



# City of Palo Alto

## City Council Staff Report

(ID # 10338)

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**Report Type: Consent Calendar**

**Meeting Date: 6/3/2019**

**Summary Title: 1210 Newell Road: Fence Variance Hearing Request**

**Title: QUASI JUDICIAL. 1210 Newell Road [18PLN-00289]: Recommendation by the Planning and Transportation Commission to Uphold the Director's Tentative Decision to Deny a Variance Request to Allow for an Exception From the Standard Corner Lot Fence Height Regulations for a Fence of Approximately: 7' 5" in the Front Yard, 8' in the Rear Yard, and 7' 5" in the Street Yard, and no Reduced Height in the Sight Triangle for the Newell Road/Community Lane Intersection. Environmental Assessment: In accordance with Guideline Section 15270, CEQA Does not Apply to Projects That a Public Agency Disapproves. Zoning District: R-1 (Single-Family)**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation:**

1. Adopt the attached Record of Land Use Action per the recommendation of the Planning and Transportation Commission, upholding the Director's denial of a Fence Variance application.

### **Executive Summary:**

The property owner submitted a variance application after the City received a Code Enforcement complaint and initiated an investigation regarding the heights of the fences located on the subject property of 1210 Newell Road. The variance was submitted in an attempt to maintain all of the noncomplying fence heights on the property. On January 15, 2019, the Director of Planning and Community Environment determined that the required findings per Palo Alto Municipal Code (PAMC) Section 18.76.030(c) could not be made and therefore tentatively denied the variance request. The property owner submitted a timely hearing request and the application was heard before the Planning and Transportation Commission, which voted unanimously (7-0) to recommend Council deny the variance in accordance with the Director's decision, based on the project's inability to meet the required

findings for approval.

**Background:**

The applicant submitted the fence variance application after a Code Enforcement investigation found the fence(s) on the subject property to be in violation of the City’s fence code standards found within PAMC Chapter 16.24 ([bit.ly/PAFenceCode](http://bit.ly/PAFenceCode)). Code Enforcement staff investigated the site upon receiving a complaint. Photos from the initial Code Enforcement investigation can be viewed on Attachment I of this report. Code Enforcement notified the property owner that the fences would need to be brought into conformance with the City fence regulations. The owner chose to submit a variance application requesting to exceed the fence height limit to keep the constructed fence(s).

**Discussion:**

The applicant has requested a Variance to exceed the allowed fence height for a standard corner lot, as set forth in the PAMC Chapter 16.24. As shown in the table below, all existing fences are above the allowed height limit. The request also seeks to maintain the existing fence heights at the Newell Road/Community Lane Intersection, which does not comply with the Sight Triangle requirements of PAMC Section 16.24.040.

COMPARISON WITH CHAPTER 16.24 FENCES		
Location	Allowed Height	Proposed Height
Front Yard	4 feet, or 6 feet, if 16 feet from front property line	~7 feet 5 inches, more than 16 feet the property line
Rear Yard	7 feet	~7 feet 6 inches (fence), 8 feet 3 inches (gate)
Interior Side Yard	7 feet	~6 feet*
Street Side Yard (Standard Corner Lots)	4 feet, or 6 feet, if 16 feet from street side property line	~7 feet 5 inches at the property line

\*Follow up site visit was conducted on June 15, 2019 with the property owner. The interior fence height was measured to be approximentaly six feet tall.

Variances are available to adjust the requirements of Chapter 16.24 (Fences) except as specified in PAMC Section 16.24.090 (Variances). PAMC Section 16.24.090 states that “no variance may be granted to the requirements contained in Sections 16.24.040 or 16.24.070,” which deal with Fences at Intersections and Prohibited Fences (such as barbed wire fences), respectively. Palo Alto Municipal Code Section 18.76.030 (c) sets forth the findings to approve or deny a variance application. All findings must be made in the affirmative to approve the

project. Failure to make any one finding requires project denial. Special circumstances that are expressly excluded from consideration are: the personal circumstances of the property owner, and any changes in the size or shape of the subject property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation.

According to the Variance Section of the Palo Alto Municipal Code, neither the Director nor the City Council on appeal, shall grant a variance, unless it is found that:

(1) Because of special circumstances applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, the strict application of the requirements and regulations prescribed in this title substantially deprives such property of privileges enjoyed by other property in the vicinity and in the same zoning district as the subject property. Special circumstances that are expressly excluded from consideration are:

(A) The personal circumstances of the property owner, and

(B) Any changes in the size or shape of the subject property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation.

(2) The granting of the application shall not affect substantial compliance with the regulations or constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zoning district as the subject property, and

(3) The granting of the application is consistent with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning), and

(4) The granting of the application will not be detrimental or injurious to property or improvements in the vicinity, will not be detrimental to the public health, safety, general welfare, or convenience.

The submitted variance request was not found to meet the required findings in order to grant approval as detailed in Tentative Denial Letter (Attachment H) and the Draft Record of Land Use Action (Attachment B). Additionally, the Variance seeks to waive the required vision triangle regulation (PAMC Section 16.24.040). This regulation is intended to help avoid collision hazards for vehicles, pedestrians, and cyclists. The vision triangle regulation would necessitate a reduction in the fence height within that triangle to a maximum height of three feet. Furthermore, PAMC 16.24.090 "Variances" specifically states that no variance may be granted for the vision triangle regulation.

The Planning and Transportation Commission reviewed the applicant's request for a fence variance on April 10, 2019. The minutes for this hearing are contained in Attachment F. The Planning and Transportation Commission, after hearing the item, voted unanimously (7 to 0) to recommend Council deny the application in accordance with the Director's decision for this variance request, based on the project's inability to meet the required findings for approval.

The property owners' legal counsel submitted a response after the PTC hearing to City Staff on May 8, 2019, which can be found within Attachment G of this report. This response asserts that no variance is required, that lattices should not be considered part of a "fence," that the City incorrectly measured the existing fence heights, and that Community Lane is not subject to the vision triangle requirement.

Planning staff in consultation with the City Attorney's Office has reviewed these assertions and determined that they are without merit. First, even if the City erroneously approved non-complying fences in a final building inspection, it is well established that such an error does not prevent the City from later enforcing its laws. Second, the City's long-standing interpretation of its fence code has included permanently attached fixtures such as lattices. The alternative interpretation suggested by the applicant would create a significant loophole that is contrary to the code's regulation of a "fence, wall, or other structure in the nature of a fence." Third, Staff conducted a site visit on May 15, 2019, with the property owner present to verify the fence measurements. All but one of the fence measurements were found to be consistent with the previous measurements stated by Staff. The interior lot line fence was measured to be approximately six feet in height. This was confirmed by staff during the site visit after the property owner granted access to the interior yard. Finally, Community Lane is a right of way that is used for vehicular traffic and that creates an intersection subject to 16.24.040. The PAMC contains numerous definitions of "street," including a definition in PAMC 1.04.050 that is generally applicable unless a different meaning is specifically defined or required by context.

### **Policy Implications:**

The recommendation in this report does not have any significant policy implications. The Council's decision to affirm action on consent would be consistent with the independent review and recommendation by both the planning director and the Planning and Transportation Commission. If pulled from consent, the Council would be scheduling this matter for a public hearing. Neither action has any significant policy implication.

### **Timeline:**

A Code Enforcement investigation was started in June of 2018 after a complaint was submitted to the City. The property owner was contacted by a Code Enforcement Officer and a timeline to bring the violation into compliance by August of 2018 was required with the option for a Variance to be submitted. A Variance application was submitted by the property owner in August of 2018 to the Planning Department to maintain all of the existing fence heights on the property. The Variance application was tentatively denied on January 15, 2019. The property owner submitted a timely request for hearing on January 30, 2019. The Planning and Transportation Commission heard this item on April 10, 2019, after the property owner requested the 45-day hearing requirement be waived to allow additional time to prepare for

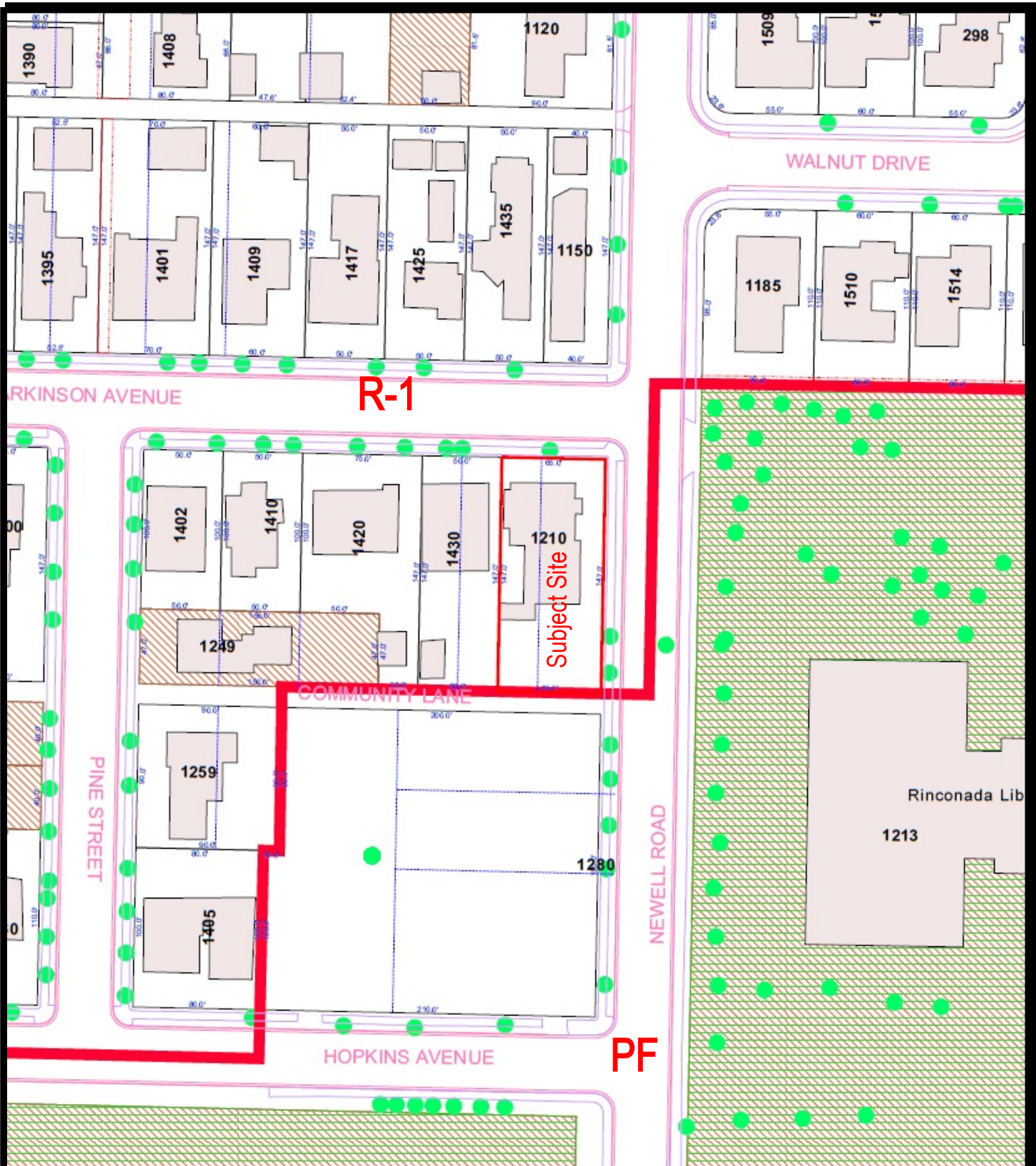
the hearing. The property owner also requested additional time to prepare for the Council Hearing.

**Environmental Review:**

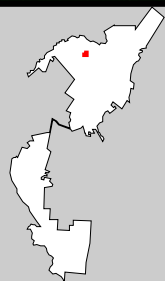
The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. In accordance with Guideline Section 15270, CEQA does not apply to projects for which a public agency rejects or disapproves.

**Attachments:**

- Attachment A: Location Map(PDF)**
- Attachment B: Draft Record of Land Use Action (DOCX)**
- Attachment C: Zoning and Fence Height Comparison Table (DOCX)**
- Attachment D: Request for Hearing (PDF)**
- Attachment E: April 10, 2019 PTC Staff Report w/o Attachments (PDF)**
- Attachment F: Excerpt Minutes for April 10, 2019 PTC Hearing (DOC)**
- Attachment G: Applicant Response to PTC Hearing (PDF)**
- Attachment H: Director's Tentative Denial (PDF)**
- Attachment I: Code Enforcement Violation Photos (PDF)**
- Attachment J: Public Comments (PDF)**
- Attachment K: Project Plans (DOCX)**



The City of  
Palo Alto



1210 Newell Road

This map is a product of the  
City of Palo Alto GIS



**APPROVAL NO. 2019-\_\_\_\_\_**

**RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE  
DENIAL FOR 1210 NEWELL ROAD: FENCE VARIANCE [FILE NO. 18PLN-00289]**

On \_\_\_\_\_, 2019, the City Council concurred with the Planning and Transportation Commission's recommendation to uphold the Director's denial of the applicant's request for approval of a Variance to allow an existing fence, located at 1210 Newell Road, to be granted increased fence heights and to be exempted from the sight triangle requirements for fences located at intersections, making the following findings, determination and declarations:

**SECTION 1. BACKGROUND.** The City Council of the City of Palo Alto ("City Council") finds, determines, and declares as follows:

A. On August 27, 2018, the property owner submitted a Variance application for an existing fence that after Code Enforcement actions were started at the subject property.

B. The requested fence height Variance is for an existing fence which does not adhere to the regulations within PAMC Section 16.24.020 "Height and Location Regulations". The existing fence also does not adhere to the sight triangle height regulations pursuant to PAMC Section 16.24.040 "Fences at intersections".

C. Following staff review, the Director of Planning considered and tentatively denied the Variance application on January 15, 2019.

D. Following a timely request for hearing received on January 28, 2019, the applicant requested additional time to engage with legal counsel and prepare materials for the Planning and Transportation Commission (Commission) hearing and submitted a statement to waive the 45 day timeline for a public hearing pursuant to PAMC 18.77. On April 10, 2019 the Planning and Transportation Commission reviewed the project and recommended to uphold the Director's denial of the project to City Council.

E. On \_\_\_\_\_, 2019, the City Council reviewed the request. After hearing public testimony, the Council voted to uphold the Director's denial of the requested fence variance.

**SECTION 2. ENVIRONMENTAL REVIEW.** The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. In accordance with Guideline Section 15270 CEQA does not apply to projects that a public agency rejects or disapproves.

**SECTION 3. VARIANCE FINDINGS.** The request by the applicant to maintain the existing fence exceeding fence regulations under PAMC Chapter 16.24 does not comply with the required Findings for a VARIANCE as required in Chapter 18.76.030 of the PAMC.

*Finding #1: Because of special circumstances applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, the strict application of the requirements and regulations prescribed in this title does not substantially deprive such property of privileges enjoyed by other property in the vicinity and in the same zoning district as the subject property.*

The project site is a standard corner lot within the R-1 Zone District. The parcel is 9,555 sf in lot area, and 65 feet by 147 feet, with standard corner lot setbacks. The subject parcel has an access alley (Community Lane) at the rear which runs the length of the block and provides rear yard vehicle access for all properties on this block of Parkinson Avenue. The applicant has requested a variance to allow for an increase in fence height which includes a 6 foot 2-inch fence along the street side yard and rear yard with 1 foot 2-inch lattice above the fence for total fence heights of 7 foot 4-inches. Additionally, the applicant has requested a street facing fence of 5 foot 9 inch with a 1 foot 1-inch lattice located within the street side setback facing Parkinson Avenue, for a total fence height of 6 foot 10-inches. The applicant has requested a variance for increased fence heights beyond what is allowed by the Municipal Code and for their property to be considered a back to back corner lot in consideration to how the subject lot is impacted by traffic, security, and privacy concerns. However, the subject lot conditions are not unique to this property.

