



**PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT**

**STAFF REPORT**

**DATE:** May 2, 2018

**TO:** Hearing Officer

**SUBJECT:** Minor Variance #11884

**LOCATION:** 969 S Madison Avenue

**APPLICANT:** Christina Hoffman

**ZONING DESIGNATION:** RS-6 (Single-Family Residential, 0-6 units per acre)

**GENERAL PLAN DESIGNATION:** Low Density Residential

**CASE PLANNER:** Jamie Peltier

**STAFF RECOMMENDATION:** Adopt the Environmental Determination and Specific Findings in Attachment A to **disapprove** Minor Variance #11884.

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**PROJECT PROPOSAL:** Minor Variance: To allow an 8'-5" high fence in the corner side yard, where the maximum allowed height is four feet. A Minor Variance is required for a fence that exceeds the maximum allowable height.

**ENVIRONMENTAL DETERMINATION:** This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15303, Class 3, New Construction or Conversion of Small Structures) and there are no features that distinguish this project from others in the exempt class; therefore there are no unusual circumstances. Section 15303 exempts the construction of or installation of accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences, from environmental review. The use of the site will remain as a single-family residence.

**BACKGROUND:**

**Site Characteristics:** The site is a 15,181 square-foot, rectangular shaped corner lot located on the southwest corner of Madison Avenue and Alpine Street. The site is developed with a 4,134 square-foot, two-story single-family residence, 360 square-foot detached garage, 540 square-foot pool cabana and storage area, swimming pool with attached spa, and other site improvements.

**Adjacent Uses:** North – Single-Family Residential  
South – Single-Family Residential  
East – Single-Family Residential  
West – Single-Family Residential

**Adjacent Zoning:** North – RS-6 (Single-Family Residential, 0-6 units per acre)  
South – RS-6 (Single-Family Residential, 0-6 units per acre)  
East – RS-6 (Single-Family Residential, 0-6 units per acre)  
West – RS-6 (Single-Family Residential, 0-6 units per acre)

**Previous Zoning Cases on This Property:** None.

**PROJECT DESCRIPTION:**

The applicant and property owner, Christina Hoffman, has submitted a Minor Variance application to allow an 8'-5" high fence in the corner side yard, where the maximum allowed height is four feet. A Minor Variance is required for a fence that exceeds the maximum allowable height.

The subject site is a regular rectangular shaped corner lot containing a two-story, single-family residence, detached garage, pool cabana and storage areas, and swimming pool. The lot is flat, and prior to the construction of a retaining wall along the corner street lot line, there was a gentle slope from the building pad area to the property line along the sidewalk on the north side of the property.

The subject solid five-foot tall wood fence was previously located approximately 8'-4" from the corner street lot line. On December 27, 2017, building permit BLD2018-01626 was issued for a new 3'-5" tall retaining wall spanning approximately 91'-6" along the corner side yard. The retaining wall was constructed along the corner street lot line and backfilled with dirt to create an extended flat pad in the backyard of the property. The five-foot tall fence was subsequently relocated immediately adjacent to the newly constructed retaining wall, on the newly-raised finished grade, without the benefit of a Zoning Permit. The flat pad is now being utilized as part of the backyard area for the property. Prior to the relocation of the fence to the current location, the fence was in compliance with the Zoning Code requirements. The relocation of the fence is subject to compliance with the current standards set forth in the Zoning Code; including height which is measured from existing grade. The requested Minor Variance application would permit the existing five-foot high solid wood fence to be on top of the 3'-5" retaining wall at the corner street lot line with an overall height of 8'-5" from existing grade.

