



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: July 18, 2018

TO: Hearing Officer

SUBJECT: Minor Variance #11881

LOCATION: 1415 El Mirador Drive

APPLICANT: Deven and Donald LeTendre

ZONING DESIGNATION: RS-2-HD (Single-Family Residential, 0-2 units per acre – Hillside Overlay District)

GENERAL PLAN DESIGNATION: Low Density Residential

CASE PLANNER: Kristen Johnston

STAFF RECOMMENDATION: Adopt the Environmental Determination and Specific Findings in Attachment A to **disapprove** Minor Variance #11881.

PROJECT PROPOSAL: Minor Variance: To allow a driveway gate and fence along the side (west) property line ranging in height from 6'0" to 7'4" within the front 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)(5); Administrative Code, Title 14, Chapter 3, §15270(a), Projects Which are Disapproved. This Statutory Exemption states that CEQA does not apply to projects which a public agency rejects or disapproves.

BACKGROUND:

Site Characteristics: The site is a 38,640 square-foot flag lot with street frontage along El Mirador Drive and Afton Street. The site is developed with a 3,761 square-foot, one-story single-family residence with an

attached garage, swimming pool and 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-2-HD (Single-Family Residential, 0-2 units per acre – Hillside Overlay District)
South – PD-9 (Planned Development, El Mirador)
East – RS-2-HD (Single-Family Residential, 0-2 units per acre – Hillside Overlay District)
West – RS-2-HD (Single-Family Residential, 0-2 units per acre – Hillside Overlay District)

Previous Zoning Cases on This Property:

Vesting Tentative Parcel Map #070163: To subdivide one 58,646 square-foot land lot into two land lots of 38,640 square feet and 20,006 square feet. Hillside Development Permit to subdivide a property in the Hillside Overlay District, and a Conditional Use Permit to create a flag lot. (Approved - April 15, 2009)

Variance #7190: To allow the construction of a pool on the front half of a double frontage lot. (Approved – August 20, 1964)

PROJECT DESCRIPTION:

The applicants, Deven and Donald LeTendre, have submitted a Minor Variance application to allow a driveway gate and fence along the side (west) property line ranging in height from 6'0" to 7'4" within the front 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 located within the RS-2-HD (Single-Family Residential, Hillside Overlay District) zoning district and is a 38,640 square-foot flag lot, with frontage along El Mirador Drive and Afton Street. The site maintains vehicle access from El Mirador Drive. The subject site is developed with a one-story, single-family residence with an attached garage, swimming pool and spa, and other site improvements. The lot gradually slopes to the north, from El Mirador Drive to the building pad, with a descending slope to Afton Street.

On July 6, 2016, a code compliance case (CTP2016-01036) was created for the subject site. The City issued a warning notice to the property owners to obtain all required premits for fencing. Following the warning notice, a Zoning Permit (ZON2016-00160) was issued on July 28, 2016 for a driveway gate and side property line fence. The approved site plan noted a four-foot high fence with 50 percent transparency.

On May 6, 2017, a second warning notice was issued (CTP2016-01285), citing the owner to comply with the allowed height of four feet, per Zoning Permit (ZON2016-00160), issued on July 28, 2016, or obtain a Variance to allow the fence to exceed the maximum allowable height within the front yard. As documented by the Code Compliance Officer at the time of site inspection, the driveway gate and property line fence exceeds the maximum allowable height within the pole

portion of the flag lot and front yard. Consequently, an administrative citation was issued on September 28, 2017, for non-compliance with the two previously issued warning notices.

ANALYSIS:

Section 17.40.180 of the Zoning Code states that a wall or fence within the RS or RM-12 zoning district located within front yard (between the front property line and the occupancy frontage) shall have a maximum height of four feet and be at least 50 percent open. More specifically, Section 17.40.180, subsection (f) identifies wall and fence height for flag lots, allowing a maximum front yard wall or fence height of six feet, provided the front yard of the flag lot is abutting interior side or rear yards on all sides. However, the maximum height of walls and fences shall remain four feet in the portion of the pole that abuts a front yard, from the street property line to the occupancy frontage of the adjacent properties or 25 feet, whichever is greater.