There are a total of nineteen (19) properties along Parkinson Avenue, located within the R-1 Zone District, with rear yard alley access onto Community Lane. Additionally, there are eight eighty (88) properties with rear yard alley access similar to the subject site within 2,000 feet (less than a half mile) of the subject property for a total of one hundred and seven (107) properties with similar rear access situations in the immediate area. Of these properties, thirty-one are corner lots and are subject to the same standard fence regulations for corner lots as the subject property. Meaning that the street side yard (along Newell Road) has a limitation of four (4) feet maximum height for fences facing the street unless said fences are located at least sixteen (16) feet away from a street facing property line. Furthermore, the request to be considered a back to back corner lot is not possible as PAMC 16.24.060 "Fences on corner lots" clearly states that corner lots are adjacent properties with joining rear yards. This lot configuration is not present in on the subject lot. The standard corner lot allows for seven foot tall rear and interior yard fences, along with six foot tall fences at a minimum of sixteen feet from the street side and front lot lines, and four foot tall fences along the street side yard and front lot lines within sixteen feet of said property lines. The applicant states concerns over privacy as being one of the motivations for the request for taller fences, however, there is an option for the applicant to supplement a code compliant fence with hedges or other tall dense fast growing plants. The Palo Alto Municipal Code does not speak to regulations involving the height of vegetation outside of required vision sight triangles and maintaining clearances in the public right of ways. Thus, the privacy issues claimed by the applicant could be addressed by planting dense hedges directly adjacent to a code compliant fence. Plants that are six to eight feet in height, fast growing, and low water usage are readily available and utilized in the development of single-family homes throughout the City in the R-1 district. Furthermore, the applicants statements regarding impacts to their privacy due to lower code compliant fence heights are no greater than other corner lots in the area.



The applicant states that high traffic volumes from both automotive and pedestrian traffic, produce noise and pose a security concern, and the request for a taller fence would address these issues. However, similar conditions are experienced by all properties in the area, and the applicant does have the option to supplement code compliant fencing with tall dense planting, presenting no hardship or constraints on the subject property. The request from the applicant does not identify how they are precluded from designing and developing the parcel in compliance with local regulations. As stated by the applicant, the home on the subject property was recently built and designed to the applicant's specifications while developing the parcel in compliance with local regulations. The purpose of the granting of a variance, as outlined in PAMC Section 18.76.030(a) is to provide a way to grant relief when strict application of the zoning regulation would subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the same vicinity and zoning district. As noted above, the subject property has similar constraints and conditions as many other properties within the immediate vicinity and within the same zone district. Therefore, the fact that the lot is standard corner lot with rear alley access alone does not, in and of itself, constitute a hardship, constraint, or practical difficulty that does not normally arise on other properties within the immediate vicinity and within the same zone district and does not substantially deprive the property of privileges enjoyed by other properties within the immediate vicinity and in the same zoning district.

For the reasons outlined above, the request finding described in PAMC Section 18.76.030(c)(1) for approval of the variance cannot be made for the proposed project.

*Finding #2: The granting of the application affects substantial compliance with the regulations or constitutes a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zoning district as the subject property.*

As noted above, all other properties within the immediate vicinity and within the same zoning district that are corner lots are all similarly restricted by the regulations for fences in regards to maximum height, location, and sight triangle requirements. Therefore, the granting of a variance for the subject property would constitute a grant of special privileges that would be inconsistent with the limitations upon other properties in the vicinity and in the same zoning district. Further, the applicant is requesting approval for taller fences within a vision sight triangle for the corner of the subject property at the intersection of Community Lane and Newell Road. The vision triangle described in PAMC 16.24.090 would reduce the fence height and prohibit any vegetation from growing beyond three (3) feet tall. The submitted application does not account for this requirement. Furthermore, PAMC 16.24.090 "Variances" specifically states that no variance may be granted to the requirements contained in sections 16.24.040 "Fences at intersections". The extent of the requested variance affects substantial compliance with the regulations. For the reasons outlined above, the request finding described in PAMC Section 18.76.030(c)(2) for approval of the variance cannot be made for the proposed project.

*Finding #3: The granting of the application will be detrimental or injurious to property or improvements in the vicinity, will not be detrimental to the public health, safety, general welfare, or convenience.*

The requested variance as submitted for the increased fence heights at the rear and street side yard, as discussed in the section above, does not account for the required vision triangle where the rear property line meets the street side property line. The vision triangle is required to allow a clear line of sight for pedestrians, cyclists, and automobiles where Community Lane intersects with Newell Road. Without the vision triangle, the conditions would increase the potential for a collision to occur when a vehicle is exiting Community Lane at Newell Road. The submitted application does not account for this requirement, as such the requested variance for additional height would be detrimental or injurious to public safety. In accordance with the PAMC Section 16.24.040 *"A fence, wall or structure in the nature of a fence located at the intersection of any street improved for vehicular traffic, shall not exceed three feet in height above the adjacent curb grade, within a triangular area formed by the curblines, and their projection, and a line connecting them at points thirty-five feet from the intersection of the projected curblines"*, which requires the described vision triangle. Therefore, the requisite finding described in PAMC Section 18.76.030(c)(4) for approval of the variance cannot be made for the proposed project.

SECTION 4. EFFECTIVE DATE. The requisite findings described in PAMC 18.76.030(c) for approval of a Variance cannot be made for the proposed project. The variance request is therefore denied and this decision is effective immediately upon adoption.

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

\_\_\_\_\_

City Clerk

\_\_\_\_\_

Director of Planning and  
Community Environment

APPROVED AS TO FORM:

\_\_\_\_\_

Senior Asst. City Attorney

**ATTACHMENT B**  
**ZONING COMPARISON TABLE**  
1210 Newell Road, 18PLN-00289

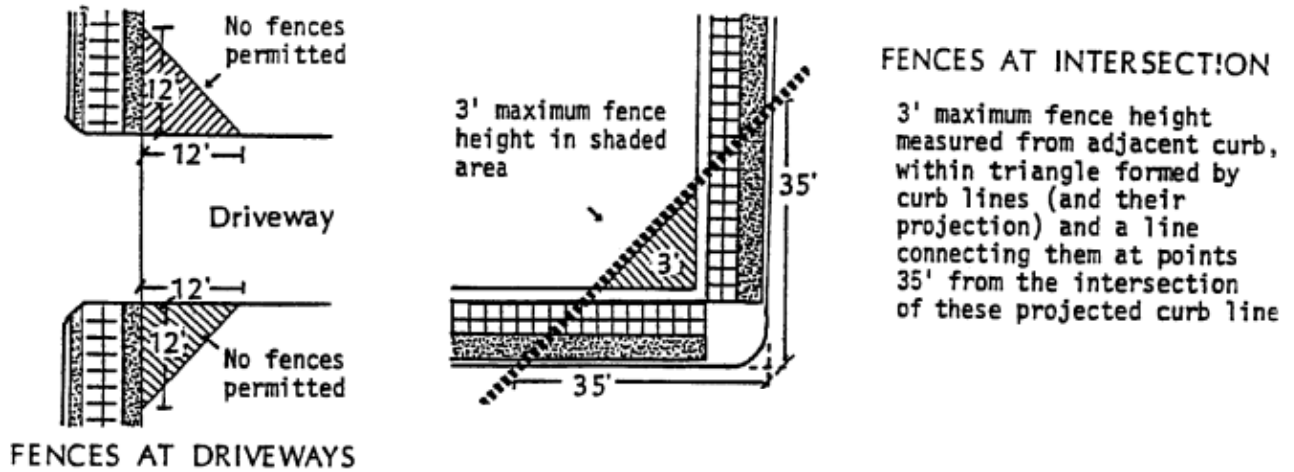
<b>Table 1: COMPARISON WITH CHAPTER 18.12 (R-1 DISTRICT)</b>		
<b>Regulation</b>	<b>Required</b>	<b>Existing</b>
Minimum Site Area, Width and Depth	6,000 sf area, 60 feet width, 100 feet depth	9,555 sf area, 65 feet width, 147 feet depth
Front Setback	20 feet	20 feet
Rear Setback	20 feet	20 feet
Interior Side Setback	6 feet	6 feet
Street Side Setback	16 feet	16 feet

<b>Table 2: COMPARISON WITH CHAPTER 16.24 FENCES</b>		
<b>Regulation</b>	<b>Maximum Height Within Setbacks</b>	<b>Existing Height</b>
Front Yard	4 feet with up to 5 feet tall posts, 6 feet tall if at least 16 feet from the front property line	~7 feet 5 inches
Rear Yard	7 feet	~7 feet 6 inches fence, 8 feet 3 inches gate
Interior Side Yard	7 feet	~7 feet 5 inches
Street Side Yard (Standard Corner Lots)	4 feet with up to 5 feet tall posts, 6 feet tall if at least 16 feet from the street side property line	~7 feet 5 inches

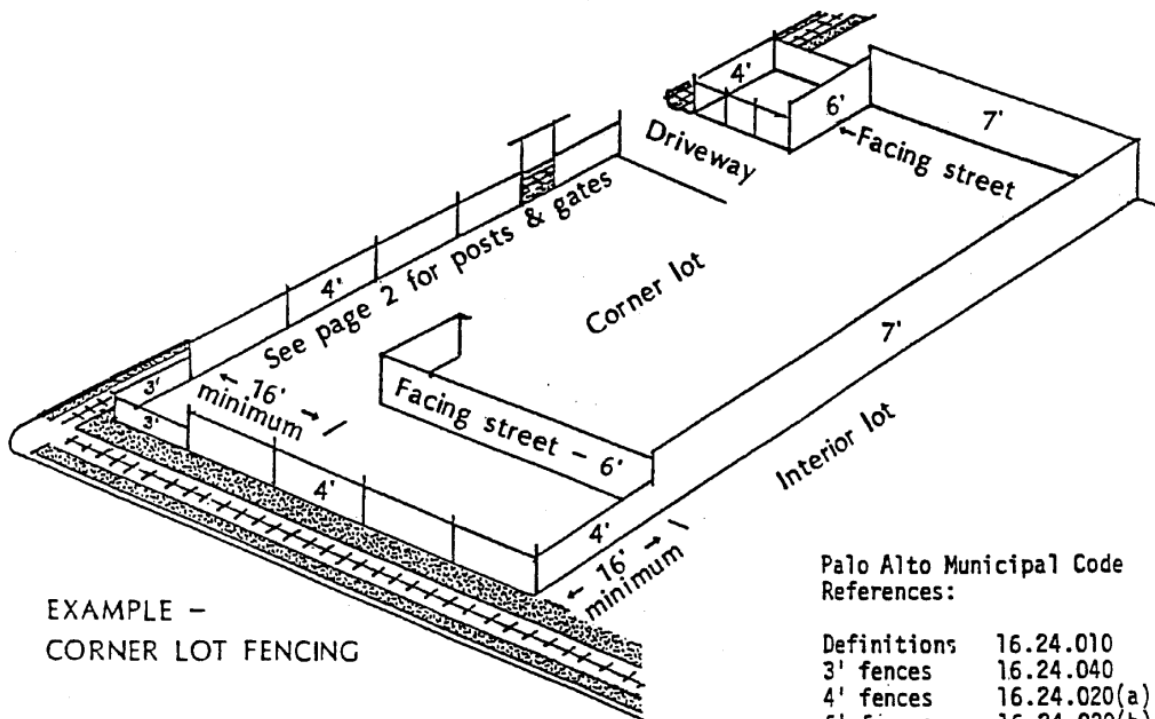
16.24.020(a) Fences Between the Street Setback Line and the Lot Line. A fence, wall, or other structure in the nature of a fence located between the street setback line and the lot line, shall be permitted up to four feet in height, except as otherwise provided in this chapter. Support posts or columns, not exceeding five feet in height or eighteen inches in width, and pedestrian gates and trellises used as entryway features, not exceeding eight feet in height, three feet in depth or five feet in width shall be permitted.

16.24.040 Fences at intersections: A fence, wall or structure in the nature of a fence located at the intersection of any street improved for vehicular traffic, shall not exceed three feet in height above the adjacent curb grade, within a triangular area formed by the curblines, and their projection, and a line connecting them at points thirty-five feet from the intersection of the projected curblines.

16.24.060 Fences on corner lots. Where corner lots are adjacent to each other with rear yards joining, a six-foot fence is permitted on the street side yard lot line at a point beginning fifty feet from the radius point of the corner, except that where a driveway occurs in that area, no fence may be constructed for a clear distance of twelve feet from the point of intersection of driveway and property lines. This provision shall not apply to corner lots whose rear or side yard abuts an interior side yard of an adjacent property.



### Standard Fences – Corner Lots



EXAMPLE –  
CORNER LOT FENCING

Palo Alto Municipal Code  
References:

Definitions	16.24.010
3' fences	16.24.040
4' fences	16.24.020(a)
6' fences	16.24.020(b)
7' fences	16.24.020(b)
Posts & gates	16.24.02(a)

Received

JAN 30 2019

Department of Planning  
& Community Environment

Xin Zhang  
1210 Newell Rd,  
Palo Alto, CA 94303  
xin\_zhang@hotmail.com

Planning & Community Environment  
250 Hamilton Avenue, 5<sup>th</sup> Floor  
Palo Alto, CA 94301

Jan 28, 2019

Re: 1210 Newell Road (18PLN-00289); Variance

To Whom It May Concern,

I request a hearing of the proposed decision regarding project 18PLN-00289.

Best Regards,

A handwritten signature in black ink, appearing to read 'Xin Zhang', written in a cursive style.

Xin Zhang



# Planning & Transportation Commission

## Staff Report (ID # 10123)

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**Report Type:** Action Items **Meeting Date:** 4/10/2019

**Summary Title:** 1210 Newell Road: Fence Variance Hearing Request

**Title:** PUBLIC HEARING. 1210 Newell Road [18PLN-00289]: Request for Hearing on the Director's Tentative Decision to Deny a Variance Request to Allow for an Exception From the Standard Corner Lot Fence Height Regulations for an Unpermitted Fence of Approximately: 7' 5" Front Yard (Where 6' is Allowed), 8' Rear Yard (Where 7' is Allowed), 7' 5" Interior Yard (Where 7' is Allowed), and 7' 5" Street Yard with No Sight Triangle Reduction at The Newell Road/Community Lane Intersection (Where Approximately 4' is Allowed and a Sight Triangle Limits Fences to 3' Tall). Environmental Assessment: The Proposed Project is Exempt From the Provisions of the California Environmental Quality Act (CEQA) in Accordance with Guideline Section 15303 (New Construction or Conversion of Small Structures). Zoning District: R-1 (Single-Family). For More Information, Contact Project Planner, Samuel Gutierrez at [Samuel.Gutierrez@cityofpaloalto.org](mailto:Samuel.Gutierrez@cityofpaloalto.org)

**From:** Jonathan Lait

### Recommendation

Staff recommends the Planning and Transportation Commission (PTC) take the following action(s):

1. Recommend Council deny the variance request based on the project's inability to meet the required findings.

### Background

#### Project Information

Owner: Chu Ching-Yao and Zhang Xin

Architect: Not Applicable

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City of Palo Alto  
Planning & Community Environment  
250 Hamilton Avenue  
Palo Alto, CA 94301  
(650) 329-2442

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Representative:	Not Applicable
Legal Counsel:	Derek R. Longstaff

