

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

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Agenda Item # 5 December 14, 2023

November 20, 2023

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612

Dear Board Members:

SUBJECT: **VARIANCE PLN2023-00042, MAX SIMMONS** – To allow a 6-foot-tall fence within the 30-foot front yard setback where 4-feet maximum is allowed and to allow a solid fence within the front yard setback where at least 50% see-through is required, located at 27640 Fairview Ave, Fairview area of unincorporated Alameda County, Assessor's Parcel Number: 085A-6200-15-00.

RECOMMENDATION:

Fairview Municipal Advisory Council (FVMAC): On September 5, 2023, the FVMAC recommended approval of the Variance with a vote of 4 in favor and 1 opposed.

West County Board of Zoning Adjustments (WBZA): On September 27, 2023, the WBZA voted 2 in favor of the Variance and 1 in denial of the Variance, with 1 member excused and 1 member recused. Since there were not the requisite three affirmative votes as required by the WBZA by-laws, no action was taken which automatically forwards it to the Alameda County Board of Supervisors.

Planning Department: Staff recommends that the Board of Supervisors uphold the recommendation of the FVMAC to approve the Variance.

BACKGROUND:

The applicant submitted the Variance request for the following reasons:

1. **Privacy.** Since the property is on a hill, car headlights shine into the bedroom, living room, and bathroom of the residence. On March 6, 1991, Variance, V- 10125 was granted for a higher fence (5 ft. solid fence where 4 ft. is permitted) than what was permitted for a property across the street which had similar issues with privacy due to the topography of the parcel.
2. **Fire Safety.** It has been determined by the Hayward Fire Department that the location of the current fence allows for greater fire truck access in the case of an emergency.
3. **Security.** There is a radio tower on the property that the owner would like to keep safe along with the security of his family.

On September 5, 2023, this item was heard at the Fairview Municipal Advisory Council and recommended for approval with a vote of 4 in favor and 1 opposed. The one vote opposing the Variance cited that most people in this area follow the rules and there should not be an exception for one person. During the public hearing, three neighbors spoke in support of the fence, stating that it was attractive and did not harm the surrounding area. One person from the community spoke against the project and referred to a fence height Variance in Castro Valley which was recently denied by the Board of Supervisors (PLN2022-00168). In addition, that person spoke against this fence Variance request and also noted that the subject parcel to this Variance application has an unpermitted structure located in the rear of the lot. The unpermitted structure is currently going through the Building Permit process.

On September 27, 2023, the item was heard at the West County Board of Zoning Adjustments (WBZA), and after deliberation, no formal action was taken on the project by the WBZA. The BZA voted 2-1 in favor of granting the Variance, with one member excused and one member recused. Based on the WBZA bylaws, an action is required to obtain three votes in the affirmative for the matter to get approved. In this case, since the matter did not receive three affirmative votes, no action was taken by the WBZA. In such cases, the WBZA bylaws allow the matter to be forwarded to the Board of Supervisors for their consideration.

The one member who voted to deny the Variance had requested additional landscaping along the fence and street for screening and commented that a hedge alone could suffice to block headlights from entering the home. During the public hearing, one neighbor phoned in to express support for the Variance request and referenced that the FVMAC supported this Variance application and that the Board should support the local Council's direction.

The WBZA did discuss requiring landscaping along the portion of the fence, which is currently bare and without vegetation, to help soften the appearance of the solid wood fence from Fairview Avenue. Staff has included a condition of approval to require landscaping along the fence.

DISCUSSION:

A six-foot tall fence has existed at this location for three years; however, it violates the height restrictions and required see-through material of the Alameda County Zoning Ordinance and Residential Design Standards and Guidelines. A Variance can be approved to allow deviations from zoning standards pertaining to fence height and material so long as the appropriate findings are made.

Staff has included draft findings supporting the application in the attached resolution, which are detailed here. In 1991, there was a Variance approved across the street that granted a 5-foot-tall fence where 4 feet is the maximum permitted to address similar concerns with privacy and intrusive light from passing cars. Therefore, in this case, granting a Variance for increased fence height would not be a grant of special privilege – at least one other property in a similar condition was granted a Variance. In addition, there is a unique circumstance in the current case since the site is situated at the apex of a hill, causing the house to be elevated above the fence line and street level, which results in vehicle headlights shining directly into the home. Lastly, there would be a detriment to approving the proposed fence height Variance.

CONCLUSION:

Although a six-foot fence is only permitted when located beyond the minimum 30 feet requirement from the front property line (required front yard setback), the Planning staff believes the conditions exist on the

current site to support the findings for a Variance. Staff recommends that the Board of Supervisors uphold the recommendation of the FVMAC to approve the Variance.

The complete record is attached.

Very truly yours,

DocuSigned by:

Sandra Rivera

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Sandra Rivera, Director
Community Development Agency

Attachments:

Appeal letter
Photos
Copy of file

RESOLUTION NO. R-2023-_____

**RESOLUTION APPROVING VARIANCE PLN2023-00042, FOR MAX SIMMONS, TO
ALLOW A SIX FOOT TALL FENCE AND A SOLID FENCE WITHIN THE FRONT
YARD SETBACK AT 27640 FAIRVIEW AVENUE IN THE FAIRVIEW AREA OF
UNINCORPORATED ALAMEDA COUNTY**

WHEREAS, Max Simmons (“Applicant”) has filed for a VARIANCE, PLN2023-00042 (“Application”) to allow a 6-foot-tall fence within the 30-foot front setback where 4-feet maximum is allowed and to allow a solid fence within the front yard setback where at least 50% see-through is required at 27640 Fairview Ave., east side, 300 ft. south of Oakes Dr., in the Fairview area of unincorporated Alameda County, bearing Assessor’s Parcel Number (APN): 085A-6200-15-00; and

WHEREAS, the Application has been reviewed in accordance with the provisions of the California Environmental Quality Act and has been found to be Categorically Exempt; Article 19, Section 15301, Class 1, existing facilities; and

WHEREAS, the Fairview Municipal Advisory Council held a public hearing on the application in the Castro Valley Library, 3600 Norbridge Avenue, Castro Valley, at 6:00 p.m. on the 5th day of September 2023; and

WHEREAS, on September 5, 2023, the Fairview Municipal Advisory Council voted four (4) in favor and one (1) opposed to recommend approval of the Application; and

WHEREAS, the West County Board of Zoning Adjustments (“WBZA”) held a public hearing on the application in the Alameda County Planning Building, 224 West Winton Avenue, Room 160, Hayward, California, at 1:30 p.m. on the 27th day of September 2023; and

WHEREAS, at the September 27, 2023 hearing, the WBZA discussed a condition of the inclusion of landscaping along the proposed solid wood fence to soften its appearance along Fairview Avenue. As such, Staff recommends approval of the Application contingent upon a minimum of three (3) 10-gallon shrubs or bushes being planted and maintained along that portion of the fence that currently has no vegetation along Fairview Avenue; and

WHEREAS, the By-laws of the WBZA requires three (3) affirmative votes to approve or deny an application; and

WHEREAS, on September 27, 2023, the WBZA voted two (2) in favor and one (1) opposed to the recommendation of approval of the Application, with one member excused and one member recused. As such, there were insufficient affirmative votes to approve or deny the Application, no action was taken by the WBZA at the September 27, 2023 meeting; and the Application is now before the Board of Supervisors for their consideration; and

WHEREAS, the Applicant appeared at the public hearing and presented testimony in support of the Application; and

WHEREAS, it satisfactorily appears from affidavits on file that proper notice of the public hearing was given in all respects as required by law; and

WHEREAS, the statements, findings, determinations, and other actions set forth in this Resolution are based on substantial evidence contained in the entire record before the County; and

NOW, THEREFORE, BE IT RESOLVED that this Board finds that:

- a. There are special circumstances applicable to this property that deprive the property of privileges enjoyed by other properties in the vicinity under identical zoning classification. The property is situated at the apex of a hill, causing the house to be elevated above the fence line and street level. This specific topography results in vehicle headlights shining directly into the master bedroom, bathroom, and other living spaces, leading to a significant invasion of privacy and disruption to the property owner's family's well-being. These special circumstances are not shared by other properties in the vicinity, which deprives the property of privileges enjoyed by neighboring properties.
- b. Permitting the existing 6-foot-tall solid fence will not bestow special privileges inconsistent with the limitations placed on other properties in the area. The fence serves to mitigate privacy concerns arising from the topography of the roadway and the property. As other properties in the vicinity do not face these challenges, they would not be disadvantaged by the approval of this Application. Variance, V- 10125 was granted for a higher fence than what was permitted for a different property in the area which had similar issues with privacy.
- c. The granting of this application will not be detrimental to persons or property in the neighborhood or to the public welfare since there were no comments received from the Public Works Agency or Traffic Division for any line-of-sight issues, and no concerns raised as to encroachment in the public right of way.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Alameda County Board of Supervisors does hereby approve the Application as shown by materials labeled Exhibit "A" dated April 6, 2023, on file with the Alameda County Planning Department and the following conditions:

1. This permit authorizes an existing 6-foot-tall fence within the 30-foot front setback where 4-feet maximum is allowed and allows a solid fence within the front yard setback where at least 50% see-through is required.
2. The fence is permitted to be located 2 feet from the front property line for 95 feet of the property's frontage, then the fence shall jog inward towards the parcel and shall provide a 23-foot 5-inch setback from the front property line for the driveway access leading to the gates to access the parcel.
3. Within 30 Days of Variance Approval, the Applicant shall install and maintain a minimum of three (3) 10-gallon shrubs or bushes along the portion of the fence that currently has no vegetation, along Fairview Avenue.
4. Fencing elevations shall be in substantial conformance with those shown on "Exhibit A" dated April 6, 2023.
5. The property owner shall meet and maintain compliance with the requirements of the following agencies:
 - A. Alameda County Public Works Agency, Building Inspection Division

- B. Alameda County Public Works Agency Development Engineering
- C. Alameda County Code Enforcement
- D. City of Hayward Fire Department, Fire Prevention

6. Hold Harmless: By exercise of this Application, the applicant, property owner, or their successor(s) in interest shall defend, indemnify, and hold harmless Alameda County (the County) or its agents, officers, and employees from any claim, action or proceeding against Alameda County or its, agents, officers or employees to attack, set aside, void, or annul Variance, PLN2023-00042, the finding of exemption from the requirements of the California Environmental Quality Act (under Article 19, Section 15301, Class 1, existing facilities), or any combination thereof. Such indemnification shall include, but not limited to, an award of costs and attorney's fees incurred by Alameda County in its defense. The County shall promptly notify applicant or successor of any such challenge.

7. Responsibility for fees: The Applicant, owner, and any successor shall be responsible for payment of all reasonable costs associated with the necessary permit processing or inspections required to verify compliance with the conditions of approval contained in the authorization of the facility, including costs incurred by the County Community Development Agency, the Alameda County Fire Department, the Building Inspection Division, the Public Works Agency or any other applicable Federal, State or County department or agency. Nonpayment of fees may subject the permit to revocation in accordance with the conditions of approval herein and Alameda County Zoning Ordinance Section 17.54.030.

8. Property owner, Applicant, and/or their successors, shall comply with all Federal, State, and Local Laws, Regulations, and Alameda County Ordinances.

9. Minor Modifications of this plan may be authorized by the Planning Director upon the receipt of a request from the Applicant in writing for such modifications accompanied by drawings sufficient to show the proposed changes. More substantial changes shall require a new Variance.

10. The Variance shall remain revocable for cause in accordance with Section 17.54.030 of the Alameda County Zoning Ordinance.

THE FOREGOING was PASSED and ADOPTED by a majority vote of the Board of Supervisors of the County of Alameda this 14th day of December, 2023, pursuant to the following vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:
Anika Campbell-Belton, Clerk
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

DocuSigned by:
By Melanie S. O'Brien
Melanie S. O'Brien, Deputy County Counsel

Regular Calendar: Member Spalding said she wants to recuse herself from this item since Mr. Simmons is her neighbor.

