

# PLANNING & REDEVELOPMENT DEPARTMENT STAFF REPORT PLANNING COMMISSION MEETING July 28, 2005

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ITEM V-A: ADMINISTRATIVE PERMIT – 211 CHURCH STREET – MCCALISTER FENCE – FILE# AP 04-69

#### REQUEST

The applicant requests approval of an Administrative Permit to locate a seven-foot (7') tall fence within the front yard setback of an existing single-family residence.

Applicant / Property Owner – Joe McCalister

# **SUMMARY RECOMMENDATION**

The Planning & Redevelopment Department recommends that the Planning Commission take the following actions:

- A. Adopt the three findings of fact for Staff's recommended changes to the Administrative Permit; and
- B. Approve the Administrative Permit as recommended by Staff, with six (6) conditions of approval.

# **SUMMARY OF OUTSTANDING ISSUES**

The applicant constructed the fence last summer without Zoning Clearance. The City received a complaint and upon investigation found that the fence does not meet the setback and height requirements of the Zoning Ordinance. The applicant filed for the Administrative Permit after being informed of the violation.

Staff is recommending that the fence be located outside of the clear vision triangle and at the front yard setback line. The applicant is not in agreement with Staff's recommendation. The applicant would prefer to leave the fence in its current location, regardless of the front yard setback. Staff has proposed several alternative fence locations but has been unable to come to an agreement with the applicant.

#### **BACKGROUND**

The subject property is located at 211 and 213 Church Street, which are two parcels, an interior lot and a corner lot on a collector street (Attachment 1). The applicant has requested an Administrative Permit to allow a seven-foot (7') tall wood fence in the front yard setback. The applicant is requesting the exception to provide security, privacy, and additional usable front and side yard space within the front yard where the zoning ordinance only allows a three (3) foot fence.

The Zoning Ordinance states that the maximum height of fences shall be 3 feet within the required 15-foot front yard setback (corner lot) and 6 feet elsewhere. The portion of the fence that is within the front yard setback exceeds the maximum height requirement of 3 feet. The Zoning Ordinance allows for exceptions to this standard upon approval of an Administrative Permit. The applicant has applied for this Administrative Permit to allow for an increase in the permitted height to 7 feet, as constructed.

The applicant has stated the main reason he has requested the fence to remain in its current location is the need for security and noise attenuation from adjacent uses. The property is zoned Historic District (HD), and is bounded on the North and South by two commercial uses. Located across Church Street

is the First Methodist Church of Roseville. To the South is the Amtrak Station. These two commercial uses and the Washington Boulevard underpass do have an impact on the property given the increased pedestrian and vehicle traffic in the area.

Because the property is a nonconforming residential use in a commercial zone the property is subject to the development standards of the Single Family (R1) residential zone. Section 19.24 of the Zoning Ordinance states that the "nonconforming use of a residential building in a nonresidential district may continue to be used as a residence subject to the Residential Zone Development Standards requirements of the [R1 District], until such time as the building is condemned, removed, or converted."

#### **EVALUATION**

Given the impacts from the adjacent commercial uses and traffic volume on Church Street, Staff has examined alternative designs with the applicant. Staff has suggested two alternatives to locating the fence within the front yard of the home. One alternative involved increasing the height of the side yard fence to 8 feet and reducing the height of the fence within the front yard to 3 feet. The 3 foot tall fence could be topped with a decorative wrought iron design that would discourage pedestrians from using the fence to sit on or loiter. The increase in height to 8 feet would increase the screening and buffering capabilities of the fence from vehicles and the neighboring church traffic.

Another alternative proposed by Staff was to remove the fence from the front yard setback and extend the fence to the rear property line of the house at 213 Church Street. This would allow the applicant to increase their usable rear yard without encroaching on the front yard area of the home. In both cases, the applicant has indicated that they are concerned about the surrounding land uses of the Intermodal Facility and the First Methodist Church transient shelter operations.

Because an acceptable alternative to the current location of the fence could not be agreed upon, staff has evaluated the applicant's request to keep the fence where it has been constructed. Section 19.78.060.A of the City of Roseville Zoning Ordinance requires that three findings be made in order to approve an Administrative Permit. The three findings are listed below in **bold italic** text and are followed by an evaluation.