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Property Information

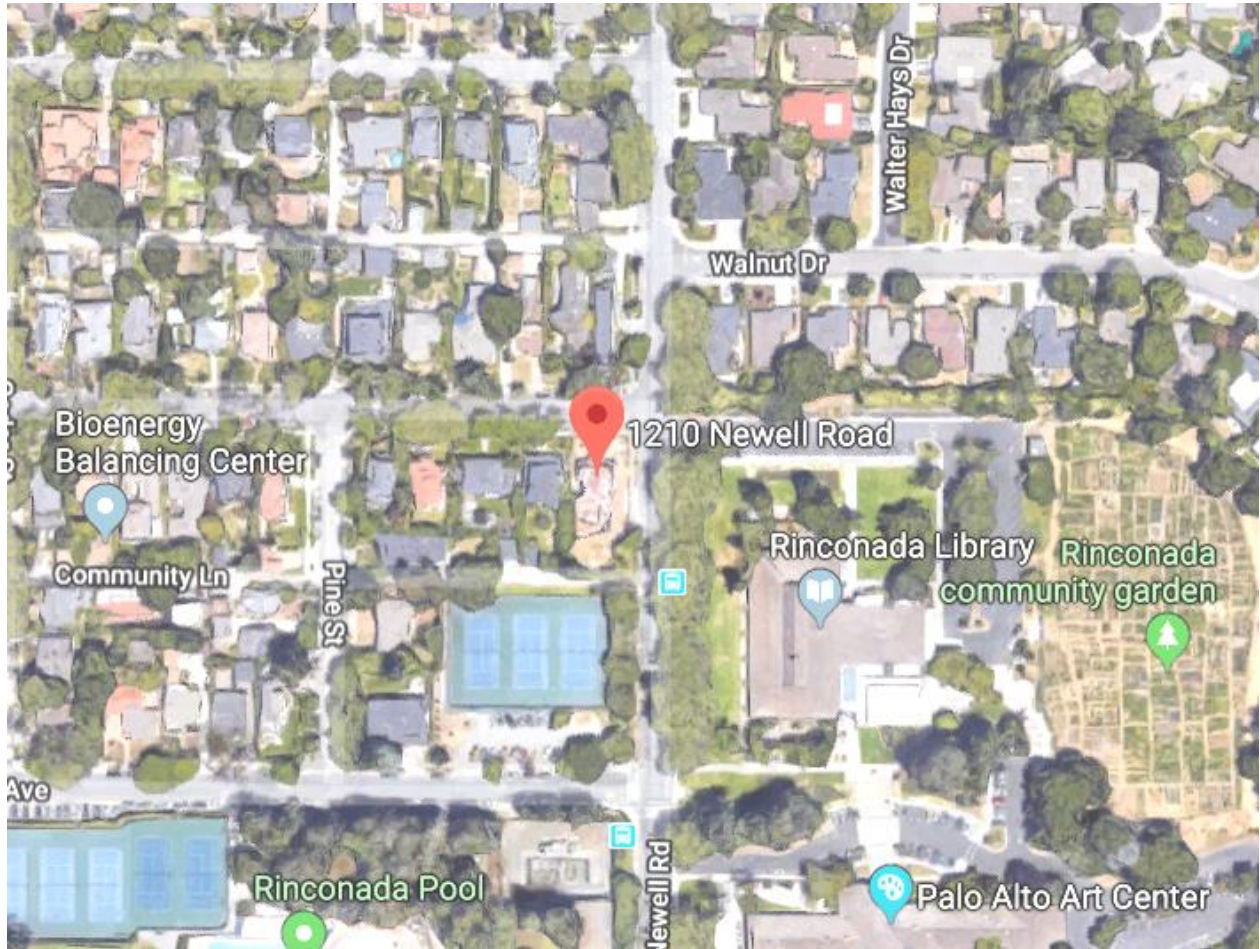
Address:	1210 Newell Road
Neighborhood:	Community Center
Lot Dimensions & Area:	65' by 147' & 9,555 sf
Housing Inventory Site:	Not Applicable
Located w/in a Plume:	Not Applicable
Protected/Heritage Trees:	Street Tree on Newell Road
Historic Resource(s):	Not Applicable

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Existing Improvement(s):	3,376 sf; 2 stories; 25' 10" high; built 2017
Existing Land Use(s):	SF – Single Family Residential
Adjacent Land Uses & Zoning:	North: R-1 Single Family Homes West: R-1 Single Family Homes East: PF Public Facilities South: PF Public Facilities
Special Setbacks:	Not Applicable

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Aerial View of Property:



Source: Google Maps

Land Use Designation & Applicable Plans/Guidelines

Zoning Designation: R-1 Single-Family Residential District

Comp. Plan Designation: SF Single Family Residential

Prior City Reviews & Action

City Council: None

PTC: None

HRB: None

ARB: None



## **Project Description**

The proposal is to retain an existing fence built in violation of the City's Fence Code. The applicant has requested a Variance to exceed the allowed fence height set forth in the Palo Alto Municipal Code (PAMC) Chapter 16.24. The existing fence has approximate heights of 7' 5" in the front yard, 8' along the rear property line, 7' 5" along the interior side yard, and 7' 5" along the street side yard. The request also seeks to maintain the existing fence heights at the Newell Road/Community Lane Intersection, which currently does not comply with the Sight Triangle requirements of PAMC Chapter 16.24.040.

### Requested Entitlements, Findings and Purview:

The following discretionary application is being requested and subject to PTC purview:

- Variance: The process for evaluating this type of application is set forth in PAMC 18.76.030 and 18.77.050. The director shall prepare a proposed written decision. Any party, including the applicant, may request a hearing of the planning and transportation commission (PTC) on the proposed director's decision by filing a written request. Within 45 days following the filing of a timely hearing request of a proposed director's decision the PTC shall hold a hearing on the application. The recommendation of the PTC shall be placed on the consent calendar of the Council within 45 days. The decision of the Council is final.

The purpose of a variance is to:

- (1) provide a way for a site with special physical constraints, resulting from natural or built features, to be used in ways similar to other sites in the same vicinity and zoning district; and
- (2) provide a way to grant relief when strict application of the zoning regulations would subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the same vicinity and zoning district.

Variances are applicable to the requirements of Chapter 16.24 (Fences) except for the fences identified in Section 16.24.090 (Variances). Palo Alto Municipal Code Section 18.76.030 (c) sets forth the findings to approve or deny a variance application. All findings must be made in the affirmative to approve the project. Failure to make any one finding requires project denial. Special circumstances that are expressly excluded from consideration are; the personal circumstances of the property owner, and any changes in the size or shape of the subject property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation. The findings to deny the subject variance application are provided in Attachment D.

## **Analysis<sup>1</sup>**

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<sup>1</sup> The information provided in this section is based on analysis prepared by the report author prior to the public hearing. Planning and Transportation Commission in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to take an alternative action from the recommended action.

### Neighborhood Setting and Character

The project is located on a standard corner lot within the R-1 Zone District in the Community Center neighborhood. The subject parcel is developed with a new two story home that recently replaced the previously existing single story home. The subject parcel has an access alley (Community Lane) at the rear which runs the length of the block and provides rear yard vehicle access for all properties on this block of Parkinson Avenue. There is a total of nineteen (19) properties with rear yard alley access to this portion of Community Lane. Six of these properties, as shown on the location map, have back yards directly across from the Community Center tennis court.

### Background

The applicant submitted the fence variance application after a Code Enforcement investigation found the existing fence on the subject property to be in violation of the fence code standards found within PAMC Chapter 16.24. Code Enforcement staff investigated the site upon receiving a complaint. Photos from the initial code enforcement investigation can be viewed on Attachment F of this report. Code Enforcement notified the property owner that the fences would need to be brought into conformance with the City fence regulations. The owner chose to submit a variance application requesting to exceed the fence height limit to keep the existing fence(s).

### Zoning Compliance<sup>2</sup>

A detailed review of the proposed project's inconsistency with applicable Municipal Code standards is shown in the Zoning Comparison Table (Attachment B). The Variance request seeks to diverge from all fence heights requirements as required for a standard residential corner lot. The existing fences on site not only exceed the code allowances in terms of height, but also violate the required sight triangle (aka vision triangle) at the intersection with Community Lane and Newell Rd.

The vision triangle regulation, set forth in PAMC Section 16.24.040 (Fences at Intersections), is intended to help avoid collision hazards for vehicles, pedestrians, and cyclists. The applicant's request for a variance conflicts with this section. An approval for any fence variance involving a property with an intersection, must ensure the fence meets the required sight triangle for the corner of the subject property. The vision triangle described in PAMC 16.24.040 would necessitate a reduction in the fence height within that triangle to a maximum height of three feet. This code also requires pruning of vegetation that grows beyond a height of three feet above grade within the triangle. The submitted application does not account for this requirement. Furthermore, PAMC 16.24.090 "Variances" specifically states that no variance may be granted for vision triangles.

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<sup>2</sup> The Palo Alto Zoning Code is available online: [http://www.amlegal.com/codes/client/palo-alto\\_ca](http://www.amlegal.com/codes/client/palo-alto_ca)

A violation of any provision of chapter 16.24.080 is an infraction. However, since the variance process was started, code enforcement actions have been placed on hold, pending the conclusion of the hearing process for the applicant's hearing request.

#### Consistency with Application Findings

The requested variance does not meet the required approval findings set forth in PAMC Section 18.76.030 "Variance", as further described in Attachment D. According to this section of the Palo Alto Municipal Code, neither the Director, nor the City Council on appeal, shall grant a variance, unless it is found that:

(1) Because of special circumstances applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, the strict application of the requirements and regulations prescribed in this title substantially deprives such property of privileges enjoyed by other property in the vicinity and in the same zoning district as the subject property. Special circumstances that are expressly excluded from consideration are:

(A) The personal circumstances of the property owner, and

(B) Any changes in the size or shape of the subject property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation.

(2) The granting of the application shall not affect substantial compliance with the regulations or constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zoning district as the subject property, and

(3) The granting of the application is consistent with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning), and

(4) The granting of the application will not be detrimental or injurious to property or improvements in the vicinity, will not be detrimental to the public health, safety, general welfare, or convenience.

The applicant provided justifications (Attachment H) for the requested variance based on personal circumstances, including the property owners' fear of crime and privacy based on the design of their newly constructed home. The applicant has requested a variance to allow for an increase in fence height for all existing fencing. Staff finds there are 88 properties with rear yard alley access similar to the subject site within 2,000 feet (less than a half mile) of the property for a total of 107 properties with similar rear access situations. Of those properties, 31 are corner lots and are subject to the same standard fence regulations for corner lots as the subject property. In other words, this property is not unique.

The applicant's request for increased fence heights also argues for the consideration of their property as a back-to-back corner lot. However, the subject lot's conditions are not unique to this property. The context represented by the tennis courts and Community Lane access presents a challenge for many parcels, not only the subject parcel, and the regulations for fence heights on a standard corner lot are applicable to all residential neighborhoods. Furthermore, the sight triangle required by PAMC 16.24.040 cannot be intruded upon using a variance

request. This triangle is required for line of sight for all modes of travel at an intersection that facilities vehicle traffic. Without, this sight triangle, the finding cannot be made in the affirmative that granting of the variance request will not be detrimental to public health, safety, general welfare, or convenience.

There is no evidence to support the findings that the subject property is hindered by the existing regulation in such a manner that the property does not enjoy the same rights and privileges of similar properties in the area. Furthermore, the findings cannot be made in the affirmative that Council approval of the variance would not grant special privileges to this property that are inconsistent with the limitation upon other properties in the vicinity and in the same zoning district.

#### Applicant Submittal After Hearing Request

The applicant's legal counsel has prepared a document response in support of the requested Variance application. This response was submitted to the Project Planner on March 27, 2019 and can be found at Attachment H.

#### **Environmental Review**

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The project was tentatively denied by the Director, and therefore no environmental review is required. However, if approved, a project of this nature would be exempted under a Class 3 exemption, 15303 Small Structures, since the property has an existing single-family residence and the fence is accessory to the residence.

#### **Public Notification, Outreach & Comments**

The Palo Alto Municipal Code requires notice of this public hearing be published in a local paper and mailed to owners and occupants of property within 600 feet of the subject property at least ten days in advance. Notice of a public hearing for this project was published in the *Daily Post* on March 29, 2019, which is 13 days in advance of the meeting. Postcard mailing occurred on March 27, 2019, which is 15 in advance of the meeting.

#### Public Comments

As of the writing of this report, public comments were received during the review and tentative denial of the variance application. The received comments can be found in Attachment I of this report. The majority of comments received are not supportive of the requested variance.

#### **Alternative Actions**

In addition to the recommended action, the Planning and Transportation Commission (PTC) may:

1. Recommend Council approval of the project with modified findings or conditions;

**Report Author & Contact Information**

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[samuel.gutierrez@cityofpaloalto.org](mailto:samuel.gutierrez@cityofpaloalto.org)

**PTC<sup>3</sup> Liaison & Contact Information**

Jonathan Lait, AICP, Assistant Director  
(650) 329-2679

[jonathan.lait@cityofpaloalto.org](mailto:jonathan.lait@cityofpaloalto.org)

**Attachments:**

- ATTACHMENT A: LOCATION MAP (PDF)
- ATTACHMENT B: ZONING COMPARISON TABLE (DOCX)
- ATTACHMENT C: TENTATIVE DENIAL LETTER (PDF)
- ATTACHMENT D: DRAFT RECORD OF LAND USE ACTION Sam - see track changes (DOCX)
- ATTACHMENT E: REQUEST FOR HEARING (PDF)
- ATTACHMENT F: CODE ENFORCEMENT VIOLATION PHOTOS (PDF)
- ATTACHMENT G: APPLICANT REQUEST TO WAIVE 45 DAY HEARING REQUIREMENT (PDF)
- ATTACHMENT H: APPLICANT RESPONSE TO DECISION (PDF)
- ATTACHMENT I: PUBLIC COMMENTS (PDF)
- ATTACHMENT J: PROJECT PLANS (DOCX)
- COI MAP 1210 Newell Road - NO CONFLICTS (PDF)

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<sup>3</sup> Emails may be sent directly to the PTC using the following address: [planning.commission@cityofpaloalto.org](mailto:planning.commission@cityofpaloalto.org)



# Planning & Transportation Commission

## Excerpt Minutes: April 10, 2019

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7  
8       **3. PUBLIC HEARING. 1210 Newell Road [18PLN-00289]: Request for Hearing on the**  
9       **Director's Tentative Decision to Deny a Variance Request to Allow for an Exception**  
10       **From the Standard Corner Lot Fence Height Regulations for an Unpermitted Fence**  
11       **of Approximately: 7' 5" Front Yard (Where 6' is Allowed), 8' Rear Yard (Where 7' is**  
12       **Allowed), 7' 5" Interior Yard (Where 7' is Allowed), and 7' 5" Street Yard with No**  
13       **Sight Triangle Reduction at The Newell Road/Community Lane Intersection (Where**  
14       **Approximately 4' is Allowed and a Sight Triangle Limits Fences to 3' Tall).**  
15       **Environmental Assessment: The Proposed Project is Exempt From the Provisions of**  
16       **the California\ Environmental Quality Act (CEQA) in Accordance with Guideline**  
17       **Section 15303 (New Construction or Conversion of Small Structures). Zoning**  
18       **District: R-1 (Single-Family). For More Information, Contact Project Planner, Samuel**  
19       **Gutierrez at [Samuel.Gutierrez@cityofpaloalto.org](mailto:Samuel.Gutierrez@cityofpaloalto.org)**  
20

21       Chair Riggs: Ok was that... with that said we have a study session or sorry we have a public  
22       hearing on 1210 Newell Road. A request for hearing on the Director's tentative decision to deny  
23       a Variance Request to allow for an Exception from the standard corner lot fence with the height  
24       regulations for an unpermitted fence of a approximately 7-foot 5-inches in the front where 6-  
25       foot is allowed, 8-foot in the rear where 7-foot is allowed, 7-foot 5-inches in the interior yard  
26       where 7-foot is allowed and 7-foot 5-inches on the street yard with no sight triangle reduction  
27       at the Newell Road and Community Lane intersection. This project is exempted from CEQA and  
28       I will let Staff take it away from there.

29  
30       Mr. Jonathan Lait, Director of Planning: Great, thanks Chair, we're... Samuel Gutierrez will make  
31       the presentation this evening and we're also joined by Jodie Gerhardt who is the Planning  
32       Manager for the Current Planning Program. Sam?

