



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: June 3, 2020

TO: Hearing Officer

SUBJECT: Minor Variance #11910

LOCATION: 1265 Chateau Road

APPLICANT: Curtis Fortier, on behalf of Hadiran Sridjaja

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

GENERAL PLAN DESIGNATION: Low Density Residential

CASE PLANNER: Jennifer Driver

STAFF RECOMMENDATION: Adopt the Environmental Determination and Specific Findings in Attachment A to **approve** Minor Variance #11910 with the conditions in Attachment B.

PROJECT PROPOSAL: Minor Variance: To permit a six-foot high fence within the front yard of an existing single-family residential property, where the maximum height for fences is four feet.

ENVIRONMENTAL DETERMINATION: This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15303, Class 3, New Construction or Conversion of Small Structures) and there are no features that distinguish this project from others in the exempt class; therefore there are no unusual circumstances. Section 15303 exempts the construction of or installation of accessory (appurtenant) structures including fences. Therefore, the project is exempt from environmental review.

BACKGROUND:

Site Characteristics: The irregularly shaped, 33,095 square-foot site is located on the north side of Chateau Road at the beginning of the cul-de-sac. The site is improved with a two-story, 5,955 square-foot single-family dwelling with an attached three-car garage toward the rear of the residence, and a pool in front of the residence. The improvements are located on an existing flat pad that is elevated above the Chateau Road right-of-way. Access into the garage is via a sloping driveway along the eastern portion of the site. There are 86 trees located on or adjacent to the property.

Adjacent Uses: North – Single-Family Residential
South – Single-Family Residential
East – Single-Family Residential
West – Single-Family Residential and Annendale Golf Club

Adjacent Zoning: North – RS-2-HD (Single-Family Residential, 0-2 units per acre, Hillside Overlay District)
South – RS-2-HD (Single-Family Residential, 0-2 units per acre, Hillside Overlay District)
East – RS-2-HD (Single-Family Residential, 0-2 units per acre, Hillside Overlay District)
West – RS-2-HD (Single-Family Residential, 0-2 units per acre, Hillside Overlay District) and OS (Open Space)

Previous Zoning Cases on this Property: Conditional Use Permit (CUP) #1860 – CUP to allow for the construction of a pool within the front yard. Variance to allow a four-foot, six-inch fence along the front property line, where fences were permitted a height of three feet, six inches. CUP for addition of pool – Approved with conditions on July 6, 1988. Variance for fence along the front property line – Disapproved on July 6, 1988.

PROJECT DESCRIPTION:

The applicant, Curtis Fortier, has submitted a Minor Variance application to allow the replacement of a four-foot, six-inch high metal post fence post with a six-foot high, iron slat fence that is 60 percent open between the front property line and the front occupancy line. Zoning Code Section 17.40.180 (Walls and Fences) states that a wall or fence within the RS or RM-12 zoning district located between the front property line and the occupancy frontage are limited to a maximum height of four feet and be at least 50 percent open. A Minor Variance is required to exceed the maximum allowed height of a fence.

ANALYSIS:

An existing swimming pool, located within the front yard, was approved by CUP #1860 in 1988 and is enclosed by an existing permitted 4'-6" high fence, located at the top of the slope, and setback 15 to 25 feet from the front property line. In addition, there is a permitted, nonconforming 4'-6" high driveway gate and fence set back between 10 to 25 feet from the front property line, to the east of the pool enclosure fence. The driveway gate and fence secure the driveway and motor court and do not serve as the pool enclosure.

Due to disrepair, most of the existing fence in the front yard is proposed to be removed as part of the proposed project. The proposed replacement, six-foot high fence would serve as a pool safety enclosure and would be located along the entire frontage on Chateau Road with a five-foot setback from the front property line, and return to connect to the occupancy frontage. In addition, the proposal includes replacing the driveway gate and fence with a similar six-foot high fence. The existing fence within the side yards of the property will remain and meet the proposed six-foot fence.

Minor Variance

Pursuant to Zoning Code Section 17.61.080 (Variances), an adjustment to the height of a fence is subject to a Minor Variance application. A Minor Variance application allows the City to review whether a deviation from the Zoning Code can be granted for a project. A Minor Variance may only be granted when, because of special circumstances applicable to the subject property, the strict application of the Zoning Ordinance denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts, or creates an unnecessary and non-self-created hardship or unreasonable regulation which makes it obviously impractical to require compliance with the applicable development standards. A Minor Variance shall not be granted if the granting of the application would be detrimental or injurious to property or improvements in the vicinity of the subject site, or to the public health, safety, or general welfare.

