



OFFICE OF COMMUNITY DEVELOPMENT
CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
(408) 777-3308 • FAX (408) 777-3333

DESIGN REVIEW COMMITTEE STAFF REPORT

Meeting: August 3, 2017

Subject

Fence Exception to consider allowing a six-foot tall wall within the required street side setback and columns in a front yard fence to exceed the maximum permitted height (by up to six inches) within the required front yard setback. (Application No.(s): EXC-2017-01; Applicant(s): Santha Chittajallu; Location: 20984 Alves Drive; APN(s): 326-31-023)

Recommended Action

That the Design Review Committee deny the Fence Exception (EXC-2017-01) in accordance with the draft resolution (Attachment 1).

Discussion

Application Summary:

Fence Exception to allow a newly-constructed six-foot tall wall to encroach into the required street side setback, and a newly-constructed wall with columns exceeding the maximum permitted height within the required front yard setback.

Project Data:

General Plan Designation:	Residential Low Density (1-5 DU/ac)			
Special Area/Neighborhood:	Garden Gate			
Zoning Designation:	R1-10 Single Family Residential			
Lot Size:	11,046 sq. ft.			
Floor Area Ratio:	4,970.2 sq. ft. (44.9%)			
	Front	Street Side	Interior Side	Rear
Required fence setbacks for 6 foot tall fence	20 feet	5 feet	None	None
Project Consistency with				
General Plan:	Yes			
Zoning:	No, fence exception requested as described below			
Environmental Assessment:	Categorically Exempt			

Background:

A Two-Story Permit (R-2014-14) and associated Minor Residential Permit (RM-2014-19) was approved in August 2014 to allow a new two-story single-family home at 20984 Alves Avenue. In addition, a Director's Minor Modification (DIR-2015-01) was approved to allow design modifications to the second story massing and window placement. Subsequently, a building permit for this work was issued in March 2015. The approved building permit plan set indicates, on a red-lined landscape plan, that the applicant intended to construct a six-foot tall masonry wall, that complied with the City's Fence Ordinance - five feet from the street side property line (along North Stelling Avenue), avoiding the corner triangle and that lowered to three feet in height when located within the 20 foot front setback area (Attachment 2). However, during an onsite inspection, it was discovered that the six-foot wall along North Stelling Avenue is located within the required five-foot street side setback. It was also discovered that a section of the wall within the required front yard setback has approximately six columns that exceed the allowed height limit.

While the City does not require that fences be constructed between properties or between the right-of-way and a property, the City regulates the location and height of fences, if one is constructed. Chapter 19.12, Administration, of the Cupertino Municipal Code requires that the Design Review Committee review and approve requests for exceptions to the development standards adopted in Chapter 19.48, Fences.

Applicant Request:

The applicant, Santha Chittajallu, is requesting a Fence Exception to allow the newly constructed six-foot tall wall to encroach into the required street side setback and the three-foot tall wall with columns exceeding the maximum permitted height within the required front yard setback.

Analysis:*Project Location and Surrounding Uses*

The project is located on the corner along North Stelling Road. Single-family residential homes are located to the north and east of the property, and the Abundant Life Church is located behind the property to the south. The Commons Townhomes is located west of the property across North Stelling Road.



The setback requirements for the fence was illustrated in the redlined landscape plan from the applicant's building permit set prior to construction. The setback from the street side property line for the as-built wall along North Stelling Road varies from 41 inches (3 feet 5 inches) close to Alves Drive, to 50 inches (4 feet 2 inches) close to the Abundant Life Church. The minimum setback requirement is 60 inches (5 feet). The wall within the front yard setback is located along the front property line. The columns of the three-foot tall wall within the front setback measure up to 42 inches in height.

The applicant has offered the following as rationale for retaining the wall in its constructed location in the application for a fence exception:

1. The fence/wall was installed incorrectly due to a contractor error;

Staff Comments: The applicant had indicated that the wall was built in the wrong location even though the correct setbacks were measured and the wall placement was identified prior to construction. This rationale does not support the findings that need to be made to support a Fence Exception as it would establish precedence, if approved. An error made by the applicant's representative does not negate the setback requirement.