PLN2023-00042, VARIANCE, MAX SIMMONS - A Variance, to allow a 6-foot-tall fence within the 30-foot front setback where 4-feet is the maximum allowed and to allow a solid fence within the front yard setback where at least 50% see through is required, located at 27640 Fairview Avenue, east side, 300 ft. south of Oakes Drive, in the Fairview area of unincorporated Alameda County, in a R-1-L-BE (Single Family Residential, 5-acre minimum building site area, 300 ft. median lot width, 30 ft. front yard, 20 ft. side yard) District, with an *Eden Area General Plan* land use designation of Very Low Density Residential, bearing Assessor's Parcel Number: 085A-6200-15-00. This Project is exempt from the requirements of the California Environmental Quality Act (CEQA, 1970 as amended), per Article 19, Section 15303, Class 3, New Construction or Conversion of Small Structures. **Planning Staff: Michael Flemming, Action Item**

Michael Flemming presented the staff report. The Fairview MAC recommended approval of the variance. There is one person who is against the project. Three of the neighbors spoke in favor of the project. He noted that V-10125, was approved in 1991 for an adjacent neighbor. This application was referred to the Hayward Fire Department and they asked that the fence remain at the same place which gives them plenty of turn around space. Staff recommends that the West Board of Zoning Adjustments approve the Variance, PLN2023-00042 to allow a 6-foot-tall fence within the 30-foot front setback where 4-feet maximum is allowed and to allow a solid fence within the front yard setback where at least 50% see through is required to be provided based on drawings marked "Exhibit A" dated April 6, 2023, on file with the Alameda County Planning Department.

Member Seibert asked if this fence is permitted and did it need a permit. Michael Flemming said this fence would not be allowed. Member Seibert noted that it was built without a permit.

Member Santos asked if this item needed to come to this board. Michael said variances usually come to this board. Member Santos asked if the neighbors in favor live in the neighborhood and did he speak to the neighbors? Michael said he is not sure where they live. Member Santos asked if the Fire Department had any comments about pulling out of the driveway. Michael said they did not. Vice-Chair Voves asked when was the fence constructed. Michael said most likely in the last couple of years. The previous owner had a chain link fence.

Public comment was open.

Max Simmons, the property owner, said regarding the permit for the fence, he hired a contractor and they made a mistake. Regarding the person that concerned about the fence, the individual does not live in the neighborhood, he lives in the City of Fremont. In terms of view obstruction, the home is elevated above the street. He said he could get a written statement from the adjacent neighbors. The neighbors were notified. In regards the setback, there is plenty of space in the front.

Member Santos asked staff if it is located in a residential neighborhood and what is the setback. Rodrigo said the front yard setback is thirty ft and the fences have to be four ft. Member Santos said the setback looks reasonable. He asked why the setback of thirty feet Christine said in the

Fairview Specific plan it requires a thirty ft setback.

Fran, a neighbor, she is very close to this property. She is very familiar with traffic on this road. She is in support of the variance. She said driving around the area there are many homes that the fence exceeds the four ft requirement. The traffic on Fairview has changed dramatically, the traffic has increased and often are speeding. The properties on Fairview are more rural in nature and the fence keeps animals from coming onto the property. The fence is attractive and it fits in with the neighborhood. She urged the board to support and approve the variance.

Public comment was closed.

Vice-Chair Voves said she has no issues with the fence. She drove in the area and has no issues. Member Seibert said she drove the neighborhood and this is the only one with a solid fence. She spoke against granting the variance. Member Santos said the amount of time to have the hedge grow can be drastic or would have to spend quite a bit of money to purchase mature trees.

Member Santos moved to approve variance PLN2023-00042 with a recommendation that the property owner plant three ten-gallon bushes to soften the appearance of the wooden fence. The property owner said he is in favor of planting the bushes. County Counsel said it should be added as a condition. Vice-Chair Voves seconded. Two votes in favor and one opposed, and one recused. Motion failed.

Member Santos retracting first motion and moved to continue this item to the next meeting. Vice-Chair Voves seconded the motion. Motion was retracted. Member Spalding said there can always be an amendment to the motion in order to move that along.

Fran, a neighbor, said she could not hear Member Seibert's comments she was not speaking into the microphone. She noted that the local MAC voted for approval, and she encouraged this board to support the decision of the Fairview MAC.

Max, a neighbor, spoke about the light going into their bedroom. If fence was reduced the light would be projected into his bedroom.

Staff called the vote. Yeas: Vice Chair Voves, Member Santos. Nays: Member Seibert. Excused: Member Spalding. Motion failed.

Rodrigo said the property owner will need to appeal to the Board of Supervisors within ten days.



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO: WEST COUNTY BOARD OF ZONING ADJUSTMENTS

HEARING DATE: SEPTEMBER 27, 2023

GENERAL INFORMATION

APPLICATION

TYPE & NUMBER: Variance, PLN2023-00042

OWNER/

APPLICANT: Max Simmons

PROPOSAL:

To allow a 6-foot-tall fence within the 30-foot front setback where 4-feet maximum is allowed and to allow a solid fence within the front yard setback where at least 50% see through is required.

**ADDRESS AND
SIZE OF PARCEL:**

27640 Fairview Ave., east side, 300 ft. south of Oakes Dr., in the Fairview area of unincorporated Alameda County, bearing Assessor's Parcel Number (APN): 085A-6200-15-00. The parcel measures 75,750 square feet in area.

**GENERAL PLAN
DESIGNATION:**

The site lies within the boundaries of the *Eden Area General Plan*, which includes the *Fairview Specific Plan* designates the site land use as Very Low Density Residential, Single-family Residential land use.

ZONING:

The site is zoned FASP R-1-L-BE (Single Family Residence, 5-acre minimum building site area, 300 ft. median lot width, 30 ft. front yard, 20 ft. side yard) District.

**ENVIRONMENTAL
REVIEW:**

This project is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15301-Class 1 -Existing Facilities

RECOMMENDATION

Staff recommends that the West County Board of Zoning Adjustments approve Variance, PLN2023-00042 to allow a 6-foot-tall fence within the 30-foot front setback where 4-feet maximum is allowed and to allow a solid fence within the front yard setback where at least 50% see through is required to be provided based on drawings marked "Exhibit A" dated April 6, 2023, on file with the Alameda County Planning Department.

BACKGROUND

On September 5, 2023, PLN2023-00042 was recommended for approval with a 4 in favor and 1 opposed vote by the Fairview Municipal Advisory Council. During the public hearing, three neighbors spoke in support of the fence, stating that it was attractive and did not harm the surrounding area in anyway. One person from the community spoke against the project bringing up that a project in Castro Valley was turned down for a similar fence, and that the subject parcel has an unpermitted structure located in the rear of the lot. The unpermitted structure is currently going through the building permit process.

PARCEL ZONING HISTORY

August 11, 1956, the 107th Zoning Unit established the zoning for the area as R-1-A (Single Family Residential, Agricultural) District.

August 25, 1971, Conditional Use Permit, C-2320 an application to construct a 170-foot radio transmission tower on the subject property, subject to conditions requiring metal surfaces of the tower to be coated with non-reflective paint and all electronic components to be located within the “A” District, was approved with expiration July 31, 1985.

March 24, 1975, the 1175th Zoning Unit reclassified the subject property and surrounding area to the R-1-L-B-E (Single Family Residence, Limited Agricultural, 5-acre minimum building site area, 30 ft. front yard, 20 ft. side yard) District.

September 3, 1975, Conditional Use Permit, C-2994 an application to modify a previously approved permit (C-2320) approved the continued use of a radio transmission tower subject to the previous conditions and including expiration on September 3, 1980, or the end of Walter D. Gordon’s occupancy of the premises, whichever occurs first.

September 3, 1980, Conditional Use Permit, C-3855 an application to continue operation of a radio transmission tower subject to expiration in five years or the end of Mr. Gordon’s occupancy of premises, whichever occurs first was approved.

December 23, 1980, the Fairview Area Specific Plan was adopted by the Alameda County Board of Supervisors.

September 11, 1985, Conditional Use Permit, C-4956 an application to allow the continued operation of a radio transmission tower; expiration September 11, 1990, or the end of Mr. Gordon’s occupancy of premises, whichever occurs first, was approved.

January 23, 1991, Conditional Use Permit, C-5906 an application to allow the continued operation of a radio transmission tower; expiration in five years or at the end of Mr. Gordon’s occupancy of premises, whichever occurs first, was approved.

January 31, 1996, Conditional Use Permit, C-6723 an application to allow the continued operation of a radio transmission tower; expiration in five years or at the end of Mr. Gordon’s occupancy of premises, whichever occurs first, was approved.

September 4, 1997, the Fairview Area Specific Plan was amended and adopted by the Alameda County Board of Supervisors.

March 14, 2001, Conditional Use Permit, C-7746, an application to allow continued operation of a radio transmission tower was conditionally approved with expiration in five years or at the end of Mr. Gordon’s occupancy of premises, whichever occurs first.

August 11, 2004, Conditional Use Permit, C-8301, an application to allow continued operation of a radio transmission tower, was conditionally approved with expiration in five years.

September 10, 2008, Variance, V-12124, an application to allow a 17 1/4'-wide side yard where 20' is required for an attached addition was approved.

January 27, 2010, Conditional Use Permit, PLN2009-00113, application to allow the continued operation of a 170-foot-high radio tower, was approved.

January 13, 2021, Conditional Use Permit, PLN2020-00139, application to allow the continued operation of a 170-foot-high radio tower, was approved with expiration on January 13, 2031.

April 13, 2021, Lot Line Adjustment, PLN2021-00071, application to allow the parcel to merge with neighboring parcel 085A-6200-14-00, was approved. The Lot Line Adjustment has been recorded.

January 3, 2023, Site Development Review, PLN2022-00092 application to allow a 1,334 sq. ft. addition to an existing single-family dwelling which is over 50% of the existing floor area where otherwise not permitted, was approved.

SITE AND CONTEXT DESCRIPTION

Physical Features: The subject property is generally rectangular in shape and measures 75,750 sq. ft. in area. The existing single-family home measures 1,262 sq. ft. in area with the home being slightly elevated from the street level.

Adjacent Area: Directly adjacent to the parcel is mostly filled with large rectangular single-family residential lots similar in size to the subject parcel with the zoning classification of “R-1-L-BE.”

REFERRAL RESPONSES

Below is a summary of Attachment A Referrals.

Alameda County Public Works Agency Development Engineering: As of this writing, no comments have been received.

City of Hayward Fire Department, Fire Prevention: Referral comments were received from the City of Hayward Fire Department dated May 30, 2023, which stated there is greater fire access with the fence at the current non-conforming location.

Alameda County Code Enforcement: A referral comment dated May 1, 2023, from a Code Enforcement Officer was received which stated there is an open case for the increased fence height where not permitted and stated that the Officer is monitoring the outcome of the variance application (see attached).

PROJECT DESCRIPTION

The proposal is to allow a 6-foot-tall fence in the front 30-foot setback where 4 feet maximum is allowed and to allow a solid fence within the front yard setback where at least 50% see through is required to be provided. The 6-foot-tall wooden fence was constructed within the required front yard. This variance application is a result of a code enforcement case for the increased fence height where otherwise not allowed and a solid fence where a 50% see through fence is required.

The applicant states that the for the increased fence height made of solid material is due to the topography of the lot in relation to the street level. This results in vehicle headlights shining directly into the master bedroom, bathroom, and other living spaces, leading to a significant invasion of privacy and disruption to the property owner's family's well-being.

STAFF ANALYSIS

Conformance with the General Plan: The *Eden Area General Plan* includes the Fairview subarea. All information on the vision, goals, policies, and existing conditions for Fairview can be found in the *Fairview Area Specific Plan* and its related documents. The site's designated land use is Very Low Density Residential, Single-family Residential land use.

Conformance with the Fairview Area Specific Plan: The intent of the *Fairview Area Specific Plan* is to preserve existing residential areas, protect and preserve important environmental resources and significant natural features in the Fairview area, and promote development that is sensitive to variations in topography and the rural residential character of the Fairview Area. The current *Fairview Area Specific Plan* was adopted by the Board of Supervisors on June 3, 2021.

Fencing within the first 30 feet is limited to 4 feet in height or less and is required to be at least 50% see through where a solid wood fence is being proposed. Both of these requests are the subject of this variance. The fence is located 2 feet from the front property line along the south portion of the lot and then jogs back to 23 feet and 5 inches at about the middle of the property's frontage. The applicant replaced a chain link fence with a gate with the wooden fence and gate in January 2021.

The Fairview Specific Plan, limits fence heights per the Zoning Ordinance and the Residential Design Standards and Guidelines, except for fences constructed on top of retaining walls.

Residential Standards and Design Guidelines (RSDG): The Residential Design Guidelines and Standards limits the height of fences and walls within the required front yard to 4 feet tall. The Fences and Walls section of the RSDG, also requires for fences within the required front yard to be at least 50% see-through, unless visibility is blocked because of plants. The proposed 6-foot-tall fence is two feet from the front property line and is a solid fence therefore not providing the 50% see through visibility.

NEARBY VARIANCE:

On March 6, 1991, a Variance, V-10125 was approved for a 5-foot-tall fence where 4 feet is permitted located at 27647 Fairview Avenue. The increased fence height was warranted based on the topography of the lot which resulted in a lack of privacy for the residents in the dwelling during the evening time since the headlights of vehicles would penetrate the windows due to the home being lower than the street level. The fence was made of non-see-through materials (stone) and a metal iron gate. to mitigate privacy concerns arising from the topography of the roadway and the property

TENTATIVE FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING

1. Are there special circumstances applicable to the property, which deprive the property of privileges enjoyed by other properties in the vicinity under identical zoning classification?

