



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 07/20/04

AGENDA ITEM 7

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Denial of Variance No. PL-2004-0073 – Aaron and Denise Larson (Appellant/Owner) – Request to Retain an 8-Foot Fence Along the Side and Rear Property Lines - The Property is Located at 24099 Malibu Road

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution denying the appeal and upholding the Planning Commission denial of the variance application.

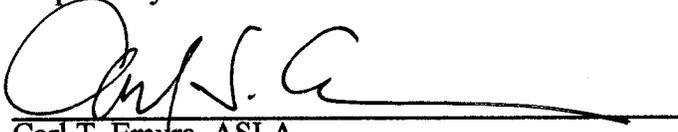
DISCUSSION:

The appellant is requesting to retain an 8-foot-high wood fence located along the side and rear property lines where a maximum 6-foot-high fence is allowed. The fence includes a 1-foot lattice section atop a solid 7-foot fence.

At its May 27, 2004 meeting, the Planning Commission (4:2) denied the application. Planning Commissioners who voted to deny the variance stated that there are no grounds to support the variance in that there are no unusual physical constraints associated with the property and strict application of the ordinance would not deprive the property of privileges enjoyed by others in the area. The Planning Commissioners supporting the variance indicated that fence regulations should be reviewed for possible amendment to allow taller fences. The appellant did not attend the Commission hearing. Paige Bennett, whose fence height variance application was denied by the City Council a year ago, spoke in support of the application and of changing the Zoning Ordinance to allow for taller fences. She has since filed an application to amend the Zoning Ordinance.

The appellant's letter states that they have a unique situation with an irregularly-shaped lot, seven neighbors bordering their property, and the need for privacy, security and a noise buffer. It states that requiring them to remove the fence would create a financial hardship. Privacy, security or financial hardship are not special circumstances that may justify a variance. Though their property is irregular in shape and bordered by several properties, the lot is level like the surrounding properties and larger than the typical neighborhood lots. Furthermore, two neighbors oppose the variance as the portion of their rear fence abutting the appellant's property is 8 feet high while the remainder is 6 feet high. Should the variance be granted, the appellant would be required to obtain a building permit as the fence would be in excess of 6 feet in height.

Prepared by:



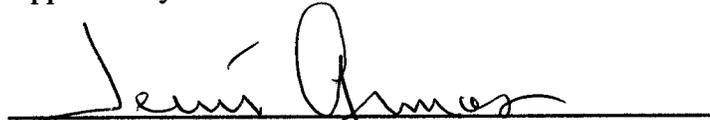
Carl T. Emura, ASLA
Associate Planner

Recommended by:



Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:



Jesus Armas, City Manager

Attachments: Exhibit A. Appellant's Letter
Exhibit B. Planning Commission Meeting Minutes and Staff Report, dated
May 27, 2004
Draft Resolution

6/25/04

To City of Hayward

Variance - Decision Appeal

The reason we applied for a variance is that our home at the property of 24099 Malibu rd. located on an irregular sized lot, causing us to share our fence with 6 to 7 neighbors. We are the only property in this housing sector that share our fence with this many neighbors therefore making this a unique situation. We have concerns of privacy, neighboring pet safety and security since there have been some thefts in our neighborhood. The privacy issues involve knowing that we would be more able to enjoy the relaxing surroundings of our backyard, sharing precious moments with children and family bbq's, without feeling invaded upon by possibly 7 other families. The surrounding houses are all two story with views from bedroom windows into each others yards, although neighbors don't normally sit in their rooms and stare down since the intent is more obvious. One of the other functions our fence provides besides being a visual blanket between neighbors is that it also acts as a noise buffer. The fence seems to tone down the sounds of neighboring noises such as lawn mowers, children playing and pets barking. Our fence is also very visually appealing and in no way does it obstruct the vision of any bay views or natural scenery to any of our neighbors. One of our other concerns is neighboring pet safety. We are very concerned that with the Hayward ordinance height of a 6 ft. fence, one of our neighbors dogs could easily jump over into our yard.. A harmless situation such as an overthrown Frisbee into our yard could be the difference between life and death for our 3 year old son. Dogs can detect fear and it would be the normal reaction for a child to scream and panic causing the dog to become