As described in the application, the property owner is requesting to permit the relocation of the existing fence to the top of the retaining wall measuring a total of 8'-5" high from existing grade at the property line. The application states the purpose of the fence proposal is for privacy and safety purposes. The property owner indicated when the previously conforming fence was located away from the property line that it exposed their home to loiterers and trespassers and allowed the public to see inside their home. Additionally, the property owner is concerned about providing safety from the swimming pool and spa. There are two non-protected trees onsite located approximately five feet from the corner street lot line and the trees pose an issue to the property owner because the perimeter fence serves as a protective pool enclosure. If the fence were to be relocated to the previous location away from the property line, the trees would be located outside of the fence. The property owner indicated that the trees would act as climbing features, which someone could use to climb over the fence into the backyard. The California Building Code requires a five-foot high swimming pool enclosure with the construction of the new spa attached to the swimming pool (BMN2018-00020). The fence would serve as the pool safety enclosure for the swimming pool and spa.

#### **ANALYSIS:**

Section 17.40.180 of the Zoning Code states that a fence or wall in the RS or RM-12 zoning district shall not exceed a maximum height of four feet when located within five feet from the corner side property line and the maximum height shall be six feet between the rear building line and the rear property line, provided the wall or fence is located a minimum distance of five feet from the street property line. In addition, the Building and Safety Department requires that swimming pools (depth greater than 18") provide a barrier (e.g. fencing) on all sides to enclose the pool area and shall have a minimum height of five feet pursuant to Chapter 14 of the Municipal Code. Per Section 17.40.180.A.1, walls and fences are measured from existing grade as it existed on March 2, 2009. The height of all walls and fences are measured from the existing grade to the top of the wall or fence in order to prevent the artificial raising of the grade in order to allow for a higher wall or fence. Existing grade is the surface of the ground or pavement at a stated location as it exists before disturbance in preparation for a project regulated by this Zoning Code. The application requests to allow a five-foot high solid wood fence to be on top of the new 3'-5" retaining wall at the corner street lot line with an overall height of 8'-5" as measured from existing grade.

The intent of the Zoning Code height limitation for walls and fences along the corner side setback to four feet is to allow a visual connection between pedestrian and vehicles traveling in the neighborhood while being able to view and enjoy visually the various types, styles and colors of residential homes in the neighborhood.

A Minor Variance application allows the City to review whether a deviation from the Zoning Code can be granted for a project. It may only be granted when, because of special circumstances applicable to the subject property, the strict application of the Zoning Ordinance denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts, or creates an unnecessary and non-self-created hardship or unreasonable regulation which makes it obviously impractical to require compliance with the applicable development standards. In addition, a Minor Variance shall not be granted that would have the effect of granting a special privilege not shared by other property owners in the vicinity and under identical zoning districts.

In this case, the subject site does not present any exceptional or extraordinary circumstances that make it impractical to comply with the fence height requirement. The subject site is rectangular in

shape and exceeds minimum lot size and lot width requirements for properties in the RS-6 (Residential, Single-Family) zoning district. The minimum lot size for RS-6 properties is 7,200 square feet with a minimum width of 55 feet. The subject lot is 15,173 square feet and 76 feet wide. The lot is relatively flat with existing site improvements typically associated with a single-family residence. The five-foot solid wood fence that was setback 8'-4" from the property line was in compliance with the Zoning Code requirements prior to the relocation. The request is to keep the fence at the proposed location on the corner side property line, on top of a retaining wall, with an overall height of 8'-5" does not present an exceptional circumstance. The lot is large, contains a substantial backyard area with existing site improvements, and is not deprived of use of the property. The properties in the area share the same site characteristics in terms of lot size, dimensions, shape, and topography, and are in the same zoning district, subject to the same development standards in the Zoning Code. This includes other corner lots of similar width and lot size in the immediate neighborhood.

In order to support a Minor Variance request, staff must make five findings, including that there are exceptional or extraordinary circumstances or conditions applicable to the development of the site that do not apply to sites in the same zoning district, and that granting the request is necessary for the preservation and enjoyment of a substantial property right of the applicant and to prevent unreasonable property loss or unnecessary hardship. Staff is unable to make the findings because there are no exceptional or extraordinary circumstances or conditions applicable to the development of the site that would support the proposed fence height.

