



WEST LOS ANGELES AREA PLANNING COMMISSION

200 N. Spring Street, Room 532, Los Angeles, California, 90012-4801, (213) 978-1300
www.lacity.org/PLN/index.htm

Determination Mailing Date: MAR 21 2007

CASE NO.: ZA 2006-6917-ZAD-1A
CEQA: ENV 2006-6918-CE

Council District: 11
Location: 2325 S. McKinley Avenue
Plan Area: Venice
Zone: R1-1-O
District Map: 106.5 A 147
Legal Description: Lot 4, Tract 4424

Applicant: Quinton Alsbury, Representative: Richards W. Gershon
Appellant: Same

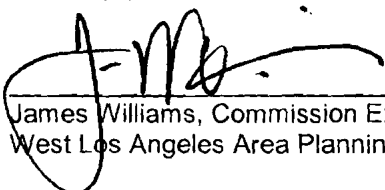
At its meeting on February 21, 2007, the following action was taken by the West Los Angeles Area Planning Commission:

1. **Denied** the appeal.
2. **Sustained** the action of the Zoning Administrator.
3. **Denied**, pursuant to Los Angeles Municipal Code Section 12.24-X,7, a **Zoning Administrator's Determination** to permit the continued use and maintenance of a 4-foot 6-inch high wood fence over a 3-foot 6-inch stuccoed concrete block wall and associated wooden pedestrian gate and door frame for a total height of 8 feet within the front yard setback area of property zoned R1.
4. **Adopted** Findings of Zoning Administrator's determination dated December 26, 2006 (attached).
5. **Adopted** ENV 2006-6918-CE.

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

This action was taken by the following vote:

Moved: Foster
Seconded: Washington
Ayes: Brown, Burton, Martinez
Vote: 5-0



James Williams, Commission Executive Assistant
West Los Angeles Area Planning Commission

Effective Date/Appeals: This action of the West Los Angeles Area Planning Commission is effective on the mailing date of this Determination and is final. **The Zoning Administrator's Determination is not further appealable.**

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachment: Zoning Administrator's Determination dated December 26, 2006.
Zoning Administrator: Anik Charron

MICHAEL LOGRANDE
ACTING CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

GARY BOOHER
PATRICIA BROWN
R. NICOLAS BROWN
SUE CHANG
ANIK CHARRON
LARRY FRIEDMAN
EMILY J. GABEL-LUDDY
DANIEL GREEN
LOURDES GREEN
ERIC RITTER
LINN WYATT
MICHAEL S.Y. YOUNG

CITY OF LOS ANGELES
CALIFORNIA



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December 26, 2006

Bill Vuylsteke (A)(O)
2325 South McKinley Avenue
Venice, CA 90291

Jose Martinez (R)
17001 Sherman Way
Van Nuys, CA 91406

Department of Building and Safety

CASE NO. ZA 2006-6917(ZAD)
ZONING ADMINISTRATOR'S
DETERMINATION - FENCE HEIGHT
2325 South McKinley Avenue
Venice Planning Area
Zone : C2-1-O-CA
D. M. : 106.5A147
C. D. : 11
CEQA : ENV 2006-6918-CE
Fish and Game : Exempt
Legal Description : Lot 4,
Tract 4424

Pursuant to Los Angeles Municipal Code Section 12.24-X,7, I hereby DENY:

the authorization to maintain a 4-foot 6-inch high wood fence over a 3-foot 6-inch stuccoed concrete block wall and associated wooden pedestrian gate and door frame for a total height of 8 feet within the front yard setback area of property zoned R1.

FINDINGS OF FACT

After thorough consideration of the statements contained in the application, the plans submitted therewith, the report of the Zoning Analyst thereon, the statements made at the public hearing on December 14, 2006, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find as follows:

BACKGROUND

The property is a level, rectangular-shaped, interior lot with a frontage of 40 feet on the west side of South McKinley Avenue and a depth of 91 feet. The property is improved with a two-story single-family dwelling.

Surrounding properties are within the R1-1-O Zone and are improved with one- and two-story single-family dwellings.

Previous zoning related actions in the area include:

Case No. ZA 2006-6447(ZAD) – No disposition. A request has been filed for a Zoning Administrator's Determination to permit the construction, use and maintenance of an 8-foot block wall within the front yard setback area of an existing single-family dwelling in lieu of the permitted 3 feet 6 inches at 2337 McKinley Avenue.

