



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: December 5, 2018

TO: Hearing Officer

SUBJECT: Minor Variance #11898

LOCATION: 721 – 725 South Pasadena Avenue

APPLICANT: Pasadena Community Garden

ZONING DESIGNATION: RS-4 HH (Single-Family Residential, 0-4 dwelling units per acre; Hospitality Home 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 #11898 with conditions in Attachment B.

PROJECT PROPOSAL: Minor Variance: To allow a six-foot high, chain link fence and metal gate in the front yard, where the maximum allowed height is four-feet. A Minor Variance is required for a fence that exceeds the maximum allowable height.

ENVIRONMENTAL DETERMINATION: This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(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. Class 3 exempts from environmental review the construction of accessory structures, including fences.

BACKGROUND:

Site Characteristics: The subject property is on the west side of South Pasadena Avenue between West California Boulevard to the north and Bellefontaine Street to the south. The site is approximately 0.83 acres and is currently developed with a community garden with 69 garden plots and three small, prefabricated, garden enclosures. There is a single-lane driveway entrance on Pasadena Avenue leading to unpaved parking area. The subject site is generally flat after a short, initial, upward-sloped berm immediately adjacent to Pasadena Avenue. The subject fence, located approximately 10’6” from the front property line, is located at the top of this berm. In front of the fence, between it and the sidewalk, is sparse landscaping. The gate is located approximately 44’ – 56’ from the front property line. The site has 51 trees on-site, all of which will be retained.

Adjacent Uses:
North – Single-family home
South – Single-family home
East – Huntington Memorial Hospital
West – Single-family home

Adjacent Zoning:
North – RS-4 HH (Single-Family Residential, 0-4 dwelling units per acre, Hospitality Home Overlay District)
South – RS-4 HH (Single-Family Residential, 0-4 dwelling units per acre, Hospitality Home Overlay District)
East – PS (Public and Semi-Public)
West – RS-4 (Single-Family Residential, 0-4 dwelling units per acre)

Previous Zoning Cases on This Property: MCUP #6630 (PLN2018-00086): A Minor Conditional Use Permit to allow for the establishment of a Community Garden land use on a lot designated as RS-4 HH. Approved on June 7, 2018.

USE AND DEVELOPMENT BACKGROUND

The subject site is owned by Caltrans and is leased to the City of Pasadena for the sole purpose of allowing for the operation of a Community Garden (Pasadena Community Garden (“PCG”). The lease between the City of Pasadena and Caltrans was originally signed on October 1, 2011 for five years, and then in 2016 was extended until September 31, 2021. In addition, since March 2016, the Los Angeles Community Garden Council (LACGC), as a non-profit entity, has been partnering with PCG. In December 2017, Pasadena Community Garden entered into a Memorandum of Understanding with the City of Pasadena to oversee the maintenance and operations of the Community Garden.

PCG received City approval of a Minor Conditional Use Permit (MCUP) to allow for the Community Garden use of the RS-4 HH zoned property on June 7, 2018 via MCUP #6630. A Community Garden is defined in Pasadena Municipal Code (PMC) Section 17.80 as:

“A site used by the community or a neighborhood for the growing of ornamental plants or vegetables that are not sold commercially but are used exclusively for personal use. The site is without permanent structures and without the on-site storage of nursery equipment or materials.”

As such, in order to maintain compliance with the use restrictions, there are no permanent structures on-site. As a result, there is no established occupancy line, which is determined by a permanent, occupied structure.

Prior to gaining occupancy of the site, on an unknown date, Caltrans installed chain-link fencing, ranging from four – six feet tall, around the previously vacant property perimeter, including a four-foot tall fence in the front yard. Subsequent to occupying the site, and beginning operation in 2012, PCG replaced the existing four-foot fence and installed the subject six-foot fence and gate facing the Pasadena Avenue property line. The other fences installed prior to PCG’s occupancy by Caltrans on the interior property lines remain as legal, non-conforming and are not subject to zoning review at this time.

PROJECT DESCRIPTION:

The applicant, PCG, has submitted a Minor Variance application to deviate from PMC Section 17.40.180.B.2.c in order to allow for the retention of a previously installed, chain link fence and metal gate (from here on referred to as ‘fence’) measuring six feet high from existing grade, approximately 10’6” – 56’ from the front property line within the front yard, where the maximum allowed height is four feet, in the RS-4 HH zoning district. A Minor Variance is required for a fence that exceeds the maximum allowable height.

The application states the purpose of the fence is for the safety of garden members and to secure the site while the garden is unattended to overnight. The application indicated that when the previously conforming fence was four feet tall, it exposed the property to loiterers and trespassers, and that since the installation of the current six-foot tall fence, no such incidents have been reported.