Per Pasadena Building Code Section 14.04.400, fencing is required to isolate pools from neighboring properties and public ways. The purpose is for pool safety. The barrier shall be a minimum of five feet in height measured from the outside of the barrier. In order to comply with the swimming pool security enclosure requirement, the applicant is proposing to remove an existing 4'-6" high fence and to construct a six-foot high fence that is 60 percent open within the front yard, fully enclosing the front yard area, where the swimming pool is located. The proposal also includes a driveway gate and side return, also six feet high and 60 percent open.

Zoning Code Section 17.71.070.A.2 (Repair and Maintenance) states that ordinary repair and maintenance of a nonconforming structure, such as the existing pool enclosure fence, driveway gate and fence, shall be allowed. However, the Zoning Code states that ordinary repair and maintenance allows replacement or repair of broken boards or concrete blocks, and does not include the replacement of an entire segment of a fence or wall. Subsequently, Zoning Code Section 17.71.080.D.2 (Alteration or enlargement of a nonconforming structure) states that a nonconforming structure shall not be enlarged or moved unless the enlargement or new location conforms to the current development standards identified for the subject zoning district. As a result, once removed, the replacement fence shall comply with current code height limits and thus forfeits the nonconforming height of 4'-6".

As a result of the location of the existing pool within the front yard, a four-foot high fence would not sufficiently secure the site or comply with the pool enclosure requirement, creating a special circumstance that is unique to the subject site. Staff reviewed the proposed fence and finds that since a five-foot high fence is required, the proposed six-foot high fence is in excess of both what is required for a pool enclosure and of fence heights in the Zoning Code. As a result, staff recommends that the fence for the pool enclosure be reduced to no more than five feet high in order to meet minimum safety regulations and be more in line with what the Zoning Code permits. Furthermore, the granting of the Minor Variance for the pool enclosure fence would not be detrimental or injurious to property or improvements in the vicinity of the subject site, as public

safety would be maintained and new landscaping would be planted to aid in minimizing visibility of the fence from the public right-of-way.

Further, as the application includes replacing the driveway gate and fence with the proposed six-foot high fence, and there is no explicit purpose or extraordinary circumstance that make it impractical for the proposed driveway gate and side returns in the front yard to comply with the front yard fence maximum height requirement, staff recommends limiting the height of this portion of the fence and gate to a maximum of four feet. The area where the driveway gate and fence is located is relatively flat and is set back substantially from the front property line and the property owner is not deprived of use of the property by limiting the height to four feet. The properties in the area share similar characteristics in terms of lot size, dimensions, shape, and topography, and are in the same zoning district, subject to the same development standards in the Zoning Code, and do not have any fences that exceeds the height limit.

Tree Protection Ordinance and Preliminary Landscape Plan

The Arborist report prepared by Certified Arborist Rebecca Latta identifies 86 trees, which includes 16 trees located off the property adjacent to the subject site. One protected Coast Live Oak (*Quercus agrifolia*) is on the property and seven other protected trees were surveyed off the property, including one Coast Live Oak, one Toyon (*Heteromeles arbutifolia*), and five Red Ironbark (*Eucalyptus sideroxylon*).

Based on the level of proposed disturbance proposed by the installation of the fence, a total of 13 non-protected on-site trees are proposed for removal. In addition, there are two protected off-site trees that may be impacted by the construction and shall be protected from encroachments. No protected trees are to be removed.

Further, as a recommended condition of approval, the Planning Department will require the submittal of a Final Landscape Plan in compliance with Zoning Code Chapter 17.44 (Landscaping), and a Tree Protection Plan for the protected trees on public and private property. The landscape plan shall include the planting of shrubs or hedges in front of the proposed fence in order to minimize visibility from the public right-of-way.

ENVIRONMENTAL REVIEW:

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15303(e), Class 3, New Construction or Conversion of Small Structures). There are no features that distinguish this project from others in the exempt class; therefore there are no unusual circumstances. This class exemption exempts from environmental review specifically accessory structures including garages, carports, patios, swimming pools, and fences.

GENERAL PLAN CONSISTENCY:

The subject property is designated Low Density Residential in the Land Use Element of the General Plan. The existing use of the site is a single-family residence and the proposed fence within the front yard would not change the existing use of the property. The property will maintain consistency with General Plan Land Use Policy 21.7 (Safety) which encourages residential developments to facilitate and enhance neighborhood safety with elements such as front porches, large front windows, and property improvements such as fences. The proposed fence within the

front yard of an existing single-family residence intends to provide a pool safety barrier for the occupants of the subject site and adjacent properties.

