



## PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

### STAFF REPORT

**DATE:** April 17, 2019

**TO:** Hearing Officer

**SUBJECT:** Minor Variance #11904

**LOCATION:** 1285 N. Michillinda Avenue

**APPLICANT:** Richard Garris

**ZONING DESIGNATION:** RS-6-HD-1 (Single-Family Residential, 0-6 units per acre of site area, Hillside Development Overlay, Upper Hastings Ranch Area)

**GENERAL PLAN DESIGNATION:** Low Density Residential

**CASE PLANNER:** Jason Van Patten

**STAFF RECOMMENDATION:** Adopt the Environmental Determination and Specific Findings in Attachment A to **approve** Minor Variance #11904.

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**PROJECT PROPOSAL:** Minor Variance: To allow a 10-foot-tall fence between the occupancy frontage and the rear property line, where the Zoning Code limits height to six 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 7,320 square-foot project site is located on the west side of Michillinda Avenue between Fairview Avenue to the north and Alegria Avenue to the south. The site is improved with a one-story, single-family dwelling with attached two-car garage and pool. The improvements sit on a relatively flat pad that is elevated above the Michillinda Avenue right-of-way. Access into the street-facing garage is via a sloping driveway. Abutting properties are improved with single-family dwellings. The adjoining Michillinda Avenue right-of-way ascends rapidly in elevation to the north, with each successive property elevated above the previous. The abutting northerly property sits approximately four feet above the subject site while the abutting southerly property sits approximately four feet below.

**Adjacent Uses:**  
North – Single-Family Residential  
South – Single-Family Residential  
East – Single-Family Residential (City of Sierra Madre)  
West – Single-Family Residential

**Adjacent Zoning:**  
North – RS-6-HD-1 (Single-Family Residential, 0-6 units per acre of site area, Hillside Development Overlay, Upper Hastings Ranch Area)  
South – RS-6-HD-1 (Single-Family Residential, 0-6 units per acre of site area, Hillside Development Overlay, Upper Hastings Ranch Area)  
East – Single-Family Residential (City of Sierra Madre)  
West – RS-6-HD-1 (Single-Family Residential, 0-6 units per acre of site area, Hillside Development Overlay, Upper Hastings Ranch Area)

**Previous Zoning Cases on this Property:** None.

**PROJECT DESCRIPTION:**

The applicant, Richard Garris, has submitted a Minor Variance application to allow a 10-foot-tall fence between the occupancy frontage and the rear property line, where the Zoning Code limits height to six feet. A Minor Variance is required to exceed the maximum allowed height of a fence.

The applicant is seeking relief after the fact. The fence was installed in 2018 inside the north property line, and extends approximately 97 lineal feet. The applicant’s desire for privacy and a complete pool barrier led to construction. Existing topographical conditions and minimum pool safety requirements contributed to the 10-foot height. The subject property sits approximately four feet below the abutting property to the north (1295 North Michillinda Avenue). An approximate four-foot retaining wall restrains the grade along the northerly property line allowing for the difference in elevation. According to a letter from a licensed land surveyor, the retaining wall is located off the subject property. A wood fence currently sits atop the easterly half of the retaining wall and appears to exhibit signs of wear. No fence sits atop the westerly half.

Aware that the City measures height from existing grade, the applicant specified that an effort was made to work with the neighboring owner to the north to construct a fence on/above the retaining wall. According to the applicant, an agreement could not be reached with the neighbor. As a result, the applicant resorted to constructing a fence on the subject property, immediately adjacent to the retaining wall. The 10-foot height was intended to match the aggregate height of the approximate four-foot tall retaining wall with a compliant six-foot fence above. Were the applicant and neighbor able to come to an agreement, the retaining wall with six-foot fence above would comply with the Zoning Code. Due to the aforementioned circumstances, the applicant filed this Minor Variance application to allow the fence to remain at a height of 10 feet.

## **ANALYSIS:**

The subject property is located in the RS-6-HD-1 (Single-Family Residential, 0-6 units per acre of site area, Hillside Development Overlay, Upper Hastings Ranch Area) zoning district. Residential accessory structures that include fences are permitted by right pursuant to Table 2-2 (Allowed Uses and Permit Requirements for Residential Zoning Districts), Zoning Code Section 17.22.040 (RS and RM-12 Residential Districts General Development Standards).

### Minor Variance

Fence height is limited to six feet when constructed outside the front yard, corner yard, or more than five feet from a street property line pursuant to Zoning Code Section 17.40.180 (Walls and Fences). Fence height is measured from existing grade. The proposed fence measures 10 feet tall.

Pursuant to Table 6-4 (Allowable Minor Variances) of Zoning Code Section 17.61.080 (Variances), an adjustment to the height of a fence is subject to a Minor Variance application. The Hearing Officer may approve a Minor Variance to adjust the height of a fence only after making five findings listed in Zoning Code Section 17.61.080.G (Findings and Decision). The general purpose of review is to identify compliance with the Zoning Code and General Plan, whether exceptional or extraordinary circumstances exist, whether the application is necessary for the preservation and enjoyment of property rights, and to ensure no detriment or injury to surrounding properties.

In this case, staff finds there is an exceptional circumstance that does not apply generally to sites in the same zoning district. The RS-6-HD-1 zoning district extends generally to Ranch Top Road on the north, Sierra Madre Boulevard on the south, Michillinda Avenue on the east, and the Eaton Canyon Golf Course/Sierra Madre Villa Debris Basin on the west. The zoning district is developed with numerous single-family residences with rear yard pools.

