



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: September 21, 2022

TO: Hearing Officer

SUBJECT: Variance #11944

LOCATION: 1411 Edgehill Place

APPLICANT: Marley Majcher (Owner)

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

GENERAL PLAN DESIGNATION: Low Density Residential

CASE PLANNER: Katherine Moran

STAFF RECOMMENDATION: Adopt the Environmental Determination and the Specific Findings in Attachment A to **disapprove** Variance #11944.

PROJECT PROPOSAL:

1. Variance: To allow a driveway gate and fence to be constructed across an access easement that serves more than one property. A Variance is required for a gate and fence to be constructed across an access easement that serves more than one property;
2. Variance: To allow a solid front yard driveway gate and fence, where the Zoning Code requires walls, fences, and gates located within the front yard setback to be at least 50 percent open. A Variance is required to deviate from the design standards for fences; and
3. Minor Variance: To allow a six-foot high front yard driveway gate and fence, where the maximum height permitted by the Zoning Code is four feet. A Minor

Variance is required to deviate from the height standards for fences.

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)(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.

BACKGROUND:

Site characteristics:

The site is a triangular lot located on the northern side of Edgehill Place, measuring approximately 27,467 square feet in size. It is currently developed with a two-story, 3,620 square-foot single-family residence with an attached garage. The subject property is accessed by a 20-foot wide easement to the City of Pasadena for ingress and egress. The ingress/egress easement contains a 20-foot wide shared driveway ascending from Edgehill Place to three residential properties. The site is located within the Hillside Overlay District.

Adjacent Uses:

North – Single-family Residential
South – Single-family Residential
East – Single-family Residential
West – Vacant

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)

Previous zoning cases on this property:

UP1023: Use Permit to divide 1.86 acres into three lots and to construct single-family residences within an Interim Study District. Approved with conditions on January 18, 1979.

80-V9800: Variance to grade two existing hillside lots for residential use. Approved with conditions on December 29, 1980.

81-V9952: Variance to have a slope gradient greater than 1:1 with a height greater than 20 feet. Approved with conditions on September 1, 1981.

PROJECT DESCRIPTION:

The applicant and property owner Marley Majcher, has submitted an application to allow the following applications for a driveway gate and fence within the front yard: 1) a Variance for front yard driveway gate and fence to be constructed across an access easement that serves more than one property; 2) a Variance for the structure to be solid where the Zoning Code requires walls, fences, and gates located within the front yard setback to be at least 50 percent open; and 3) a Minor Variance to allow the structure's six-foot height between the front property line and the building frontage, where a maximum height limit of four feet is allowed.

This application is in response to a Code Case Violation CTP2020-10915 for a driveway gate and fence constructed without the necessary permits. In order to continue the use of the unpermitted existing gate and fence, the applicant is required to obtain approval of the Variances and Minor Variance.

The site is a sloped, triangular lot located on the northern side of Edgehill Place at the end of the west-facing cul-de-sac. Although the subject property and the two adjacent residential properties to the east, 1419 Edgehill Place and 1415 Edgehill Place, have frontages on Edgehill Place, access to all three residences are from an easement that provides for a 20-foot wide driveway. The driveway is on an easement, to the City of Pasadena, for ingress and egress purposes. The easement is located on the three parcels. The shared driveway ascends from Edgehill Place to these three residential properties, and since the subject site is located at the end of the driveway, it is at an elevation of approximately 40 feet above Edgehill Place.

The as-built six-foot high driveway gate and fence is oriented north to south transecting the 20-foot wide driveway and easement. The driveway gate consists of two ten-foot wide electric doors that open toward the property and has a six linear foot fence connecting it to an existing retaining wall. The gate and fence's design is constructed of metal framing with horizontal wood planks.

The existing solid and over height unpermitted gate and fence is intended for privacy reasons to close off the subject property and the adjacent vacant property to the west (which is also owned by the applicant) from vehicles and pedestrians within the easement. The Zoning Code prohibits fence and gate structures to be constructed across an access easement that serves more than one property. Furthermore, the Zoning Code allows a maximum four-foot high fence between the residence and the front property line. Variances are required for the fence and gate structure constructed across an access easement that serves more than one property, and for the solid design in front of the face of the building. A Minor Variance is required to exceed the maximum height of a wall or fence.

ANALYSIS:

Variance and Minor Variance applications allow the City to review whether deviations from the Zoning Code can be granted for a project. A Variance or a Minor Variance may only be granted when, because of special circumstances applicable to the subject property, including dimension, location, shape, size, or surroundings; geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity, the strict application of this 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 Variance or 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.

Variance: To allow a driveway gate and fence on an access easement that serves more than one property

The Zoning Code prohibits a gate, fence, or wall from being constructed across an access easement that serves more than one property. Staff is unable to make the findings necessary to support the request for a gates and fence to be constructed across an access easement that serves more than one property.