The proposal would also maintain consistency with General Plan Land Use Policy 22.2 (Garages and Accessory Structures). The policy requires that garages and accessory structures, including fences, be located and designed so that they do not dominate the appearance of the dwelling from the street. The proposed fence, with recommended conditions of approval, would be limited to five feet in height for the pool enclosure, and four feet in height for the driveway gate and side return, while within the front yard. By complying with the Zoning Code, to the extent feasible, the fence would not detract from the appearance of the dwelling from the street. In addition, the fence would be at least 50 percent open. Therefore, the proposal would not appear out of place from the street and is consistent with the goals, policies, and objectives of the General Plan.

COMMENTS FROM OTHER DEPARTMENTS:

The Building Section, Design and Historic Preservation Section and Departments of Transportation, Fire and Public Works reviewed the proposal. The Department of Public Works provided comments and recommended conditions of approval that have been included in Attachment B of this staff report. No other comments or concerns were provided.

CONCLUSION:

Staff finds that there are exceptional or extraordinary circumstances and conditions applicable to the development on the subject site, which warrants the approval of the requested Minor Variance to permit a height of five feet for the pool enclosure fence, but that the remainder of the fence including the driveway gate and side return, shall be limited to four feet in height. As designed, the fence height would not be injurious or detrimental to surrounding properties and to other residences in the immediate neighborhood. Staff recommends approval of the Minor Variance, subject to the findings in Attachment A and recommended conditions of approval in Attachment B.

Attachments:

Attachment A: Specific Findings of Approval
Attachment B: Conditions of Approval

ATTACHMENT A
SPECIFIC FINDINGS FOR MINOR VARIANCE #11910

Minor Variance

1. *There are exceptional or extraordinary circumstances or conditions applicable to the development site that do not apply generally to sites in the same zoning district.*

Fences, per the Zoning Code, are permitted at a maximum height of no more than four feet within the area between the front property line and the front occupancy line of the residence; however, pool enclosures are required to be at least five feet high by Pasadena Building Code. As a result of the existing pool's location within front yard, the site would not be permitted to construct a four-foot high fence to secure the site and comply with the pool enclosure requirement, creating a special circumstance that is unique to the subject site, that warrants the granting of this Minor Variance. As conditioned, the pool enclosure fence will be reduced in height from six feet to five feet, the minimum height required for a pool enclosure, and the remainder of the proposed fence will be limited to a maximum of four feet.

2. *Granting the application is necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.*

The ability to maintain an existing swimming pool for recreational purposes is a substantial right of the property owner. Requiring strict application of the Zoning Code will fail to provide a compliant pool barrier and will result in unnecessary hardship and unreasonable loss of privacy. Allowing the fence to exceed the City's four-foot height limit by one-foot preserves the applicant's privacy and safety, a substantial property right. The subject fence for the existing pool, being that it is a Building Code requirement, is necessary for the preservation and enjoyment of this substantial property right. As conditioned herein, the pool enclosure fence will be reduced in height from six feet to five feet, the minimum height required for a pool enclosure, and the remainder of the proposed fence will be limited to a maximum of four feet.

3. *Granting the application will not be detrimental or injurious to property or improvements in the vicinity of the project site, or to the public health, safety, or general welfare.*

Permitting the applicant to exceed the allowable four-foot height limit for a fence in the front yard will provide and the required security for the existing pool. While the fence will be visible from the street, the proposed five-foot high fence will be constructed with vertical angled steel slats, at least 50 percent open. In addition, shrubbery and trees will be planted in front of the fence in order to soften the appearance of the new fence. The fence will also be required to meet all safety and building codes, which will be reviewed through the plan check process. Therefore, the granting of the Minor Variance for the fence would not be detrimental or injurious to property or improvements in the vicinity of the subject site.

4. *Granting the application is consistent with the General Plan and the purposes of Title 17 of the Municipal Code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zone district.*

The subject property is designated Low Density Residential in the Land Use Element of the General Plan. The existing use of the site is a single-family residence and the proposed fence within the front yard will not change the existing use of the property. The property will maintain

consistency with General Plan Land Use Policy 21.7 (Safety) which encourages residential developments to facilitate and enhance neighborhood safety with elements such as front porches, large front windows, and property improvements such as fences. The proposed fence within the front yard of an existing single-family residence intends to provide a safety barrier for the occupants of the subject site and adjacent properties. The proposal will maintain consistency with General Plan Land Use Policy 22.2 (Garages and Accessory Structures). The policy requires that garages and accessory structures, including fences, be located and designed so that they do not dominate the appearance of the dwelling from the street. The proposed fence, with recommended conditions of approval, will be limited to five feet in height for the pool enclosure, and four feet in height for the driveway gate and side return, while within the front yard. By complying with the Zoning Code, to the extent feasible, the fence will not detract from the appearance of the dwelling from the street. In addition, the fence will be at least 50 percent open. Therefore, the proposal would not appear out of place from the street and is consistent with the goals, policies, and objectives of the General Plan.

