



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 2006-6927-F-1A
CEQA: ENV 2006-6928-CE

Council District: 11
Location: 2329 S. McKinley Avenue
Plan Area: Venice
Zone: R1-1-O
District Map: 106.5 A 147
Legal Description: Lots 5 and 6, Tract 4424

Applicant: Elaine Bouffard, Representative: Lee Hale
Appellant: Pamela Harbour

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

1. **Granted** the appeal.
2. **Overtured** 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 6-foot 3-inch over-in-height, white pre-fabricated, vinyl panel fence within the front yard setback in lieu of the maximum 3-feet 6-inches otherwise permitted under Section 12.21-C,1(g) of the Los Angeles Municipal Code in the R1-1-O Zone.
4. **Adopted** amended Findings (attached).
5. **Did not adopt** ENV 2006-6928-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: Burton
Seconded: Washington
Ayes: Brown, Foster, 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 Commission'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: Amended Findings.
Zoning Administrator: Anik Charron for Linn Wyatt

FINDINGS

1. The maintenance of the over-in-height fence/gate will not be in conformity with the public necessity, convenience, general welfare and good zoning practice.

The property consists of two level, rectangular-shaped, interior lots with a total area of approximately 7,400 square feet, a combined frontage of 80 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 one-story single-family home originally built in 1923.

The applicant has installed an unauthorized white prefabricated, vinyl, solid panel fence along the front property line, effectively enclosing the full front yard at the edge of the public right-of-way. The fence reaches a maximum 6 feet 3 inches in height as measured from the adjoining sidewalk grade level. The applicant was issued an Order to Comply by the Department of Building and Safety, Case No. 176925, Order No. A-1224189, effective July 28, 2006. A request was filed by the applicant with the Office of Zoning Administration on August 1, 2006, to legalize the fence pursuant to Section 12.24-X,7 of the Municipal Code.

The applicant expressed a desire to enclose the property frontage for security purposes. She cited examples of similar fences in the area and additional justification in regards to security based on personal health-related/disability issues. Letters from her physician were submitted for inclusion in the case file. The applicant's father testified that "an influx of undesirable elements" had become more prevalent in the neighborhood, especially during summer months, resulting in problematic situations for residents. He noted that newer development in the area, including that on immediately adjoining properties, and that other properties on Clement, Clark, and Olive Streets, exhibited walls, fences, and other screening structures in the front yards without any setback or limitation in height.

A visit of the area by several members of the Commission 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, one, abutting the property to the east, at 2325 McKinley has been denied. Across the street, at 2334 and 2338 McKinley, are partial over in height fences, none built with the benefit of necessary permits. All the over-in-height 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. It was observed that several homeowners chose to plant non continuous landscaping behind the fences in order to achieve some privacy.

The general purpose and intent of the zoning regulations is to maintain a compatibility of uses, 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. As a matter of fact, the fence was erected in summer of 2006, after over-in-height fences/walls were constructed, without the benefit of required permits, on both properties abutting the applicant's, thereby enclosing the applicant's property's front yard on each side. The applicant's response was to also enclose her yard, leading to the current situation.

As shown by the history of the subject fence, the grant of the request would further establish undesirable precedence 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 other 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 area residents further revealed that break-in incidents often follow intrusion through the rear yard, where not much public scrutiny occurs.

The applicant also argued for the need for privacy. While privacy is a matter of individual perception, the size of the property and footprint of the house let ample fenced in rear yard space available for the applicant's enjoyment.

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 maintenance of the over-in-height fence/gate will be in conformity with the public necessity, convenience, general welfare and good zoning practice.

2. The maintenance of the over-in-height fence/gate 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 maintenance of the over-in-height fence/gate 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 by the Zoning Administrator on November 2, 2006 where the applicant presented the request. Testimony in support of the request was presented by five persons including the occupant of the property abutting to the south, (herself currently in the process of legalizing an over-in-height fence on her property). Testimony in opposition was received from two persons. The Chair of the Land Use Committee of the Grass Roots Venice Neighborhood Council noted that projects of this type should be reviewed by the appropriate Neighborhood Council to assure compatibility of the proposed development with the character of the neighborhood and consistency with the objectives of the community. Additional statements and documents regarding the Fair Housing Act and Americans With Disabilities Act were submitted by the applicant. On February 21, 2007, the West Los Angeles Area Planning Commission held a public hearing following appeal of the Zoning Administrator's action by the owner of property located across the street from the site. Three persons spoke in support of the appeal. Four persons spoke in opposition to the appeal, including the Chair of the Land Use Committee of the Venice Neighborhood Council. A representative of the Council District Office indicated her office historical position of not supporting over-in height fences, but her desire not to take a position in the instant case.

The major points in support are:

- Security, safety
- Privacy
- Fair Housing Act and Americans With Disabilities Act

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 an 80-foot wide frontage on the west side of McKinley Avenue. Immediately adjoining properties are developed with single-family homes. The fence is enclosing a front yard area approximately 15 feet in depth by 80 feet wide .

Contrarily to what the applicant is presenting, the area is not known to have a particularly high crime rate. Statistics presented reveal that the most common crime is that of theft from a vehicle. 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.

In response to the reference by the applicant to the Fair Housing Act and Americans With Disabilities Act, the applicant was advised by the City Attorney that Section 12.22-A, 27 of the Municipal Code establishes a formal procedure for an Individual with a Disability seeking equal access to housing to request a reasonable accommodation as provided by the federal Fair

Housing Amendments Act of 1988 and California's Fair Employment and Housing Act. This section also establishes criteria to be used when considering these requests.

An open, unencumbered character and attractive pedestrian environment fosters safer residential communities by creating the opportunity for interaction between neighbors and allowing them a familiarity with their surroundings. Conversely, tall fences, hedges, and solid walls create barriers between the public and private environment that can detract from the interactions that can occur in residential neighborhoods and the overall character of the neighborhood.

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, we have considered the environmental effects and appropriateness of materials, design and location of any proposed fence, including any effects 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 2006-6928-CE, for a Categorical Exemption, Class 3, Category 1, 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.