Fencing is required to isolate pools from neighboring properties as required in the Pasadena Building Code Section 14.04.400 for safety purposes. The barrier shall be a minimum of five feet in height measured outside the barrier. Under the current circumstance, where one neighbor is elevated above another, the pool barrier is commonly constructed at the higher elevation (typically above a retaining wall). This not only addresses the City's requirements (zoning code and building code), but is desirable because it provides the neighbor safety and privacy. However, this circumstance is not available to the applicant. This leaves the applicant to construct a fence from the lower existing grade elevation, off the retaining wall.

The 10-foot height proposed is equivalent to the four-foot retaining wall with six-foot fence above. Allowing an additional four feet above the City's six-foot height limit preserves the applicant's

privacy, a substantial property right. It also provides pool safety to the maximum extent commonly seen. The fence would generally appear six feet tall when viewed by the neighbor, typical for a fence located between properties. Requiring strict application of the Zoning Code would not allow the applicant with full enjoyment of their outdoor area, and would also result in failure to provide a compliant pool barrier. Together, this could create an unnecessary hardship, unreasonable loss of privacy, or life safety concern. Materials used predominantly consist of vinyl, a lightweight, but quality material that would limit any detriment or injury to property or improvements in the vicinity.

#### **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 dwelling. The proposed fence, an accessory structure, would not change the use of the property. The proposal would 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 10-foot tall fence would extend inside the north property line beginning at the occupancy frontage and terminating at the rear property line. The fence would not detract from the appearance of the dwelling from the street. In addition, the fence would be white in color, consistent with the color of the existing garage door, retaining wall, and side yard gate. Therefore, the proposal would not appear out of place from the street and is consistent with the General Plan.

#### **COMMENTS FROM OTHER DEPARTMENTS:**

The Building Section, Design and Historic Preservation Section and Departments of Transportation, Fire, Public Works, and Water and Power reviewed the proposal. Staff did not receive any comments or concerns regarding the project.

#### **CONCLUSION:**

It is staff's position that the findings for approval can be made for the Minor Variance. The applicant is unable to provide a compliant pool barrier because of topographical conditions and the location of an existing retaining wall. Further, outdoor areas to the rear of the subject property lack privacy from the neighbor to the north. This leaves the applicant to construct a fence from the lower existing grade elevation, off the retaining wall. The 10-foot height proposed is equivalent to the four-foot retaining wall with six-foot fence above. Allowing an additional four feet above the City's six-foot height limit preserves the applicant's privacy, a substantial property right. The fence would maintain sufficient distance from the right-of-way. Materials used predominantly consist of vinyl, a lightweight, but quality fence material that would limit any detriment or injury to property or improvements in the vicinity. Therefore, staff recommends that the Hearing Officer approve the application with the findings in Attachment A and the 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 #11904**

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.* The applicant is unable to provide a compliant pool barrier because of topographical conditions and the location of an existing retaining wall. Further, outdoor areas to the rear of the subject property lack privacy from the neighbor to the north. This leaves the applicant to construct a fence from the lower existing grade elevation, off the retaining wall. The 10-foot height proposed is equivalent to the four-foot retaining wall with six-foot fence above. Therefore, there is an exceptional circumstance that warrants 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.* Allowing an additional four feet above the City's six-foot height limit preserves the applicant's privacy, a substantial property right. It also provides pool safety to the maximum extent commonly seen. The fence would generally appear six feet tall when viewed by the neighbor, typical for a fence located between properties. Requiring strict application of the Zoning Code would not allow the applicant full enjoyment of their outdoor area. It would also fail to provide a compliant pool barrier. Together, this may create an unnecessary hardship, unreasonable loss of privacy, or life safety concern.
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 fence would maintain sufficient distance from the right-of-way. Materials used consist of vinyl, a lightweight, but quality fence material that would limit any detriment or injury to property or improvements in the vicinity. In addition, the fence would be required to meet applicable Building Code requirements that are in place to prevent injury to property or improvements, public health, safety or general welfare.
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 dwelling. The proposed fence, an accessory structure, would not change the use of the property. The proposal would maintain consistency with General Plan Land Use Policy 22.2 (Garages and Accessory Structures). The policy requires that garages and accessory structures be located and designed so that they do not dominate the appearance of the dwelling from the street. The proposed 10-foot fence would extend inside the north property line beginning at the occupancy frontage and ending at the rear property line. The fence would not detract from the appearance of the dwelling from the street. In addition, the fence would be white in color, consistent with the color of the existing garage door, retaining wall, and side yard gate. Therefore, the proposal would not appear out of place from the street and is consistent with 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 VARIANCE #11904**

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 April 17, 2019," except as modified herein.
2. The right granted under this application must be enacted within 24 months from the effective date of approval. It shall expire and become void, except where an extension of time is approved in compliance with Zoning Code Section 17.64.040.C (Time Limits and Extensions).
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 adopted 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 10-foot tall fence inside the north property line between the occupancy frontage and the rear property line.
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 **PLN2019-00027** is subject to a Final Zoning inspection. Contact the Planning Case Manager, Jason Van Patten at (626) 744-6760 to schedule an inspection appointment time and set up monitoring fees.