

**MINUTES  
BOARD OF ZONING APPEALS  
SEPTEMBER 5, 2018**

Public Meeting 6:30 P.M.  
100 North Garfield Avenue  
Council Chambers, Room S249  
Meeting Started: 6:34p.m.  
Meeting Adjourned: 8:10p.m.

<b>Commissioners Present: Chair Coher, Commissioner Nanney, Michael Williamson, Felicia Williams (Alternate)</b>
<b>Commissioner Absent: Commissioner Barar</b>
<b>Staff Present: Talyn Mirzakhonian, (Zoning Administrator), Brad Fuller, (City Attorney), Carrie Banks, Marina Khrustaleva, Jamie Peltier, Kevin Johnson</b>

1. ROLL CALL AND READING OF PROCEDURES
2. PUBLIC HEARINGS

**REGULAR CASES**

1<sup>st</sup> case

**APPEAL OF A PRIVATE TREE REMOVAL PERMIT TR#2018-00169: 1132 Wotkyns Drive – Council District #1**

Private Tree Removal Permit: Appeal of the Principal Planner's denial of a request to remove a Pinus Canariensis (Canary Island Pine) tree with a DBH of 30 inches within a residential property. The tree is protected by the City's Tree Protection Ordinance (M.C. Chapter 8.52).

**Staff Recommendation:**

- 1) Find that the project is exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(5); Administrative Code Title 14, Chapter 3, §15270(a), Projects Which are Disapproved. This Statutory Exemption states that CEQA does not apply to projects which a public agency rejects or disapproves; and
- 2) Uphold the Principal Planner's decision and deny Private Tree Removal Permit TR#2018-00169.

**PRESENTATION BY: Marina Khrustaleva**

<b>Appellant:</b> Nadia Demory
<b>Applicant:</b> same as appellant
<b>Speakers in Favor:</b> Steve Mermis
<b>Speakers in Opposition:</b> Amina Darakjy
<b>Appellant Rebuttal:</b> Nadia Demory
<b>Applicant Rebuttal:</b> Nadia Demory

**THE BOARD OF ZONING APPEALS MOVED TO ADOPT THE ENVIRONMENTAL DETERMINATION THAT THE PROPOSED PROJECT BE EXEMPT FROM ENVIRONMENTAL REVIEW AND TO UPHOLD THE PRINCIPAL PLANNERS DECISION TO DISAPPROVE THE PRIVATE TREE REMOVAL. COMMISSIONER WILLIAMSON MADE THE MOTION AND COMMISSIONER WILLIAMS SECONDED.  
MOTION CARRIED WITH A 4-0 VOTE.**

Chair Coher: Yes

Commissioner Williamson: Yes

Commissioner Barar:

Commissioner Williams: Yes

Commissioner Nanney: Yes

**2<sup>nd</sup> case**

**MV #11884: 969 S. Madison Avenue – Council District #7**

Minor Variance: To allow an 8'-6" high fence in the corner side yard, where the maximum allowed height is four feet.

**Staff Recommendation:**

- 1) Find that the project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(5); Administrative Code, Title 14, Chapter 3, §15270(a), Projects Which are Disapproved. This Statutory Exemption states that CEQA does not apply to projects which a public agency rejects or disapproves. In the event the Hearing Officer decides to approve Minor Variance #11884, the project could qualify for an exemption pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15303(e), Class 3, New Construction or Conversion of Small Structures), and there are no features that distinguish this project from others in the exempt class; therefore there are no unusual circumstances. Class 3 exempts from environmental review the construction of accessory structures including fences; and
- 2) Uphold the Hearing Officer's decision and disapprove the Minor Variance.

**PRESENTATION BY: Jamie Peltier**

<b>Appellant:</b> Christina Hoffman, Paul Hoffman, John (Council)
<b>Applicant:</b>
<b>Speakers in Favor:</b> Susan Masterman, Maureen Crow, Heidi Bender
<b>Speakers in Opposition:</b>
<b>Appellant Rebuttal:</b>
<b>Applicant Rebuttal:</b>

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

**OLD FINDINGS FOR DISAPPROVAL**

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

- ~~1. There are no exceptional or extraordinary circumstances or conditions applicable to the development site that do not apply generally to sites in the same zoning district. The subject site is rectangular in shape and exceeds the minimum lot size and lot width requirements for properties in the RS-6 (Residential, Single Family) zoning district. The minimum lot size for RS-6 properties is 7,200 square feet with a minimum width of 55 feet. The subject lot is 15,173 square feet and 76 feet wide. There are similar corner lots of similar width and lot size in the immediate neighborhood that observe all the provisions of the Zoning Code, as they relate to fence height. As such, there is no exceptional or extraordinary circumstance that applied to this site that would allow the proposed deviation from the height requirement.~~
- ~~2. Granting the application is not consistent with the General Plan and the purposes of Title 17 of the Municipal Code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district. The subject site is designated as Low Density Residential in the General Plan Land Use Element. The use of the site would remain a single-family residence; therefore, the character of the single family neighborhood would be maintained. However, the project is not consistent with the adopted General Plan policies, including Policy 21.3 (Residential Neighborhoods – Neighborhood Character), to maintain elements of residential street that unify and enhance the character of the~~