ANALYSIS:

For the purposes of this report, according to PMC Section 17.80, “front setback” is to refer to “the [minimum required] distance by which a [primary or accessory] structure or other development feature must be separated from a [front property] lot line”. Further, the term “front yard” is to refer to “a yard extending across the full width of a site, the depth of which is the minimum horizontal distance between the front property line and a line parallel thereto on the site” and “an open space on the same site as a structure, unoccupied and unobstructed by structures from the ground upward.”

Per Pasadena Municipal Code (PMC) Section 17.40.180.B.2.c, fences and walls in the front yard “between the front property line and the occupancy frontage...shall be [a maximum of] four feet...” PMC defines the occupancy frontage as:

“The single linear dimension measured at the ground floor along a building frontage that defines the limits of the particular occupancy at that location. The linear dimension does not include overhangs, porches, etc.”

As there are no permanent structures with a building frontage on the site from which to establish an occupancy frontage, the regulations that pertain to fences in the front yard apply to the entirety of the subject property. As a result, any fence installed by PCG would have to be no more than four feet tall, anywhere on the property, or, as is the case here, require a Minor Variance to exceed that limit.

A Minor Variance application allows the City to review whether a deviation from the Zoning Code can be granted for a project. It may only be granted when, 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. In addition, a Minor Variance shall not be granted that would have the effect of granting a special privilege not shared by other property owners in the vicinity and under identical zoning districts.

In this case, the subject site does present exceptional or extraordinary circumstances that are uncharacteristic of other surrounding RS-4 HH zoned lots and make it impractical to comply with the fence height requirement. As the permitted use of the site is not as a single-family dwelling, as is the intended use of a RS-4 HH zoned lot, the property is left largely unoccupied and suspect to vagrancy during the frequent unoccupied periods. Further, as there are no permanent structures on the property, there is no location on the site that a new, six-foot tall fence would be permitted to be installed, which deprives the occupants of a substantial property right. Lastly, the site would not be granted special privilege as there are other non-residential sites within the nearby vicinity that were granted over-in-height fences in the front yard.

Community Garden Use

The use of the site is unique in that the community garden is not occupied or attended to on a consistent basis like a single-family residence is. The garden is permitted to be open to its members and guests from 7:00 a.m. to 10 p.m., daily (per PMC Section 17.40.070), but realistically, the site is seldom occupied during the weekdays, only in use in the mornings on the weekends for events, and unavailable for use overnight by default. Typically on non-event days, there may only be a few members who attend to the garden at irregular times throughout the day. Further, the site does not have any on-site security to patrol or oversee the site. As a result, the site is often left vacant and unattended to for great lengths of time, allowing for the opportunity for break-ins or vagrancy, including the destruction of community garden plots and creation of a potential security risk to abutting single-family homes.

As a result, the additional height for the fence in the front yard has and will be for security purposes. The additional height would continue to provide additional security to the site and to the surrounding properties. In support of this, in its six years of operation, the installation of the six-foot tall fence has kept the site free from unwelcome intrusion as opposed to when the site was secured by the Caltrans installed four-foot tall fence, where vagrancy was an issue.

Development Restrictions

Per Section 17.22.050.A, the minimum required front setback for properties within the RS zones is 25' or the prevailing setback on the subject sites' block face. Fences are permitted in the front setback, but are restricted in design, height and location by Section 17.40.180, and therefore

locating a fence within the front setback is not in violation of any setback restrictions, be it 25' or the prevailing setback. The regulations pertaining to fence height in PMC Section 17.40.180 speak to the *area between the front property line and the occupancy line*. With no permanent structures, there is no established occupancy line at a building frontage, and thus the entire property would be subject to the front yard regulations for fences and walls. This would prevent the property owner/occupant from constructing a six-foot tall fence or wall anywhere on the property, let alone simply behind an occupancy frontage to safeguard the property from the front. As a result, the property is deprived of a substantial property right to have a six-foot tall fence at or behind the occupancy frontage, which is contrary to the intent of the fence and wall regulations within the Zoning Code.

The intent of the Zoning Code height limitation for walls and fences along the front setback to four feet tall is to allow for a visual connection between pedestrians and vehicles traveling in the neighborhood, while being able to view and enjoy visually the various types, styles and colors of residential homes in the neighborhood. As there are no homes, or even any permanent structure on site, this aim is unnecessary for the subject site, and a six-foot tall fence should be permitted to maintain a safe neighborhood. However, in order to be in line with the General Plans aim for neighborhood compatibility and maintenance of character (General Plan Land Use ("GPLU") Policy 21.3, "Residential Neighborhoods – Neighborhood Character"), additional landscaping should be planted in front of the fence to shield it from view from the public right-of-way and to create an aesthetically pleasing buffer. This landscaping should include bushes, shrubs and/or trees that will grow to a minimum of six - eight feet in height at maturity.

