

Planning Commission Staff Report

December 14, 2011
Item 6.c.

SUBJECT: Appeal of P11-0664

APPLICANT: Todd Deike

APPELLANT: Carl Pretzel

PURPOSE: Appeal of the Zoning Administrator's Approval of an Administrative Design Review application to retain the existing fencing along the rear and side yards, measuring up to seven feet, one inch tall.

GENERAL PLAN: Medium Density Residential

ZONING: R-1-6,500 (One-Family Residential) District

LOCATION: 3642 Carlsbad Way

EXHIBITS:

- A: Recommended Conditions of Approval
- B: Site Plan and Fencing Details dated "Received, April 18, 2011"
- C: Zoning Administrator Approval letter including the Conditions of Approval for P11-0664
- D: Zoning Administrator Hearing Meeting Minutes of October 4, 2011
- E: Mrs. Fink's Statement, dated October 12, 2011
- F: Mr. Pretzel's Appeal Statement (Appeal Application)
- G: Fencing Height Diagram
- H: Fencing Photos
- I: Z-98-211 Staff Report, dated Oct. 19, 1998
- J: Z-98-211 Approval Letter, dated November 5, 1998
- K: Location Map
- L: Noticing Map

I. BACKGROUND

In 1998 new fencing was approved for the rear property line with specific conditions of approval (Exhibits I and J). That fencing was not built. In August of 2011, Mr. Deike filed an application for approval for five overheight fences - a recently installed fence along the back of Mr. Deike's property, overheight fencing along the right and left side property lines that was install approximately eight years ago, and for two overheight fencing located within the side yards of the subject site. All of the said fencing was installed without benefit of City approval prior to their installations.

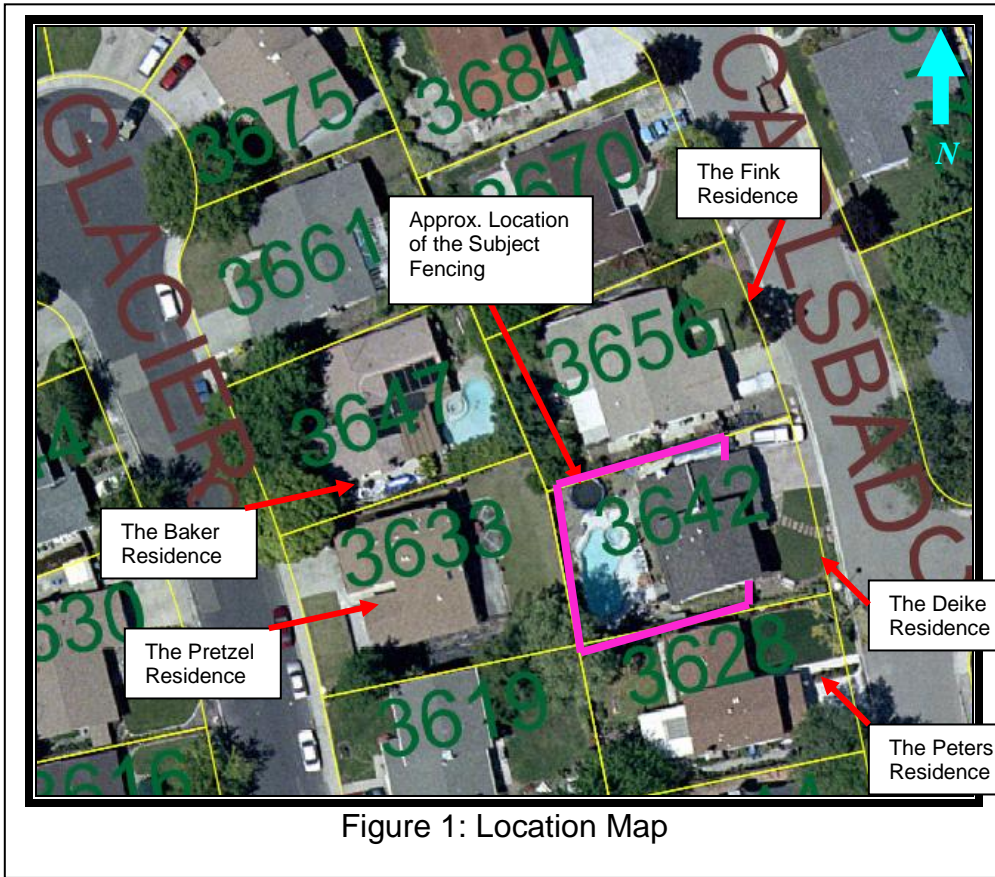
The recent installation of the rear yard fencing triggered an enforcement case. As a result of the enforcement case, Mr. Deike was required to apply for administrative design approval for all overheight fencing on-site that was not previously approved. Notice of the overheight fencing was sent to surrounding neighbors on September 20, 2011. Carl Pretzel, property owner of 3633 Glacier Court, requested a hearing on the subject fencing.