more aggressive and attack. We have had a red nosed pit bull (American Staffordshire) in the past as a family pet and are very aware of the jumping abilities that these and many other the other breeds have for jumping over 6 ft walls easily. Since pets have the right to be loose within the boundaries of their own yard, We should have the right as parents to secure our children within our yards by choosing to provide higher fences. Lastly, another function that our fence provides is that it is a crime deterrent for burglary and theft. There have been some incidents of burglary and theft in our neighborhood, which is why many of my neighbors have also put in security bars along with having higher fences. Our fence has been up for over two years and within that time we have planted full size trees around the majority of the perimeter of the fence. During these two years the trees have grown very close to the fence therefore making it nearly impossible not to damage them if the fences had to be shortened. We are very concerned that if our appeal for variance was denied it would create a great financial hardship for our family to professionally shorten the entire fence. I am five months pregnant so we are dealing with several medical bills while trying to save for future hospital bills and the expenses of a new baby. We are happy to be residents of Hayward . We would like to request at this time that the council please review to reform the ordinance for 6 ft. fence height in Hayward to 8 ft. high for all residents not just special circumstances. We would then be joining the height ordinance of allowing 8 ft. fences along with neighboring cities such as Pleasanton and Fremont with proper city approval.

*I would like to appeal planning Commission decision
for variance.*

Daniel Larson
Ann Sun

MINUTES



REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD
Council Chambers
Thursday, May 27, 2004, 7:30 P.M.
777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Zermeño, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Bogue, McKillop, Sacks, Fraas, Thnay
CHAIRPERSON Zermeño
Absent: COMMISSIONER One Vacancy

Staff Members Present: Anderly, Conneely, Emura, Looney, Patenaude, Pearson

General Public Present: Approximately 10

PUBLIC COMMENT

There were no public comments.

AGENDA

1. Variance No. PL-2004-0073 - Aaron & Denise Larson (Applicant/Owner) - Request to Retain an 8-Foot Fence Along The Side and Rear Property Lines Where a Maximum of 6 Feet is Permitted - The Project is Located at 24099 Malibu Road (Continued from May 13, 2004)
2. Variance No. PL-2004-0079 - Signs Designs (Applicant) / Harman Management (Owner) - Request to Install Two Logo Signs on The Roof of an Existing Fast Food Restaurant (KFC) Where Roof Signs are Prohibited and Where The Height of The Signs Exceed 24" (48" Proposed) - The Project is Located at 1299 W. Tennyson Road, at The Corner of Patrick Avenue (Continued from May 13, 2004)

PUBLIC HEARINGS

1. Variance No. PL-2004-0073 - Aaron & Denise Larson (Applicant/Owner) - Request to Retain an 8-Foot Fence Along The Side and Rear Property Lines Where a Maximum of 6 Feet is Permitted - The Project is Located at 24099 Malibu Road (Continued from May 13, 2004)

Associate Planner Emura described the property. The applicant is concerned with security and privacy so they would like to retain the eight-foot fence, which they have constructed. He noted that there were no special circumstances regarding the property. Also, the applicant would be afforded a special privilege were the variance granted. As a result, staff

DRAFT

recommended denial of the variance. The applicant had been notified of the hearing but was not in attendance.

Commissioner Sacks asked about this being the second continuance.

Planning Manager Anderly said because it is a community preservation action and it has been continued twice, staff was requesting that the Commission hear and act on it.

Chairperson Zermeno asked about the ordinance itself and what the process would be to change it to a 7-foot requirement.

Planning Manager Anderly responded that a citizen would file an application for a text amendment. She noted that no one had applied to do that as of now.

Commissioner Thnay asked whether the process was different from applying for a 7-foot fence rather than 8-foot.