Examples of Legal, Over-in-Height Fences Nearby

Lastly, the opportunity to exercise over-in-height fences in a front yard is not unique to this site and at least two non-residential uses, subject to the same fence restrictions, were granted Minor Variances in the past: (1) approximately 900 feet to the north at 535 Pasadena Avenue, Sequoyah School received approval for a Minor Variance to permit a six-foot tall fence within the required front yard; and, (2) approximately a quarter mile to the south at 270 Arlington Drive, Arlington Gardens also received a Minor Variance for a fence in its' front yard.

As a result, there are special circumstances unique to the site that warrant the approval of a six-foot tall fence within the designated front yard. The site's use, operation and development requirements create a need for flexibility in the fence height requirements, and the granting of the additional height would not create an instance of special privilege. Further, as recommended herein, there are measures to continue to maintain the neighborhood character, in light of this Zoning Code divergence.

GENERAL PLAN CONSISTENCY:

The subject property is designated Low Density Residential in the Land Use Element of the General Plan and zoned RS-4 HH for single-family development. Utilizing MCUP #6630, the existing permitted use of the site is as a Community Garden. The fence within the front yard would not change the existing, approved 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 six-foot tall fence, measured from existing grade, within the front yard of the lot, intends to provide a safety barrier for the subject site when left unattended. In addition, as conditioned, the six-foot high, open fence will be minimally visible from

the street with the recommended additional landscaping in front of the fence and thus would be consistent with the adopted General Plan policies, including GPLU Policy 21.3 (Residential Neighborhoods – Neighborhood Character), which encourages development to maintain elements of residential street that unify and enhance the character of the neighborhood. Therefore, the applicant's request is consistent with the goals, policies, and objectives of the General Plan.

COMMENTS FROM OTHER DEPARTMENTS:

The proposed project was reviewed by the Department of Public Works, Department of Transportation, Fire Department, Building and Safety Division, and Design and Historic Preservation Section. The departments have no comments at this time.

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.

CONCLUSION:

In order to support a Minor Variance request, staff must make five findings, including that there are exceptional or extraordinary circumstances or conditions applicable to the development of the site that do not apply to sites in the same zoning district, and that granting the request is necessary for the preservation and enjoyment of a substantial property right of the applicant and to prevent unreasonable property loss or unnecessary hardship. Staff is able to make the findings because there are exceptional, extraordinary circumstances or conditions applicable to the development of the site that would support the requested fence height.

Staff finds that the unique use of the lot and the lack of permanent structures, either constructed or permitted, to establish an area on-site to permit a six-foot tall fence behind an occupancy frontage, create exceptional or extraordinary circumstances and conditions applicable to the development on the subject site, which warrants the approval of the requested Minor Variance for the height of the fence. As recommended as a condition, landscaping will be planted in front of the fence in order to screen the view from the public right-of-way and to increase safety for the subject site by creating a physical buffer. It is staff's assessment that the findings necessary for approving the Minor Variance application to deviate from the four-foot height limit for walls and fences can be made. As designed, the requested fence height would not be harmful 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: Minor Variance Findings
- Attachment B: Recommended Conditions of Approval

ATTACHMENT A
SPECIFIC FINDINGS FOR MINOR VARIANCE #11898

Minor Variance: To allow a six-foot high fence and gate in the front 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.*

As permitted by MCUP#6630, the site is used as a community garden, rather than as a single-family residence, which is the General Plan's intended use of a RS-4 HH zoned property. By its definition, community gardens cannot have permanent structures. As a result, no occupancy frontage can be established to define the limits of the front yard and where a site would be permitted to construct a six-foot tall, security fence or wall to prevent unwanted access to the site from the street. In this case, with no occupancy frontage, the front yard fence regulation of no more than four feet tall is applicable to the entirety of the lot. With no area on-site to permit a six-foot tall fence, let alone to permit a fence at or behind the occupancy frontage, the site is unique in the surrounding neighborhood of RS-4 HH zoned properties. In addition, the operations of the community garden render exceptional circumstances as the site is seldom occupied. Single-family residences are typically occupied on a consistent manner, day and night, and security is generally assumed. However, the community garden is infrequently occupied during the weekdays and events that do attract a multitude of visitors are typically held in the mornings on weekends. With that, the garden is left largely unattended with no security safeguards in effect (i.e. security guard, surveillance etc.) for extended periods of time. Additional security, such as a six-foot tall fence facing Pasadena Avenue, is needed to provide a safe property to contribute to the betterment of the surrounding neighborhood (GPLU Policy 21.7, "Safety"). As such, with these circumstances, the site is unique in both its' physical design and in its' day-to-day operation. As a result, additional height for a fence facing Pasadena Avenue is warranted in order to safely protect this unique site during unoccupied periods and to allow a substantial property right, a six-foot tall fence fronting the front property line, unto the garden. Further, in order to minimize any potential aesthetic impacts on the street frontage, as conditioned, additional landscaping, shrubs, bushes and/or trees that will grow to a minimum of six – eight feet at maturity, will be planted in front of the fence.