There are special circumstances applicable to this property that deprive the property of privileges enjoyed by other properties in the vicinity under identical zoning classification. The property is situated at the apex of a hill, causing the house to be elevated above the fence line and street

level. This specific topography results in vehicle headlights shining directly into the master bedroom, bathroom, and other living spaces, leading to a significant invasion of privacy and disruption to the property owner's family's well-being. These special circumstances are not shared by other properties in the vicinity, which deprives the property of privileges enjoyed by neighboring properties.

2. Will the granting of the application not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone?

Permitting the existing 6-foot-tall solid fence would not bestow special privileges inconsistent with the limitations placed on other properties in the area. The fence serves to mitigate privacy concerns arising from the topography of the roadway and the property. As other properties in the vicinity do not face these challenges, they would not be disadvantaged by the approval of this variance. Variance, V- 10125 was granted for a higher fence (5 ft. solid fence where 4 ft. is permitted) than what was permitted for a different property in the area which had similar issues with privacy due to the topography of the parcel.

3. Will granting the application not be detrimental to persons or property in the neighborhood or to the public welfare?

The granting of this application will not be detrimental to persons or property in the neighborhood or to the public welfare since there were not comments received from the Public Works Agency, Traffic Division for any line-of-sight issues and or any concerns as to encroachment in the public right of way. The fence location is required to be approved by the City of Hayward Fire Department.

Summary: The proposed project meets the goals and regulations of the General Plan and Specific Plan except for the fence height and solid material which is the subject of this variance. Based on the findings Planning Staff recommends that the Board approve the variance application.

CONCLUSION

Staff recommends that the West County Board of Zoning Adjustments approve Variance, PLN2023-00042 to allow a 6-foot-tall fence within the required 30-foot front setback where 4-feet maximum and to allow a solid fence within the front yard setback where at least 50% see through is required to be provided, based on drawings marked "Exhibit A" dated April 6, 2023, on file with the Alameda County Planning Department and subject to the following conditions:

1. This permit authorizes an existing 6-foot-tall fence within the 30-foot front setback where 4-feet maximum is allowed and to allow a solid fence within the front yard setback where at least 50% see through is required to be provided, located at 27640 Fairview Ave., Fairview area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085A-6200-15-00, subject to plans marked "Exhibit A" dated April 6, 2023, on file with the Alameda County Planning Department.
2. The fence is permitted to be located 2 feet from the front property line for 95 feet of the property's frontage, then the fence shall jog inward towards the parcel and shall provide a 23-foot and 5-inch setback from the front property line for the driveway access leading to the gates to access the parcel.

3. Fencing elevations shall be in substantial conformance with those shown on “Exhibit A” dated April 6, 2023.
4. The property owner shall meet and maintain compliance with the requirements of the following agencies:
 - A. Alameda County Public Works Agency, Building Inspection Division
 - B. Alameda County Public Works Agency Development Engineering
 - C. Alameda County Code Enforcement
 - D. City of Hayward Fire Department, Fire Prevention
5. Indemnification: The applicant, property owner, and any successor shall defend, indemnify, and hold harmless the County of Alameda (the County) and its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers or employees to attack, set aside, void, or annul. The property owner or successor in interest shall defend, indemnify, and hold harmless Alameda County or its agents, officers, and employees from any claim, action or proceeding against Alameda County or its, agents, officers or employees to attack, set aside, void, or annul. Variance, PLN2023-00042, the finding of exemption from the requirements of the California Environmental Quality Act (under Article 19, Section 15301, Class 1, existing facilities), or any combination thereof. Such indemnification shall include, but not limited to, an award of costs and attorney’s fees incurred by Alameda County in its defense. The County shall promptly notify owner or successor of any such challenge.
6. Responsibility for fees: The applicant, owner, and any successor shall be responsible for payment of all reasonable costs associated with the necessary permit processing or inspections required to verify compliance with the conditions of approval contained in the authorization of the facility, including costs incurred by the County Community Development Agency, the Alameda County Fire Department, the Building Inspection Division, the Public Works Agency or any other applicable Federal, State or County department or agency. Nonpayment of fees may subject the permit to revocation in accordance with the conditions of approval herein and Alameda County Zoning Ordinance Section 17.54.030.
7. Property owner, Permittee, and/or their successors, shall comply with all Federal, State, and Local Laws, Regulations and Alameda County Ordinances.
8. Minor Modifications of this plan may be authorized by the Planning Director upon the receipt of a request from the applicant in writing for such modifications accompanied by drawings sufficient to show the proposed changes. More substantial changes shall require a new Variance.
9. Said Variance shall remain revocable for cause in accordance with Section 17.54.030 of the Alameda County Zoning Ordinance.

ATTACHMENTS

“Exhibit A” Plans

Attachment A Referrals

V-10125 Resolution

Prepared By: Michael Flemming

Reviewed By: Christine Greene, Senior Planner

SIMMONS RESIDENCE

FENCE VARIANCE APPLICATION

PROJECT DESCRIPTION

Variance Application for 6' existing fence to remain within the 30' front yard setback

Property Owner/Applicant Contact"

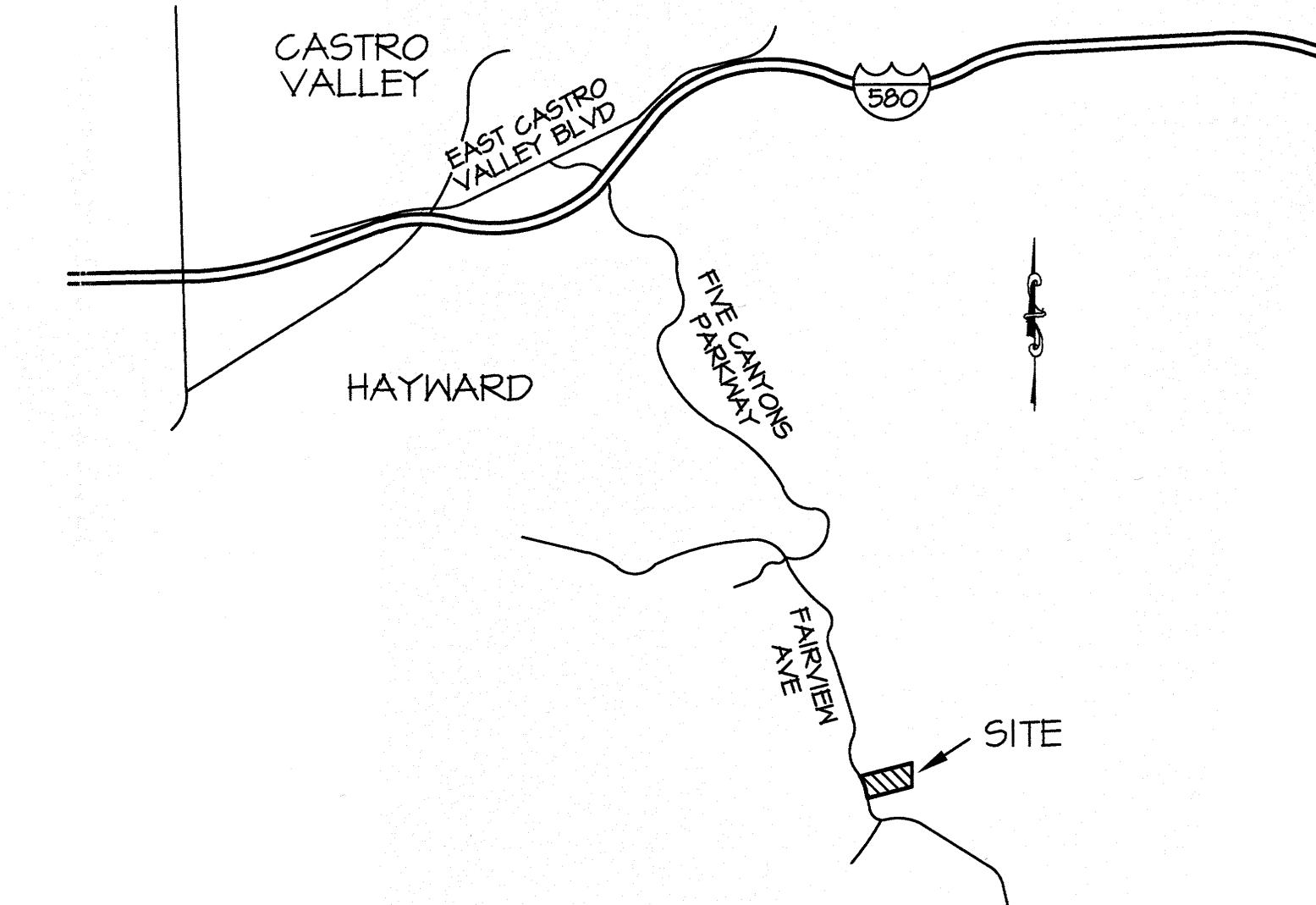
MAX SIMMONS
(510) 414-4056
27640 FAIRVIEW AVE
HAYWARD, CA 94542

Site Information:

APN: 085A-6200-015-00
ZONING: R1-L-BE
USE CODE: 1100
CONSTRUCTION: TYPE V
OCCUPANCY CLASSIFICATION: Group U (Utility/Misc)
STRUCTURE FOOTPRINT: 670SF
SITE AREA: 87,565sf.

Table of Contents

- 1 Project Information
- 2 Site Plan
- 3 Section Detail & Miscellaneous Information
- 4 Photos (Before & After)



VICINITY MAP
NO SCALE

REVISION NOTES
Revised Title Block
Drawings Re-Drafted

****IMPORTANT****

NO CHANGES MADE TO INFORMATION RELEVANT
TO FENCE VARIANCE, FENCE LOCATION, ACCESS,
WRITTEN STATEMENT OR VARIANCE APPLICATION

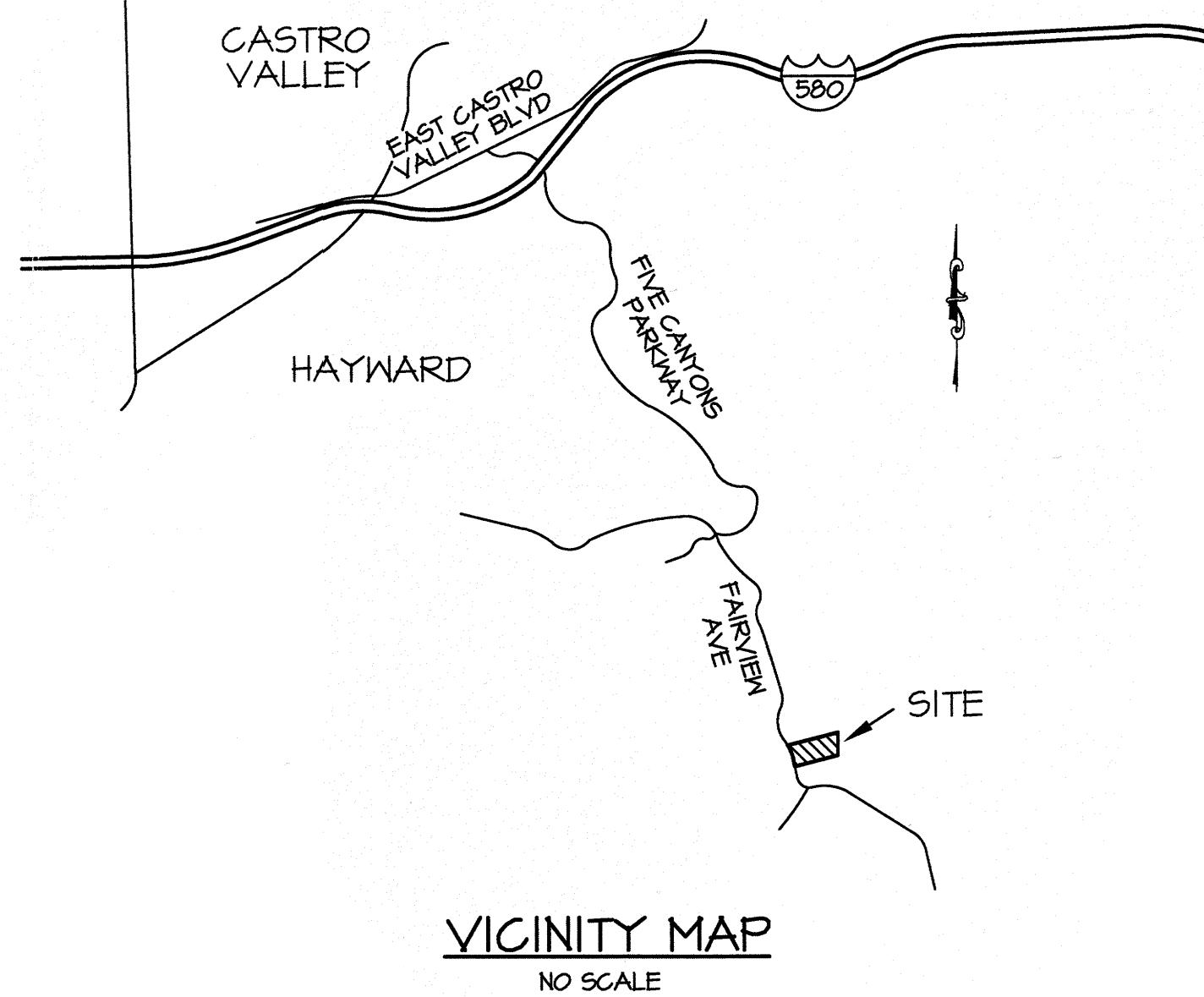
SIMMONS RESIDENCE FENCE VARIANCE APPLICATION
27640 Fairview Ave.
Hayward, CA 94542
APN: 085A-6200-015-00