33  
34       Mr. Samuel Gutierrez: Thank you. Gooding evening to the Commission Members here. Here,  
35       let's just jump into the presentation, we'll start with... this is just the straight elevation view of  
36       the existing site and the existing conditions as is. Just to give you a brief overview of the project  
37       here this was initially started as a Code Enforcement case last summer. We did an investigation  
38       and a notice of violation was sent out. There was some discussion with the property owner  
39       about options and what to do to correct the issues and the property owner chose to with a  
40       Variance which was submitted in August. After discussions and viewing the Variance application  
41       we sent out a tentative denial January of this year and the property owner did make a timely

1 request for a hearing so here we are. And also, just to keep in mind this is a single-family  
2 residential zone and the house that is currently on site is newly constructed.

3  
4 So just to go over a bit of the Variance, remember the purpose of Variance here is to give some  
5 flexibility to the property owner that has some specific constraints for a number of reasons. It  
6 could be the site size; it could be possibly trees or some watercourse. That is unique to that  
7 property and applying zoning or other sections of the code would be difficult. There it would  
8 actually hinder them more than similar properties in the area.

9  
10 And of course, a Variance does require Findings. All Findings must be met and if we don't meet  
11 one of the Findings then a Variance cannot be approved. There are a number of Findings, I  
12 summarized them here in the three bullet points. Again, special circumstances of the property  
13 could hinder that property from enjoying the privileges that properties in the same district can  
14 enjoy. Also, we want to be sure that we aren't granting a Variance that now makes that  
15 property have special privileges far beyond what other properties enjoy. And then, of course,  
16 the granting a Variance wouldn't be detrimental to public safety, health, welfare, and  
17 convenience so those are a summary of the required Findings.

18  
19 Here's photos of the... again the existing conditions from all angles. You can see again the street  
20 view front side of the home, the second picture in the upper right you can see the Newell Road  
21 Street-facing side, you can see the fence that's existing, and then a zoomed in photo of that  
22 same fence on the lower fence. And then the lower right is the backyard fence that runs along  
23 Community Lane which is the alley behind this property. Here's a map of the vicinity, you can  
24 see the property there indicated with the little pin drop, and our public tennis courts that are  
25 across from Rinconada Library. And there you can see here that a number of properties actually  
26 back up to the tennis courts as well not just this one property. And you can also see Community  
27 Lane how it cuts through the rear portion of these properties.

28  
29 Just to give you a brief overview of the zoning. This is a standard R-1 zone so a 6,000-square  
30 foot lot is the minimum. This property is over that, over 9,000-square feet so it is a large  
31 property in consideration of the R-1 Zone. As we move on here, we can compare the what is  
32 permitted per the fence code versus what's existing. The fences are over all of the required  
33 fence sizes and this would be the illustration of what would be permitted on site. This is a  
34 standards corner lot fence regulation diagram. And you can see here with the red outline that's  
35 superimposed on this image that's the footprint roughly of the house and where the larger  
36 fences would normally go and where the smaller fences should be which currently are occupied  
37 by the larger existing fence. And also, there a depiction of the sight triangle on the top portion  
38 of this image which applies to corners and intersections. Of course, this property has  
39 Community Lane running along the rear so that changes this image a little bit where we have to  
40 have a sight triangle here as well. This is that corner intersection that I was referring to earlier  
41 where Community Lane and Newell Road. The existing fence is over 7-feet tall and it goes right  
42 to the public right of way, the sidewalk, and the Community Lane that runs along the rear and  
43 you can see here how tall it is. This is a break down of Community Lane as it intersects the  
44 sideway and Newell Road and where the sight triangle should be. And here you can see from

1 the pedestrian perspective the... if you're standing here on this right image, this would be your  
2 approach towards Community Lane and the tennis court facility. You don't really have a large  
3 line of sight at all whereas if you stand on the other side you have more line of sight. As you can  
4 see this fence we do have at our public facility is offset, pulled back, so it does grant a bit more  
5 view. This is a requirement in the code because we do want to have this sight triangle to avoid  
6 collision points and allow pedestrians, cyclists, or anyone driving enough time to react as  
7 another car is coming. So that is depicted here in these images, you can on the Vehicle A and  
8 Vehicle B this sight line is the sight line triangle. And that would be the point where it would  
9 allow these two moving vehicles to have a reaction point. They can see a car approaching, they  
10 know to slow down, and this is also further depicted in these triangles here. This one's for a  
11 driveway, this one is for an intersection, and furthermore here in this lower right photo you can  
12 see that if the sight triangle is offset further back then these two moving vehicles would have  
13 greater time to see one another and react. Where if the sight triangle doesn't exist, you're  
14 almost at the collision point already and that's what this image here essentially shows is the  
15 existing condition. You have vehicles there; you have bicyclists and you have pedestrians so as  
16 they're heading towards the tennis court facilities on Newell you have this conflict point here.  
17 And that is a requirement in the Fence Code to have these reductions in fence heights in this  
18 area so that it allows this sight triangle to exist and then you have a minimized collision point.

19  
20 So, the key consideration is that we couldn't make Findings in the affirmative for all of the  
21 requirement Variance Findings for this fence as is. There was no modification to it so it was  
22 difficult to make a Finding that it... the property is unique and is somehow restricted. The other  
23 Finding is the Safety Finding that's required and convenience to public health and safety  
24 because there is no sight triangle and you can actually not request a Variance for the sight  
25 triangle. The code specifically says that you cannot pass for a Variance from that so that was  
26 another problem with the Variance Findings, we couldn't make that Finding as well because of  
27 that.

28  
29 So, as we move forward, we... oh, I'm sorry, we also did present some options to the property  
30 owner. There are the options of putting the code compliant fences and if they have a concern  
31 about privacy there's also hedges that you could put behind the code compliance fences that  
32 now would create a privacy screen. There's also the potential for the sight triangle to be  
33 somehow changed in the sense that their fence would be cut down but pushed back and they  
34 could plant hedges along there and still maintain a privacy screen. There was a lot of concern  
35 about privacy towards their rear yard and we said if you bring down the fence for the sight  
36 triangle, I don't have that anymore but that's not quite true. You have still the ability to have  
37 hedges planted at the higher point than the code compliant fence as long as it's outside of the  
38 sight triangle. So, these options were discussed with the property owner as well.

39  
40 So, we do recommend that the Planning and Transportation Commission take the following  
41 action. Recommend that the Council deny the Variance request based on the project's inability  
42 to meet the required Findings and that ends the presentation. The applicant has prepared a  
43 presentation as well.

44



1 Mr. Derek Longstaff: Good evening, my name is Derek Longstaff, I'm an attorney at practice  
2 here in Palo Alto. Thank you for taking the time to hear from me on behalf of my clients Chu  
3 Ching-Yao and Cindy Zhang who's here with me. I'd also like to if it's ok have Ms. Zhang make a  
4 very brief statement at the end of my statements here.  
5

6 First and for most I have to say the principle problem here is a matter of legal interpretation  
7 and it goes to Municipal Code Sections 16.24.040. Unfortunately, I have no idea if the City  
8 Attorney has reviewed our interpretation of this code section. I have no knowledge as to  
9 whether or not the City Attorney has advised this body of our arguments. The code upon which  
10 Planning relies exclusively on specifically states that a vision corner, this vision triangle which  
11 was basically the entire presentation, is required in a case where a street is improved for  
12 vehicular traffic. Community Lane does allow cars to go down it, however, in reading the code  
13 in context, it is not a street improved for vehicular traffic. And the definition upon which the  
14 City relies states, "A street is anything that includes courts, places, squares, curbs, or other  
15 public ways." That is taken from 1.04.050, again it would be more useful for this body had  
16 Planning rendered – offered to have the City Attorney render a legal opinion. The definition of  
17 street upon which the applicant relies states, "at a street is a highway, thoroughfare, parkway,  
18 road or avenue," and it specifically states, "It does not include an alleyway or driveway."  
19 Planning has told us that Community Lane is considered an alleyway. If an alley is not a street  
20 under Palo Alto Municipal Code Section 21.04.30 then this code section does not apply.  
21

22 Secondly, this condition of a 6-foot high fence or higher at the corner of a street, an actual  
23 street not their version of a street but an actual street, and a lane, an alleyway, exists all over  
24 the City. There are numerous homes and I will try and show you just a few by scrolling through  
25 this thing with bad vision. Let's see... where... how do we get this thing to move? Yeah, there we  
26 go. First of all, I want to point out this is the condition of Community Lane and Newell Road at  
27 the time that my clients bought the property. There was a 6-foot high fence on that corner at  
28 that time. This is 1008 Bryant and I actually have a better picture there that I'd like to pass to  
29 you. These are measurements of fences along streets. That post that the gentlemen is holding  
30 as a marker at 6-feet and 7-feet and this is all laid out in our PowerPoint deck and I believe you  
31 all have a hard copy of. This is, let's see, look at... these are all homes in similar conditions with  
32 similar fencing all around them and at... I apologize I cannot find the one that we're looking for.  
33 There it is. 1160 Ramona Street is actually 1160 Bryant Street, I have a correction page for this.  
34 That is the corner of what is identified as I believe 69 Lane. I'm going to pass around if I can  
35 hard copies, I printed out of Google street views of these fences so you can get a better  
36 orientation of that street Bryant. It's actually Kingsley and this 69 East Lane. It's a little lane,  
37 these are lanes that will only accommodate one car in one direction at a time and by their  
38 definition, by the City's definition, it's an alley.  
39

40 The last point that I want to make here before my client has a chance to speak with you aside  
41 from the fact that this condition exists all over the City and I can't get this to go backward.  
42 There we go. These are the crime reports for the immediate area. They live near Highway 101  
43 and Embarcadero. We all know where the Rinconada Library is and those tennis courts and  
44 that's our next slide. These are all the public facilities around this property so aside from the

1 fact that this is a back to back lot because Community Lane is not a street. As side from the fact  
2 that Planning has mis-interrupted the City's Code and therefore does not apply. This property is  
3 entitled to an accommodation, a Variance because unlike many properties in the City it is  
4 surrounded by all of these public facilities. You see in the pictures that it backs right into the  
5 tennis court. It is right across, directly across from Rinconada Library. A 4-foot high fence along  
6 Newell Road makes no sense given the exposure to all of these public locations. I don't know of  
7 any homeowner in this City that would not ask for a Variance along Newell Road that faces out  
8 to a public parking lot. So, all we heard was vision triangle, relying exclusively on a Municipal  
9 Code that I'd be interested to hear from the City Attorney on because it simply does not apply  
10 according to my reading.

11  
12 And the rest of the Variance is necessary here given the unique location of this property and  
13 that was not addressed. And the fact that I can show you with my handouts with any drive  
14 around town and the slides that we've provided you multiple homes with fencing all around  
15 these busier streets. Multiple homes with 6-foot high or higher fencing right along the corner of  
16 a lane, not a street, and a street. So, this is the condition and the reason why this is allowed at  
17 1008 Bryant, the reason why... Byron excuse me, the reason why it's allowed at 1160 Bryant is  
18 because at that time the City interpreted their own code correctly. They correctly understood  
19 that the lane was not a street improved for vehicular traffic. So, it does not apply and I will pass  
20 out some further views so that you can get a better orientation of other locations in the City  
21 that have this condition. Thanks.

22  
23 Chair Riggs: I'm sorry is your client going to address the Commission?

24  
25 Ms. Cindy Zhang: Good evening ladies and gentlemen, my name is Cindy Zhang, homeowner of  
26 1210 Newell Road and my husband George Choo he is listening in from Shanghai, China now;  
27 you know I have on my cell connected with him.

28  
29 We moved to Silicon Valley 25-years ago and we made it our home ever since then. We've  
30 really enjoyed it. 1210 Newell Road was purchased in August 2013. The 6-foot fence was there  
31 along with all the property. We then hired Roger Kohler's team to design a new home for our  
32 family. During the design stage, no one questioned anything about fence height. I expected a 6-  
33 foot fence would be there, therefore we made two very important decisions based on that.  
34 First, we relocated the driveway from facing Rinconada Library on the Newell Road to the alley  
35 facing the tennis courts because it was for privacy purpose. I didn't want people to peek into  
36 our back yard whenever we drive in our vehicle or we drive the vehicle out of our garage. And  
37 then the second decision was Mr. Kohler's advice and then the design expertise we used a lot of  
38 large glass patio doors because we want to be able to enjoy the outdoor living with the 6-foot  
39 fence being there. And we always made it very clear to the City the fence about... we won't  
40 change the 6-foot fence. Privacy, safety, security are extremely important for us. I guess it's the  
41 same for all of you, everybody, here. We have three children, one daughter, two younger boys,  
42 my husband does not live with us for most of the time. When we started on the join to build  
43 this new home about 5-years ago my kids only 11, 9, and 8-years old. As you can imagine myself  
44 alone with three young kids we needed very, very, much an extra sense of security and I still

1 could not express how much shocked when I first learned there is a code violation on this fence  
2 when I received that notice from the City.

3  
4 They are talking about vision triangle on the rear corner where the Community Lane meets the  
5 Newell Road and they insisted on we lower the fence height to 3-feet. 3-feet means like this  
6 height and then our rear side... just assume this is the lot, our rear side 65-feet and then 35-feet  
7 means this much. You know you cut in and there's 3-feet along the Community Lane, 35-feet  
8 long and 35-feet long along Newell Road; only a 3-feet fence. You know this is absolutely just  
9 literally no fence, open back yard. Its almost just gives me enormous pressure. I had many,  
10 many sleeps last night. Still... I still have a sleeping difficulty and then many times I'm crying to  
11 my husband. Had I known this I wouldn't consider relocating the driveway. We would have kept  
12 the garage outside to get more privacy. Also, even had I known this I wouldn't even consider  
13 buying this property because of this. I didn't expect... we have no privacy, just a house exposed  
14 to the public facility and the public roads.

15  
16 And another thing I would like to challenge (interrupted)

17  
18 Chair Riggs: You can... please just finish and be judicious of your time.

19  
20 Ms. Zhang: Sure, the height of the fence measurement. I have a totally different opinion with  
21 what the City stated here from Planning. For example, they say the interior fence height  
22 between my home and then my neighbor, Mr. Joe is my next-door neighbor, is 7-feet 5-inches  
23 but I think they must measure wrong. This is the fence, this is the 6-foot marker... 7-foot marker  
24 and I think we all can see this is not 7' 5". And they are talking about the front facing fence, 7-  
25 foot 5-inches. Again, this is our front yard, 6-foot this is with the lattice 1-foot, without it not  
26 even 6; with this about, I mean you know 6' maybe 9", 6' 8", you know that's it. So even on the  
27 street, the Newell side (interrupted)

28  
29 Chair Riggs: If you could wrap up your comments, we're a little over what's been allowed.

30  
31 Ms. Zhang: Sure, my point is here on all four sides the measurement stated here is incorrect.  
32 Thank you very much. Thank you for your time.

33  
34 Chair Riggs: Thank you. So, I think before we go into a public hearing, I have three comment  
35 cards from Mr. Cala, Mr. Longstaff, and Mr. Keopl but any specific questions from  
36 Commissioners on the content from Staff?

37  
38 Mr. Lait: And I just might also suggest that we... I don't think we've done disclosures yet too.

39  
40 Commissioner Summa: What?

41  
42 Mr. Lait: Did you do (interrupted)

43

1 Chair Riggs: We did not and we can say that this is quasi-judicial item and that we do need to do  
2 disclosures but maybe we can have questions first just because I had already... any specific  
3 questions?  
4

5 Commissioner Lauing: Are these to Staff?  
6

7 Chair Riggs: Correct, to Staff.  
8

9 Commissioner Roohparvar: Does that include Albert?  
10

11 Chair Riggs: What's that?  
12

13 Commissioner Roohparvar: Does that include Albert?  
14

15 Chair Riggs: That's correct.  
16

17 Mr. Lait: [unintelligible – off mic]  
18

19 Commissioner Roohparvar: I do have a question.  
20

21 Chair Riggs: Yeah, Commissioner Roohparvar.  
22

23 Commissioner Roohparvar: So, I have some questions for the City Attorney, I want to make sure  
24 I fully understand this. The fence heights, the regulations that we're looking at, it's not only  
25 based on the sight triangle where it's not in compliance. There are also additional code  
26 requirements for the remainder of the parcel? So, it's on two bases, it's on the bases of the  
27 sight triangle and the basis of the remaining fence around the property?  
28

29 Mr. Albert Yang, Senior Deputy Attorney: That's correct. The request for the Variance is for to  
30 allow additional height on all around the property in addition to allowing [unintelligible]  
31 (interrupted)  
32

33 Commissioner Roohparvar: The Variance on the sight triangle.  
34

35 Mr. Yang: In the sight triangle area.  
36

37 Commissioner Roohparvar: Go ahead.  
38

39 Chair Riggs: Are you finished Commissioner Roohparvar? Commissioner Lauing and the  
40 Commissioner Templeton.  
41

42 Commissioner Lauing: Would you remind us of the lattice on top of fences? That regulation  
43 compared to the actual fence. Is that a freebie or does that count as part of the fence? I don't  
44 recall that.