~~neighborhood, including parkways, street trees, and compatible setbacks. The development standards for walls and fences of the Zoning Code were created to implement the General Plan policies by addressing additional details of site planning, project design, and the operation of land uses to ensure that proposed development produces an environment of desirable character. The proposed 8'5" wall and fence, built at the corner side property line, would conflict with Policy 21.3 because it would be out of pedestrian scale and would impede the visual connection to the neighborhood from the public right-of-way and would be detrimental to the efforts in providing and maintaining features that unify and enhance the character of the neighborhood.~~

## **NEW FINDINGS FOR APPROVAL**

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

1. *There are exceptional or extraordinary circumstances or conditions applicable to the development site that do not apply generally to sites in the same zoning district.* There are exceptional conditions applicable to the subject site that warrant the granting of this application: topography and existence of trees. The applicant obtained a building permit for a 3'5" retaining wall as a part of overall rear yard improvements. The construction of this retaining wall resulted in altered topography on the site near the corner side setback. To accommodate the resulting grade change, and to comply with Building and Safety's pool fencing requirements, the applicant is proposing a fence that exceeds the City's height requirement for fences within a corner side setback. Disapproval of the Minor Variance would create safety concerns for the inhabitants of the property as well as for the general public, as there is a pool existing on site. Furthermore, locating the fence as proposed on the property line allows them to preserve two existing trees that would otherwise be impacted, or potentially removed, if the fence were required to be placed five feet from the property line, per strict application of Code requirements. Therefore, there are exceptional circumstances applicable to the development site that warrant the granting of this Minor Variance.
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 subject property is a corner lot and rectangular in shape. Based on evidence provided by the applicant, there are numerous other corner lots in the vicinity of the subject site that enjoy fences exceeding the maximum allowed four-foot height limit located at the corner side property line. The approval of this Minor Variance would grant this property owner the right to use his/her property in the same manner as that currently enjoyed by numerous neighboring properties. Conversely, not granting this Minor Variance would make this property an outlier and would make it less compatible with the surrounding neighborhood. Therefore, the proposed project meets this finding.
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.* The property will continue to be used as a single-family residence. The proposed fence would be allowed on top of the retaining wall to secure the site from potential safety hazards that could result from having an open flat pad 3'5" above existing sidewalk grade along the public right-of-way on Alpine Street. The fence would eliminate safety concerns related to public accessibility of the existing pool on the subject property. Furthermore, the application was reviewed by the Department of Public Works, the Fire Department, and the Building and Safety

division, who expressed no safety concerns related to the construction of the subject fence.

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 site is designated as Low Density Residential in the General Plan Land Use Element. The use of the site would remain a single-family residence; therefore, the character of the single-family neighborhood would be maintained. The proposed fence exceeding the height of four feet at the corner side property line would not change the existing use of the property. The property will maintain consistency with General Plan Land Use Policy 4.11 (Development that is Compatible), which encourages development that demonstrates a contextual relationship with neighboring structures and site addressing elements such as: massing, orientation, setbacks, and aesthetics. The proposed fence would be compatible with the numerous other corner properties in the vicinity of the subject site that also have fences exceeding the maximum height requirement along the corner side property line. Additionally, the project is consistent with General Plan Land Use Policy 6.2 (Established Neighborhoods), which aims to preserve, protect, and enhance residential neighborhoods by providing appropriate transitions between adjoining areas. The proposed fence would contribute to the overall existing physical characteristics of the neighborhood and would not negatively alter the aesthetics. Furthermore, it would protect the neighborhood by eliminating safety concerns related to public accessibility of the existing on-site pool.
5. *Cost to the applicant of strict compliance with a regulation is not the primary reason for the granting of the Variance.* The cost to the applicant for compliance with the City's development standards has not been considered a factor throughout the review of this application.

#### **NEW CONDITIONS OF APPROVAL**

#### **ATTACHMENT B CONDITIONS OF APPROVAL FOR MINOR VARIANCE #11884**

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

1. The site plan submitted for zoning/building permits and/or future development shall substantially conform to the site plan stamped "Approved at Hearing September 5, 2018," except as modified herein.
2. The approval of this application authorizes the construction of an 8'5" fence measured from existing grade, within the corner side yard of an existing single-family residence.
3. The applicant or successor in interest shall meet the applicable code requirements of all other City Departments.
4. The right granted under this application must be enacted within 24 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.

THE BOARD OF ZONING APPEALS MOVED TO ADOPT THE ENVIRONMENTAL DETERMINATION THAT THE PROPOSED PROJECT BE EXEMPT FROM ENVIRONMENTAL REVIEW PURSUANT TO SECTION 15303(e) OF THE CEQA GUIDELINES AND TO OVERTURN THE HEARING OFFICER'S DECISION AND APPROVE THE MINOR VARIANCE. COMMISSIONER WILLIAMS MADE THE MOTION AND COMMISSIONER WILLIAMSON SECONDED.  
MOTION CARRIED WITH A 4-0 VOTE.

Chair Coher: yes  
Commissioner Williamson: Yes  
~~Commissioner Barar:~~  
Commissioner Williams: Yes  
Commissioner Nanney: Yes

3. ADJOURNMENT

  
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Talyn Mirzahanian, Zoning Administrator

  
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Carrie Banks, Recording Secretary