Date:
7/20/23

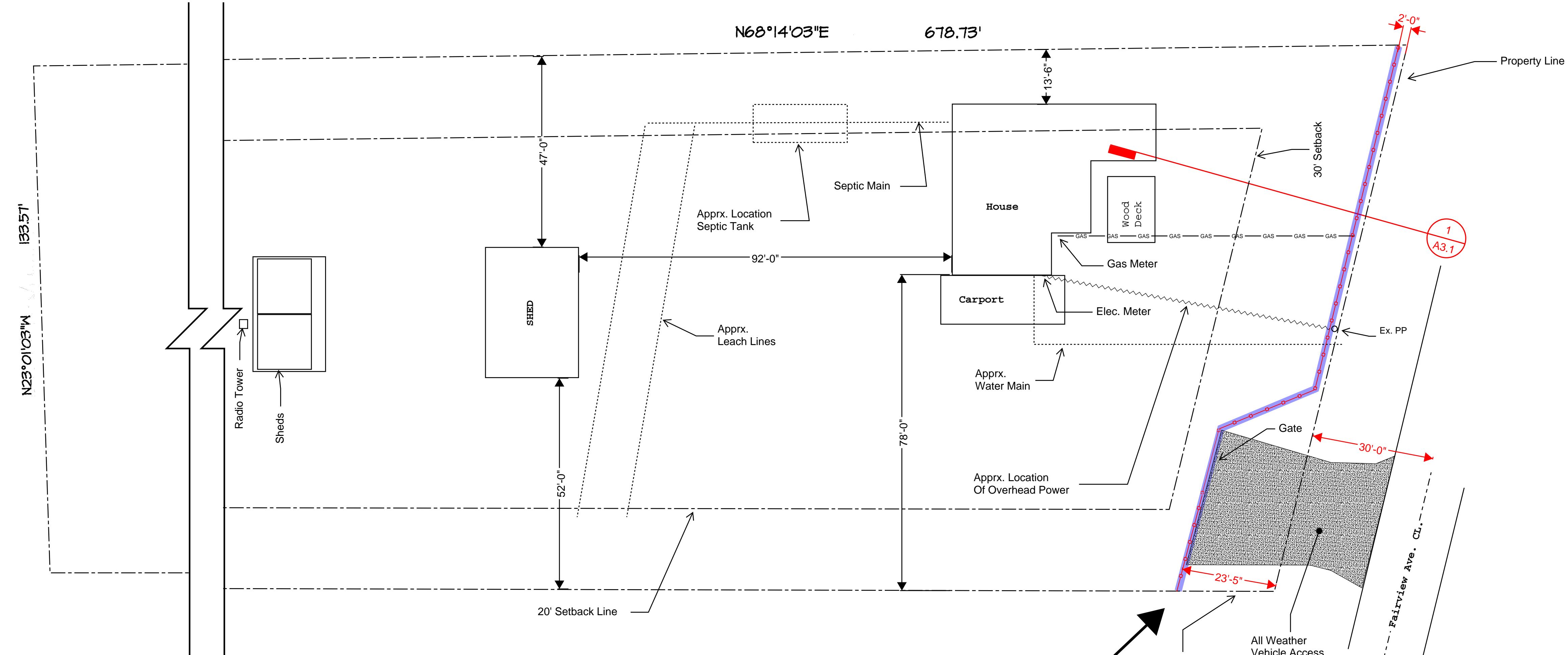
Revisions:
Updated Title Block &
Dwgs. Re-Drafted

Project:
Fence Variance App.

Sheet:
Project Information



APN: 085A-6200-015-00



EXISTING 6' FENCE IN QUESTION
RE: VARIANCE APPLICATION

SEE DETAIL 1 ON 3.1

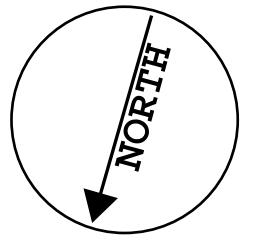
SIMMONS RESIDENCE FENCE VARIANCE APPLICATION
27640 Fairview Ave.
Hayward, CA 94542
APN: 085A-6200-015-00

Date:
7/20/23

Revisions:
Updated Title Block &
Dwgs. Re-Drafted

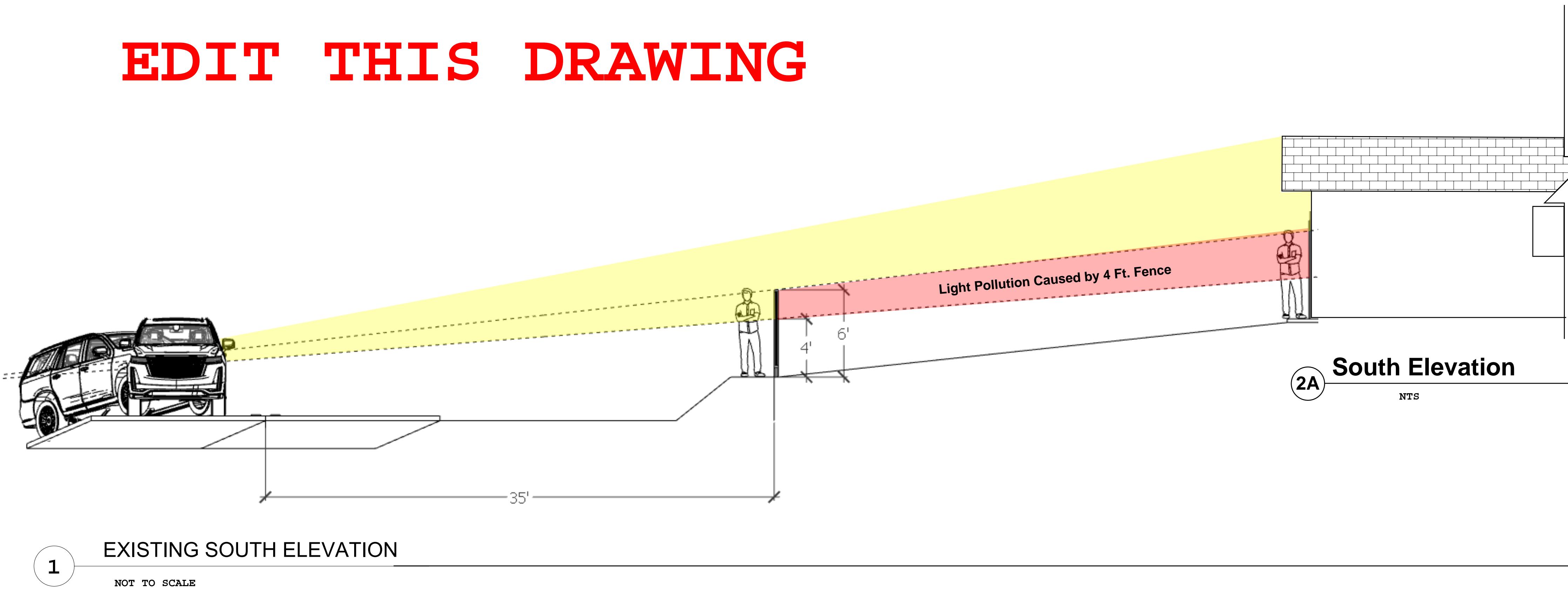
Project:
Fence Variance App.

Sheet:
Site Plan



Scale: 1/16" = 1'-0"

EDIT THIS DRAWING



Alternative Considerations:

1. Lowering Fence to 4 Ft.

Cons:

- a. Lacks Discouragement of Unauthorized Access to Communications Tower & Therefore Reduction of Public Safety
- b. Introduces Invasion of Privacy & Disruption to Family's Well-Being Caused by Headlights Glaring into Living Space