Staff finds that disapproving the proposed fence across the access easement would not prohibit the property owner from enjoying the property. An alternative fence design could be constructed in a location outside of the easement which complies with the Zoning Code and still provides the applicant with the ability to enjoy the front yard portion of the property with reasonable privacy. The easement is dedicated to ingress and egress as a driveway for the three properties located at 1411, 1415, and 1419 Edgehill Place. In addition, the adjacent neighboring properties located at 1415 and 1419 Edgehill Place do not have privacy gates constructed across the access easement, and granting of the Variance would constitute granting of a special privilege. Thus, the property owner is not suffering a hardship nor losing a substantial property right by not being allowed to construct a gate and fence across the access easement. Therefore, staff finds that the Variance is not necessary for the preservation and enjoyment of a substantial property right.

Variance: To allow a solid front yard driveway gate and fence

The Zoning Code requires that walls, fences, and gates located between the front property line and the building face to be at least 50 percent open. Staff is unable to make the findings necessary to support the request for a solid fence design.

Staff finds that disapproving the proposed solid fence design would not prohibit the property owner from enjoying the property. An alternative fence design that is 50 percent open, in compliance with the Zoning Code, could be constructed and still provides the applicant with the ability to enjoy the front yard portion of the property with reasonable privacy. Removing every other horizontal plank in the fence could potentially provide compliance with the Zoning Code's 50 percent open requirement. The property owner is not suffering a hardship nor losing a substantial property right by not being allowed to construct a solid fence, as opposed to a fence that is 50 percent open, within the front yard setback. Therefore, staff finds that granting the Variance would constitute granting of a special privilege. The Variance is not necessary for the preservation and enjoyment of a substantial property right.

Minor Variance: To allow a six-foot high front yard driveway gate and fence

The Zoning Code limits a front yard wall, fence, or gate on a property subject to the RS (Residential Single-Family) zoning district standards to four feet in height when located between the front property line and the building face. As such, the applicant is requesting a Minor Variance to allow a driveway gate and fence that is six feet high.

The four-foot height requirement per the Zoning Code is primarily an aesthetic requirement. In this situation, there are no safety requirements of the Building Code requiring the gate and fence height to supersede the height requirement of the Zoning Code. Therefore, staff is unable to make the findings necessary to support the request for a gate and fence over the height requirement. Staff finds that disapproving the proposed gate and fence height would not prohibit the property owner from enjoying the property. Staff finds that to allow a six-foot high gate and fence for privacy does not impede the preservation and allow the enjoyment of a substantial property right by the property owners. As proposed, the six-foot high gate and fence would be a deviation from the development standards of the Zoning Code, would be inconsistent with other properties in the vicinity, and would not be necessary for the preservation of a substantial property right. In general, the properties in this neighborhood do not have over height fences or walls in front of a house. The over height fences or walls that exist were either constructed prior to the existing height regulations or have received a Minor Variance to be rebuilt in the same location and place. In most cases, properties in this area that have six-foot high fences or walls have them located such that they are behind the front of the house, in compliance with the Zoning Code.

Tree Protection Ordinance

No protected trees are proposed to be removed as a part of the project.

GENERAL PLAN CONSISTENCY:

The subject site is designated as Low Density Residential in the General Plan Land Use Element within the Hillside Overlay District. The use of the site would remain a single-family residence and the character of the single-family residential neighborhood would be maintained. The site will continue to be used for single-family residential purposes as intended by the RS-2-HD zoning district. Policy 21.3 (Neighborhood Character) of the Land Use Element of the General Plan requires preservation of the character and scale of Pasadena's established residential neighborhoods. The Variances and Minor Variance for a solid fence that exceeds the maximum allowed height and transects an access easement will compromise the character of the existing residential neighborhood and will grant a special privilege.

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)(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 Variance #11944, 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, §15301(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 gates and fences.

COMMENTS FROM OTHER DEPARTMENTS:

The Building and Safety Division, Department of Transportation, the Fire Department, the Design

and Historic Preservation Section, and the Public Works Department have reviewed the project and had no comments. The Planning Division's recommended conditions of approval would be incorporated as an Attachment B should the project be approved.

CONCLUSION:

Staff finds that the findings necessary for approving the Variances to allow a front yard driveway gate and fence to be constructed across an access easement that serves more than one property, and a solid gate and fence where such structures are required to be a minimum of 50 percent open; and the Minor Variance to allow the six-foot high fence to exceed the four-foot height limit for walls and fences within the front setback, cannot be made. Granting the application is not in conformance with the goals, policies, and objectives of the General Plan, and would constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zone district, and that the Variances and Minor Variance are not necessary for the preservation and enjoyment of a substantial property right. Therefore, staff recommends that the Hearing Officer disapprove the application subject to the findings in Attachment A.