5. *Cost to the applicant of strict compliance with a regulation is not the primary reason for the granting of the Variance.*

Cost to the applicant has not been considered a factor at any time throughout the review of this application. The applicant paid for construction of the fence.

ATTACHMENT B
CONDITIONS OF APPROVAL FOR MINOR VARIANCE #11910

The applicant or successor in interest shall meet the following conditions:

General

1. The site/floor plans to be submitted for building permits shall substantially conform to the site/floor plans stamped "Approved at Hearing June 3, 2020," except as modified herein.
2. In accordance with Section 17.64.040 of the Pasadena Municipal Code and in accordance with City Council Resolution No. 9774, the right granted under this application must be enacted within 36 months from the effective date of approval. It shall expire and become void, unless an extension of time is approved in compliance with Section 17.64.040 C of the Zoning Code.
3. The applicant shall obtain a building permit (or zoning permit, where applicable) to ensure the fence is properly constructed in compliance with the applicable requirements of the City's Building Code.
4. The Zoning Administrator, at any time, can call for a review of the approved conditions at a duly noticed public hearing. These conditions may be modified or new conditions added to reduce any impacts of the use. The Hearing Officer may revoke the Minor Variance if sufficient cause is given.
5. The approval of this application authorizes a five-foot tall, 50 percent open, fence within the front yard around the existing pool. No additional height is permitted for the driveway gate or side returns within the front yard.
6. Any change to these conditions of approval, expansion in height, or location shall require the modification of this Minor Variance or a new application.
7. The applicant or successor in interest shall meet the applicable code requirements of all other City Departments.
8. The final decision letter and conditions of approval shall be incorporated or accompany plans as part of an applicable building or zoning permit.
9. The proposed project, Activity Number **PLN2019-00378** is subject to a Final Zoning inspection. Contact the Planning Case Manager, Jennifer Driver at (626) 744-6756 to schedule an inspection appointment time.

Planning

10. The existing fence between the front property line and the front occupancy line shall be removed.
11. The project shall comply with the Municipal Code Chapter 8.52 (City Trees and Tree Protection Ordinance). A tree protection and retention plan shall be submitted to the Zoning Administrator for approval prior to the issuance of any building or grading permits. Any proposal to remove a protected tree requires approval of a Tree Removal Application prior to

the issuance of building permits. The tree protection and retention plan shall take into account the trees on adjoining properties along the property lines, adjacent to the proposed project that might be impacted by the proposed construction. The plan shall provide mitigation measures, if necessary, and analyses potential damage to trees by mechanical injuries to roots, trunks or branches; the compaction of soil; and changes to existing grade which may expose or suffocate roots.

12. The applicant or the successor in interest, shall submit a final landscape and irrigation plan, in compliance with Zoning Code Chapter 17.44 (Landscaping) along with plans for a building permit. The plan shall be reviewed and approved to the satisfaction of the Zoning Administrator prior to the issuance of any building or grading permits. The landscape plan shall include vertical landscape (shrubs or hedges) between the front property line and the approved fence. Plant species and spacing shall be reviewed and approved by the Zoning Administrator during the plan check process. The landscape plan shall include a mix of plant size and materials. Plant materials shall emphasize drought-tolerant and/or native species.
13. A certified arborist and the civil engineer of record shall monitor all related construction activities including, but not limited to: demolition, digging, grading, excavating, or trenching, and as recommended in the supplemental reports. The monitoring of construction activities shall ensure the project implements all of recommendations and conditions provided in the arborist and geotechnical reports in order to protect the existing trees during construction.
14. Should this project meet the threshold for state-mandated water-efficient landscaping, the final landscape plans (inclusive of planting and hardscape plans, the planting pallet, drainage plan, and irrigation system plan(s) and specifications), shall be reviewed by Planning and Community Development Department staff for conformance with the standards and requirements specified within the 2015 California Model Water Efficient Landscape Ordinance (MWELo) prior to the issuance of a building permit. No certificate of occupancy shall be issued until such plans have been deemed compliant with the MWELo and the landscaping has been installed per such approved MWELo-compliant plans to the satisfaction of the Director of Planning and Community Development or his/her designee.

Department of Public Works

15. There is an existing sewer easement traversing the subject property. The sewer easement and all sewer facilities shall be shown on all of the construction drawings. No structure shall be built within the 10 feet wide sewer easement, projecting five (5) feet on each side from the sewer main alignment. The City sewer facility plan, Dwg. 3868-3, is attached herein for your reference.
16. The applicant shall protect all existing public facilities and maintain the right of way in good clean condition during the construction. If any damage is proven to be caused by the subject development, the applicant is responsible for replacing and/or repairing the facilities to the satisfaction of the City, prior to the issuance of Certificate of Occupancy.