Planning Manager Anderly explained that someone could apply for a variance. In the hillside, there might be special circumstance. Or they can apply to amend the ordinance.

Chairperson Zermeno commented that this is at least the second time this issue so perhaps it is time to consider changing the ordinance.

The public hearing opened at 7:37 p.m.

Paige Bennett quoted the ordinance and said she was in support of a change in the ordinance. She brought examples of 8-foot fences in the City of Hayward. She maintained that the City of Hayward does a disservice to its residents by enforcing the 6-foot fence rule but allowing 8-foot fences under special circumstances. She has requested updating the law. She shared some statistical data regarding fencing in Hayward. She stated that within one mile from her home there are 26 fences above the 6-foot requirement. Given that, there are potentially hundreds of other violations. She also brought information from surrounding cities' fence ordinances and added that she has been advised that the City of Hayward will take her to court over her fence violation. She advocated changing the ordinance and supported this variance.

Commissioner Fraas asked whether she had considered approaching the change of ordinance by the process Planning Manager Anderly discussed.

Ms. Bennett said she did not know of that process but would talk to the Planning Manager tomorrow.

The public hearing closed at 7:45 p.m.

Commissioner Sacks moved, seconded by Commissioner Bogue to accept the staff recommendation and deny the variance.



Commissioner Sacks said she agreed with the findings. There was no compelling reason to support this exception except for a desire to violate the rules. There is no reason to see this approved. She noted, however, that there is a mechanism for a change. It does not appear to her that there is a need for changing the rules.

Commissioner Fraas said she would definitely support the motion. When and if the Ordinance change were to come before the Commission, they could discuss it at that time.

Commissioner McKillop said she also would support the motion adding that she hopes Ms. Bennett takes up the issue. She said she wished she could feel more comfortable with this decision.

Commissioner Thnay said the current Ordinance is flawed. A 6-foot fence might have worked in previous era but today, there are zero lot line homes, decks are being built everywhere, and people are taller. Fences make good neighbors, and there is a time for privacy. He noted that Pleasanton allows 8-foot fences, and Fremont has the same option but 7-foot might be a good compromise. They should have an option. This item might not meet the variance requirement but the City should look at other cities to see what they are doing.

Commissioner Bogue also supported the motion. This applicant has no grounds in this place at this time for a higher fence. He argued that second stories eliminate privacy as well.

Chairperson Zermeno discussed his own home and his 6-foot fence. He agreed with Commissioner Thnay that the Ordinance needs to be revisited. There is a place for higher fences in some areas.

The motion carried by the following vote:

AYES: COMMISSIONERS Sacks, Fraas, McKillop, Bogue
 NOES: COMMISSIONER Thnay
 CHAIRPERSON Zermeno
 ABSENT: One Vacancy
 ABSTAIN: None

2. Variance No. PL-2004-0079 - Signs Designs (Applicant) / Harman Management (Owner) - Request to Install Two Logo Signs on The Roof of an Existing Fast Food Restaurant (KFC) Where Roof Signs are Prohibited and Where The Height of The Signs Exceed 24" (48" Proposed) - The Project is Located at 1299 W. Tennyson Road, at The Corner of Patrick Avenue (Continued from May 13, 2004)

Associate Planner Pearson described the location as well as the other signs in the area. He noted the number of signs and the visibility of the location. He said that the City Sign Ordinance encourages lower, monument signs. He showed various other KFC's in the area. He

DRAFT



CITY OF HAYWARD AGENDA REPORT

Meeting Date 5/27/04
Agenda Item 1

TO: Planning Commission

FROM: Carl T. Emura, Associate Planner

SUBJECT: Variance No. PL-2004-0073 – Aaron and Denise Larson (Applicant/Owner) – Request to Retain an 8-Foot Fence Along the Side and Rear Property Lines Where a Maximum of 6 Feet is Permitted

The Property Is Located at 24099 Malibu Road in the Single-Family Residential (RS) District

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
2. Deny the application, subject to the attached findings.