Case No. ZA 2006-6927(F) – On December 6, 2006, the Zoning Administrator approved a Determination to permit the continued use and maintenance of a fence and gate with a maximum height of 6 feet 3 inches within the front yard setback of an existing single-family dwelling in lieu of the permitted 3 feet 6 inches at 2329 South McKinley Avenue. The determination has been appealed and is pending review and action by the West Los Angeles Area Planning Commission.

MANDATED FINDINGS

In order for an over-in-height fence/wall request to be approved, all of the legally mandated findings in Section 12.24-X,7 of the Municipal Code must be made in the affirmative. The following section states such findings in bold type with the applicable justification set forth immediately thereafter.

1. **The proposed wall/fence will not be in conformity with the public necessity, convenience, general welfare and good zoning practice.**

The property consists of is a 3,666 square-foot, level, rectangular-shaped, interior lot with a frontage of 40 feet on the west side of McKinley Avenue, and a uniform depth of approximately 91.5 feet. It is zoned R1-1-O and developed with a two-story single-family home, with covered parking accessed from the 15-foot alley known as Beach Court, to the rear.

Pursuant to Section 12.24-X,7, The owner is requesting the authorization to maintain a 4-foot 6-inch wooden fence over a 3-foot 6-inch stuccoed concrete block wall and associated wooden pedestrian gate and door frame, in the front yard area of the property.

The applicant states:".. *the wood fence in question was built by the previous owner of the property in violation of the maximum 3' 6" otherwise permitted under Section 12.21-C, 1(g) of the Municipal Code for a lot in the R1-1-O Zone. However, as the new and ongoing owner of the property, I am seeking to keep the fence at its current height and in its current form. Please consider the arguments and rebuttals summarized and presented below:*

The ordinance that allows for the 3'6" maximum fence height is outdated in comparison to the wants and needs of the residents of the area, a fact that is evidenced coincidentally by the opposing arguments centered around what the

referendum to return the neighborhood to something it used to be, but rather to identify it as part of a community wide trend that reflects what the residents in the neighborhood want it to become.

Security:

I would also like to rebut the opposing arguments that were made in regards to the security benefits provided by the fence in question. While the area surrounding the address is not a high crime area, there is consistent criminal activity as evidenced by the LAPD crime statistics and verbal testimony provided at the hearing. In fact, one of the attendees who testified in opposition to the fence, stated that his house in the neighborhood had been broken into not once, but twice. The fence provides a level of protection that benefits the property, with little or no negative effect on the community.

Privacy

Lastly, I would like to re-emphasize the essential and reasonable privacy benefits afforded to the property by the fence with the following points:

- Most houses in the area have a high fenced in backyard where occupants can be outside their dwelling in relative privacy. However, due to the size of the dwelling on the property in relation to the lot size, there is not a backyard area on the lot. This leaves the front patio area as the only useable outdoor living space, child's play area etc.. on the property.*
- The first floor of the dwelling, as well as the vast majority of the useable space in the front of the property, sits 2.5' above the street level. Meaning that from the inside, the functional height of the fence is only about 6'.*

In summary, the fence in question provides reasonable benefits to the property, has the overwhelming support of the community, all while having virtually no adverse impact on the surrounding area. It seems undemocratic to be forced to make concessions for a very small minority, especially when chances are that the ordinance dictating fence height will probably be changed in the near future."

A visit of the area by this Zoning Administrator revealed that on the relevant block, (McKinley Avenue between Olive Avenue and Mildred Avenue) there are 3 over-in-height fences, including the applicant's, currently undergoing a legalization process. One at 2337 McKinley is still pending a determination, the other, abutting the property to the west, at 2329 McKinley has been approved, with substantial design changes, and is now being appealed. Across the street, at 2334 and 2338 McKinley, are partial over in height fences, none built with the benefit of necessary permits. All the 6-foot high fences along Olive Avenue, where located in the side yard are legally permitted. All other properties either do not have a fence or said fence does not exceed the 42-inch height limit. I was observed that several homeowners chose to plant non continuous landscaping behind the fences, as permitted by the Code, in

order to achieve some privacy.

Interestingly enough, the applicant is requesting that *"this case not be made a referendum on all the fences in the neighborhood"*, yet utilizes the same argument to justify the maintenance of his fence, while the alleged *"trend"* is far from being evident in the immediate area, as detailed above. Besides, it is the intent of any adjustment/variance, or other determination procedure to judge of any application on its own merit.

That the front yard fence regulation is *"outdated"*, is only the applicant's partial opinion. It must be noted that should these regulations be truly outdated and the neighborhood intent on changing its character by permitting the construction of over-in-height fences, Section 13.10 of the Municipal Code allows for the establishment of a fence height district, which would allow by right the construction and maintenance of over-in-height fences, following certain design guidelines.