1  
2 Ms. Jodie Gerhardt, Manager of Current Planning: So, the lattice is considered part of the fence  
3 structure.  
4  
5 Commissioner Lauing: Ok, I didn't recall that. Is it Staff's interpretation that the existing...  
6 reported existing 6-foot fence that was there, to begin with, is now sort of overruled because  
7 it's an entirely new property as opposed to a remodeled property so that it might be  
8 grandfathered in?  
9  
10 Ms. Gerhardt: There are several... fences don't require a Planning Permit or a Building Permit,  
11 they are just required to adhere to the code. And so, there are several illegal fences throughout  
12 the City so that is likely the case here for the existing fence that was there prior to the house.  
13  
14 Commissioner Lauing: Ok so you're saying there's no difference because they put up a new  
15 house as opposed to a remodeled house that just happened to have an illegal house... sorry  
16 illegal fence when they moved in?  
17  
18 Ms. Gerhardt: Correct.  
19  
20 Commissioner Lauing: Ok, that's it for now.  
21  
22 Chair Riggs: Alright Commissioner Templeton and then Commissioner Waldfogel and  
23 Commissioner Alcheck. I'll remind you that we still have a hearing to go through as well  
24 Commissioners.  
25  
26 Commissioner Templeton: I wanted to ask... well, I'm trying to figure out your... you're trying to  
27 segment our comments so I have questions of Staff. Can you clarify what you want before and  
28 what you want after?  
29  
30 Chair Riggs: I'd like detailed questions and clarifications based on the presentations. I'd like to...  
31 please withhold your dialog until later if you can.  
32  
33 Commissioner Templeton: Ok.  
34  
35 Mr. Yang: Sorry, if I could interrupt. You know if we're going to get into these sorts of questions,  
36 I'd like to do the disclosure first if you don't mind.  
37  
38 Chair Riggs: That's fine we can do disclosures. Let's start with Commissioner Waldfogel if you  
39 don't mind?  
40  
41 Commissioner Waldfogel: I drove past the property after I saw the Packet.  
42  
43 Commissioner Summa: Yeah, I went and looked at the property and I also looked at the history  
44 of the property on Google maps.

1  
2 Commissioner Templeton: No disclosures.  
3  
4 Chair Riggs: Nothing to disclose.  
5  
6 Vice-Chair Alcheck: Yeah just for clarification, it's not a disclosure if we visited the property. I  
7 had no contacts with the applicant and I don't have... I don't live near the applicant.  
8  
9 Commissioner Roohparvar: No disclosures.  
10  
11 Commissioner Lauing: No disclosures.  
12  
13 Chair Riggs: Commissioner Templeton.  
14  
15 Commissioner Templeton: Could you clarify whether this property was inspected when it was  
16 being built?  
17  
18 Ms. Gerhardt: So, this is a two-story house that went through our Individual Review process so  
19 the house itself would have been inspected prior to occupancy.  
20  
21 Commissioner Templeton: And did it pass inspection?  
22  
23 Ms. Gerhardt: Yes, it would have had to be occupied.  
24  
25 Commissioner Templeton: And was the fence on the site at the time?  
26  
27 Ms. Gerhardt: That's the information that I do not know.  
28  
29 Commissioner Templeton: Ok and what can you tell me about the difference between a street  
30 and a lane and a driveway or is that discussion? Bill you're pulling your hair over here so do you  
31 want me to wait for this kind of question?  
32  
33 Chair Riggs: If you all would prefer; we're having the dialog that we need to have after the  
34 hearing. I'd prefer to maybe to withdraw these comments unless there's really specific  
35 questions on what was presented. I think that (interrupted)  
36  
37 Commissioner Templeton: [off mic] These are all relevant but it's (interrupted)  
38  
39 Chair Riggs: I'm not disagreeing, they're relevant but I think that we need to hear from the  
40 public and if you have something specific please (interrupted)  
41  
42 Commissioner Waldfogel: Yes, a specific technical question, you can differ it if you wish. Just  
43 remind us the definition of natural grade.  
44

1 Chair Riggs: Commissioner Summa.  
2  
3 Commissioner Summa: [off mic] I can wait if you want.  
4  
5 Chair Riggs: Commissioner Alcheck.  
6  
7 Vice-Chair Alcheck: Yep, the same, I'll wait.  
8  
9 Chair Riggs: Yeah ok so I'd like to... I think its... we need to open the public hearing and then  
10 hear from our... hear from the public. So maybe we can hear from John Cala first and after John  
11 Cala Derek Longstaff.  
12  
13 Mr. John Cala: Good evening, my name is John Cala, I live at 1420 Parkinson Avenue which is  
14 two houses down from 1210 Newell. I'll keep my comments briefly, very brief, and respectful of  
15 your time. First off, we had a lot of discussion in the earlier presentations about the fence. I  
16 would remind you all of the fences, every bit of the fence is above the allowed height,  
17 notwithstanding that side discussion about the triangle. I've written in objection to that, I don't  
18 like the fortress feel that it creates for the neighborhood. Several of my other neighbors have  
19 written to that effect as well and in your Packet, I see that there are other neighbors that are  
20 more sympathetic and support the fences. So, you have mixed views in the neighborhood. I've  
21 spoken out against it because it creates a fortress.  
22  
23 Secondly with respect to the alleyway and how you... I'll leave the legal interpretation of what  
24 might come to bare there. I drive down that alley every day. My driveway is on the back, my  
25 garage is there, I park in the garage. It is incredibly unsafe. There is no visual sight line for me  
26 exiting across the sideways onto Newell for the bikers or the pedestrians on the sidewalk.  
27 None. I cannot see until I've actually crossed the sidewalk because of that. Those of you that  
28 are familiar you'll know that Newell is the main transport road for the kids riding their bikes  
29 down to Green Middle School in the morning. So, in addition to the cars and the safety of the  
30 cars, you've got the issues of the sidewalk and the pedestrians and the bicyclists on the  
31 sidewalk. I don't know if that's relevant legally but I'm just offering that point of view and  
32 speaking out against it.  
33  
34 Lastly, if you were to ask the homeowner to produce the records from the fence-building  
35 company and the invoices there. You will find that the fence was constructed three days after  
36 the final site inspection. Thank you.  
37  
38 Chair Riggs: Mr. Longstaff.  
39  
40 Mr. Longstaff: [unintelligible – off mic]  
41  
42 Mr. Lait: Yeah, this is the (interrupted)  
43  
44 Chair Riggs: Alright, ok.

1  
2 Mr. Lait: Yeah unless there's another public speaker and then the applicant would have a  
3 chance to rebut.

4  
5 Chair Riggs: Mr. Keopl.

6  
7 Mr. Joseph Keopl: Good evening, my name is Joseph Keopl, I live at 1430 Parkinson Avenue, and  
8 I'm the abutting neighbor to Cindy's property. There are a couple issues here that I think are  
9 important to understand. One is as I read through the documents that were presented here  
10 today what I didn't note was the unique nature of the property at 1210 Newell in conjunction  
11 to those other public facilities that were shown on the slide. The key thing there is that the  
12 library is directly across the street, the Palo Alto Art Center is next door to that, and then the  
13 tennis courts are behind this. To give you some kind of understanding of what this means, as  
14 I've looked at data for 2017 there were 24,000 visits, separate visits to that library that walks  
15 along that line that their property fronts. There are 10,000 people who attend certain events at  
16 the Palo Alto Art Center including the glass and the pumpkin glass displays that are there. That's  
17 not even counting the people from the tennis courts, the park that's there, and often I've gone  
18 in the back there while that house was being constructed and encountered individuals who  
19 really clearly shouldn't have been there. As I mentioned before too many neighbors that I've  
20 run into people dumping garbage back there and people who really shouldn't be there. So, they  
21 do present a different security risk than what was presented in the documents here and it really  
22 needs to be taken into account. While that house was down, I was the frontage property to  
23 Newell and I saw many things that were very disturbing from a point of view of privacy,  
24 security, and quiet enjoyment of my property.

25  
26 We can't take a cookie cutter approach to these things and Variance is put there for a specific  
27 reason and that is if you have an exceptional property you have to make an exceptional  
28 remedy. And in this particular case, I think they have warranted that; I think they've  
29 demonstrated that. While there is an issue with respect to that Community Lane, it really has to  
30 be looked at from its overall safety perspective. I don't think you can find anyone on that block  
31 who could tell you what direction you drive on that lane. I will tell you one thing, a simple  
32 inspection of that will show a stop sign at one end on Pine Street. No stopping on the side  
33 facing Newell. I'm not even sure you're supposed to be able to drive out there. Even if that was  
34 the case the stop sign and the vegetation at the end of the alley on Pine Street blocks the view  
35 as well. There's no triangle sight, there's no sight there, you have to do the same thing that you  
36 do all the time in an alley. Proceed to around 5 to 11 MPH and be very cautious as you move  
37 forward for the reasons that John stated; that there are bicycles there, there are kids, and there  
38 all kinds of people there. If they did take down that fence at that area there, they still have a  
39 sight angle problem because there's vegetation that I believe the City owns that presents a  
40 similar blockage that was upon Mr. Gutierrez's slide over there when he showed the picture. If  
41 you didn't notice it because he might have been pointing to the line sight. The vegetation is  
42 there, that would have to be dealt with. I'm very concerned about vehicular traffic and people  
43 and injuries and those kinds of things. And one of the things that I think would be... whatever  
44 happens to this particular case there needs to be a mirror put up there or one-way directional



1 sign or something to tell the public when they're driving in there which way to drive down  
2 there, how to proceed safely because it does require some type of a mirror even if you took  
3 down the fence. That fence removal is not going to change that issues (interrupted)

4  
5 Chair Riggs: Ok, thanks.

6  
7 Mr. Keopl: So, I'd like to conclude my comments and thank you for listening.

8  
9 Chair Riggs: Ok that concludes our hearing unless the applicant would like to make another  
10 statement? So (interrupted)

11  
12 Mr. Longstaff: Very briefly because I just want to correct a couple things.

13  
14 Chair Riggs: Ok, Mr..... Thank you, Mr. Longstaff, go ahead.

15  
16 Mr. Longstaff: We have in the Package you got from the applicants, slide 53, 54, 55. So one of  
17 the earlier speakers, John I think something, anyway said that the fence was put up three days  
18 after final inspection and he'd like to see the contractor's records. We already provided that.  
19 The fence was up about 2-weeks, 3-weeks before the final inspection. It was there so those  
20 slides make it clear. My client took a cell phone picture... just happened to take a picture of her  
21 kitchen so you can see... go back one, please? Thank you. The final inspection is 6/14/2018 and  
22 then the next slide is the picture out of her window and that's the fence that's already there  
23 and then the next... so that's 6/6. These are the canceled checks, she paid him half when he  
24 started the job and half when he finished the job so that's May 31<sup>st</sup>. So, it was present prior to  
25 the final inspection and there are other slides in the deck that make clear that the 6-foot high  
26 fence along Newell was always in the plans. These are plans that the neighborhood would have  
27 had a chance to speak about, these are plans that the City reviewed, these are plans the City  
28 approved, and they designed and built their house with a lot of glass based upon those  
29 approvals. So, we did cite some case authority, I will be the first to admit it's not a slam dunk  
30 legally but there is some good case that once a City's has blessed the mess they have to sort of  
31 live with it. So, in this sense, the 6-foot high fence in the plans should have been allowed.

32  
33 The lattice is probably where we're getting some differences in measurements between the  
34 two sides but this conversation about its every single fence is over the limit might be an  
35 interruption based upon the lattice; which as this Commission rightfully pointed out is not as  
36 clear as it should be in the code about the lattice. I think you need to clean... ideally, that would  
37 be cleaned up but in reliance upon that and in reliance upon the architect advising them at the  
38 time they built it the right way.

39  
40 And lastly, I'm sorry to hear that the Community Lane, the little alleyway, is somehow  
41 dangerous. That's unfortunate and it's unfortunate to a mother of three kids that lives right  
42 there. It's also the case that that's been the situation for a long time, a very long time. Thank  
43 you.

1 Chair Riggs: Thank you. That concludes the public hearing, we'll bring it back to the  
2 Commission. Before we do that, there were two things that came out in the premeeting  
3 yesterday Mr. Gutierrez and Ms. Gerhardt that I think I would just like you to mention. You  
4 mentioned yesterday to Vice-Chair Alcheck and I that code compliance is complaint based and I  
5 wonder if you could speak to that. And also, how we should treat a quasi-judicial item and that  
6 it's judging the property against the code, not against other properties. And I was hoping you  
7 could speak to both of those items and Dr. Lait and Albert if you would like to speak to that too  
8 but I think that would help us direct our discussion a little better.

9  
10 Mr. Gutierrez: Yes, so Code Enforcement is in this City operated under a complaint-based  
11 system. So, you would need to submit a formal complaint to Code Enforcement for us to initiate  
12 Code Enforcement action. That's typically done through the 311 System or contacting a Code  
13 Enforcement Officer via email and even at times a planner. You say this is a possible violation I  
14 suspected, I've observed it at this address on this date, a lot of times they submit photos of  
15 that, and then we would proceed with a Code Enforcement investigation to foresee if that is  
16 the case. I mean the code is dense so sometimes what may be perceived as a Code  
17 Enforcement violation isn't actually that. So, we do confirm that first and then we... after we do  
18 a confirmation, we inform the complainant that there is or there isn't and then we inform the  
19 subject property owner wherever the infraction lies.

20  
21 Mr. Lait: Right and so with respect to the subject application, yeah, it's true, there may be other  
22 properties that have non-complying illegal fences; you know we don't know. Like Sam noted  
23 our Code Enforcement is a complaint-driven effort at this time and for your consideration when  
24 you're reviewing this Variance request it's on the Findings. And the Findings are pretty clear as  
25 to what the standard for review is and maybe Sam, can we get those Findings back on the  
26 board for the Commission? And in this... as you review the Findings for this it does not include  
27 any sort of reference to existing conditions of other properties, that's not a standard for your  
28 review. These are the special circumstances that apply to the property that deprive the owner  
29 of privileges enjoyed by other properties in the same district and you can review the other  
30 ones. That the granting of the application would not constitute a special privilege to this owner  
31 and not others or it would be detrimental injurious to the property, public health, safety,  
32 general welfare, or convenience. And all three of these would have to be answered in the  
33 affirmative to grant the Variance and one area where I think we get... very clearly have a  
34 concern is with respect to the visual triangle that we're trying to maintain. So that pedestrian,  
35 bicycle and motor conflicts can be reduced or eliminated with the inclusion of that provision  
36 and we have other references in our Zoning Code, excuse me, in our Municipal Code that  
37 speaks to what a street is and a street does include by definition an alley. And so, we feel like in  
38 this particular area in particular that we're not able to support the Variance Findings but of  
39 course, that's before the Commission now.

40  
41 Chair Riggs: Ok thanks for that framework, I think that was somewhat lost in... not... Sam, you're  
42 great, your presentation was great. I just want to make sure that it [unintelligible] lost. So, if my  
43 Commissioners don't mind, I want to start in a different way. I know Commissioner Templeton  
44 you had a lot... you said you had a lot of comments so if you don't mind, we'll start with

1 Commissioner Templeton, Commissioner Summa, and then Commissioner Waldfogel and then  
2 we'll do the same on this side. Any questions, comments, let's just keep it moving.