On October 4, 2011, the Zoning Administrator held a hearing on the subject fencing. The Zoning Administrator approved the fence subject to conditions. On October 14, 2011, Mr. Pretzel filed an appeal of the Zoning Administrator's decision. He appeal is currently before the Planning Commission for consideration.

II. SITE DESCRIPTION

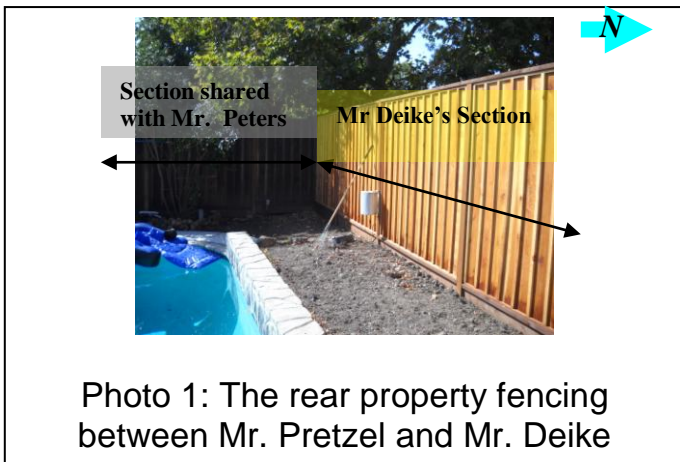
The properties of the applicant (3642 Carlsbad Way) and the appellant (3633 Glacier Court North) are located back to back and are occupied by existing single family homes (see Figure 1 on the next page).

Mr. Deike's property itself is relatively flat; however, there is a minor elevation difference between 3642 Carlsbad Way and 3633 Glacier Court North, in that 3633 Glacier Court North is approximately 1 to 3 inches lower than 3642 Carlsbad Way. The subject property (3642 Carlsbad Way contains an existing swimming pool in the rear yard.