The general purpose and intent of the zoning regulations is to maintain a compatibility of uses and densities of land under general circumstances, as well as visual consistency in a neighborhood. Variances, adjustments and other determinations are permitted to bring relief from these regulations, when special circumstances not applying to other property exist. They are not intended to partake in the creation of a land use pattern not consistent with the intent of the General Plan and with good planning practice.

The maintenance of the front yard views and setbacks partakes of the character of this area. There are no special circumstances pertaining to the property itself which do not apply to other property in the immediate area. The character of the area has been established as a result of the conformance with applicable zoning regulations.

The fence height limitation applying to the property has been in effect since 1981. Ever since, there has been no attempt to repeal this general rule, or establish a Fence Height District, thereby showing the effectiveness of this regulation in achieving its purpose and the continuing need of such regulation. Should this regulation become obsolete or *"not relevant"*, as implied by the applicant, the establishment of a Fence Height District, applying to all properties in the areas indiscriminately, is available as a procedure.

Conversely, the grant of the request would establish an undesirable precedent in the community signaling that it is acceptable to slowly undermine the fence height regulations of the City for the private benefit of a single (or a few) applicant(s), to the detriment of the long term general public welfare, notwithstanding the negative impact it would have on the expectations of other property owners who invested in the area based on its current regulations as a guarantee of the maintenance of its character.

The next reason cited by the applicant for the request is based on the need for

security. The feeling of security a visual barrier between the public and private space may provide, may in fact be one of false security if one is to believe the testimony of Los Angeles Police Department officers at several other hearings on the same matter, who strongly advise against such visual barriers which prevent patrolling police officers and other security services from monitoring what may happen on a property, at least in the front yard, thereby making these properties prime targets since once behind the visual barrier, intruders are much freer to operate as they wish, out of public view. The testimony of an area resident further revealed that the two break-in incidents he suffered were both following intrusion through the rear yard, where not much public scrutiny occurs. Finally, one wonders, if the applicant felt this area to be that unsecure, why the choice was made to invest at this location in the first place (the applicant declared at the public hearing having closed escrow on November 30, 2006).

Finally, the applicant argues for the need for privacy. While privacy is a matter of individual perception, the design of the dwelling, with apparently limited yard space, resulting from the maximization of floor area ("big house on small lot" syndrome), and the glass front design are a private choice by the owner/purchaser. These features were already part of the house at the time of purchase by the current owner, and the purchase was completed with full knowledge of the existence of these features. There is absolutely no reason why the remainder of the community would have to accommodate the "inconvenience" resulting from a private choice to benefit one single party.

As stated in the book, California Real Estate Principles, 8th Edition, by Walt Huber that is widely used as a preparation tool for those interested in taking the California DRE Salesperson Exam, Chapter 10, Principle of Conformity. *"The principle of CONFORMITY states that the maximum value is obtained when a reasonable degree of building similarity is maintained in the neighborhood. The principle of conformity is one of the primary reasons for zoning regulations. They protect the neighborhood from other nonconforming uses, and from infiltration of incompatible structures. An attractive neighborhood would quickly decline in value if zoning did not help protect its conformity."*

Section 12.02 -Purpose - of the Planning and Zoning Code also clearly states its purpose as the implementation tool of the intent and objectives of the General Plan: *"...such regulations are deemed necessary in order to encourage the most appropriate use of land; to conserve and stabilize the value of property; to provide adequate open spaces for light and air, and to prevent and fight fires; to prevent undue concentration of population; to lessen congestion on streets; to facilitate adequate provisions for community utilities and facilities such as transportation, water, sewerage, schools, parks and other public requirements; and to promote health, safety, and the general welfare all in accordance with the comprehensive plan."*

In light of the above, it cannot be found that the proposed fence/gate will be in conformity with the public necessity, convenience, general welfare and good zoning practice.

2. The proposed wall/fence will not be in substantial conformance with the various elements and objectives of the General Plan.

The property is located in the Venice Community Plan area and designated for Low Density Residential uses, with corresponding zones of RE9, RS, R1 and RD6, and Height District No. 1. The property is also located within the Venice Specific Plan area (Ordinance No. 172,890), and the Coastal Transportation Corridor Specific Plan area (Ordinance 168,899). The property's use as a single-family home is consistent with its plan designation and R1 zone classification.

The Plan does not specifically address the issue of fence heights. However, the Plan encourages the preservation and enhancement of the existing character of single-family neighborhoods. The Housing Element of the General Plan also promotes the development, preservation and enhancement of quality single-family residential neighborhoods in the City. Denial of this request is consistent with such policies insofar as evidence has not been satisfactorily provided that the construction of an over in height fence in the front yard setback of a property in this area is a legally permitted, established practice in the immediate neighborhood.

