium Inc (applicant) / Ernst and Lucy Mahnel (owner)

Environmental Review: A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act (CEQA). Class 3 Categorical Exemptions includes construction of new accessory structures including fences (CEQA Section 15303 (e)).

Project Planner: Aastha Vashist, (408) 730-7458, avashist@sunnyvale.ca.gov

REPORT IN BRIEF

General Plan: Residential Low Density

Existing Site Conditions: Single Family Residence

Surrounding Land Uses

North: Single-Family Residence across East Duane Avenue

South: Single-Family Residence

East: Single-Family Residence across Worley Avenue

West: Single-Family Residence

Issues: Vision triangle requirement

Staff Recommendation: Deny the Appeal and uphold the decision of the Zoning Administrator to deny the Variance. If the Planning Commission decides to Approve the Variance, the recommended Conditions of Approval are included in the Attachment 3. A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act (CEQA). Class 3 Categorical Exemptions includes construction of new accessory structures including fences (CEQA Section 15303 (e)).

BACKGROUND

The subject property is located on a corner lot at the intersection of East Duane Avenue and Worley Avenue. The project includes an existing 5 feet 8-inch high front yard and reducible front yard fence located in both the corner and driveway vision triangle areas. The fence was constructed without permits and the applicant is now proposing to legalize the structure. A Variance is required for fences exceeding 3 feet 6-inch in height within the vision triangle areas per Sunnyvale Municipal Code

(SMC) 19.34.060.

On November 16, 2016, the Zoning Administrator considered the request for a Variance to allow an existing 5 feet 8-inch high front yard and reducible front yard fence within the vision triangles. A neighbor spoke in favor of the project (no one spoke in opposition).

The Zoning Administrator was unable to make the required findings for a Variance and denied the permit. Included in the Zoning Administrator's decision was a determination by the Department of Public Works Transportation and Traffic Division that the fence is considered a potential visual obstacle for vehicles and bicyclists. The Zoning Administrator's November 16, 2016 hearing minutes are included in Attachment 5.

See Attachment 1 for Vicinity and noticing map, Attachment 2 for project data table, and Attachment 4 for the applicant's appeal letter.

Previous Actions on the Site

A Tree Removal Permit (#2006-0526) for a Redwood tree on the left corner of the front yard was previously approved by the staff in year 2006. However, no trees are proposed to be removed as part of this permit.

DISCUSSION

Site Layout

The subject property is located on a corner lot at the intersection of East Duane Avenue and Worley Avenue. For corner lots, the area in front of the home adjacent to the longer street frontage is defined as the reducible front yard, while the area in front of the shorter street frontage is considered the front yard. The layout of the property is such that the main entry of the house is located along the reducible front yard (along East Duane Avenue).

The existing 5 feet 8-inch high fence is positioned along the front property line adjacent to each street and along the left side of the driveway to the garage. An existing legal 6 foot high wooden fence is positioned along the right side of the driveway and adjacent to East Duane Avenue, which encloses the rear yard of the property.

Fence Design

The subject fence is constructed of cinder block and wrought iron with brick posts spaced a minimum 9 feet 6-inches apart. The solid 2 feet 11-inch cinder block fence is topped by wrought iron fence (refer to Attachment 6).

Open fences are exempt from vision triangle requirements, which are defined in SMC 19.48.020 as fences up to four and one-half feet tall with posts spaced at least eight feet apart. However, the subject fence cannot be categorized as an "open fence" as the 5'-8" fence (measured from the top of the adjoining curb to the highest point of the fence) is greater than the maximum 4 feet 6-inches allowed for open fences, and the brick posts are two feet in width and thickness, where a maximum of twelve-inches wide or thick posts are allowed for open fences.

The corner properties within the immediate neighborhood have hedges, open fences, or low solid fences along the front and reducible front property line. Although the fence has a residential

character, the thicker brick posts make the fence inconsistent in scale with others in the neighborhood (See Attachment 7 for site photographs).

APPEAL

The following are the appellant's justifications for the appeal and staff's responses:

Appellant: *The fence does not create a visual obstacle for drivers using the East Duane Avenue and Worley Avenue intersection.*

Staff response: SMC 19.34.060 requires that the vision triangle be maintained clear of structures over three and one half feet in height, except those exempt from the requirement. The fence is located within the 40-foot corner vision triangle and 10-foot driveway vision triangle (refer to Attachment 6). The intent of this requirement is to promote safety and reduce the potential of accidents by providing drivers a better view of pedestrian, bicycle, and vehicular traffic. The Transportation and Traffic Division considers the fence as a potential visual obstacle for vehicles and bicyclists. The 4 feet 11-inches high and two feet thick brick columns is a visual obstacle that can be detrimental to the motorist or bicyclist safety.