DISCUSSION:

The applicant is requesting to retain an 8-foot-high wood fence located along the side and rear property lines where a maximum 6-foot-high fence is allowed. The fence includes a 1-foot lattice section atop of a solid 7-foot fence which replaced the original 6-foot solid common property fence. The applicant received a notice of violation from the City as a result of a complaint.

The applicant states that he is concerned about privacy and security and believes that there are special circumstances applicable to his property in that his lot is irregular in shape and is enclosed by six adjacent properties. Privacy and security are not special circumstances that may justify a variance. Though his property is irregular in shape and bordered by several properties, the lot is level like the surrounding properties and approving the variance would be granting the applicant special privileges not allowed to other properties in the vicinity. Staff also points out that it is not known whether the fence has been constructed to a standard that would meet the Uniform Building Code since no building permit was obtained.

In 2003, the Planning Commission reviewed a variance to retain a 7-foot-high wood fence at 313 Bridgecreek Way. The applicant wanted to maintain the fence to contain the dogs she fostered. The Commission vote 4-2 to approve the variance. The decision was appealed to the City Council, which unanimously denied the application. The City Council indicated that there were

no special circumstances applicable to the property to justify the variance; and though fostering of the dogs is commendable, it was not justification for a variance to the height of the fence.

ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alterations of Land Use Limitations.

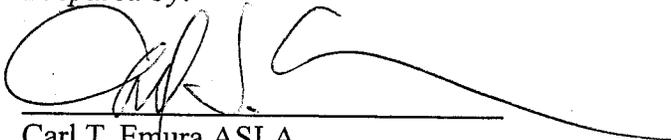
PUBLIC NOTICE:

On, April 12, 2004, a Notice of Public Hearing was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records, the Westwood Manor Homeowners Association, and the Mount Eden Neighborhood Task Force. Staff received three responses, one supporting and two opposing the variance. The two opposing the variance are adjacent property owners who indicated that the 8-foot-high fence is not consistent in design with the remaining fences surrounding their properties.

CONCLUSION:

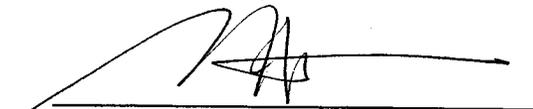
In staff's opinion, the 8-foot fence is visually intrusive to the adjacent properties, does not conform to the neighborhood standard, and the necessary findings to support the variance cannot be made. Therefore, staff recommends that the variance be denied.

Prepared by:



Carl T. Emjura ASLA
Associate Planner

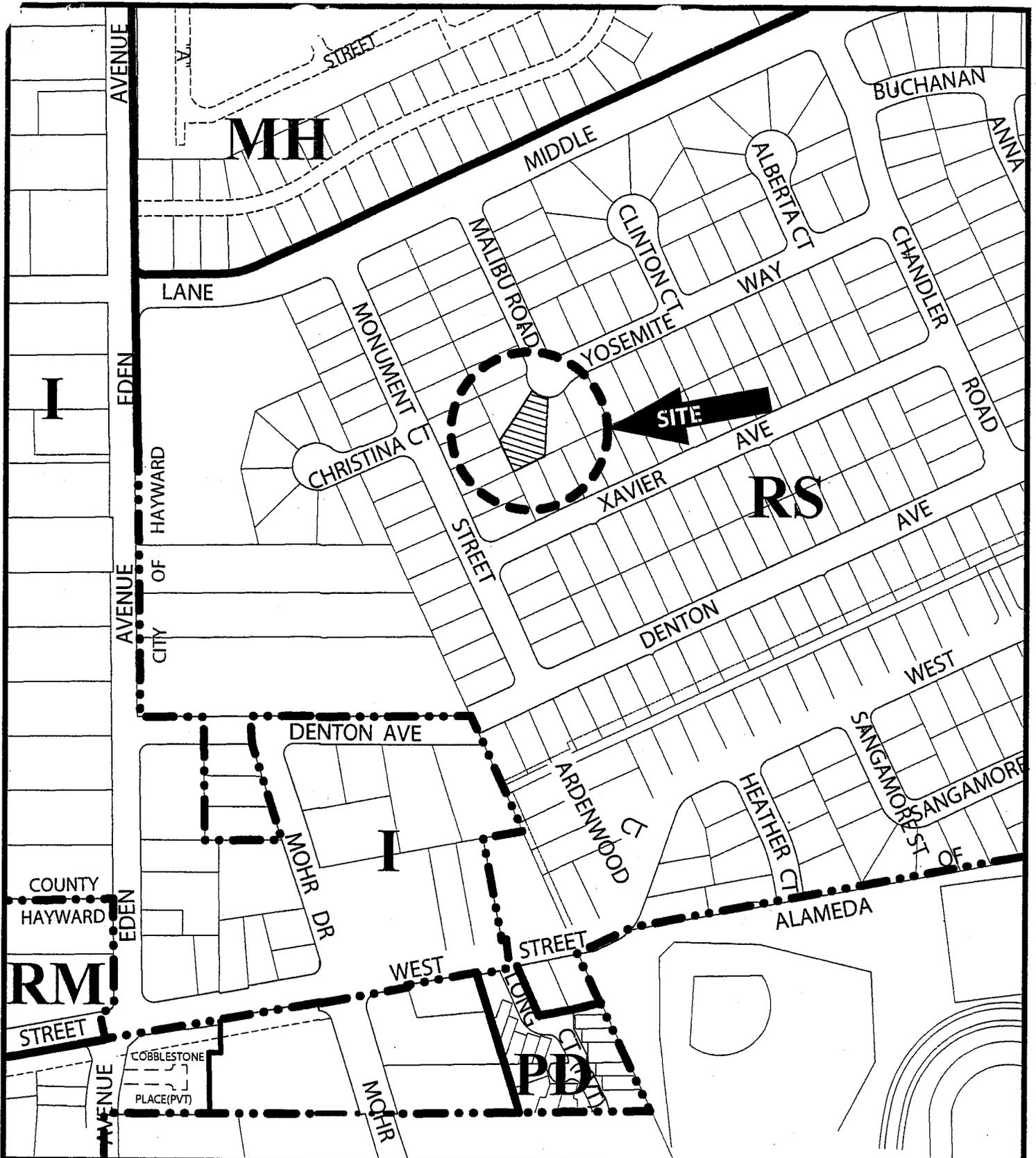
Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Denial
- C. Site Plan
- D. Photographs
- E. Email dated 2/29/04