1. The proposed use or development is consistent with the City of Roseville General Plan.

The subject property has a General Plan land use designation of Central Business District (CBD). The Central Business District is intended to allow a mix of retail, office, and apartment uses. The General Plan lists Low Density Residential (LDR) uses as a conditionally compatible use within the CBD. Fences are permitted accessory structures to single-family residences. The General Plan relies on the Zoning Ordinance to regulate the height and placement of residential fences.

2. The proposed use or development conforms with all applicable standards and requirements of the Zoning Ordinance.

The subject property is zoned HD. Fences are a permitted accessory structure for single-family dwellings in the HD zone, subject to the standards established under the Zoning Ordinance.

The Zoning Ordinance permits a maximum six foot (6') high fence anywhere within a parcel, provided it meets certain criteria (Chapter 19.22.030.C.6. Accessory Structures). The pertinent criteria state that the height of a fence must be lowered to three feet (3') if it is located:

• Within a residential clear vision triangle (defined as a triangular area created by the diagonal connection of two points measured twenty-five feet (25') along the front, and seventy-five feet (75') along the side of a property measured from the back of curb);

The site plan submitted by the applicant does not include an accurate depiction of the clear vision triangle. Staff has prepared an exhibit to accurately depict the clear vision. A site inspection has confirmed that the fence encroaches on the clear vision triangle (Exhibit B). Staff has suggested alternative locations for the fence outside the clear vision triangle but the applicant has chosen to pursue an exception rather than relocate or change the design of the fence.

Within a required front setback;

As mentioned above the zoning of the property is Historic District (HD). Because the property is a nonconforming use in a commercial zone the residential zone development standards are applied to the project. Therefore the R1 development standards for a corner lot require to a minimum fifteenfoot (15') front yard setback for fences over three feet in height. The applicant has located the fence within 7' of the property line along Church Street. As proposed the fence will not meet this standard. In the past Staff has not supported fences within the front yard setback unless extenuating circumstances have warranted it.

• Within five feet (5') of the back of the sidewalk for a corner lot, or within ten feet (10') of the back of the sidewalk of a street-side for a corner lot adjacent to a key lot.

As discussed previously, the subject property is a corner lot, which is not adjacent to a key lot. A key lot is defined as a lot with a side lot line that abuts the rear lot line of any one (1) or more adjoining lots. In this instance, the two adjoining lots share rear property lines. Therefore, the subject property is required to provide a minimum five-foot (5') setback from the back of curb along Pacific Street.

Section 19.22.030.C.14 of the Zoning Ordinance provides that exceptions to the setback requirements may be authorized by approval of an Administrative Permit. There are instances within the City of Roseville where side yard fences have been allowed to be located as close as five feet (5') from the property line, provided safety considerations (clear vision triangle) can be met. In this case the proposed fence location will encroach on the clear vision triangle and will be detrimental to the safety of motorists and pedestrians in the area.

3. The location, size, design and operating characteristics of the use or development is compatible with and shall not adversely affect or be materially detrimental to the health safety, or welfare of persons residing or working in the area, or be detrimental or injurious to the public or private property or improvements.

The Planning Department's evaluation of the proposed fence is separated into discussions of safety, neighborhood compatibility, and utilities as discussed below:

**Safety:** As discussed above, the clear vision triangle will be compromised by the placement of the fence. This ordinance was adopted to maintain adequate sight lines for motorists in residential neighborhoods. Pedestrians traveling north on Pacific Street onto Church Street would also have a compromised line of sight from the placement of the fence. Given the safety concerns associated with the placement of the fence staff cannot support this request. The Code Enforcement Division has received one complaint from a motorist regarding the placement of the fence. Staff feels this complaint is a valid concern given the fences encroachment into the clear vision triangle.