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.*

All RS-4 HH zoned properties are afforded the right to construct a six-foot tall fence outside the front yard portion of the lot facing the street behind the site's occupancy frontage. As the subject site has no permanent structures, and thus no occupancy frontage, it does not have a terminus for the front yard portion and the entirety of the site is subject to the four-foot tall fence restrictions. This application to the site removes a substantial property right to allow for a six-foot tall security fence at or behind an occupancy frontage to protect its' members and the garden from unwanted access from the street. Granting the approval of the additional height allows for the property to exercise their right to a front-facing security fence.

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 six-foot tall fence would not be detrimental or injurious to property or improvements in the vicinity of the project site as it will provide additional security to the site and limit unwanted access by squatters and vagrancy during unoccupied hours. By permitting the additional height, GPLU Policy 21.7 (Safety), which aims to provide additional safety to the occupants and the immediately surrounding single-family residences abutting the site, is fulfilled by creating a physical buffer. Further, as conditioned, with additional bushes/shrubs that are at least six – eight feet tall at maturity, the fence would be minimally visible from the street level. This buffering will support GPLU Policy 21.3 (Residential Neighborhoods – Neighborhood Character) by maintaining the residential character of the surrounding area. Lastly, the fence will also be required to meet all safety and building codes which will be reviewed through the plan check process.

4. *Granting the application is in conformance with the goals, policies, and objectives of the General Plan, and the purpose and intent of any applicable specific plan and the purposes of this Zoning Code and would not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zone district.*

The Minor Variance will not compromise the character and quality of the existing residential neighborhood. The General Plan policies are intended to promote development to serve community needs, to preserve Pasadena's character and environment and to promote a healthy community (GPLU Policy 21.3, "Residential Neighborhoods – Neighborhood Character"). The fence is meant to promote safety and maintain that typical essence of the residential neighborhood, which also fulfills the GPLU Policy 21.7, "Safety." In addition, the Minor Variance will not constitute a grant of special privilege as two, non-residentially used sites nearby, subject to the same regulations, have been granted Minor Variances to have an over-in-height fence within their front yard (Arlington Gardens, approximately a quarter mile to the south, and Sequoyah School, approximately 900 feet to the north).

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

The cost to the applicant of complying with the city's development standards has not been considered a factor at any time throughout the review of this application.

ATTACHMENT B
RECOMMENDED CONDITIONS FOR MINOR VARIANCE #11898

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

General

1. The site plan and elevations submitted for zoning permits shall substantially conform to plans submitted with this application, stamped "Approved at Hearing, December 5, 2018", except as modified herein.
2. This approval allows for the Minor Variance to permit a six-foot tall, chain link fence and gate within the front yard, approximately 10'6" – 56' from the front property line.
3. 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.
4. The applicant or successor in interest shall meet the applicable code requirements of all City Departments.
5. The final decision letter and conditions of approval shall be incorporated in the submitted building plans as part of the building plan check process.
6. The proposed project, Activity Number **PLN2018-00465**, is subject to the Inspection Program by the City. A Final Zoning Inspection is required for your project prior to the issuance of a Certificate of Occupancy or approval of the Final Building Inspection. Contact Jennifer Driver, Current Planning Section, at (626) 744-6756 to schedule an inspection appointment time.

Planning

7. The applicant shall submit a Zoning Permit application within 60 days of the effective date of this approval to permit the approved six-foot tall, chain link fence and gate in the front yard.
8. Prior to issuance of a Zoning Permit, submit a site plan correcting the easterly property line fronting Pasadena Avenue to reflect the accurate representation of the property line at the western edge of the sidewalk, in lieu of the eastern edge of the sidewalk (i.e. the sidewalk shall not be included in the property lines).
9. Within the 10'6" setback in front of the fence, there shall be landscaping, such trees, shrubs or bushes, which at maturity reach at least six – eight feet in height, to shield it from view from the public right-of-way. Plant species and spacing shall be reviewed and approved by the Zoning Administrator prior to issuance of a Zoning Permit.
10. The subject fence shall not exceed six-feet in height, at any point, as measured from the lowest point of grade on either side.