3. The proposed wall/fence will be materially detrimental to the property or improvements in the same zone or vicinity in which the property is located.

A public hearing on the matter was held on December 14, 2006 where the designer of the fence presented the project, followed by the new owner of the property. Testimony in support of the request was presented by the owner of the property abutting to the south, (himself currently in the process of legalizing an over-in-height fence on his property), and by the Trustee of the previous owner. Testimony in opposition was received from six persons. A representative of the Council District Office spoke in opposition to the request.

Correspondence was received as follows:

Support: - one petition with 16 signatures
 - material submitted at the hearing, and in rebuttal by the owner

Opposition: - 5 letters

The major points of opposition are:

- Visual impact
- Change of character of area
- High fence a protection for undetected crime
- Requests are a result of disproportionate houses on small lots
- Individual "variances" not the proper procedure to address possible desirability of a change in the fence height regulations in the area

The property enjoys a 40-foot wide frontage on the west side of McKinley Avenue

and takes vehicular access from the rear alley. Immediately adjoining properties are developed with single-family homes. The fence is enclosing a front yard area approximately 16 feet in depth to the north and 24 feet to the south.

Contrarily to what the applicant is presenting, the area is not known to have a specially high crime rate. Statistics presented reveal that the most common crime is that of theft from a vehicle. Such statistics being presented by the applicant himself, should that level of "criminality" not have been comfortable, why was the house purchased in the first place, in full cognizance of the crime statistics?. As indicated earlier, the Los Angeles Police Department has long opposed the construction of high walls/fences most particularly in high crime areas as, far from being a deterrent to crime, they allow crime to be conducted outside public view, and prevent any police monitoring of properties. Local community groups, together with the Council District Office, the Los Angeles Police Department, and the Department of Recreation and Parks are currently involved in active programs to address any crime issue which may affect this community. The proliferation of high walls/fences is a definite detraction from these efforts.

Additionally, the maintenance of the wall results in the partial blocking of the view of the street and other front yard by the occupants of the property abutting to the north, as it would for the property to the south, should that owner have to take down his own unpermitted over-in-height fence.

As detailed above, the approval of the request would result in potentially detrimental effects to other property located in the same zone and vicinity as the subject site, as it would set the undesirable precedent of a legally established over in height wall in the area, which would cumulatively result in long-term impacts which would remain permanently unmitigated.

In making the above finding, I have considered the environmental effects and appropriateness of materials, design and location of any proposed fence, including any effect on the view which may be enjoyed by the occupants of adjoining properties, and the security to the subject property which the wall will provide.

ADDITIONAL MANDATORY FINDINGS

4. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located in Zone C, areas of minimal flooding.
5. On August 7, 2006, the project was issued a Notice of Exemption (Article III, Section 3, City CEQA Guidelines), log reference ENV 2006-6918-CE, for a Categorical Exemption, Class 3, Category 6, City CEQA Guidelines, Article VII, Section 1, State EIR Guidelines, Section 15100.
6. Fish and Game: The subject project, which is located in Los Angeles County, will not have an impact on fish or wildlife resources or habitat upon which fish and wildlife

depend, as defined by California Fish and Game Code Section 711.2.

APPEAL PERIOD - EFFECTIVE DATE

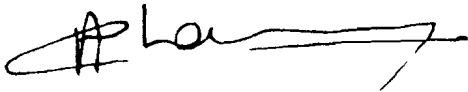
The Zoning Administrator's determination in this matter will become effective after JANUARY 10, 2007, unless an appeal therefrom is filed with the City Planning Department.

It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at www.lacity.org/pln**. Public offices are located at:

Figueroa Plaza
201 North Figueroa Street,
4th Floor
Los Angeles, CA 90012
(213) 482-7077

Marvin Braude San Fernando
Valley Constituent Service Center
6262 Van Nuys Boulevard, Room 251
Van Nuys, CA 91401
(818) 374-5050

The time in which a party may seek judicial review of this determination is governed by California Code of Civil Procedure Section 1094.6. Under that provision, a petitioner may seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, only if the petition for writ of mandate pursuant to that section is filed no later than the 90th day following the date on which the City's decision becomes final.



ANIK CHARRON
Associate Zoning Administrator
Direct Telephone No. (213) 978-1307

AC:lmc

cc: Councilmember Bill Rosendahl
Eleventh District
Adjoining Property Owners
County Assessor