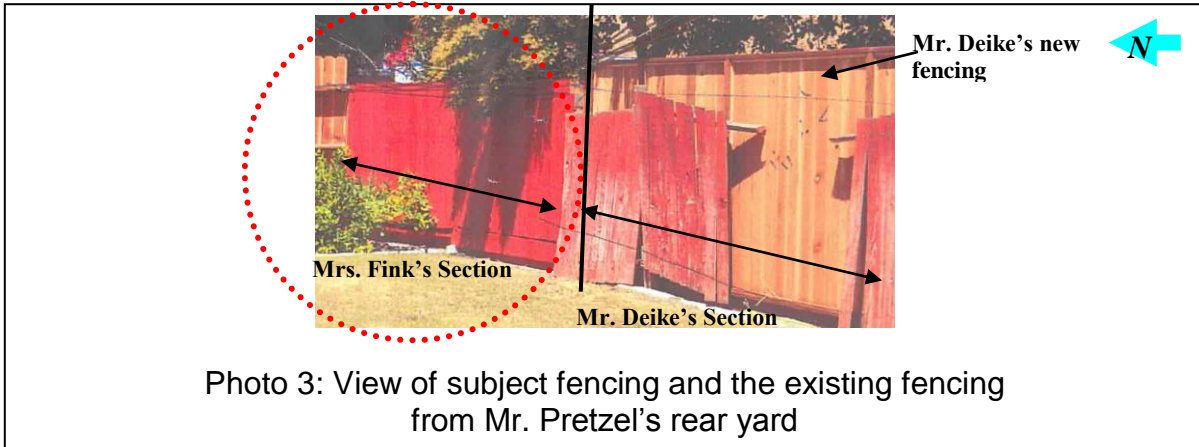


III. PROJECT DESCRIPTION

The applicant, Todd Deike, received approval to retain the existing solid redwood fencing measuring up to seven feet, one inch tall, located along the common side property lines, across the rear of the property, and within the side yards of the property located at 3642 Carlsbad Way.



The side fencing is located on the common property lines, but the rear fencing was built within the boundaries of Mr. Deike's property and costs for the rear yard fence was not shared with the rear yard neighbor (Mr. Pretzel).



The new rear yard fencing spans the full width of Mr. Deike's property, but because Mr. Deike's rear property line is not as long as Mr. Pretzel's rear property line, there is a section of Mr. Pretzel's rear yard fencing (see Photo 3 below) that is joint fencing between himself and Mrs. Fink (located at 3656 Carlsbad Way, the northern neighbor of Mr. Deike). This section of the fence was not replaced.



IV. ZONING ADMINISTRATOR'S HEARING

Mr. Pretzel requested a Zoning Administrator hearing for Mr. Deike's new rear yard fencing, based on the objection that the rear yard fencing should match the remaining portion of the rear yard fencing on his lot in terms of style, construction methods, height (6 foot tall), and color (See Photo 3 on prior page).

On October 4, 2011, the Zoning Administrator held a hearing. In addition to the applicant, Mr. Todd Deike, Robert Baker (3647 Glacier Court- the neighbor of Mr. Pretzel), and Mr. Pretzel (who requested the hearing), were also present.

At the hearing, it was stated that the existing fencing along the side property lines has been there for eight years with no objection from the neighboring property owners. Mr. Deike feels that the taller fencing around his property is needed to provide privacy as a result of being watched by other neighbors while using the pool and he stated that there is a video camera mounted on Mr. Pretzel's house directed toward his backyard. Mr. Deike reported that the prior common property line fencing for his rear yard property line started to fall down last January. With Mr. Deike's property containing a swimming pool, he stated he a legal responsibility to maintain a properly fenced back yard to provide a safety barrier for the pool. In response to Mr. Pretzel's objection to the rear yard fencing style mismatch, Mr. Deike offered to replace the remaining section of fencing to match the new fencing or to extend a new section of fencing to screen Mrs. Fink's remaining section so that the result would be that all of Mr. Pretzel's rear yard fencing would match. Due to the fact that Mrs. Fink was not in attendance at the meeting, the project was conditioned for Mr. Deike to approach Mrs. Fink about the two options that would impact her fencing. Mr. Pretzel said that he was in agreement with the concept of the two options, but that he would appeal the approval if Mrs. Fink did not agree to one of them.

The Zoning Administrator, Mr. Otto, explained that he would structure the condition of approval to reflect a signed agreement from Ms. Fink is acceptable; however, if it was not agreeable with Ms. Fink, applicant's fence would still be approved as he found the design to be acceptable. He stated that it is not uncommon in neighborhoods for fences to vary in height along the property due topography or due to property line situations where it is owned by multiple owners.

The Zoning Administrator stated that this fence application is not an unusual request and the design of the fence is attractive on both sides, so it is called a good-neighbor fence. He stated that the fence built for Ms. Fink would need to be the same design.