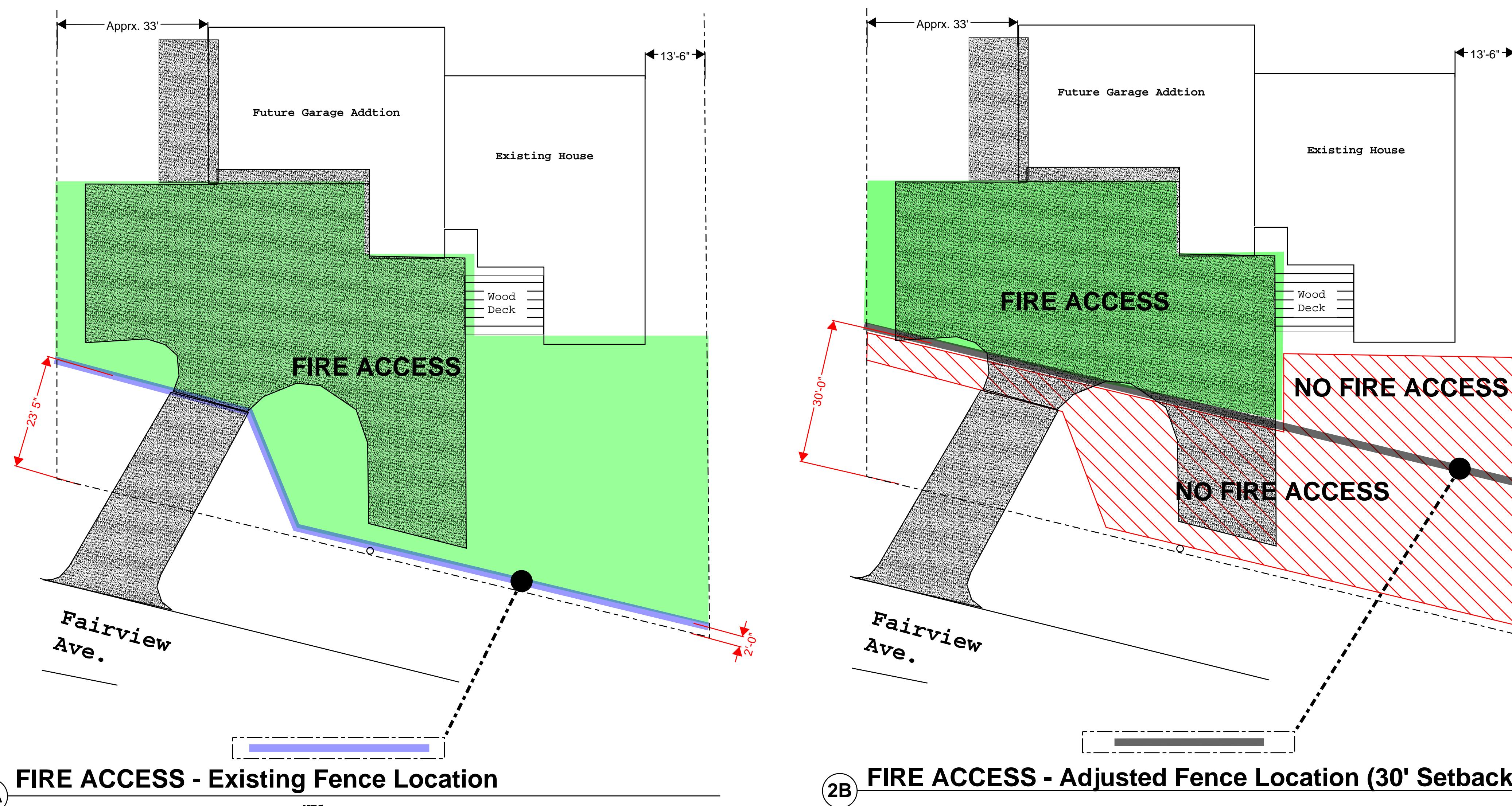
SEE DETAIL 1 ABOVE

2. Moving Fence Inboard 28 Ft. (Meet 30 Ft. Setback)

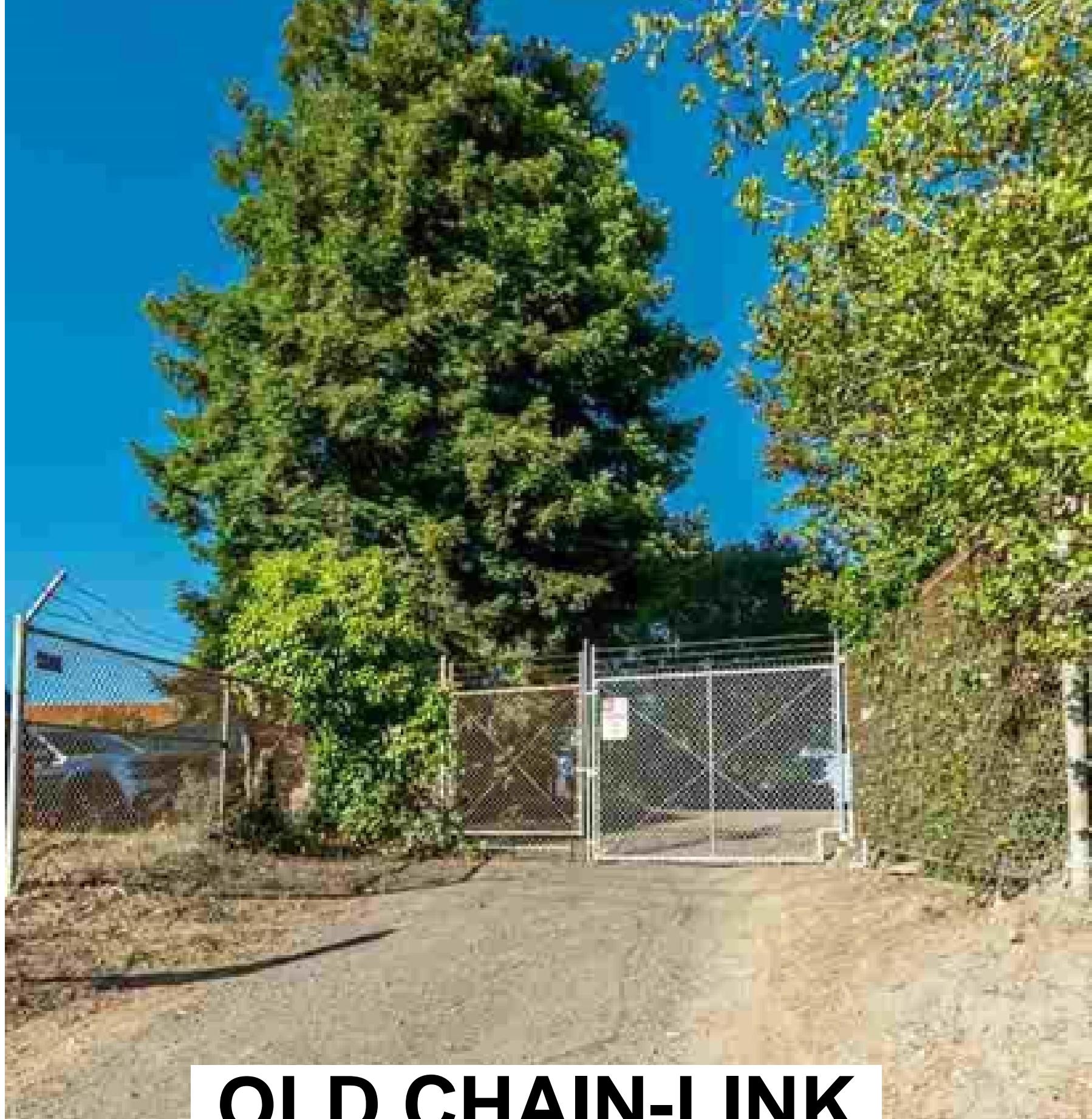
Cons:

- a. Significant Reduction of Fire Apparatus Access & Therefore, Reduction of Public Safety

SEE DETAIL 2A & 2B



SIMMONS RESIDENCE FENCE VARIANCE APPLICATION
27640 Fairview Ave.
Hayward, CA 94542
APN: 085A-6200-015-00



**OLD CHAIN-LINK
SECURITY FENCE**



- NEW FENCE -

SIMMONS RESIDENCE FENCE VARIANCE APPLICATION
27640 Fairview Ave.
Hawthorne, CA 94542
APN: 085A-6200-015-00

Date:
7/20/23

Revisions:
Updated Title Block &
Dwgs. Re-Drafted

Project:
Fence Variance App.

Sheet:
Photos



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

Sandra Rivera
Agency Director

Albert Lopez
Planning Director

224 West Winton Ave
Room 111

Hayward, California
94544-1215

phone
510.670.5400
fax
510.785-8793

www.acgov.org/cda

PROJECT REFFERAL

Date: 04/27/2023

RE: Case No: PLN2023-00042

VAR

Due Date: 05/18/2023

PWA DEV ENG
CITY OF HAYWARD FIRE DEPT.

ALAMEDA CO. ZONING ENFORCEMENT

The following application is referred to you for your information and recommendation:

Variance to allow an existing 6' tall fence within the 30' front setback where 4' max is allowed located at 27640 Fairview.

APN: 085A-6200-015-00

CEQA: 15301, Class 1, Existing Facilities

Receipt of your comments by the indicated due date will enable the inclusion of relevant information in the preparation of a written staff report; otherwise, please initial and date below that your organization, department, or agency has no comment and return this notice by the indicated due date.

Please send a copy of your recommendation(s) to the applicant.

If you have any questions, please contact me at 510-670-5400, or at the email below.

Sincerely,

Michael Flemming
Development Planning Division
michael.flemming@acgov.org

cc: Applicant: Maxwell Simmons maxcsimmons@gmail.com
 Owner: same

ff No Comment – Date 5/4/23

Rosemarie De Leon
5-5209

Additional Referral Comments PLN2023-00042

We have an open case for the fence height (see attached). We are monitoring the outcome of this variance.

Edward J. Labayog

Assistant Planning Director

Code Enforcement Manager

ALAMEDA COUNTY | Community Development Agency

Planning Department

224 W. Winton Avenue, Room 111 • Hayward, CA 94544

Office 510-670-6556 | Fax 510-785-8793

edward.labayog@acgov.org | www.acgov.org/cda

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Hayward Fire:

If the fence is moved to the location noted by 2B, it appears that fire apparatus could only nose into the property and not turnaround. We would have to back all the way back to the street. 2A appears to be sufficient for an emergency vehicle turnaround. Per CFC, any access that is provided shall allow Fire Dept. to park and get a hose line to within 150ft. of all points of the first floor of the residence. Essentially the ability to stretch hose lines around the building. If, from the access road provided we can accomplish that and we do not need to turn around, then the fence can be moved. However, if we

cannot get to a point in the roadway that we can stretch a hose line around the building, then this area needs to be maintained so that we can park closer to the residence and deploy hose around the structure.

Hope this helps. If not, I can discuss with the applicant/designer.

Andrew

CAUTION:This is an external email. Do not click on links or open attachments unless you know the content is safe.

Hello Andrew,

Do you want them to keep their fence where it is or move it 30' back from the property line? See the diagram below.

Thanks,



Michael Flemming

Planner | Planning Department | Alameda County Community Development Agency

224 West Winton Avenue, Suite 111 - Hayward, CA 94544

Office: 510-670-6102 | michael.flemming@acgov.org

General: 510-670-5400 | <https://www.acgov.org/cda/planning/>

General Plan and Zoning information is now available online. Go [here](#) to access the Public Access Map (P.A.M.)

CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended only for the person(s) or entity(ies) to which it is addressed and may contain confidential and /or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

The Planning Department is working normal business hours and remotely in compliance with the Shelter in Place Order issued by the County Public Health Officer

Good Afternoon Michael,

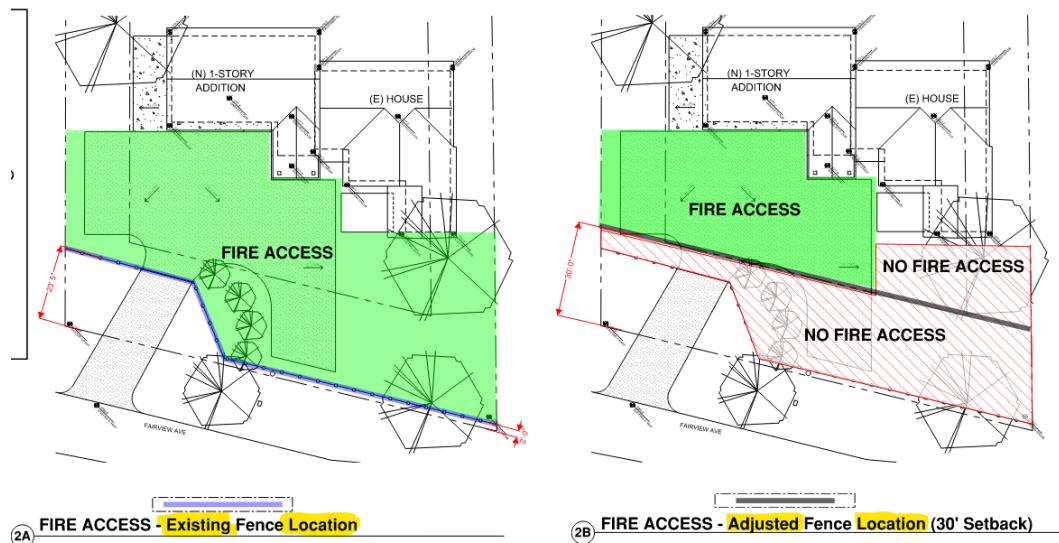
It seems there is some confusion here.

Hayward Fire's comments align with my objective: to keep the fence where it currently is.

Hayward Fire's position reinforces that if I were to rebuild the fence to meet the 30' setback that would limit/eliminate EMV access to the property.

Item No.	Sheet No.	Correction Comments
1.	A3.1	The proposed fire access- Adjusted Fence Location (30' setback) will limit/eliminate required Emergency Vehicle Access to the property. This is not allowed. Revise plan to reflect a fence line that does not block required access.

Here is the side-by-side comparison of the **current fence location (left)** vs the **Adjusted Fence Location (30' Setback) (right)**.



Please confirm if this clears things up.

ALAMEDA COUNTY PLANNING DEPARTMENT

• Development Planning • Housing & Community Development • Policy Planning & Research • Zoning Administration & Enforcement

399 Elmhurst Street, Hayward, CA 94544 (415) 670-5400 FAX (415) 785-8793

March 7, 1991

Lamar Spalding
27647 Fairview Avenue
Hayward, CA 94542-2219

Dear Applicant:

Enclosed is a copy of the resolution which was adopted by the Zoning Administrator at the public hearing held Wednesday, March 6, 1991, which conditionally approved your application for Variance, V-10125.

The resolution is effective on the eleventh day following the action unless within that period there is an appeal filed with the Clerk of the Board, Alameda County Board of Supervisors, Administration Building, 1221 Oak Street, Oakland, California, 94612. This appeal should make reference to the application number and the date of the hearing as well as the reasons for the appeal. An appeal fee of either \$25.00 or \$100.00 is required depending on the type of application; call this office for the specific fee for your application.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Stephen F. Richards
Stephen F. Richards
Zoning Administrator

Enclosure

**RESOLUTION NO. Z-7246 OF
THE ZONING ADMINISTRATOR OF ALAMEDA COUNTY
ADOPTED AT THE HEARING OF MARCH 6, 1991, CONCERNING V-10125**

WHEREAS LAMAR SPALDING has filed for VARIANCE, V-10125, to allow a 6' high fence in the front yard where 4' is the maximum permitted in an R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 ac. M.B.S.A.) District, located at 27647 Fairview Avenue, west side, 300' south of Oakes Drive, Hayward, Assessor's No. 425-500-14.

WHEREAS the Zoning Administrator did hold a public hearing on said application at the hour of 1:30 p.m. on the 6th day of March, 1991, in the Alameda County Public Works Building, Auditorium, 399 Elmhurst Street, Hayward, California; and

WHEREAS it satisfactorily appears from affidavits on file that proper notice of said public hearing was given in all respects as required by law; and

WHEREAS this application has been reviewed in accordance with the provisions of the California Environmental Quality Act and has been found to be categorically exempt; class 5, example h; and

WHEREAS a Pre-Hearing Analysis was submitted recommending the application be conditionally approved; and

WHEREAS the representative appeared at said public hearing and presented testimony in support of the application; and

WHEREAS the Zoning Administrator did hear and consider all said reports, recommendations and testimony as hereinabove set forth; Now Therefore

BE IT RESOLVED that the Zoning Administrator finds that:

- (a) There are special circumstances applicable to the property which deprive the property of privileges enjoyed by other properties in the vicinity under the identical zoning classification as due to the topography and existing circumstances, the subject property is deprived of the privacy otherwise enjoyed under normal circumstances.
- (b) The granting of the application will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone as any other property with similar circumstances would be given similar and equal consideration and the fence does not afford excessive privacy.