2. Conflicts with a Cupertino Sanitary cleanout cover located about five feet from the street side property line;

Staff Comments: While the updated site plan (Attachment 3) submitted with the Fence Exception application reflects the location of the cleanout and the as-built wall, it differs from the original grading and drainage plan (Attachment 4) approved with the building permit plans in March 2015. Originally, the cleanout was shown to be located approximately two feet from the street side property line. Therefore, the City did not provide comments on the wall placement in relation to the cleanout at the time of initial building permit approval. The location of cleanout cover does not affect the placement of the wall. The side property line wall can be constructed to accommodate the location of the cleanout cover without encroaching into the public right-of-way.

3. Conflicts with three existing trees, approximately ten feet in height and varying between four to eight inches in diameter breast height (DBH), located approximately five feet from the street side property line;

Staff Comments: It appears that the location of these trees were incorrectly shown on the original landscape plan (see Attachment 2). The plan indicated that the wall would be constructed to the east of the trees. However, the wall was constructed to the west of the trees. In addition, these trees, which include two fruit trees and one flowering tree, are not protected trees under Chapter 14.18, Protected Trees, of the Cupertino Municipal Code and could possibly be removed or relocated.

These conflicts would have been apparent when the setbacks were first measured out by the applicant for the contractor to construct the wall and should have been communicated to the City to determine alternatives and do not adequately justify approving a fence exception. The applicant has also indicated an unwillingness to break up the wall plane in order to avoid these conflicts or build the wall setback farther from within the property line. However, alternate options that would warrant lesser modifications or intensification from the regulations in the Fence Ordinance could have been pursued including:

1. Encroaching into the setback only for the areas affected by the location of the sanitary cleanout cover and existing trees or
2. Relocating the wall to a location that avoided these conflicts.

Other Department/Agency Review:

The City's Building Division, the Santa Clara County Fire Department, and the County's Sheriff's Office reviewed the project and indicate that the fence complies with relevant and applicable codes.

Environmental Assessment:

The use permit is categorically exempt from the California Environmental Quality Act (CEQA) per section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines.

Public Noticing and Outreach

The following table is a brief summary of the noticing done for this project:

Notice of Public Hearing and Intent, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"> ▪ Site Signage (<i>14 days prior to the hearing</i>) ▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>) ▪ Eight public hearing notices mailed to adjacent property owners (<i>10 days prior to the hearing</i>) 	<ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>) ▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)

No public comments have been received as of the date of production of this staff report.

Permit Streamlining Act

This project is subject to the Permit Streamlining Act (Government Code Section 65920 – 65964). The City has complied with the deadlines found in the Permit Streamlining Act.

Project Received: March 29, 2017; ***Deemed Incomplete:*** April 6, 2017

Project Received: April 27, 2017; ***Deemed Incomplete:*** May 3, 2017

Project Received: May 9, 2017; ***Deemed Complete:*** May 25, 2017

Since this project is Categorically Exempt, the City has up to 60 days from the date of deeming the project complete (until July 25, 2017) to make a decision on the project. However, the applicant had made a request per an email dated July 11, 2017 to reschedule for a hearing date after July 20, 2017.

Conclusion

Staff recommends denial of the project and that the wall be brought into compliance as the necessary findings to grant approval of the exception consistent with Chapter 19.48 Fences of the Cupertino Municipal Code cannot be made. Granting approval would set a precedent for future constructions and create unequal treatment of other properties in the City that had experienced similar situations but complied with rules and regulations.

Next Steps

The Design Review Committee's decision on this project is final unless an appeal is filed within 14 calendar days of the decision, on August 18, 2017. If appealed, the City Council will be the approval authority on the appeal.

If approved, the approval will expire on August 3, 2018, at which time the applicant may apply for a one-year extension. However, since the wall is already constructed, the decision to approve will simply affirm the location of the existing fence.

Prepared by: Jeffrey Tsumura, Assistant Planner

Reviewed by: Piu Ghosh, Principal Planner

Approved by: Benjamin Fu, Assistant Director of Community Development

ATTACHMENTS:

1 – Draft Resolution for EXC-2017-01

2 – Landscape Plan (Sheet L1.0), approved March 24, 2015

3 – Revised Site Plan (Sheet A1), submitted June 20, 2017

4 – Grading and Drainage Plan (Sheet C2), approved March 24, 2015