3  
4 Commissioner Templeton: Thank you Mr. Chair. So, I did want to talk... I had some questions  
5 about the selective enforcement process, you said that's complaint driven. Are there any other  
6 factors that you... a process you go through to ensure that it's not somehow biased?

7  
8 Mr. Lait: Well somehow not what?

9  
10 Commissioner Templeton: Biased.

11  
12 Mr. Lait: Yeah, well I would say that it's not selective, its complaint driven. When we receive a  
13 complaint, we send (interrupted)

14  
15 Commissioner Templeton: That is a selection criterion, right? That's the selection criteria is  
16 what you're saying?

17  
18 Mr. Lait: I'm distinguishing complaint driven from proactive where if we find a violation, we  
19 would follow up on it. We're simply not Staffed for that. I mean we have three positions in total  
20 in the City and two of them are vacant right now. So especially at this point in time, we're only  
21 able to respond to complaints that come in.

22  
23 Commissioner Templeton: Ok thank you and regarding the measurement accuracy can you  
24 clarify? One of the applicants mentioned a discrepancy between the measurements.

25  
26 Mr. Gutierrez: Yes, so I believe that they didn't include the lattice as a part of the fence because  
27 it's a separate structure that's bolted on but we do include anything that's attached to the top  
28 of the fence that is structural to be a part of the fence. So, this could be a decorative light that's  
29 on top of the fence. That's is the totality of the fence from the ground up.

30  
31 Commissioner Templeton: But in the photo, it looked like the pole that she was holding took  
32 the... it was right... the lattice was present. Is that... do you have any other measure  
33 (interrupted)

34  
35 Mr. Gutierrez: Yeah, I don't know how they measured that, I'm not sure if that was 6-feet.  
36 When this all started this was again with the Code Enforcement case and the Code Enforcement  
37 Office at the time did take measurements of the fence from the public right of way.

38  
39 Commissioner Templeton: Ok and did you discuss as part of your alternative ways of dealing  
40 with this case, did you talk about removing the lattice?

41  
42 Mr. Gutierrez: The lattice and bringing down the fence height to the proper code height which  
43 would be 4-feet along Newell. So that was discussed and then like I mentioned earlier in my  
44 presentation we discussed the privacy factor which then was you could plant hedges and

1 shrubs. There's a number of properties that do do this, they have a smaller fence and then they  
2 have dense vegetation as a privacy buffer, sound buffer as well. So those were the options that  
3 were discussed.

4  
5 Commissioner Templeton: And for the sight triangle did you discuss alternatives like mirrors or  
6 other ways of handling the safety of the intersection that didn't involve cutting through the  
7 back yard.

8  
9 Mr. Gutierrez: So, the mirrors aren't something that's referenced in the code so that wouldn't  
10 be something that's applicable.

11  
12 Commissioner Templeton: Ok and inspecting the fence height of adjoining properties is out of  
13 scope? Is that what you were saying earlier?

14  
15 Mr. Gutierrez: Correct, that wouldn't be something that we would look at for Code  
16 Enforcement nor would it be something during the Variance application. That's not part of the  
17 required Findings.

18  
19 Commissioner Templeton: How does that relate to the Finding here about the enjoying the  
20 property with the privileges that the other properties have? How does that... I don't know if  
21 that's an Albert question?

22  
23 Mr. Lait: I think what you need to look at is a couple of factors. One is our City does have  
24 different regulations for corner properties. And so, I think if there is... if you are looking at how  
25 the regulations apply to other corner properties in the same zoning district with the same  
26 conditions, I think that might be a measure of standard to look at. And in that context, all of  
27 those properties are subject to the same standards.

28  
29 Commissioner Templeton: Is the property on the other end of the block does that have a 35-  
30 foot triangle, sight triangle?

31  
32 Mr. Lait: [off mic] I don't know the reference (interrupted)

33  
34 Mr. Gutierrez: Which block would you be talking about, Community Lane or Newell?

35  
36 Commissioner Templeton: Community... the block that the subject property of the applicant.  
37 So, here's the applicant, does this one have a 35-foot line of sight triangle?

38  
39 Mr. Gutierrez: At their corner of Newell and Pine? I'm not aware of their situation because if  
40 you're speaking to the Newell and Pine intersection, the one that you pointed too in the top  
41 left, that one is different in the sense of (interrupted)

42  
43 Commissioner Templeton: I mean the one on Community Lane on the same block that the  
44 house is on. Maybe if we brought up the picture (interrupted)

1  
2 Ms. Gerhardt: So, we'll get the neighborhood diagram up here but I think you're talking about  
3 the other end of Community Lane, is that correct?  
4

5 Commissioner Templeton: That's correct.  
6

7 Ms. Gerhardt: Ok so in that... yeah, that particular house is facing in a different direction so it  
8 actually has its front setback... I'm not sure what that street is.  
9

10 Commissioner Templeton: I'm just wondering about the Community Lane corner if that  
11 (interrupted)  
12

13 Ms. Gerhardt: Yeah so it has a very low fence. I've got it up on Google Maps but it's very low,  
14 either 3 or 4-foot fence. I can't tell from the (interrupted)  
15

16 Commissioner Templeton: Great, thank you. I think that's everything I had, thank you very  
17 much.  
18

19 Commissioner Templeton: Commissioner Summa.  
20

21 Commissioner Summa: Thank you. Thank you, everyone, for coming out tonight and thank you  
22 for the Staff report. I thought the Findings were very thoroughly and nicely made. I did have a  
23 question on Packet Page 44... 43 and it relates to some of the discussion from the attorney. Its...  
24 and this is I guess maybe an Albert and Jonathan question but it's not my impression that an  
25 approved permit or an approved inspection gives you the right to no be in compliance with the  
26 law based on... would that be accurate?  
27

28 Mr. Yang: That's correct so even if a permit is issued in error or there's a final inspection that's  
29 approved in error it does not provide any right to continue that condition.  
30

31 Commissioner Summa: Ok thank you for that and does Staff have any observation on the  
32 placement of garages in general on this block because it seems to me like they're mostly in the  
33 back? And maybe they would have been required to comply with our... that law and put it in  
34 the back on the alley anyway. Does Staff have an opinion on that?  
35

36 Mr. Lait: So that would have been reviewed during the IR process and I think for the purpose of  
37 this Variance I don't think we've done any analysis as to the context-based garage placement.  
38

39 Commissioner Summa: Ok yeah, yeah, yeah (interrupted)  
40

41 Mr. Lait: I mean we could (interrupted)  
42

43 Commissioner Summa: Because all the other garages are in the back on that block.  
44

1 Mr. Lait: Yeah, we could probably do some quick work on that but I (interrupted)

2  
3 Commissioner Summa: No, I was just curious, you don't have to do any more work on it, I was  
4 curious. It did appear to be the pattern on that block. So, and I have always thought in the code  
5 that it was clear that we treat alleys like streets. It's in the definition in Title 1 it makes that very  
6 clear. And the definition in the other place, I forget where it is, Title 21, is for the... is  
7 considering this for with regards to the Subdivision Map Act which I think is a different context  
8 and it clearly, in that title, it clearly says alley is a private alley. And since this is a public alley I  
9 really... I don't see that that's very pertinent in this situation. So, and I think that the safety  
10 issue at corners is a very real consideration so those my thoughts for now.

11  
12 Chair Riggs: Commissioner Waldfogel.

13  
14 Commissioner Waldfogel: Thank you. I think there are two issues so I'll just take one at a time.  
15 First one is the intersection view triangle situation. So, if this is an intersection then my  
16 understanding is, we have no ability to make a... to allow a Variance, is that correct? So is there  
17 any way... I heard an interesting suggestion from the public that if this were... if Community  
18 Lane were one-way then the circulation... there was no circulation out from Community Lane to  
19 Newell that we wouldn't encounter this situation. Would that be a possible cure if we were to  
20 one-way Community Lane? Just... I just want to run through a hypothetical with you.

21  
22 Mr. Lait: You know I'll look to Staff to help out. I don't know that there's a distinction between  
23 in our code about whether one-way or two-way but I'll note that by bicyclists would certainly  
24 travel in it. Others use the alley besides motor vehicles too so that's something to be mindful  
25 about.

26  
27 Commissioner Waldfogel: I'm just looking for a possible cure. I'm trying to be creative and I  
28 heard an interesting suggestion but it sounds like it may not be doable. I mean unless you have  
29 some other idea.

30  
31 Mr. Lait: Yeah so there's no distinction in our code today, you know maybe a future  
32 consideration.

33  
34 Commissioner Waldfogel: Yeah ok I mean it's maybe something we could make a note on as we  
35 look at code cleanups sometime in the future. And then I think beyond this the Fence Code is  
36 pretty clear. I think that your analysis is pretty straight forward and I don't really understand  
37 why there's so much ambiguity here. I mean it's the code is pretty clear about 4-feet, 6-feet,  
38 subject to this natural grade question. Is natural grade from the street grade or is that from the  
39 improved grade when you measure fence height?

40  
41 Mr. Lait: Yes, it's typically from the grade adjacent to the fence.

42  
43 Commissioner Waldfogel: Adjacent to the fence?

44

1 Mr. Lait: Yeah.  
2  
3 Commissioner Waldfogel: Ok so you can... and you're allowed to... I think you're allowed to fill  
4 by some about 6-inches or 12-inches from (interrupted)  
5  
6 Mr. Lait: So, what we do is we get a survey typically for a new home and so we have at least a  
7 topical survey that reveals what the grade is at that particular locations and we measure and  
8 extrapolate from that.  
9  
10 Commissioner Waldfogel: Ok so we're not measuring from sidewalk grade to top of fence?  
11  
12 Mr. Lait: No, no.  
13  
14 Commissioner Waldfogel: I just want to be clear on what the standard is.  
15  
16 Mr. Lait: Correct.  
17  
18 Commissioner Waldfogel: Please. I think that Mr. Gutierrez has a comment here.  
19  
20 Mr. Lait: I don't know if the public though (interrupted)  
21  
22 Commissioner Waldfogel: Anything to add? That's all I have.  
23  
24 Chair Riggs: Alright, Commissioner Alcheck.  
25  
26 Vice-Chair Alcheck: Actually, can you come back to me?  
27  
28 Chair Riggs: Commissioner Roohparvar.  
29  
30 Commissioner Roohparvar: Sure, I just echo Commissioner Summa and Waldfogel sentiments. I  
31 feel the Packet is pretty clear, this is a pretty clear-cut issue to me. I will say it right now I  
32 cannot make the Findings. Variances require a uniqueness of the property that's inherent in the  
33 physical... how it physically is. This is not a situation like that and granting a Variance in this  
34 instance would be a special privilege without a doubt. Variances aren't created to whoever  
35 doesn't like the code come in and say hey, can you cut me a break here? The fact that other  
36 neighbors are not complying with the law doesn't make it ok in this instance and I mean that's  
37 pretty much what I have to say. I do feel a lot of empathy for the homeowner and what they  
38 are going through. I just don't think... I think our hands are tied in this instance and I don't think  
39 a Variance the appropriate mechanism by which to accomplish what they are trying to achieve.  
40  
41 Chair Riggs: Commissioner Lauing?  
42  
43 Commissioner Lauing: Just a couple comments and I won't repeat prior colleague's comments.  
44 It is odd and unfortunate that the building inspector didn't catch something that is to me as

1 obvious as the height of a fence but he didn't so that doesn't change the status of the law. I'm  
2 not convinced that a 6-foot fence is much more or less safe than a 4-foot fence but that's not in  
3 our Findings anyway and as the applicant heard there's almost no constraints outside of the  
4 vision triangle on landscaping. So, you could build something that's 15-feet tall as long as it  
5 doesn't interfere on the corners which is quite an effective natural remedy. So, I'm in support  
6 of the Staff recommendation.

7  
8 Chair Riggs: Any... Commissioner Alcheck.

9  
10 Vice-Chair Alcheck: Yeah ok thank you for your comments and your presentation. So, I had a  
11 couple questions, I don't know... look, I think is some uniqueness here. I think strict application  
12 of our zoning regulations do suggest that there's a substantial hardship here. I think... I guess I  
13 have a could question about... well, let's start with this. I'm not entirely sure that I can make the  
14 Findings for a Variance either but I am curious to know what is the path a resident should take  
15 legally if they disagree with an interruption by the Planning Department say with respect  
16 whether this road is for vehicular traffic as opposed to whether it qualifies as a lane which is not  
17 the word that we used in Section .040 [PAMC Section 16.24.040] ? And what would the path be  
18 for an applicant who wished to challenge an interpretation they think is wrong?

19  
20 Mr. Yang: So, for Zoning Code interruptions we do have a process to ask the Director to issue a  
21 formal interpretation and then there's a... something that can follow on from there. For issues  
22 outside of Zoning Code, we don't have similar provisions. In this instance where the dispute was  
23 initiated through a Code Enforcement action, the property owner could request a hearing  
24 before an Administrative Hearing Officer over the validity of that code violation. And that's an  
25 area where you could argue the interpretation of the code and then from there once that  
26 administrative process is over you could seek judicial review.

27  
28 Vice-Chair Alcheck: Ok. I think there may be some relevance to the suggest that the... I think  
29 there's... sort of when you look at it and you try to consider whether there's some legal  
30 significance to the argument that the interpretation may be wrong changes things. If we were  
31 to look at this intersection as something less than the type of intersection arises to the level  
32 defined in .040 then maybe that would change how you could have the code applied to the  
33 corner. And so, I think that doesn't necessarily address what happens along Newell Road which  
34 is sort of different. I think that to some extent the path for the interruption argument might  
35 need to go down a different road.

36  
37 I am a little... I'm not excited about reviewing this when there's what seems like varying  
38 differing measurements. It didn't occur to me to take my own measuring tape out there. I  
39 didn't anticipate actually that the owner would suggest that our measurements were off. I  
40 don't believe that you came here with the wrong information as a California Licensed attorney  
41 so I really wonder if maybe ahead of the City Council meeting you ought to go out there  
42 yourself before you make the presentation and double check. Maybe even meet the applicant  
43 and check the measurements because if as the pictures demonstrated not very many of the



1 fences are even rising above 6-feet or 7-feet then it would... I think it would be better. I just  
2 think it would lend credibility to the Staff's assessment.

3  
4 I agree with other Commissioners on the points they made. I have a question; would it change if  
5 the fence wasn't solid? If they use a metal railing fence along Newell?

6  
7 Mr. Gutierrez: No, it would be the same.

8  
9 Vice-Chair Alcheck: I think the thing that I'm struggling with the most here is that we are  
10 acknowledging that they could create a landscaped barrier that would impede visual sight  
11 almost entirely. And that may not necessarily... if they planted hedges along Newell, they could  
12 theoretically be much higher than 4-feet?

13  
14 Mr. Gutierrez: They could and everyone could do that because we do not regulate the height of  
15 the vegetation outside of that sight triangle. So, you could plant cypress trees along... behind  
16 the code compliant fence and have... cypress trees grow up to 20-feet and more for example.  
17 The one regulation that would or the one thing that you couldn't do was have vegetation that  
18 overgrows into the public right of way blocking the sidewalk.

19  
20 Vice-Chair Alcheck: Yeah no I just... there's some components that are... that seems... well,  
21 whatever so I guess my only statement would be that I don't know that we can make the  
22 Findings for a Variance. I think that there may be a pathway with respect to the interpretation  
23 argument on the rear which would change the rear sight triangle. But I think in any case I  
24 wonder if we could encourage Staff to also consider the... when we looked at the picture of  
25 that... if you wouldn't mind putting that picture up.

26  
27 Mr. Gutierrez: Which photo?

28  
29 Vice-Chair Alcheck: Of the path, that lane, that alley with the... so there's a pole there. I'm  
30 wondering if it would be possible for the City to also consider the addition of a mirror just  
31 because I guess both sides of the table sort of talked about it and it seems like it would be a  
32 good addition.

33  
34 And then the second... I guess the last thing is to what extent is it... I guess since you're already  
35 aware of this particular entrance would... I mean there's two sides to this street. Is the other  
36 side in compliance? Are we (interrupted)

37  
38 Ms. Gerhardt: Yes, the other end of... that was... we were talking to Commissioner Templeton.  
39 The other end of it has a front setback and it has a lower fence.