RESOLUTION NO. Z-7246
MARCH 6, 1991
PAGE 2

(c) The use will not be detrimental to persons or property in the neighborhood or to the public welfare as pedestrian and vehicular visibility would be maintained.

BE IT FURTHER RESOLVED that the Zoning Administrator does hereby conditionally approve said application as shown by materials labelled Exhibit "C" on file with the Alameda County Planning Department, subject to the following conditions:

1. Said fence shall not exceed 5' in height.

Except as specifically stated above, the land and use of said property shall comply with all provisions of the Alameda County Zoning Ordinance.

Pursuant to Section 8-60.8.1 of the Alameda County Zoning Ordinance said Variance shall be implemented within a term of three (3) years of its issuance or it shall be of no force or effect.

Said Variance shall remain revocable for cause in accordance with Section 8-90.3 of the Alameda County Zoning Ordinance.

STEPHEN F. RICHARDS - ZONING ADMINISTRATOR
ALAMEDA COUNTY PLANNING DEPARTMENT

\zoning\res\res3-6-91.flw

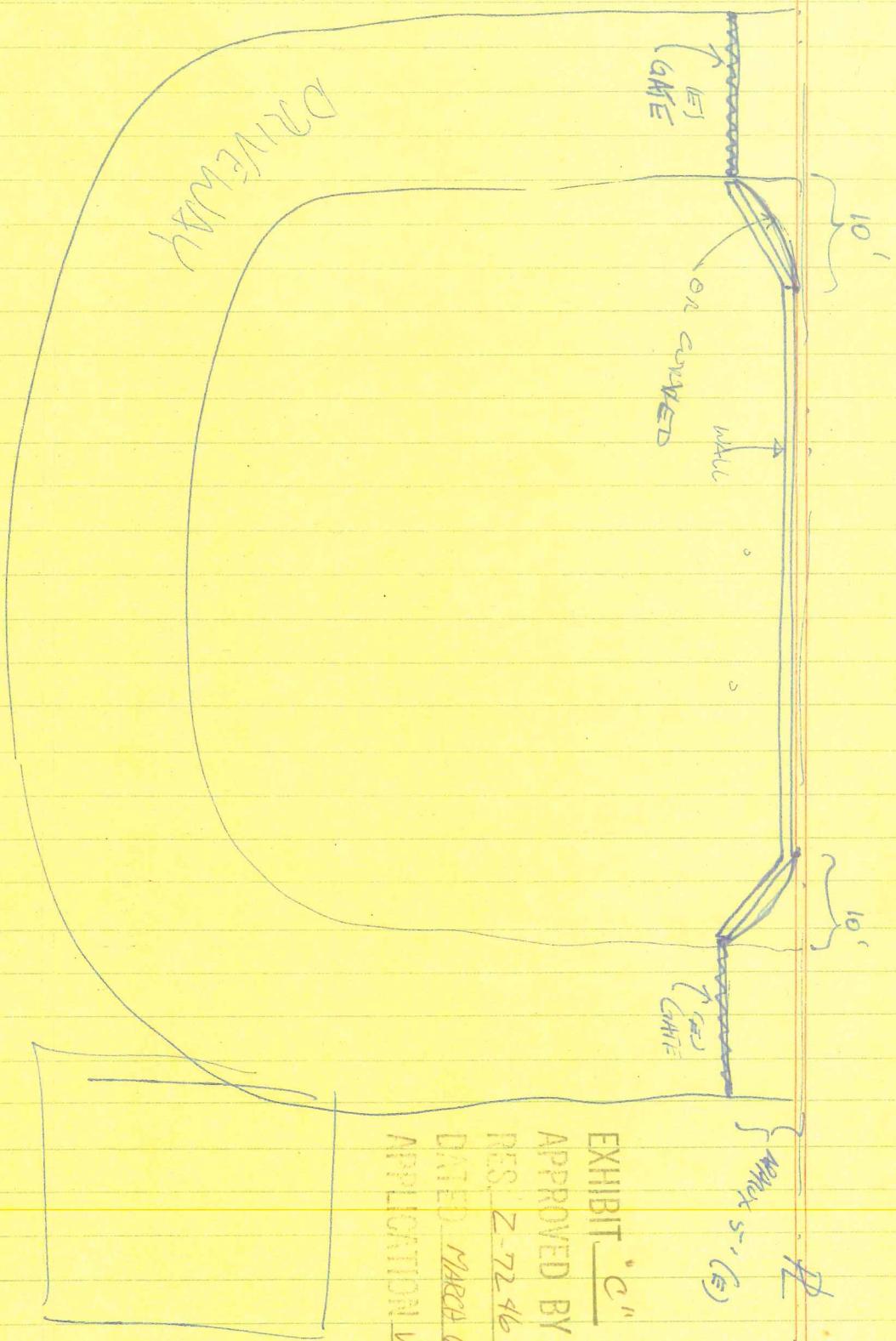


EXHIBIT "C"
APPROVED BY
RES 2-7246
DATED MARCH 6, 1991
APPLICATION V-10125

EXHIBIT "C"

PRE-HEARING ANALYSIS, MARCH 6, 1991
LAMAR SPALDING
VARIANCE, V-10125

Application for VARIANCE, V-10125, to allow a 6' high fence in the front yard where 4' is the maximum permitted in an R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 ac. M.B.S.A.) District, located at 27647 Fairview Avenue, west side, 300' south of Oakes Drive, Hayward, Assessor's No. 425-500-14.

PERTINENT FACTS:

History: May 3, 1975, 1175th Zoning Unit reclassified the subject property and adjacent properties to R-1-L-B-E (Single Family Residence, limited agricultural, 5 acre minimum lot size, 300' median lot width, 30' front yard, 20' side yard) District.

Size of Parcel: Approximately one (1) acre.

Physical Features: The lot is irregular in shape with a median lot width of approximately 250', an average depth around 170' and a street frontage of about 185'. The topography of the property varies from a gentle to steep downslope, from the front towards the rear. The property is developed with a single family dwelling, located approximately 55' from the front property line, a detached garage within the front half of the lot and a barn in the rear.

Adjacent Area: Generally hilly, the area is developed with single family homes on one acre or larger lots.

Environmental Impact: Categorically exempt; class 5, example h.

PLANNING CONSIDERATIONS:

- Applicant is proposing to construct a 6' fence, or wall, along the front property line. The maximum fence height allowed within the required 30' front yard is 4'. The request for a taller fence is mainly for privacy purposes.
- Totaling about 60' in length, the proposed fence runs along the middle one-third of the front property line, directly in front of the dwelling, between two existing driveway entrances. Each of the two driveway entrances has an iron gate, at which the fence would terminate. These gates appear to be set back a few feet from the front property line.
- Applicant argues that, because of the higher street elevation, a 4' fence would have the effect of a lower fence, and would not block the view of pedestrians and motorists from looking straight through the windows of the residence, which sits on a much lower grade. In addition, a 6' fence helps block traffic noise.

VARIANCE, V-10125
MARCH 6, 1991
PAGE 2

PLANNING CONSIDERATIONS, continued:

- Under normal circumstances, front yard fences, up to 4' in height, will not prevent pedestrians or motorists from looking at the front windows of a typical home. The front windows, in this case, are at a much lower grade from street level. Although there is some difference in grade between the surface of the road and the abutting property line, along which the fence is proposed, it does not appear to be significant enough to justify a 6' fence.

TENTATIVE FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING:

1. Are there special circumstances applicable to the property which deprive the property of privileges enjoyed by other property in the vicinity under the identical zoning classification?

Yes. Due to the topography and existing circumstances, the subject property is deprived of the privacy otherwise enjoyed under normal circumstances.

2. Will the granting of the application constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone?

No. Any other property with similar circumstances would be given similar and equal consideration.

3. Will the use be detrimental to persons or property in the neighborhood or to the public welfare?

No. As conditioned herein, the proposed fence would not be detrimental to the public welfare.

PRE-HEARING RECOMMENDATION:

Approval subject to plans marked "Exhibit B" on file with the Planning Department and the following conditions:

1. Said fence shall not exceed 5' in height.
2. Said fence shall be aligned with existing gates so as to have a setback from the property line no less than that of the gates.

ALAMEDA COUNTY PLANNING DEPARTMENT

• Development Planning • Housing & Community Development • Policy Planning & Research • Zoning Administration & Enforcement

399 Elmhurst Street, Hayward, CA 94544 (415) 670-5400 FAX (415) 785-8793

Subject: V-10125

Hearing Date: March 6, 1991

Time: 1:30 p.m.

Location: Alameda County Public Works Building
Auditorium, First Floor
399 Elmhurst Street
Hayward, California

Lamar Spalding
27647 Fairview Avenue
Hayward, CA 94542-2219

Dear Applicant:

The Zoning Administrator will hold a public hearing on your application at the date, time, and location shown above. It is requested that you or your representative be present at said hearing.

At the conclusion of testimony, the application may be approved subject to such conditions and guarantees as may be deemed to be necessary, or the application may be denied. A resolution granting an application may be exercised on the eleventh day following the action unless a notice of appeal has been filed with the Board of Supervisors.

A copy of the resolution granting or denying the application will be transmitted to you after the public hearing.

If you have any questions, please contact me at the above number.

Very truly yours,

Walid Saba, W

Walid Saba, Planner II

ALAMEDA COUNTY PLANNING DEPARTMENT

• Development Planning • Housing & Community Development • Policy Planning & Research • Zoning Administration & Enforcement

399 Elmhurst Street, Hayward, CA 94544 (415) 670-5400 FAX (415) 785-8793

RE: V-10125

DATE: February 7, 1991

DUE DATE: February 15, 1991

HEARING DATE: March 6, 1991

Building Inspection
Fairview Community Club
B. PRESTON

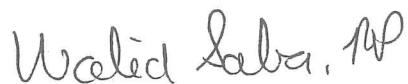
The attached application is referred to you for your information and recommendations.

Receipt of your comments by the indicated due date will enable their inclusion in this written report; otherwise, please comment by the indicated hearing date.

The Zoning Administrator public hearings are held Wednesdays at 1:30 p.m. in the County of Alameda Public Works Building, Auditorium, 399 Elmhurst Street, Hayward, California.

If you have any questions, please contact me at the above number.

Very truly yours,



Walid Saba, Planner II

Attachments

NOTICE OF PUBLIC HEARING

RELATING TO ZONING REGULATIONS

FILE COPY

APPLICANT'S NAME: Lamar Spalding

APPLICATION FOR: VARIANCE

NUMBER: V-10125

APPLICANT'S

REQUEST: TO ALLOW A 6' HIGH FENCE IN THE FRONT YARD WHERE 4' IS THE
MAXIMUM

PRESENT ZONING: R-1-L-B-E

SINGLE FAMILY RESIDENCE, LIMITED AGRICULTURAL USES, 5 ACRE
M.B.S.A., 300' M.L.W., 30' FRONT YARD, 20' SIDE YARD

LOCATION OF PROPERTY: 27647 FAIRVIEW AVENUE, WEST SIDE,
300FEET S OF THE INTERSECTION WITH
OAKES DRIVE, HAYWARD
ASSESSOR'S NO.: 425-0500-014-00

PUBLIC HEARING

DAY: WEDNESDAY

DATE: March 6, 1991

TIME: 1:30 P.M.

PLACE: ALAMEDA COUNTY PUBLIC WORKS BUILDING, AUDITORIUM
399 ELMHURST STREET
HAYWARD, CALIFORNIA

The Public Works Agency Building, located at 399 Elmhurst Street, Hayward, is wheelchair accessible. If you need other accommodations, call Pat Brimer (voice) 670-5459 or (TDD) 834-6754; advance notice is requested.

Any person interested may attend this hearing and be heard concerning this matter.

The application and accompanying maps or exhibits are on file at the office of the Planning Department, 399 Elmhurst Street, Hayward, California, and are available for review, or you may telephone 670-5400 for additional information.

If you challenge the subject application in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Administrator at, or prior to, the public hearing.