**Neighborhood Compatibility:** The character of a residential neighborhood is largely defined by the visual presence in the front yard of homes. The City of Roseville Zoning Ordinance has established exacting front yard development standards to ensure that the character of residential neighborhoods is maintained. The Planning Department's research of permit records indicates that the City has issued exceptions to fence height requirements for front yard fences only on rare

occasions, such as when a residence is located adjacent to a commercial use and screening is required to protect the residence from light, noise, or other impacts. In this instance, no other fences or walls greater than three (3) feet exist in the front yards of homes in the area and there are no such extenuating circumstances that warrant approval of an exception to the setback criteria for the fence to be located in the front yard (Attachment 3 & 4). As discussed above, the proposed design and location of the fence is not compatible with the character of the neighborhood. The Planning Department's recommendation to keep the front yard setback for the fence is consistent with the intent of the Zoning Ordinance to protect the character of residential neighborhoods.

**Utilities:** There are no public utility easements in the front yard. Electric, phone and cable television service for the home are provided by overhead lines at the rear of the site, in a separate easement. However, the water meter and sewer connection for the site is within the front yard setback. Given the fact that there are utility connections in the front yard Staff is also concerned about the location of the fence in the vicinity of the utilities.

#### **SUMMARY / CONCLUSION**

Based on the evaluation above, primarily the safety issue with the fence encroaching on the clear vision triangle, staff believes that the Planning Commission can make the required findings and approve the Administrative Permit as amended by Staff's recommendations. Staff is recommending the Planning Commission approve an Administrative Permit that would require the fence to be moved and located outside of the front yard setback and clear vision triangle. Staff supports the increased fence height (7 feet) along the side yard. With this recommendation staff believes the applicant can have increased privacy and noise attenuation while maintaining safety and the aesthetic qualities of the neighborhood.

#### **ENVIRONMENTAL DETERMINATION**

This project is categorically exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303, which exempts new construction of small facilities and structures.

### **RECOMMENDATION**

The Planning & Redevelopment Department recommends that the Planning Commission take the following actions:

- A. Adopt the three findings of fact as stated in the staff report for the Administrative Permit 211 Church Street McCalister Fence File # AP 04-69; and
- B. Approve the Administrative Permit 211 Church Street McCalister Fence File # AP 04-69 with six (6) conditions of approval, as shown in Exhibit B.

# CONDITIONS OF APPROVAL FOR ADMINISTRATIVE PERMIT #AP 04-69

- 1. The project is approved as shown in Exhibit B and as conditioned or modified below. (Planning)
- 2. This permit shall be valid for a period of two (2) years from this date and shall expire on **July 28**, **2007**. Prior to said expiration date, the applicant may apply for an extension of time, provided, however, that this approval shall be extended for no more than one year from **June 28**, **2007**. (Planning and Redevelopment)

- 3. The plans submitted to the Building Department for permits shall indicate all approved revisions/alterations as approved by this permit, including all conditions of approval. (Building)
- 4. Building permit plans shall comply with all applicable code requirements (Uniform Building Code UBC, Uniform Mechanical Code UMC, Uniform Plumbing Code UPC, Uniform Fire Codes UFC and National Electrical Code NEC), California Title 24 and the American with Disabilities Act ADA requirements, and all State and Federally mandated requirements in effect at the time of submittal for building permits (contact the Building Department for applicable Code editions). (Building)
- 5. The project is subject to the noise standards established in the City's Noise Ordinance. In accordance with the City's Noise Ordinance project construction is exempt between the hours of seven a.m. and seven p.m. Monday through Friday, and between the hours of eight a.m. and eight p.m. Saturday and Sunday. Provided, however, that all construction equipment shall be fitted with factory installed muffling devices and that all construction equipment shall be maintained in good working order. (Building)
- 6. The fence shall be located outside the front yard setback and clear vision triangle as shown in Exhibit B. (Planning & Redevelopment)

#### **ATTACHMENTS**

- Vicinity Map
- 2. Photo of Fence
- 3. Photo of Fence

#### **EXHIBITS**

- A. Applicant's Site Plan
- B. Clear Vision Triangle and Recommended Fence Location

Note to Applicant and/or Developer: Please contact the Planning & Redevelopment Department staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Director at, or prior to, the public hearing.