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TO: PLANNING AND TRANSPORTATION COMMISSION

FROM: JONATHAN LAIT, DIRECTOR, PLANNING AND COMMUNITY ENVIRONMENT

DATE: APRIL 10, 2019

SUBJECT: AGENDA ITEM 3: 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

Attached is a cleaned up version of Attachment D.

Jonathan Lait
Director
Planning and Community Environment

APPROVAL NO. 2019-_____

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

On _____, 2019, the City Council upheld the Planning and Transportation Commission's recommendation to deny the applicant's request for approval of a Variance to allow for an existing fence located at the subject property 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 unpermitted 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 within 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 denial of the project to City Council.
- E. On _____, 2019, the City Council reviewed the request. After hearing public testimony, the Council voted to deny the fence project and the requested 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 for which a public agency rejects or disapproves. Because the request for a Variance was denied, CEQA did not apply.

SECTION 3. VARIANCE FINDINGS. The request by the applicant for the existing fence 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. 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 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