ZONING ADMINISTRATOR
COUNTY OF ALAMEDA

PLANNING DEPARTMENT MAILING LIST FROM FILE #MTC125

ASSR	BOOK	PAGE	PARCEL	SUE ⁺	REGISTERED PARCEL	PARCEL	REGISTERED PARCEL OWNERSHIP NAME	CARE-OF-NAME	STATUS	ADDRESS
	425	500	14	0	SPALDING LAMAR & JEWELL J			PATRICK RILEY	27647	FAIRVIEW AV
	425	500	10	0	ESPICHA RICHARD A TR				4187	PICEA CT
	425	500	11	0	SCHOENFIELD MIKSA				4207	PICEA CT
	425	500	12	0	ANTONINI ALFRED J				27439	FAIRVIEW AV
	425	500	13	0	GADSON FRANKLIN L & AUDREY				27801	FAIRVIEW AV
	425	500	15	0	HOPKINS CORDIA M & SMITH VERA A & ALLEN E				4192	PICEA CT
	425	500	16	0	PALLAS EUGENE & AMY A				27364	FAIRVIEW AV
	425	280	15	0	KOPACZ STANLEY F & DEVILLESS SHERI L				27398	FAIRVIEW AV
	425	280	16	0	CLAY EDWARD M				27440	FAIRVIEW AV
	425	280	11	0	RAJAH RATNASOTHY S & ALICIA V				27480	FAIRVIEW AV
	085A	6200	9	0					27610	FAIRVIEW AV
	085A	6200	10	0	GRUBBE MARIE E				27626	FAIRVIEW AV
	085A	6200	10	0	HONG WILLIE K & ANGELA D				27640	FAIRVIEW AV
	085A	6200	11	0	GUSTAFSON RUSSELL J & AUDREY M				27640	FAIRVIEW AV
	085A	6200	12	0	PATTI ANTHONY J & JOYCE A				27660	FAIRVIEW AV
	085A	6200	13	0	CITY OF HAYWARD				27794	FAIRVIEW AV
	085A	6200	14	0						
	085A	6200	14	50						
	085A	6200	15	0	GORDON WALTER D					
	085A	6200	16	0	ZIEBARTH A C & DARYLE					
	085A	6200	16	0	ZIEBARTH A C & DARYLE					
	085A	6200	17	0	WARICH FRANK JR					

APPLICATION INTAKE/SUMMARY

Application: V 10125

Date Rcvd: 02/07/91 Fee Rcvd: 75.00 RecBy: RT

AP1: 425 -0500-014-00

AP2: - - -

AP3: - - -

AP4: - - -

Location: 27647 Fairview Avenue

Located: W Side 300f S of Oakes Drive

Hayward 94542

District: OT Census Tract: 4364.00

Request: to allow a 6' high fence in the front yard where 4' is the maximum

Zoning: R-1-L-B-E

Descript.: Single Family Residence, Limited Agricultural Uses, 5 Acre M.B.S.A., 300' M.L.W., 30' Front Yard, 20' Side Yard

R-O-W: 60 FWL: SBL: Site area: 43,560 (ft) 1.00 (ac)

Concapp1: Concapp2: History1: History2:

APPLICANT: Lamar Spalding

Address: 27647 Fairview Avenue

City: Hayward, CA 94542-2219

Phone: (415)889-5816

OWNER: Lamar Spalding

Address: 27647 Fairview Avenue

City: Hayward, CA 94542-2219

Phone: (415)889-5816

LESSEE:

Address:

City:

Phone: () -

CONTACT:

Address:

City:

Phone: () -

ARCH/ENGR:

Address:

City:

Phone: () -

Printed: 02/07/91

Alameda County Planning Department

2A
5/25/94
6/19/95
7/7/95

COUNTY OF ALAMEDA

2/7/51 \$45.00

V-10125

APPLICATION FOR VARIANCE

I, LAMAR SPACOING, do make application for a VARIANCE, of the provisions of the Alameda County Zoning Ordinance to permit: (Describe in detail using separate pages if necessary.)

TO ALLOW A 6' HIGH WALL WHERE A 4' HIGH WALL IS ALLOWED

at the following address(es): _____
(street) _____ (city or post office) _____ (zip) _____

and shown as Alameda
County Assessor's Parcel(s) 425 - 500 - 14
(map) _____ (block) _____ (parcel) _____

NOTE: The law requires that affirmative findings of *fact* be made in each of the following if your application is to be granted:

1. There are special circumstances applicable to this property which deprive the property of privileges enjoyed by other property in the vicinity under the identical zoning classification. (Possible disadvantages such as size, shape, topography, location or surroundings as compared to other property in the vicinity and zone should be included.)
2. The granting of this application will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone. (The granting of this application will not be a special privilege to you considering other properties are subject to the strict application of the provisions of the Zoning Ordinance).
3. Granting this application will not be detrimental to persons or property in the neighborhood or to the public welfare. (Why?)

Considering the above findings that must be made, this application is supported by the following facts:

SEE ATTACHMENT

I attest under penalty of perjury to the truth and correctness of all the facts, exhibits, maps and attachments presented with and made a part of this application.

Signature Lamar Appling (land owner) Applicant Date 2/7/91

Mailing Address 27647 FAIRVIEW AVE (street) Phone 415-889-5816
HAYWARD (city) CA 94542 (zip)

Signature _____ Date _____
(lessee or option holder)

Mailing Address _____ Phone _____
(street)
(city) (zip)

Also Notify _____ Phone _____
(representative, etc.)

Mailing Address _____
(street)
(city) (zip)

PROCEDURE FOR FILING APPLICATION FOR VARIANCE:

1. Completely fill out application for Variance. Please print or type.
2. File the following material:
 - (a) One copy of the application;
 - (b) Ten (10) copies of site plan;
 - (1) Site plan shall include all applicable information required on "typical plot plan" instruction sheet.
 - (c) Filing fee of:
 - (1) \$75.00 if property is located within an R-1 (Single Family Residential) Zoning District;
 - (2) \$150.00 if property is located within any other Zoning District;

Check to be made payable to: "Treasurer, County of Alameda".

The above material is to be filed with the Alameda County Planning Department, Public Works Building, 399 Elmhurst Street, Hayward, California, 94544. Incomplete applications may be returned.

3. Applicant will be notified of date of public hearing at which he or his representative should be present.
4. Applicant will be notified by letter of the action taken on the application.

ATTACHMENT TO
APPLICATION FOR VARIANCE
FILED BY LAMAR & JEWELL SPALDING

1. SPECIAL CIRCUMSTANCES

The topography of this lot, ^{is that it} slopes down hill from the street it fronts, Fairview Ave. As a result, a four foot high fence located within the property/ ^{below the street} easement line on this slope, ^{so} has the effect of a fence lower than four feet. To adjust for this differential, a higher fence is necessary.

This house is distinguished from others in the neighborhood because it is located close enough to the street ^{so} that travellers and pedestrians have a direct view into the house due to the slope of the hill. Other homes along Fairview which have this same topography are located significantly further from the street than this applicant. or it is impossible to look directly into the homes.

Lastly, the house is located along Fairview Ave. ^{on} which traffic is ~~potentially~~ estimated to potentially increase tenfold
et cont'd.

Attachment
Lamar & Jewell
Spalding
Page 2

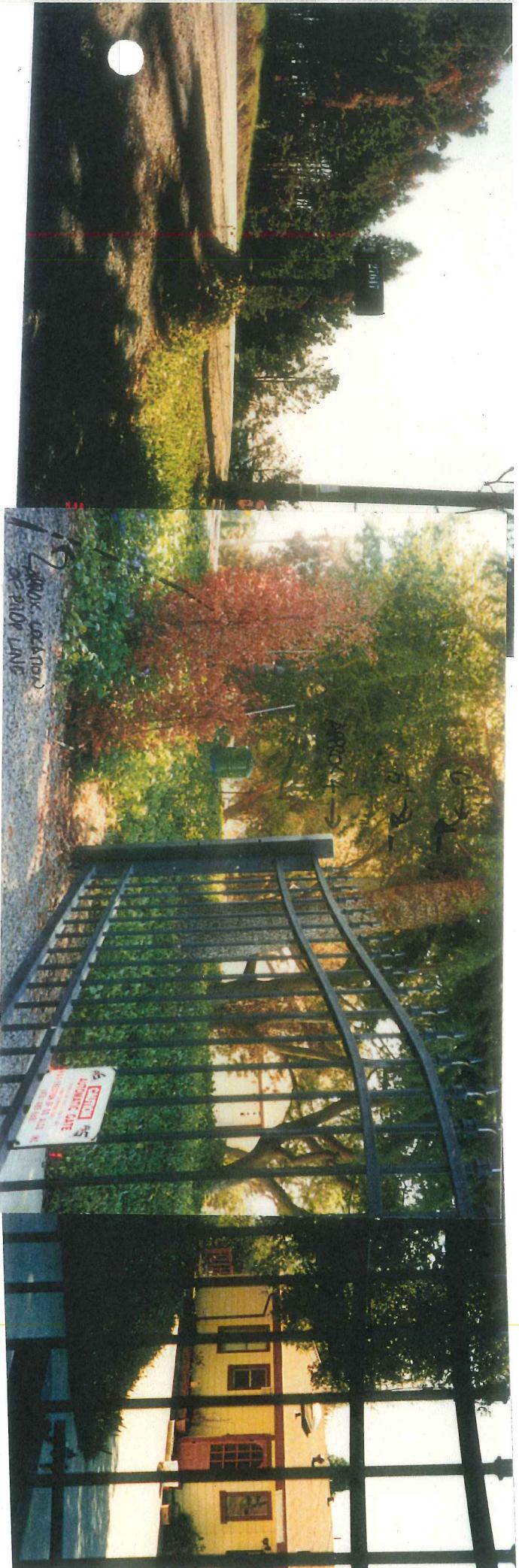
or more due to development within Hayward. No other neighborhood street in the area is expected to have as great a percentage of increase of traffic.

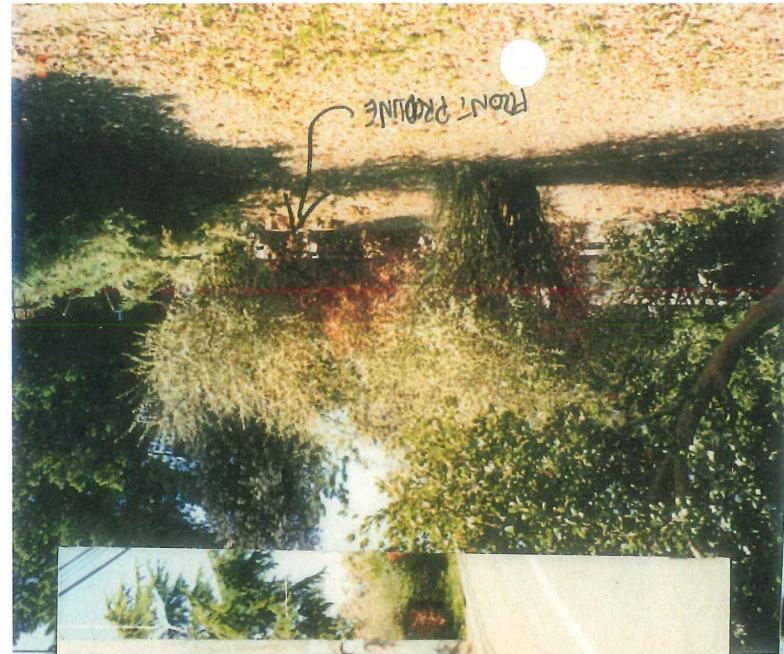
2. SPECIAL PRIVILEGES

No special privileges will be created by granting this application because of the special ~~or~~ circumstances described above which distinguish this property.

3. DETIMENT TO NEIGHBORHOOD / PUBLIC WELFARE

No detriment to persons or property in the neighborhood or to public welfare will be created because it will not interfere with any public easement, driver's line of ~~visi~~ vision or create any safety hazard of any sort.



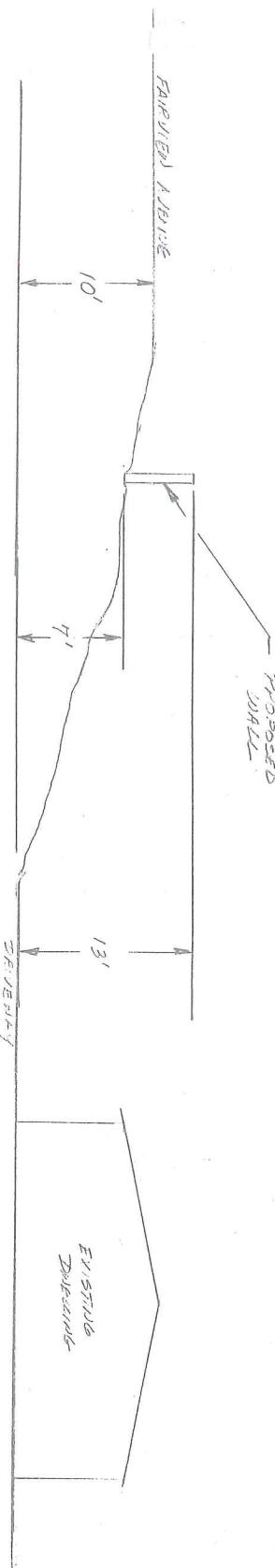


V-10125

FRONT PAGE



VIEW OF DWELLING AS SEEN FROM $\frac{1}{2}$ OF ROAD



SECTION - SCALE 1" = 10'

27647 FAIRVIEW AVE

425 - 500-14

PRINT A
FEB 08 1991

October 30th, 2023

Alameda County Board of Supervisors

Re: PLN2023-00042 / Max Simmons / Fence Variance / 27640 Fairview Ave.