Furthermore, Section 17.40.050 – Flag Lot Development Standards, Figure 4-1 illustrates flag lot components, identifying components such as the pole portion of a lot, flag portion of a lot, front lot line, side and rear lot line, etc. As such, the front lot line is the lot boundary that most nearly parallels the public or private street providing access to the lot, and which abuts the end of the pole, but does not include the pole. The side property line is any lot boundary that does not abut a public or private right-of-way, and is not a front or rear property line, exclusive of the pole portion of the lot. The rear property line is the lot boundary opposite the front property line.

As previously noted, the subject site is a flag lot located within the RS-2-HD (Single-Family Residential, Hillside Overlay District) zoning district. As concluded in the analysis above, the maximum allowable wall and fence height, located within the pole portion of a lot is 4 feet and at least 50 percent open. The plans provided by the applicant show a 6'0" to 7'4" driveway gate and 6'0" side (west) property line fence. The driveway gate is placed 16 feet from the street property line, and is within the pole portion of the flag lot. The driveway gate and side property line fence abut the front yard of the adjacent property. The adjacent property's front yard is approximately 75 feet from the street property line to the occupancy frontage. As proposed, the driveway gate and property line fence within the pole portion of the site, do not comply with the maximum allowable wall and fence height of four feet.

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 special circumstances are 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. Additionally, 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 a flag lot and exceeds minimum lot size and lot width requirements for properties in the RS-2-HD (Single-Family Residential, Hillside Overlay District) zoning district. The minimum lot size for RS-2-HD properties is 20,000 square feet with a minimum width of 100 feet. The subject lot is 38,640 square feet in area and maintains a 200-foot lot width. The lot slopes slightly upward to the building pad, with existing site improvements typically associated with a single-family residence. The zoning permit issued in 2016 granted a fence four feet in height and 50 percent open, which complies with the Zoning Code requirements for fences located within the pole portion of a flag lot. The request to

maintain the driveway gate and side (west) property line fence within the pole portion of the site with an overall height of 7'4" does not present an exceptional circumstance. The lot is large, contains a substantial yard 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 all other flag lots 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 all five findings in the affirmative, due to the site lacking exceptional or extraordinary circumstances or conditions applicable to the development of the site that would support the proposed fence height and the project is not consistent with General Plan policies as it relates to neighborhood character.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

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)(5); Administrative Code, Title 14, Chapter 3, §15270(a), Projects Which are Disapproved. This Statutory Exemption states that CEQA does not apply to projects which a public agency rejects or disapproves.

In the event the Hearing Officer decides to approve Minor Variance #11881, the project could qualify for an exemption pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15303(e), 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. Class 3 exempts from environmental review the construction of accessory structures including fences.

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 four-foot fence, as approved as part of the Zoning Permit (ZON2016-00160) was consistent with the Zoning Code, which carried out the goals of the General Plan. The driveway gate and side (west) property line fence, with an overall height of 7'4", 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 a driveway gate 6'0" to 7'4" in height and a 6'0" side (west) property line fence to exceed the maximum four-foot height requirement, for fences located within the pole portion of a flag lot 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 #11881

Minor Variance: To allow a driveway gate and side (west) property line fence ranging in height from 6'0" to 7'4", 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 a flag lot, exceeding the minimum lot size and lot width requirements for properties in the RS-2-HD (Single-Family Residential, Hillside Overlay District) zoning district. The minimum lot size for RS-2-HD properties is 20,000 square feet with a minimum width of 100 feet. The subject lot is 38,640 square feet and 200 feet wide. There are similar flag lots of similar lot size and lot width, within 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 applicable 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 driveway gate 6'0 to 7'4" in height and a 6'0" side (west) property line fence, within the pole portion of the flag lot, 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.