ATTACHMENTS:

Attachment A: Variance and Minor Variance Findings

ATTACHMENT A
SPECIFIC FINDINGS FOR VARIANCE #11944

Variance: To allow a front yard driveway gate and fence on an access easement that serves more than one property

1. *Granting the application is not 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 constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zone district.* The Zoning Code prohibits a gate, fence, or wall from being constructed across an access easement that serves more than one property. As proposed by the applicant, the gate and fence would be constructed across the driveway, which is also an easement serving more than one property. This is inconsistent with other residential properties in the vicinity. The easement is shared with 1415 and 1419 Edgehill Place and these adjacent properties do not have fences or walls across the shared access easement. Therefore, staff finds that the approval of the application would be granting a special privilege inconsistent with other properties in the vicinity. There are design alternatives, such as locating the fence outside of the easement, which would comply with the Zoning Code and still provides the applicant with the ability to enjoy the front yard portion of the property with reasonable privacy. Therefore, in disapproving this application, staff finds that no special privilege is being granted.

2. *Granting the application is not necessary for the preservation and enjoyment of a substantial property right of the applicant, and would not prevent unreasonable property loss or unnecessary hardship.* There are design alternatives outside of the easement that would afford the property owner enjoyment of the front yard and provide a sense of privacy. The easement is dedicated to ingress and egress as a driveway for the three properties at 1411, 1415, and 1419 Edgehill Place. Staff finds that disapproving the proposed fence across the access easement would not prohibit the property owner from enjoying the property. An alternative fence design could be constructed in a location that complies with the Zoning Code and still provides the applicant with the ability to enjoy the front yard portion of the property with reasonable privacy. The property owner is not suffering a hardship nor losing a substantial property right by not being allowed to construct a fence across an access easement serving more than one property.

Variance: To allow a front yard driveway gate and fence to be solid

3. *Granting the application is not 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 constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zone district.* The Zoning Code requires walls, fences, and gates located within the front yard setback to be at least 50 percent open. As proposed by the applicant, the solid fence would be a deviation from the development standards of the Zoning Code, and would be inconsistent with other residential properties in the vicinity. Policy 21.3 (Neighborhood Character) of the Land Use Element of the General Plan requires preservation of the character and scale of Pasadena's established residential neighborhoods. The majority of properties in this neighborhood do not have solid fences or walls in front of a house. The solid fences or walls that do exist were either constructed prior to the existing height regulations or have received a Variance to be rebuilt in the same location and place. In most cases, properties in this area that have solid walls or fencing have them located such that they are behind the front of the house and comply with

the height requirements. Therefore, staff finds that granting approval of the application will compromise the character of the existing residential neighborhood granting a special privilege inconsistent with other properties in the vicinity. The Variance for solid design and will grant a special privilege. There are alternative fence options available to the owner that would satisfy the desired privacy concerns and still maintain compliance with the fence design standards. Therefore, in disapproving this application, staff finds that no special privilege is being granted.

4. *Granting the application is not necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.* There are design alternatives, such as fence that is 50 percent open, that would afford the property owner enjoyment of the front yard and provide a sense of privacy. Therefore, granting this application, is not necessary for the preservation and enjoyment of a substantial property right of the applicant, and will not prevent unreasonable property loss or unnecessary hardship.

Minor Variance: to allow a front yard fence to be built at a height of six feet where the Zoning Code limits walls, fences, and gates to a maximum height of four feet.

5. *Granting the application is not 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 constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zone district.* Fences and walls are permitted a height of no more than four feet within the area between the front property line and the residence. As proposed, the six-foot fence height would be a deviation from the development standards of the Zoning Code, would be inconsistent with other properties in the vicinity. Policy 21.3 (Neighborhood Character) of the Land Use Element of the General Plan requires preservation of the character and scale of Pasadena's established residential neighborhoods. In general, the properties in this neighborhood do not have over height fences or walls in front of a house. The over height fences or walls that exist were either constructed prior to the existing height regulations or have received a Minor Variance to be rebuilt in the same location and place. In most cases, properties in this area that have walls or fencing over four feet in height have them located such that they are behind the front of the house. There are alternative fence options available to the owner that would satisfy the desired privacy concerns and still maintain compliance with the fence and wall standards. A fence design that complied with the four-foot height limitation would allow for privacy and obscure views into the property. Therefore, staff finds that the approval of the application would be granting a special privilege inconsistent with other properties in the vicinity. There are design alternatives, such as reducing the fence height, that would afford the property owner enjoyment of the front yard and provide a sense of privacy. Therefore, in disapproving this application, staff finds that no special privilege is being granted.
6. *Granting the application is not necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.* Fences and walls are permitted at a height of no more than four feet within the area between the front property line and the residence. The proposed six-foot high driveway gate and fence are not required to satisfy any necessary Building and Safety requirements. There are alternative fence options available, such as four-foot high gate and fence, to the owner that would satisfy the desired privacy concerns and still maintain compliance with the fence and wall development standards. Therefore, granting this application, is not necessary for the preservation and enjoyment of a substantial property right of the applicant, and will not prevent unreasonable property loss or unnecessary hardship.