The Zoning Administrator approved the overheight fence, subject to conditions. A copy of the approval letter is attached (Exhibit C). A condition of approval was incorporated into the Zoning Administrator's action that required Mr. Deike to approach Mrs. Fink about modifying her section of the fence. However, Mrs. Fink has expressed that she does not want to have her fencing adjusted (Exhibit E). The condition of approval specifically stated that the approval would stand regardless of Mrs. Fink's agreement to modify her portion of the fencing.

V. DISCUSSION

Mr. Pretzel stated in his appeal that the fencing distracts from peace, comfort, and general welfare of residents (Exhibit F).

The objectives of the zoning ordinance are to promote the public health, safety, peace, comfort, prosperity and general welfare. These objectives would be achieved through providing a precise guide for the physical development of the city and promoting the stability of existing land uses that conform to the general plan. The subject fence meets the development standards of the R-1-6,500 zoning district in terms of setback and height.

The Zoning Administrator was able to make the required findings as outlined by 18.84.090.G(3a-c) of the Pleasanton Municipal Code could be made to approve the application:

- a. The application conforms to the objectives of the Pleasanton Zoning Ordinance.*
- b. The application assists in providing privacy, in attenuating sound transmission, and/or in reducing other annoyance from neighboring properties.*
- c. The application does not significantly impact upon the aesthetics and safety of the neighborhood nor the light and air to all affected properties.*

Specifically, the proposed fencing was found to assist in providing privacy, in attenuating sound transmission to and from Mr. Deike's use of his back yard and pool, and/or in reducing other annoyance from neighboring properties such as the peering in of neighboring property owners, video taping, and other events that have reportedly occurred. Furthermore, Finding 3c establishes the design criteria for approving overheight fencing. It was found that the subject fencing is constructed of high quality materials and is consistent with other existing fencing found within the neighborhood. The neighborhood does not have an approved fencing plan for the development. The neighboring properties have a variety of fencing types, heights, and colors.

The code allows up to an eight foot tall fence to be constructed with City approval. The total height of the fence does not exceed seven feet, 1-inch, which allows the passage of light and air to the neighboring lots while still providing privacy for the parcels. The Zoning Administrator found that the design of the fencing was acceptable. In addition, the Zoning Administrator found that the fencing did not detrimentally affect the light and air of the neighboring properties, nor create a traffic sight obstruction.

On October 12, 2011, Staff met with Mrs. Fink to discuss the options for adjusting the portion of her fencing that is shared with Mr. Pretzel. Mrs. Fink provided a signed statement expressing that she does not wish to have any work done to her existing fence, nor does she want to have a second fence built behind her existing fence. Mrs. Fink's statement also specifies that she is not agreeable to having any fencing that is over 6-foot tall along her back

yard (Exhibit E). Staff has revised the conditions of approval to eliminate requirement for the applicant to pursue the additional fencing options (Exhibit A).

VI. PUBLIC NOTICE

Notices regarding the appeal were mailed to property owners and tenants within 1,000 feet of the subject property. No one contacted staff at the time this report was prepared.

VII. CONCLUSION

Staff believes that the subject fencing meets that objectives of the Zoning Ordinance and that the required fence findings can be made. The fencing is constructed of high quality materials and is consistent with the design, materials, and height of the other existing fencing found within the neighborhood. The proposed fencing would also provide additional privacy, sound attenuation, and pool safety compared to shorter fencing. Therefore, staff supports the fencing as constructed.

VIII. ENVIRONMENTAL ASSESSMENT

Projects of this nature are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 3 – New Construction or Conversion of Small Structures. Therefore, no environmental document accompanies this report.

IX. STAFF RECOMMENDATION

Staff recommends that the Commission deny the appeal and approve Case P11-0664, subject to the conditions listed in Exhibit A.”

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