Dear Members of the Board,

My name is James Murry, and I reside at 27480 Fairview, just two doors down from Mr. Max Simmons at 27640 Fairview Ave., Hayward, CA. I am reaching out to offer my perspective regarding Max's variance application, which, as I understand, seeks to gain approval for retaining his 6-foot-tall fence within the 30' front yard setback despite regulations that ordinarily permit only a 4-foot height.

From my vantage point as both a neighbor and resident of this community, I want to express my support for the approval of this variance. Aesthetically, Max's fence is not only built using high-quality materials, but it also significantly enhances the overall appearance of our neighborhood. It seamlessly aligns with the rural charm of Fairview and, in my opinion, even augments the overall ambiance of the area. It is something that I have admired and even considered adding to my property, if possible, sometime in the future.

Beyond aesthetics, there are practical benefits to granting this variance. One of the unique characteristics of Max's property is its orientation relative to Fairview Avenue. Before the fence's installation, headlights from passing vehicles, especially those ascending the hill from the north, would shine directly into his primary living quarters. This fence effectively remedies that inconvenience, ensuring greater comfort and privacy for Max and his family.

Furthermore, as a neighboring resident who frequents Fairview Ave., I can assertively state that Max's fence has in no way created any obstruction or impediment for me or other neighbors. It does not obscure any significant views, nor does it introduce any hazardous blind spots when accessing the avenue. I have also noticed once this has been brought to my attention that a number of other residents on Fairview may have a variance as well.

Given the circumstances, I believe that the unique nature of Max's property justifies the variance he seeks. While the ordinance might specify a particular fence height, I am confident that approval in this case would not only solve the intricacies of Max's property but also serve the broader interests of the community. This fence enhances the neighborhood aesthetics and ensures safety, aligning with the ordinance's objectives.

Thank you for your consideration, and I trust in the Board's judgment to act in the best interest of the Fairview neighborhood.

Sincerely,

James Murry

27480 Fairview Avenue

Hayward, CA 94542

11/29/2023

Re: PLN2023-00042 - Fence Variance App 27640 Fairview Ave., Hayward, CA

Board of Supervisors,

I am reaching out to provide additional context and address key concerns regarding the fence variance application for my property at 27640 Fairview Ave., Hayward, CA. This application, which has already received favorable consideration from the Fairview Municipal Advisory Council (MAC), is now before you due to specific circumstances during the West County Board of Zoning Adjustments (WCBZA) vote.

1. **Endorsement by Fairview MAC:** The Fairview MAC, deeply knowledgeable and connected with the Fairview area, has approved this variance application. Their endorsement signifies a recognition of the unique circumstances of my property and the appropriateness of the proposed solution within the local context.
2. **Voting Dynamics at WCBZA:** The majority of WCBZA voting members voted in favor of this application. However, due to the absence of one member and the recusal of another, this matter has been escalated to your board. I trust that this additional layer of scrutiny will only reinforce the validity of my request.
3. **Neighborly Support and Safety Considerations:**
 - **Neighbor Endorsements:** My proactive outreach to neighbors has garnered verbal support from two, including one immediate neighbor. Additionally, one has provided written support, with expectations of further written endorsements by our meeting.
 - **Potential Safety Issues:** Conversations with neighbors have confirmed that there are no perceived safety issues relating to the fence. It is worth noting that a majority of the fence is setback ~20ft from the street, and the remainder is setback more than 40' from the street, allowing ample visibility for ingress and egress of neighboring properties (see **Figure 1** for reference).
4. **Concerns Addressed by WCBZA:**
 - **Topography and Privacy:** The unique topographical features of my property necessitate a higher fence for privacy reasons, as vehicle headlights intrude into our living spaces. This has been thoroughly articulated in the document "2023.07.21_27640 Fairview_Drawings_Fence Variance Application."
 - **Potential Safety Issues:** Addressed above.
5. **Misunderstanding Regarding Fence Construction:** There have been suggestions that I intentionally violated regulations in constructing the fence. I assure you this was not the case. The fence was erected by a professional contractor, who was obligated to comply with all relevant rules and regulations. While I have chosen not to pursue legal action against the contractor, they have, in a gesture of goodwill, agreed to cover the cost of this variance application.

In conclusion, the application before you is backed by community support, addresses unique property challenges as described in my initial variance application written statement, and aligns with local aesthetics and safety considerations. The Fairview MAC's approval and the majority support from WCBZA members underscore its merit. I am confident that this additional context will aid in your decision-making process.

Thank you for your attention to this important matter.

Sincerely,



Max Simmons Owner, 27640 Fairview Ave., Hayward, CA 94542

11/29/2023

FIGURE 1

Neighbor to the North



Neighbor to the South



October 16, 2023

To: Supervisors Miley, Haubert, Marquez, Tam and Carson

From: Fran Krug, Fairview Resident

RE: Simmons Variance PLN2023-00042

I am writing to urge you to approve Variance PLN2023-00042. The consistent support for this variance throughout the approval process is noteworthy:

- 1. The Alameda County Planning Staff recommended approval.**
- 2. The Fairview MAC voted 4 - 1 to recommend approval.**
- 3. Neighbors spoke in support of the variance at the MAC and WBZA hearings.**
- 4. No neighbors spoke in opposition to the variance at either hearing.**

Due to unusual circumstances at the last WBZA meeting, most notably the Chair's excused absence and another member's recusal, only three members were available to vote. According to the WBZA Rules and Procedures, "Every action by the Board shall require the affirmative vote of not less than three Board members.". The WBZA was not able to garner three votes for the motion to approve the variance (two members voted to approve and 1 did not). There was no motion made nor vote taken to deny the variance.

The Castle Homes area of Fairview, where the property for this variance is located, is zoned R-1-L-BE - minimum lot size of 5 acres. The rugged terrain is more rural in nature than many areas of Fairview.

The 4-foot height limit for front yard fences is an important element for many neighborhoods of Fairview but not for all areas. For that reason, property owners have the ability to apply for a variance when circumstances are warranted. There are a variety of reasons to allow fences higher than 4 feet in this rural and hilly terrain, especially on a very busy winding road.

Since the opening of Five Canyons Parkway, Fairview Avenue has evolved into a major thoroughfare for traffic. The property for which this variance is being requested is located on a 1.2 mile stretch of Fairview Avenue, from the round-about at Five Canyons to the round-about at Woodstock, with homes on both sides of the street. I did an informal survey of this section and estimate there are about 32 homes that can be seen from the street. Approximately 10 of these have fences or walls that appear to exceed the 4-foot height limit. One house has what looks like a 12-15 foot retaining wall with a fence on top. The house directly across the street from the subject property has a WBZA-approved variance for a wall exceeding 4 feet in height.

Mr. Simmons has compelling reasons for needing this extra 2 feet of fence. His property is situated in such a unique fashion that headlights from the traffic on Fairview beam into his home. A 4-foot fence will not block the lights. The 6-foot fence does the job, is attractive and fits in with the rural nature of our neighborhood.

Dear Albert,

I am writing to you regarding Max Simmons' application for a variance which was on the 9/27/23 WBZA agenda. Following the meeting, Mr. Simmons received a letter from the Planning Department stating that his "application for a Variance PLN2023-00042 has been denied by the West County Board of Zoning Adjustments on Wednesday, September 27, 2023".

I attended the meeting via Zoom and also listened to the audio of the meeting several times. I do not believe the denial statement quoted above describes completely enough the action/non-action taken at the meeting. There was no vote taken by the WBZA to deny the variance.

According to the WBZA Rules of Procedure, Article V, Conduct of Meeting Section 3: "Every action by the Board shall require the affirmative vote of not less than three Board members. If a situation develops where three affirmative votes on a motion to recommend approval, conditional approval, or denial are not attainable, the matter shall be transmitted to the Board of Supervisors with an explanation of the circumstances that led to the vote."

Due to a unusual set of circumstances, most notably the fact that there were only 3 members available to vote on this matter, a vote to approve or deny the variance according to the WBZA Rules and Procedures, had to be unanimous rather than a majority of the quorum, as prescribed by the Brown Act. The WBZA was not able to take any affirmative action on the variance. There were not three votes for either of the motions put on the floor. One motion was to approve the Variance and the other was to postpone the item to a future meeting. At no time, was there a motion put forward to deny the variance.

When the motion to approve the Variance failed in a 2 - 1 vote due to the Rules and Procedure of the WBZA, there seemed to be some confusion as how to proceed. The next motion put forward was to postpone the item. That motion was rescinded after discussion and clarification with staff and County Counsel explaining that all three members would have to vote in favor to continue the item to the next meeting. Member Santos asked if putting his original motion back on the floor resulted in the same 2 to 1 vote, would the matter automatically go to the Board of Supervisors. County Counsel clarified that if it failed at a 2 - 1 vote, it

would not be approved and it would go to the Board of Supervisors. At that point, Mr. Santos remade the original motion. A majority of the members of the WBZA voted in favor and one denied.

It seems to me the language in the denial letter to Mr. Simmons, "the application for a Variance has been denied", could be misleading if forwarded to the Board of Supervisors without a thorough explanation. My concern is that the "explanation of the circumstances that led to the vote" be a complete description of the circumstances and specifically what motions were made and the resulting vote. I think it would be unfair to Mr. Simmons if the explanation of the circumstances gave the Board of Supervisors the impression that there was a motion and an actual vote to deny the variance, especially in light of the consistent support for the variance in the earlier steps of the approval process.

In the explanation of circumstances to the Board of Supervisors, I think it is important to include the following background information:

*The Alameda County Planning Staff recommended approval of the Variance.

*The Fairview Municipal Advisory Council voted 4-1 to recommend approval of the Variance.

*Neighbors spoke in support of the Variance at the Fairview MAC and the WBZA meetings. No neighbors spoke in opposition.

My hope is that you and staff will consider these concerns in your preparation of the "explanation of circumstances that led to the vote" to be transmitted to the Board of Supervisors.

Sincerely,

Fran Krug

Letter of Appeal

Maxwell Simmons
27640 Fairview Ave.
Hayward, CA 94542

Date: September 29, 2023

Michael Flemming
Planner

Albert Lopez
Planning Director

Alameda County Community Development Agency
224 West Winton Avenue, Suite 111 - Hayward, CA 94544

Dear Michael Flemming & Albert Lopez,

I am writing to formally appeal the decision made by the West County Board of Zoning Adjustments regarding my application for a Variance PLN2023-00042, which was denied on Wednesday, September 27, 2023.

I would like to understand better the appeal process and the necessary steps I need to take to ensure my appeal is appropriately considered. I am in the process of preparing a comprehensive letter and document package that I intend to present to the Board of Supervisors. This package will detail the reasons for my appeal and provide additional context and information that I believe will be crucial for a reconsideration of the decision.

It is worth noting that during the voting process, the decision was close, with a 2-1 vote in **favor** of approving the variance. However, one board member had to recuse themselves due to being a neighbor, and another was not in attendance. I believe that by considering the entirety of the context and facts, there's a possibility of a different outcome.

I kindly request guidance on how to proceed with my appeal and any additional information or documentation that may be required from my end.

Thank you for your attention to this matter. I look forward to your prompt response.

Sincerely,

Maxwell Simmons

October 19, 2023

To: Alameda County Board of Supervisors

Dear Board Members,

I absolutely support Mr. Simmons' fence variance, PLN2023-00042. This variance was recommended for approval by the Planning Department, 4 of 5 Fairview MAC members approved it, 2 of 3 WBZA members supported it and members of the Fairview community who spoke at the MAC and WBZA hearings spoke in support of the variance.

This variance would not be before you and would definitely not constitute an appeal had it not been for an unusual rule in the WBZA's Bylaws which require all three members to vote in favor when there are only three voting members at a hearing, unlike the typical majority rule. This variance was properly vetted through the process and Mr. Simmons received community support.

The fence is well done (one of the better ones in our area), is in harmony with the aesthetic beauty of Fairview and is necessary to block car headlights from shining into Mr. Simmons' home. There are many other fences in the Castle Homes area of Fairview that exceed the 4-foot fence height limit, some approved by variance. This fence warrants approval.

Thank you for the opportunity to support this variance.

Sincerely,
Brenda Clark
Fairview Resident