40  
41 Vice-Chair Alcheck: And do we know why this side doesn't have a stop sign if the other side  
42 does? Is there any (interrupted)

43

1 Ms. Gerhardt: Oh, I didn't mean stop sign, I meant lower fences. The other end of Community  
2 Lane has lower fences.  
3  
4 Vice-Chair Alcheck: Right and is their thing... is there any information on why one side has a  
5 stop sign and the other side doesn't? Was this (interrupted)  
6  
7 Chair Riggs: I can answer that question. You need 1,500 trips to warrant a stop sign, the other  
8 side doesn't warrant a stop sign either. The... it's (interrupted)  
9  
10 Mr. Yang: We don't have that information  
11  
12 Chair Riggs: Ok I'm trying to educate you.  
13  
14 Commissioner Roohparvar: Educate us, I'd like to know.  
15  
16 Vice-Chair Alcheck: Appreciate it. That's all I got. Oh, wait I'll add one more thing, I think with  
17 respect with what you asked about. I think it's different for corner lots because the front of this  
18 lot is not Newell or this lane, it's... I know the address says 1210 Newell but the front edge of  
19 this is actually on a different street, right?  
20  
21 [Female]: Parkinson.  
22  
23 Mr. Gutierrez: Correct it's on Parkinson.  
24  
25 Vice-Chair Alcheck: So, any location actually along Newell would have not been considered  
26 front for a corner lot with respect to your question about the location of the driveway and a car  
27 parking. Yeah, it wouldn't have changed, it would have been restricted to have access to the  
28 location of the parking facility along Newell because that's not considered a front street.  
29  
30 Commissioner Summa: [off mic] It was before [unintelligible] (interrupted)  
31  
32 Vice-Chair Alcheck: Right, no, I know I'm saying the... you could have accessed a rear parking  
33 facility on Newell regardless of the predominance of parking facilities on that street because it's  
34 not the front... it's a side street. So even if the (interrupted)  
35  
36 Mr. Lait: I'm sorry it's just not relevant to the Variance.  
37  
38 Vice-Chair Alcheck: No, I know but it is... look I'll say this we should have some sympathy for the  
39 fact that maybe when the original survey was done it likely showed... before they submitted  
40 their plans it likely showed a 6-foot fence, an existing 6-foot fence.  
41  
42 Chair Riggs: I think Commissioner Alcheck you're (interrupted)  
43

1 Vice-Chair Alcheck: To the extent that they may not have known that may have changed the  
2 way they design their lot. I think there's... if they would have had to relocate their driveway to  
3 the read anyways and they knew it then that's a different story but, in this case, I think... I'm  
4 just trying to address what Commissioner Summa was saying.

5  
6 Chair Riggs: Any other questions or comments? Seeing none, would anyone entertain a motion?  
7 Commissioner Summa.

8  
9 **MOTION**

10  
11 Commissioner Summa: Yes, I'd like to make a motion to move Staff's recommendation on the  
12 basis of the Findings.

13  
14 Chair Riggs: Do I have a second?

15  
16 **SECOND**

17  
18 Commissioner Roohparvar: I'll second.

19  
20 **VOTE**

21  
22 Chair Riggs: Any discussion of the motion on the floor? Seeing none well let's just take a vote.  
23 All in favor? Any opposed? Alright, motion carries 7-0. That concludes that hearing.

24  
25 **MOTION PASSED** 7(Lauing, Roohparvar, Alcheck, Riggs, Templeton, Summa, Waldfogel) -0

26  
27 **Commission Action**: Motion to approve Staff's recommendation to deny fence variance request  
28 was made by Commissioner Summa and seconded by Commissioner Roohparvar. The motion  
29 passed 7-0.

30  
31

May 8, 2019

**VIA E-MAIL AND**  
**FIRST CLASS MAIL**

Samuel J. Gutierrez  
Associate Partner  
P&CE Department  
CITY OF PALO ALTO  
250 Hamilton Avenue, 5th Floor  
Palo Alto, CA 94301

**Re: 1210 Newell Road**

Dear Mr. Gutierrez:

We are writing on behalf of our clients, Ching-Yao Chu and Xin Zhang (“Owners”), who are the owners and residents of 1210 Newell Road (“Property”). We appreciate this opportunity to respond to your request for a letter regarding our understanding of the circumstances surrounding the fencing at the Property and the pending variance application, and includes a preliminary statement of our position regarding these matters. Based on our current understanding of the facts, there are no grounds for code enforcement action with respect to the Property, and no need to acquire a variance to maintain the existing fencing.

***Background on the Owners and Property***

The Owners purchased the Property in August 2013 with plans to build a new single family home. The City issued a building permit on June 29, 2015, which clearly approved 6’ fencing on the perimeter of the Property, consistent with the fencing that existed at the time of purchase. Construction began in July 2015, and continued to June 2018. The City’s planning department provided the final sign off on June 7, 2018, and then a week later on June 14, 2018, the City’s building department provided the final inspection sign off. Both sign offs occurred *after* construction of the 6’ fence with a 1’ decorative lattice topper, which were in plain view to the planning and building department at these final sign-offs.

***Code Enforcement Actions***

In or about July 2018, a neighbor complained to the City about the height of the 6’ fence and 1’ decorative lattice topper. On July 12, 2018, now-retired Code Enforcement Officer Judy Glaes sent a Notice of Violations to the Owners, alleging five fence code violations. That Notice of Violation correctly recognized Community Lane as a through street, but inaccurately attempted

Samuel J. Gutierrez  
May 8, 2019  
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to apply the vision triangle requirement, despite the fact that Community Lane is not a street “improved for vehicular traffic.” On July 19, 2018, Ms. Glaes emailed an update, revising the prior notice of violation to claim that the lot is a standard corner lot without a through lot component, and to state that the Community Lane does not constitute a street. Ms. Glaes also referenced inaccurate fence height measurements that do not correctly reflect the fence height from grade.

Owners communicated with Mr. Starmer following the Notice of Violations, and he suggested that although he did not think there was anything wrong with the fencing, Owners could request a variance with respect to the 1’ decorative lattice topper, as the fastest way to get approvals to keep the lattice.

### ***Variance Application and PTC Hearing***

In August 2018, the Owners made a request to the City of Palo Alto for a “variance” seeking to keep their existing 6’ fence plus 1’ decorative lattice topper. It was tentatively denied by letter dated January 15, 2019, and Owners requested a hearing pursuant to PAMC § 18.77.060.

On April 10, 2019, City’s Planning and Traffic Commission (“PTC”) denied the variance request on the grounds the Owners’ property is required to have a so-called traffic triangle along Community Lane at Newell Road, pursuant to PAMC § 16.24.040. The PTC recommendation to City Council does not otherwise consider or make a recommendation on the 6’ fence height or 1’ decorative lattice topper at other locations on the Property. We have been informed that City Council is tentatively scheduled to vote on whether or not to adopt the PTC’s decision on June 3, 2019.

The denial of the variance and PTC recommendation for denial of the appeal are based on erroneous fence height measurements and incorrect application of PAMC § 16.24.040 to purport to require a vision triangle at Community Lane and Newell.

### ***The City’s Code does not define fence to include decorative lattice toppers***

As was presented at the April 10, 2019 PTC hearing on the subject variance, the decorative lattice topper is a pervasive feature in Palo Alto. In fact, Bud Starmer, who signed off on the final inspection, communicated to the Owners that he did not think there was anything wrong with the fencing as permitted, built, and ultimately approved by him. There is nothing in the PAMC that specifies that a decorative lattice topper is included in the definition of a fence, nor is there anything that specifies that a decorative lattice topper counts towards the applicable fence height restrictions. Staff indicated at the PTC hearing that it considers anything including lights atop a fence to count towards the fence height, but cites to no provision in the code to corroborate that interpretation.

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***The City's actions to date rely upon inaccurate fence height measurements***

The issue of the incorrect measurement of the fence height came up at the April 10, 2019 PTC hearing, but staff has not yet communicated a resolution on that issue. The measurements relied upon by the City were taken by a now-retired Code Enforcement Officer. We request a meeting at the Property so the City can re-measure and we can reach consensus on the actual fence heights at issue.

***Community Lane is not a street "improved for vehicular traffic"***

The staff's current interpretation of PAMC § 16.24.040 to apply to the Community Lane is inconsistent with the City's own actions at Community Lane, evidencing that the City has never considered Community Lane at Newell to be a street "improved for vehicular traffic." First, Section 16.24.040 does not apply because narrow driveways like Community Lane do not meet the definition of a street improved for vehicular traffic as set forth in Section 16.24.040. For the sake of argument, assuming Community Lane qualified as a "street" under PAMC 1.04.050(a)(8) and PAMC 8.04.010(a)(3), it is not "improved for vehicular traffic" as it is a narrow, one-lane 8' alley that provides pedestrian access to the rear of the tennis courts and provides the few abutting properties with access to their rear entries. Second, the City's existing fencing along the Community Center tennis courts is more than 6' tall before the segmented approximately 1' topper. If the vision triangle applied here, the City's own fencing would be located within the vision triangle. It is clear that the City has never considered Community Lane to be a "street improved for vehicular traffic" and it would be arbitrary and discriminatory to now force a property owner who relied upon approved building permits and planning and building final sign-offs to remove lawful fencing. Should the City re-characterize Community Lane in the future, Owners' rights are already vested, and the City would be equitably estopped from enforcing an interpretation against Owners that the City has never adhered to at the same location.

The Owners request the City provide to them any archival information about the history and purpose of PAMC § 16.24.040 and the subject Community Lane, including the City's construction and maintenance of the existing fencing surrounding the Community Center tennis courts that front Community Lane, Newell Road, and Hopkins Avenue.

***The Fence Height on Community Lane may be 8'***

The portion of the Property abutting Community Lane is entitled to an 8' fence as it abuts public property other than a street. Community Lane is not a street, it is a glorified driveway and pedestrian access route.

Samuel J. Gutierrez  
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***Conclusion***

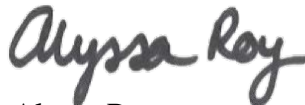
By way of this letter, the Owners are requesting that the City Attorney review the PTC's application of Section 16.24.040 to the subject property, as well as the facts demonstrating estoppel and grandfathering of the existing fence heights at Newell and Community Lane. Both prior to and at the April 10 PTC hearing, the Owners contended Section 16.24.040 does not apply to their property and should not have been considered by the PTC. The Owners are asking for the City Attorney's review be completed and communicated to the Owners prior to Council's tentatively scheduled meeting on June 3, 2019.

We also request the opportunity to meet with you in person to discuss the fence height measurements and lot characterization as applicable to the Property.

Your consideration of this request is much appreciated.

Very truly yours,

RUTAN & TUCKER, LLP



Alyssa Roy

ABR:mtr



January 15, 2019

Xin Zhang  
1210 Newell Road  
Palo Alto, CA 94303  
Email: xin\_zhang@hotmail.com

**RE: 1210 Newell Road [18PLN-00289]; Variance**

Dear Xin Zhang:

On January 15, 2019, the application referenced above was denied by the Director of Planning and Community Environment pursuant to the Palo Alto Municipal Code (PAMC) Section 18.77.060. This determination is based on the review of all information contained within the project file and the review of the proposal in comparison to applicable zoning and municipal code requirements. The findings for this denial are set forth in the attachment.

**PROJECT DESCRIPTION:** Variance to Allow for an Exception from the regulated fence height per Palo Alto Municipal Code. The fence fronting Newell Road and Parkinson Ave has a proposed height of 6'10". The fence fronting the rear of the property has a proposed height of 7'4" and the interior side fence has a proposed height of 6'. Zone District: R-1 (Single-Family).

**DIRECTOR'S DECISION: Application Denied.** This Director's decision has been denied based on the findings provided on the next page. This decision shall become final fourteen (14) calendar days from the postmark date of this mailing (or on the next business day if it falls on a weekend or holiday) unless a request for a hearing is filed pursuant to PAMC Section 18.77.060. The request for a hearing shall be in writing and submitted to the Planning and Community Environment Department prior to the end of the business day of the fourteenth day.

If you have any questions regarding this determination, please do not hesitate to contact me at [samuel.gutierrez@cityofpaloalto.org](mailto:samuel.gutierrez@cityofpaloalto.org) or by calling (650) 329-2225.

Sincerely,

Samuel Gutierrez  
Project Planner



## VARIANCE FINDINGS

Palo Alto Municipal Code Section 18.76.030 (c) sets for the findings to approve or deny a variance application. All findings must be made in the affirmative to approve the project. Failure to make any one finding requires project denial. This application has been denied based on the following findings:

- 1. Because of special circumstances applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, the strict application of the requirements and regulations prescribed in this title does not substantially deprive such property of privileges enjoyed by other property in the vicinity and in the same zoning district as the subject property.***

The project is located on a standard corner lot within the R-1 Zone District. The parcel is 9,555 sf in lot area, and 65 feet by 147 feet, with standard corner lot setbacks. The subject parcel has an access alley (Community Lane) at the rear which runs the length of the block and provides rear yard vehicle access for all properties on this block of Parkinson Avenue. The applicant has requested a variance to allow for an increase in fence height which includes a 6 foot 2-inch fence along the street side yard and rear yard with 1 foot 2-inch lattice above the fence for total fence heights of 7 foot 4-inches. Additionally, the applicant has requested a street facing fence of 5 foot 9 inch with a 1 foot 1-inch lattice located within the street side setback facing Parkinson Avenue, for a total fence height of 6 foot 10-inches. The applicant has requested a variance for increased fence heights beyond what is allowed by the Municipal Code and for their property to be considered a back to back corner lot in consideration to how the subject lot is impacted by traffic, security, and privacy concerns. However, the subject lots conditions are not unique to this property.

There is a total of nineteen (19) properties on the subject properties street block along Parkinson Avenue, located within the R-1 Zone District, with rear yard alley access (Community Lane). Additionally, there are eight eighty (88) properties with rear yard alley access similar to the subject site within 2,000 feet (less than a half mile) of the subject property for a total of one hundred and seven (107) properties with similar rear access situations. Of those properties, thirty-one are corner lots and are subject to the same standard fence regulations for corner lots as the subject property. Meaning the that the street side yard (along Newell Road) has a limitation of four (4) feet maximum height for fences facing the street unless said fences are located at least sixteen (16) feet away from a street facing property line. Furthermore, the request to be considered a back to back corner lot is not possible as PAMC 16.24.060 "Fences on corner lots" clearly states that corner lots that are adjacent to each other with rear yards joining, a six foot tall fence is permitted on the street side yard. This lot configuration is not present in on the subject lot. The standard corner lot allows for seven foot tall rear and interior yard fences at a minimum of sixteen feet from the street side and front lot lines, and four foot tall fences along the street side yard and front lot lines within sixteen feet of said property lines, with a six foot high street facing fence beyond sixteen feet at a minimum of sixteen feet from the street side and front lot lines. The applicant states concerns over privacy being one of the motivations for the request for taller fences, however, there is an

option for the applicant to supplement a code compliant fence with hedges or other tall dense fast growing plants. The Palo Alto Municipal Code does not speak to regulations involving the height of vegetation outside of required vision sight triangles and maintaining clearances in the public right of ways. Thus, the privacy issues claimed by the applicant could be potentially addressed by planting dense hedges directly adjacent to a code compliant fence. Plants that are six to eight feet in height, fast growing, and low water usage are readily available and utilized in the development of single-family homes throughout the City in the R-1 district. Furthermore, the applicants statements regarding impacts to their privacy due to lower code compliant fence heights are no greater than other corner lots in the area.

The applicant states that high traffic volumes from both automotive and pedestrian traffic, produce noise and pose a security concern and the request for a taller fence would address these issues. However, similar conditions are experienced by all properties in the area, and the applicant does have the option to supplement code compliant fencing with tall dense planting, presenting no hardship or constraints on the subject property. The requests from the applicant does not identify how they are precluded designing and developing the parcel in compliance with local regulations. As stated by the applicant the home on the subject property was recently built and designed to the applicant's specifications while developing the parcel in compliance with local regulations. The purpose of the granting of a variance, as outlined in PAMC Section 18.76.030(a) is to provide a way to grant relief when strict application of the zoning regulation would subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the same vicinity and zoning district. As noted above, the subject property has similar constraints conditions to many other properties within the immediate vicinity and within the same zone district. Therefore, the fact that the lot is standard corner lot with rear alley access alone does not, in and of itself, constitute a hardship, constraint, or practical difficulty that does not normally arise on other properties within the immediate vicinity and within the same zone district and does not substantially deprive the property of privileges enjoyed by other properties within the immediate vicinity and in the same zoning district.

For the reasons outlined above, the request finding described in PAMC Section 18.76.030(c)(1) for approval of the variance cannot be made for the proposed project.

***2. The granting of the application affects substantial compliance with the regulations or constitutes a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zoning district as the subject property.***

As noted above, all other properties within the immediate vicinity and within the same zoning district that are corner lots are all similarly restricted by the regulations for fences in regards to maximum height, location, and sight triangle requirements. Therefore, the granting of a variance for the subject property would constitute a grant of special privileges that would be inconsistent with the limitations upon other properties in the vicinity and in the same zoning district. Further, the applicant is requesting approval for taller fences required the inclusion of a vision sight triangle for the corner of the subject property at the intersection of Community

Lane and Newell Road. The vision triangle described in PAMC 16.24.090 would reduce the fence height and prohibit any vegetation from growing beyond three (3) feet tall. The submitted application does not account for this requirement. Furthermore, PAMC 16.24.090 "Variances" specifically states that no variance may be granted to the requirements contained in sections 16.24.040 "Fences at intersections". The extent of the requested variance affects substantial compliance with the regulations. For the reasons outlined above, the request finding described in PAMC Section 18.76.030(c)(2) for approval of the variance cannot be made for the proposed project.

**3. *The granting of the application will be detrimental or injurious to property or improvements in the vicinity, will not be detrimental to the public health, safety, general welfare, or convenience.***

The requested variance as submitted for the increased fence heights at the rear and street side yard as discussed in the section above does not account for the required vision triangle where the rear property line meets the street side property line. The vision triangle is required to allow a clear line of sight for pedestrians, cyclists, and automobiles where Community Lane intersection with Newell Road. Without the vision triangle, the conditions would increase the protentional for a collision to occur when a vehicle is existing Community Lane at Newell Road. The submitted application does not account for this requirement, as such the requested variance for additional height would be detrimental or injurious to public safety. In accordance with the PAMC Section 16.24.040 "A fence, wall or structure in the nature of a fence located at the intersection of any street improved for vehicular traffic, shall not exceed three feet in height above the adjacent curb grade, within a triangular area formed by the curblines, and their projection, and a line connecting them at points thirty-five feet from the intersection of the projected curblines", which requires the described vision triangle. Therefore, the requisite finding described in PAMC Section 18.76.030(c)(4) for approval of the variance cannot be made for the proposed project.

**From:** [Glaes, Judy](#)  
**To:** [Glaes, Judy](#)  
**Subject:** 1210 Newell Rd - 6/25/18 violation photos  
**Date:** Wednesday, July 11, 2018 12:50:59 PM

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## Gutierrez, Samuel

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**From:** anne dazey <annekdazey@gmail.com>  
**Sent:** Tuesday, January 29, 2019 4:41 PM  
**To:** Gutierrez, Samuel  
**Subject:** 18pIn-00289

Thank you for the postcard indicating that the decision on the fence at 1210 Newell Road has a possibility of being denied. Aside from the fact that there is a city ordinance on the height of fences, it doesn't bode well for the city to start exceptions, as they tend to snowball.

I personally feel that the fence as it is now is the only unattractive mark on a street that has such a welcoming feel to it. There are other ways to block passerbys from looking into your home, and there are examples all over Palo Alto. Of course I also object to all the 8 - 12' high shrubs that people grow to circumvent the restriction on fence heights, but that is something for the city to decide what to do about.

Thank you again for the tentative denial. As a neighbor that doesn't live that far away, I look forward to a more 'neighbor friendly' look to the property. (am also wondering about the bricked area next to Newell on the property that looks to be a second driveway....)

anne

## Gutierrez, Samuel

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**From:** Allen Podell <alpodell@gmail.com>  
**Sent:** Friday, January 18, 2019 4:57 PM  
**To:** Gutierrez, Samuel  
**Subject:** Fence variance on Newell Road

We are strongly opposed to such a high fence because

1-It gives an unfriendly, closed in impression as one walks or drives down the street.

2-It reduces visibility around the corner

I cannot imagine the impact on our city if a large number of people erect high fences.

Please don't allow this.

Sincerely,

Allen Podell

Janet Podell

1351 Harker Avenue

**From:** [John Cala](#)  
**To:** [Gutierrez, Samuel](#)  
**Subject:** Objection to Proposed Development Project, File 18PLN-00289  
**Date:** Friday, October 5, 2018 3:47:36 PM

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Samuel,

I am writing to you again to stress my objection to the requested variance made by the current owner or the newly constructed fences. I can see from the city's website that the you have replied to the initial application with a request for more information.

While I can appreciate that the process needs to proceed in its prescribed manner, I find it disappointing that these fences which were found to be in violation of the city's regulations several months ago remain intact. As a 20 year resident of this neighborhood, I cannot believe that there could possibly be a reasonable or objective consideration that would warrant an exception from regulations that have been followed by every other house in the immediate vicinity. It really feels that the variance request is being exploited to allow the owner to avoid taking action on something that should have been remedied long ago.

As a separate note, the plants that obstruct the view of Newell for cars that exit from Community Lane have continued to grow unattended, further obstructing the views. It is an incredibly unsafe situation on a street with heavy bike traffic to Walter Hays and Greene schools. As we discussed, the property owner has never shown even the slightest inclination to maintain the shrubbery on the property unless specifically directed to do so by the city. I urge you to review the shrubs as well.

Sincerely,

John Cala

----- Forwarded Message -----

**From:** John Cala <[johnjcala@yahoo.com](mailto:johnjcala@yahoo.com)>  
**To:** [samuel.gutierrez@cityofpaloalto.org](mailto:samuel.gutierrez@cityofpaloalto.org) <[samuel.gutierrez@cityofpaloalto.org](mailto:samuel.gutierrez@cityofpaloalto.org)>  
**Cc:** Susan Cala <[calafampa@aol.com](mailto:calafampa@aol.com)>  
**Sent:** Wednesday, September 5, 2018, 1:42:40 PM PDT  
**Subject:** Objection to Proposed Development Project

Samuel,

As we discussed, this email is to document my objection to the application for a variance to allow for an exemption from the regulated fence heights that are being requested for 1210 Newell Road. The file number on this request is 18PLN-00289.

The fences exceed, by a substantial margin, the allowable fence height limits under the existing regulations. Allowing higher fences would create a "fortress" that is completely inconsistent with the existing neighborhood. As far as I can tell, none of the other homes within a several block radius have fences that are closed to the heights being proposed. Perhaps if there was an aesthetic quality to the fences I might be less strenuous in my objection but the fences that have been constructed are standard redwood fencing that is not particularly attractive and oddly inconsistent with the style of the very nice, new home that has been built on the property. My objection also includes the massive iron gate that has been installed in front of the driveway which is, at its peak, several inches higher than the requested exemption and well above the allowable limits under the current regulations.

The regulations on these fences are not new and were available to the owner and contractor prior to building the fences and installing the oversized iron gate. In my view there is no reasonable basis for approving this variance request and I urge you to reject it and direct the homeowner to take the necessary actions to bring the fence and gate into compliance with the prevailing regulations.



John Cala  
1420 Parkinson Ave  
Palo Alto, CA 94301  
(415) 602-2473

## Gutierrez, Samuel

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**From:** Heidi's Gmail <heidisue.phillips@gmail.com>  
**Sent:** Saturday, September 8, 2018 3:16 PM  
**To:** Gutierrez, Samuel  
**Subject:** 1210 Newell Rd 18PLN-00289

Hi Samuel

My husband and I are owners of 1511 Walnut drive and have just received notice of the proposed project at 1210 Newell rd. We would like to register our concern about the proposed height of the fencing bordering Newell Ave. Its our strong feeling that the fencing bordering Newell and Parkinson should be subject to guidelines that are consistent with those of the neighborhood. This section of Newell is used by many pedestrians accessing the library, the community garden, and Rinconada park.

We frequently walk down Parkinson Ave to access downtown and have always loved the character of this street. Allowing a 6 foot tall fence along either Newell Rd or Parkinson Ave would have a negative impact on the sense of community in a spot that is at the heart of the community center neighborhood.

We urge you not to grant an exemption from the regulated fence height for the portions of the fencing bordering Newell or Parkinson

Thank you for your consideration of our concern.

Sincerely,

Heidi and Joe Phillips

Sent from my iPhone

## Gutierrez, Samuel

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**From:** Sidney Buttrill <bud.buttrill@mindspring.com>  
**Sent:** Wednesday, September 5, 2018 9:50 PM  
**To:** Gutierrez, Samuel  
**Cc:** bud.buttrill@mindspring.com  
**Subject:** 18PLN-00289 1210 Newell Rd.

Mr. Gutierrez,

I would like to oppose the construction of a 6'-10" fence along Parkinson Ave. and Newell Road at the intersection of these two busy streets. The Palo Alto Fence Code limits the height of fences at the intersection of two streets to a maximum height of 3'-0". This is a matter of pedestrian and traffic safety. It would be impossible to see vehicles, bicyclists, or pedestrians around a 6'-10" fence without driving out into the intersection. This would be especially hazardous for school children on bicycles who use the Newell Road bicycle paths on their way to and from Walter Hayes Elementary School and Greene Middle School.

In addition to traffic safety concerns, an outside fence would be unsightly and out of place in this residential neighborhood.

I would not oppose the rear alley fence height of 7'-4" provided it tapered down to the maximum 4' height at the setback line. The interior side fence proposed to be 6' in height should also taper down to 4' at the lot line to be consistent with the other fences along Parkinson Avenue.

Respectfully,

Bud Buttrill  
1417 Parkinson Ave.  
Palo Alto, CA 94301  
Phone: (650)-321-8338  
Cell: (650)380-5382  
FAX: (650)327-8062

## Gutierrez, Samuel

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**From:** Caitie Field <caitlinfield@yahoo.com>  
**Sent:** Wednesday, September 5, 2018 10:28 AM  
**To:** Gutierrez, Samuel  
**Subject:** 1210 Newell Road

- Dear Mr. Gutierrez,

I am writing in favor of the variance to allow for an exception from the regulated fence height for 1210 Newell Road. The fence is esthetically pleasing, suits the neighborhood, is similar in height to most fences in and around the neighborhood and I feel the height is necessary for privacy and safety for the family. The family living at 1210 Newell Road as well as the family across the street have both had intruders in their back yard and well as entering their front door while the home was occupied. Newell is a busy street and the alley behind 1210 Newell is well travelled.

I have spoken with other neighbors that agree the fence is fine as is and needed for safety and privacy.

Best,

Caitlin Field

1435 Parkinson Ave

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## Gutierrez, Samuel

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**From:** Bret E. Field <field@bozpat.com>  
**Sent:** Monday, August 27, 2018 9:03 PM  
**To:** ProjectPlans  
**Subject:** 1210 Newell, Palo Alto CA 94301

Dear Planning Department:

I am writing today to voice my strong support for our neighbor's fence at 1210 Newell Road.

I live at 1435 Parkinson directly across the street from 1210 Newell Road.

I find the fence to be nicely done and that it fits well with the overall look of the house. In no way do I find the fence to be a nuisance, intrusive or visually out of place.

In addition, I think it is important for our neighbors to have the fence in its current form, as it serves an essential purpose as a privacy barrier from the road/library across the street. Furthermore, the fence in its current form will also serve an important security function for our neighbors.

In closing I'd like to emphasize that I strongly support our neighbor's desire to maintain the fence in its current form.

Sincerely,

Bret Field  
1435 Parkinson Avenue  
Palo Alto CA 94301

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## Gutierrez, Samuel

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**From:** Caitie Field <caitlinfield@yahoo.com>  
**Sent:** Monday, August 27, 2018 11:48 AM  
**To:** ProjectPlans  
**Subject:** A note in favor of of fence 1210 Newell Road

To whom it may concern,

I am writing in support of the fence surrounding the new home construction at 1210 Newell Rd. I live across the street from the home and the fence causes no nuisance to me in the slightest. I often drive through the alley behind the home and the visibility is not an issue and provides much needed security and privacy for the occupants. There are often people passing through the alley as well as across the street at the Rinconada Library. The fence is not obtrusive or out of place visually. It fits in perfectly with the neighborhood and is of similar height to what was previously there.

My other concern is the neighbor that complained about this fence has repeatedly made this project difficult for this family, threatening to call police for parking in front of their home (legally), cutting down their hedges without permission and blocking construction trucks by parking them in on both sides on purpose. All while remodeling their own home without city permits.

Please feel free to contact me with any questions.

Sincerely,

Caitlin Field  
1435 Parkinson Ave  
Palo Alto, CA 94301  
650-740-7707

August 22, 1018

City of Palo Alto  
Planning Division and relevant Fence Code Variance Departments  
250 Hamilton Ave, Palo Alto, CA 94301

To whom it may concern:

We write in support of a variance and or a re-evaluation of the fence at 1210 Newell Road to keep the fence as is and as currently configured (current fence) as being in keeping with the purposes for the fence code and key requirements. We are the neighbors at 1430 Parkinson Ave that directly abuts the home at 1210 Newell Road. No other single family residence abuts 1210 Newell. The current fence is properly constructed and does not pose a nuisance to us as the abutting neighbor. In fact, the fence provides privacy, security and ability of the neighbors' children to safely play within the confines of the fence as constructed.

The Palo Alto code covering single family residences (18.12.010) is intended "to create, preserve, and enhance areas suitable for detached dwellings with a strong presence of nature and with open area affording maximum privacy and opportunities for outdoor living and children's play. Minimum site area requirements are established to create and preserve variety among neighborhoods, to provide adequate open area, and to encourage quality design."

Newell Road is a very busy street and 1210 Newell Road is positioned across from the Public Library and Palo Alto Arts Center and is across from Palo Alto tennis courts. This property has a long area of the yard property along Newell Road and has fairly heavy traffic with headlights at night that are intrusive and annoy the residents at 1210 Newell Road and our abutting property that the current fence as currently constructed satisfactorily limits. In addition, there are individuals often in the public library grounds at night time who either linger on the property or who attempt to spend the overnight and they can also pose a security risk to the neighbors at 1210 Newell Road that the current fence as currently constructed properly deters. The property and current fence affords the community a quality design that is encouraged by the Palo Alto code. Many area properties have similar fencing and it helps to create and preserve variety among neighborhoods.

We request the current fence be allowed to remain as currently configured and situated as it is in keeping with the purposes of the Palo Code (18.12.010) and affords our neighbors 1210 Newell Road property with the city planner's intent of maximum privacy, opportunities of outdoor living and enhanced ability for children to play in safety. The current fence also addresses special nuisance and security issues posed by the heavily trafficked Newell Road and the public access properties of the Library, Arts Center and Palo Alto tennis courts.

Sincerely,



Tracy and Joseph Keogh  
1430 Parkinson Ave  
Palo Alto, CA 940301

## **ATTACHMENT K**

### **Project Plans**

Hardcopies of project plans are provided to Council members. These plans are available to the public online and/or by visiting the Planning and Community Environmental Department on the 5<sup>th</sup> floor of City Hall at 250 Hamilton Avenue.

#### **Directions to review Project plans online:**

1. Go to: [bit.ly/PApendingprojects](https://bit.ly/PApendingprojects)
2. Scroll to find "1210 Newell Road" and click the address link
3. On this project specific webpage you will find a link to the Project Plans and other important information

#### **Direct Link to Project Webpage:**

<https://www.cityofpaloalto.org/news/displaynews.asp?NewsID=4552&TargetID=319>