#### **GENERAL PLAN CONSISTENCY:**

The subject site is designated as Low Density Residential in the General Plan Land Use Element. The use of the site would remain a single-family residence; therefore, the character of the single-family neighborhood would be maintained. However, the project is not consistent with the adopted General Plan policies, including Policy 21.3 (Residential Neighborhoods – Neighborhood Character), to maintain elements of residential street that unify and enhance the character of the neighborhood, including parkways, street trees, and compatible setbacks. The development standards for walls and fences of the Zoning Code were created to implement the General Plan policies by addressing additional details of site planning, project design, and the operation of land uses to ensure that proposed development produces an environment of desirable character. The five-foot fence in its original location approximately 8'-4" from the property line was consistent with the Zoning Code, which carried out the goals of the General Plan. The proposed 8'-5" wall and fence, built at the corner side property line, would conflict with Policy 21.3 because it would be out of pedestrian scale and would impede the visual connection to the neighborhood from the public right-of-way and would be detrimental to the efforts in providing and maintaining features that unify and enhance the character of the neighborhood.

#### **COMMENTS FROM OTHER DEPARTMENTS:**

The proposed project was reviewed by the Department of Public Works, Department of Transportation, Fire Department, Building and Safety Division, and Design and Historic Preservation Section. The Building and Safety Division provided comments and recommended conditions of approval, which would be incorporated should the project be approved. The remaining departments have no comments at this time.

**CONCLUSION:**

Staff finds that the findings necessary for approving the Minor Variance request to allow an 8'-5" fence to exceed the maximum four-foot height requirement, for fences that are less than five feet from the corner side property line, cannot be made. There are no exceptional or extraordinary circumstances or conditions applicable to the development of the site that would support the deviation from the fence height requirement in the proposed location. The granting of this Minor Variance is not in conformance with the goals, policies, and objectives of the General Plan. Therefore, staff recommends that the Hearing Officer disapprove the application.

Attachments:

Attachment A: Minor Variance Findings

**ATTACHMENT A**  
**SPECIFIC FINDINGS FOR MINOR VARIANCE #11884**

Minor Variance: To allow an 8'-5" high fence in the corner side yard, where the maximum allowed height is four feet.

1. *There are no exceptional or extraordinary circumstances or conditions applicable to the development site that do not apply generally to sites in the same zoning district.* The subject site is rectangular in shape and exceeds the minimum lot size and lot width requirements for properties in the RS-6 (Residential, Single-Family) zoning district. The minimum lot size for RS-6 properties is 7,200 square feet with a minimum width of 55 feet. The subject lot is 15,173 square feet and 76 feet wide. There are similar corner lots of similar width and lot size in the immediate neighborhood, that observe all the provisions of the Zoning Code, as they relate to fence height. As such, there is no exceptional or extraordinary circumstance that applied to this site that would allow the proposed deviation from the height requirement.
  
2. *Granting the application is not consistent with the General Plan and the purposes of Title 17 of the Municipal Code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district.* The subject site is designated as Low Density Residential in the General Plan Land Use Element. The use of the site would remain a single-family residence; therefore, the character of the single-family neighborhood would be maintained. However, the project is not consistent with the adopted General Plan policies, including Policy 21.3 (Residential Neighborhoods – Neighborhood Character), to maintain elements of residential street that unify and enhance the character of the neighborhood, including parkways, street trees, and compatible setbacks. The development standards for walls and fences of the Zoning Code were created to implement the General Plan policies by addressing additional details of site planning, project design, and the operation of land uses to ensure that proposed development produces an environment of desirable character. The proposed 8'-5" wall and fence, built at the corner side property line, would conflict with Policy 21.3 because it would be out of pedestrian scale and would impede the visual connection to the neighborhood from the public right-of-way and would be detrimental to the efforts in providing and maintaining features that unify and enhance the character of the neighborhood.