Appellant: *The fence will prevent any future vehicle collision to the house.*

Staff response: The Public Safety Department report (CR12-7573) indicates an incident of vehicle collision into the residence in 2012. As stated by the applicant, the intent of the fence is to enhance safety by preventing vehicle collision to the house and not provide additional space or privacy.

In staff's opinion, the intent of providing the fence can still be achieved by modifying the existing fence to comply with vision triangle requirement. A 3 foot 6-inch-tall solid fence or 4 foot 6-inch-tall open fence could still act as a protective barrier to help prevent collisions to the house.

Appellant: *The owner and neighbors find the fence attractive.*

Staff response: The subject fence is constructed of cinder block and wrought iron with brick posts spaced a minimum 9 feet 6-inches apart. The corner properties within the immediate neighborhood have hedges, open fences, or low solid fences along the front and reducible front property line. Although the staff finds that the fence has a residential character and utilizes high quality material, the two feet thick brick posts make the fence inconsistent in scale with other fences in the neighborhood (See Attachment 7 for site photographs).

VARIANCE FINDINGS

Staff is unable to make the findings for approval of the fence, as follows:

1. *Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity and within the same zoning district. **Finding not met.***

This corner property with two street frontages does not have any unique circumstances applicable to the site, location or surrounding. The Public Safety Department report (CR12-7573) indicates one

incident of vehicle collision into the residence in 2012. As stated by the applicant, the intent of the fence is to enhance safety by preventing vehicle collision to the house and not provide additional space or privacy. In staff's opinion, the intent of providing the fence can still be achieved by meeting the vision triangle requirement. The requirement allows fences up to 3 feet 6-inch in height or open fences, with a maximum height of 4 feet 6-inch, and posts not more than 12-inch in width and thickness between 3 feet 6-inch and 4 feet 6-inch height.

2. *The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district. **Finding not met.***

In consultation with the Transportation and Traffic Division, staff finds that the fence with 4 feet 11-inch high, 2 feet wide and thick brick columns is a visual obstacle that can be detrimental to the safety of motorist or bicyclist. The site does not have any unique safety conditions to address concerns that potentially arise with structures projecting within vision triangles. East Duane Avenue curves near the intersection with Worley Avenue, parking is permitted along the streets in proximity to this property, and there is no marked crosswalk at the intersection. Therefore, staff is unable to make the determination that the Variance will not be detrimental to public welfare.

3. *Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district. **Finding not met.***

Existing fences at the corner properties in the immediate neighborhood meet the vision triangle requirements. The property across the street has an approximately 3 feet 6-inch high solid fence. Similarly, the corner property at Cypress Avenue and Worley Avenue intersection has a roughly 3 feet 6-inch high hedge, and the property at Gresham Avenue and East Duane Avenue intersection has open fences within the corner vision triangles (refer to Attachment 6). Therefore, staff finds that the approval of the Variance will grant a special privilege to the property owner not enjoyed by other surrounding properties within the surrounding neighborhood.

ENVIRONMENTAL REVIEW

A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act (CEQA). Class 3 Categorical Exemptions includes construction of new accessory structures including fences (CEQA Section 15303 (e)).

FISCAL IMPACT

No fiscal impacts other than normal fees and taxes are expected.

PUBLIC CONTACT

As of the date of staff report preparation, staff has received no comments or phone calls from the public.

Notice of Public Hearing

- Published in the Sun newspaper
- Posted on the site
- 282 notices mailed to property owners and residents within 300 feet of the project site

Staff Report

- Provided at the Reference Section of the City's Public Library
- Posted on the City's website

Agenda

- Posted on the City's official notice bulletin board
- Posted on the City's website

ALTERNATIVES

1. Find that the action is exempt from CEQA pursuant to CEQA Guidelines 15303, deny the appeal and deny the Variance.
2. Find that the action is exempt from CEQA pursuant to CEQA Guidelines 15303, grant the appeal and approve the Variance with Conditions in Attachment 3.
3. Find that the action is exempt from CEQA pursuant to CEQA Guidelines 15303, grant the appeal and approve the Variance with modified conditions.

RECOMMENDATION

Alternative 1: Find that the action is exempt from CEQA pursuant to CEQA Guidelines 15303, deny the appeal and deny the Variance.

Prepared by: Aastha Vashist, Assistant Planner

Approved by: Andrew Miner, Planning Officer

ATTACHMENTS

1. Vicinity and Noticing Map
2. Project Data Table
3. Recommended Conditions of Approval
4. Appeal Letter by the Applicant
5. Zoning Administrator November 16, 2016 hearing' minutes
6. Architectural and Site plan
7. Site Photographs
8. Variance Justification Form by the applicant
9. Traffic Collision Report provided by the applicant