Area & Zoning Map

PL-2004-0073 VAR

Address: 24099 Malibu Road

Applicant: Aaron & Denise Larson

Owner: Aaron & Denise Larson

I-Industrial

MH (P)-Mobile Home Park

PD-Planned Development

RM-Medium Density Residential RMB 3.5, RMB 4

RS-Single-Family Residential,RSB4,RSB6



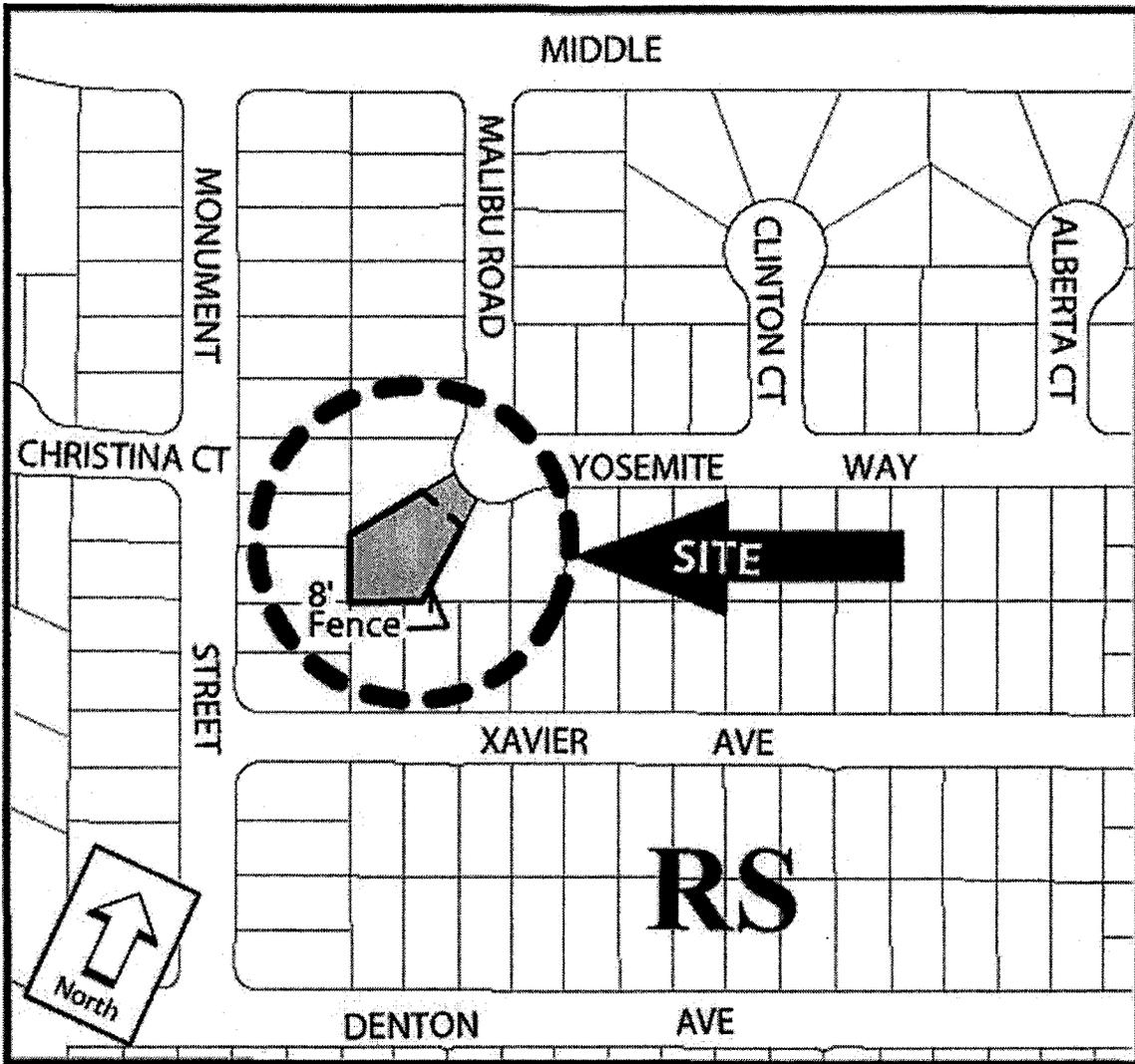
FINDINGS FOR DENIAL

Variance No. PI-2004-0073

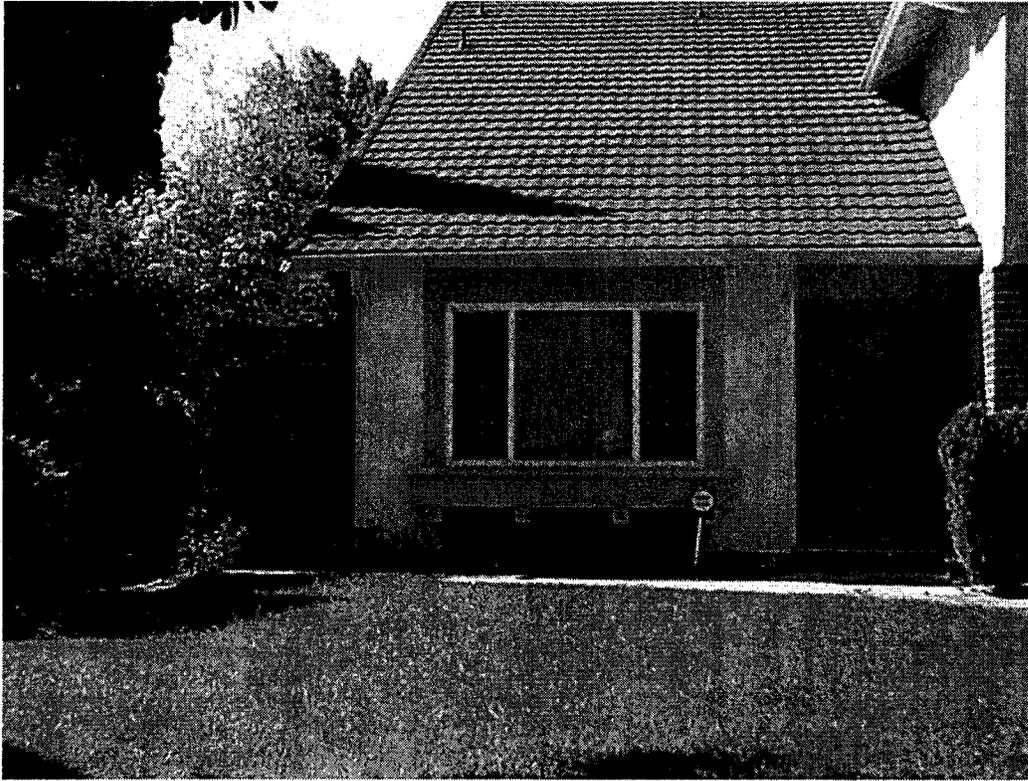
Aaron & Denise Larson(Applicant/Owner)

April 22, 2004

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
- B. There are no special circumstances applicable to the property regarding this variance request in that the property is relatively flat and typical of other properties in this residential development.
- C. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that no other properties in the vicinity have been granted a variance for an 8-foot-high fence.
- D. The variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated in that other properties in the vicinity are limited to a 6-foot-high fence.



Site Plan



View looking from Malibu Road

PaulineCraft

From: pcraft@comcast.net
Sent: Sunday, February 29, 2004 3:54 PM
To: Carl Emura
Subject: PL-2004-0073 VAR

The fence is very pleasing and look great. Let them keep it! Pauline Craft

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 04-

Introduced by Council Member _____

**RESOLUTION DENYING THE APPEAL AND UPHOLDING
THE PLANNING COMMISSION'S DENIAL OF VARIANCE
APPLICATION NO. PL-2004-0073**

WHEREAS, on May 27, 2004, the Planning Commission denied (4:2) Variance Application PL-2004-0073 of Aaron and Denise Larson (Appellant/Owner) to retain an 8-foot fence along the side and rear property lines where a maximum 6-foot fence is allowed, located at 24099 Malibu Road; and

WHEREAS, Aaron and Denise Larson appealed the decision stating that they have a unique situation with an irregularly-shaped lot, seven neighbors bordering their property, the need for privacy, security, a noise buffer, and that it would cause a financial hardship if required to lower the fence to 6 feet; and

WHEREAS, staff determined that privacy, security and financial hardship are not special circumstances that may justify a variance. Furthermore two neighbors oppose the variance as the portion of their rear fence abutting the appellant's property is 8 feet high while the remainder is 6 feet high; and

WHEREAS, the City Council of the City of Hayward hereby finds and determines:

1. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
2. There are no special circumstances applicable to the property regarding this variance request in that the property is relatively flat and typical of other properties in this residential development.
3. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that no other properties in the vicinity have been granted a variance for an 8-foot-high fence.
4. The variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated in that other properties in the vicinity are limited to a 6-foot-high fence.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that based on the foregoing findings, the appeal of the Planning Commission's denial of Variance Application No. PL-2004-0073, regarding the request to retain an 8-foot-high fence, is denied, and the Planning Commission's decision to deny the variance is upheld.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward