

## MEMORANDUM

**TO:** PLANNING COMMISSION

**FROM:** TERESA MCCLISH, COMMUNITY DEVELOPMENT DIRECTOR

**BY:** MATTHEW DOWNING, <sup>MD</sup>ASSOCIATE PLANNER

**SUBJECT:** CONSIDERATION OF VARIANCE NO. 15-002; CONSTRUCTION OF A SIX FOOT (6') FENCE ON AN EXISTING EIGHT FOOT (8') RETAINING WALL; LOCATION – 221 EAST BRANCH STREET; APPLICANT – JAMES MURPHY; REPRESENTATIVE – SANDY ARNOLD

**DATE:** OCTOBER 6, 2015

### RECOMMENDATION:

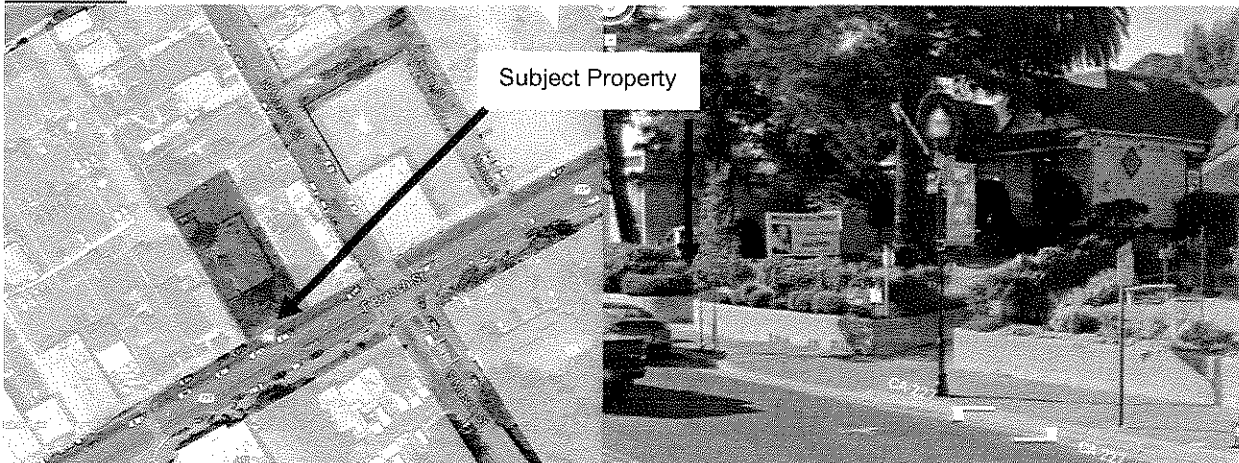
It is recommended that the Planning Commission adopt a Resolution approving Variance 15-002.

### IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

There is no impact to financial or personnel resources associated with this project. The applicant would be responsible for maintenance of the fence and removing the fence if maintenance of the City's retaining wall is necessary.

### BACKGROUND:

#### Location



The subject property is located at 221 East Branch Street, is zoned Village Core Downtown (VCD), and is located in the D-2.4 Historic Character Overlay District. A final determination on the Variance would typically be within the Planning Commission's jurisdiction; however, due to the applicant's request to place a new fence on a City owned facility, the Planning Commission is requested to make a recommendation to the City Council.

The Community Development Director approved Architectural Review No. 15-004 on June 24, 2015 for a landscape renovation project which included planting, lighting, brickwork, retention of existing historic concrete, and new fencing. Due to the grade difference along the western property, a condition of approval required that a Variance be approved prior to installation of the fence on this property line.

#### Architectural Review Committee

The Architectural Review Committee (ARC) reviewed Architectural Review No. 15-004 on March 2, 2015 and recommended approval of the project requiring the fences to be kept at six feet (6') in height as measured from the flower bed on the applicant's side. Additionally, the ARC recommended fence section 1 should have an open treatment on top, such as lattice, to allow openness and light, similar to existing fence detail on site. The ARC discussed whether or not to include the use of lattice on fence sections 2 and 3 as well, but decided it was not necessary.

#### **ANALYSIS OF ISSUES:**

The proposed project would allow the placement of a new wood fence on top of a City owned retaining wall that separates the subject property from the City Council Chambers property. The proposed fence would not extend above six feet (6') when measured from the applicant's property. Dependent upon the fence section, this results in a total fence height between eight feet (8') and fourteen feet nine inches (14' 9") when measured from the City's side of the fence.

In commercially zoned districts, fencing is typically used for screening purposes. The fencing for this property serves for screening and for safety. The applicant proposes new fencing on the west side of the property. A six foot (6') fence would separate the front and rear yards and run along the side next to the City Council Chambers where there is a narrow pedestrian alley.

The approved fence design utilizes a paneled design that will cover the existing plywood and be painted to match the green color of the house structure. The design will be double-sided and show on the front and back of the fence. Fences are allowed to be no more than 6' tall in the proposed locations, however, on the west boundary, an existing block retaining wall is already more than 6' tall on the Chamber side, but only 3'+ on the project side. With an elevation drop of this height, a guardrail height is required on the project side at a minimum of 42".

#### Variance

The purpose of a Variance is to provide flexibility from the strict application of development standards when special circumstances pertaining to the property, such as size, shape, topography or location, deprives the property of privileges enjoyed by other property in the vicinity. The Variance is being requested to allow a reasonable level of flexibility for the height of the fence on the applicant's side. The applicant states that strict application of the fence height standards will create an unnecessary hardship due to the existing height of the City's retaining wall and will deprive them of privileges enjoyed by the owners of other properties in the same zone, such as privacy.

Attachments:

1. Project plans (available for public review at City Hall)

## RESOLUTION NO.

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ARROYO GRANDE APPROVING VARIANCE CASE NO. 15-002; LOCATED AT 221 EAST BRANCH STREET; APPLIED FOR BY JAMES MURPHY

**WHEREAS**, the applicant has filed Variance 15-002 to deviate from the maximum 6' fence height allowance in the Village Core Downtown (VCD) zoning district at 221 East Branch Street; and

**WHEREAS**, the Planning Commission of the City of Arroyo Grande has considered Variance 15-002 at a public hearing on October 6, 2015 in accordance with the Development Code of the City of Arroyo Grande; and

**WHEREAS**, the Planning Commission found that this project is consistent with the City's General Plan, Development Code and the environmental documents associated therewith, and has determined that the project is categorically exempt per Section 15305 of the California Environmental Quality Act (CEQA) Guidelines; and

**WHEREAS**, the Planning Commission finds, after due study, deliberation and public hearing, the following findings are made in an affirmative manner:

#### Variance:

1. The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary hardship not otherwise shared by others within the surrounding area;

*Strict interpretation of the six foot (6') tall fence maximum on the property line would result in a practical difficulty in that the existing retaining wall itself is over 6' feet tall and no fence height would be allowable for the subject property. Safety requirements dictate a minimum 42" of guard rail height for the grade difference; however this creates a hardship for privacy due to being less than 6' high.*

2. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties classified in the same zone;

*The subject property is unique in that it sits at least six feet (6') above a majority of the adjacent City-owned property and walkway. Other properties in the Village Core Downtown zoning district have grade differentiations but are not to the same extent as the subject property.*

3. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone;

*The strict interpretation of the six foot (6') tall fence maximum on the property line would deprive the property owner of privacy in the rear and side portion of the site given the grade difference between the subject property and the adjacent City-owned property and walkway and would additionally create safety concerns regarding guard rail height and separation from the existing retaining wall.*

4. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone;

*The granting of the Variance will not constitute a grant of special privilege due to the fact that unique topography and grade differences at the subject property and the adjacent City-owned property and walkway create a circumstance where an existing retaining wall at least six feet (6') high has been constructed and limits the construction of a new fence to provide privacy and safety for the subject property.*

5. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity;

*The granting of the Variance will result in enhanced public safety but allowing the construction of a fence of adequate height to act as a guard rail between the subject property and the adjacent City-owned property and walkway in addition to allowing the placement of be on top of the existing retaining wall rather than offset, thereby prohibiting pedestrians from walking on top of the existing retaining wall..*

6. That the granting of a variance is consistent with the objectives and policies of the General Plan and the intent of the Development Code;

*The objectives and policies of the General Plan are implemented through the Municipal Code and the proposed project is consistent with the purpose and intent of the Variance provisions in the Municipal Code, which is to provide flexibility to allow adjustments to development standards to provide the property the same privileges enjoyed by other properties in the vicinity.*

7. The granting of the requested variance will not result in the parking of vehicles on public streets in such a manner as to interfere with the free flow of traffic;

*The granting of the proposed Variance does not relate to in any way to parking and therefore will not result in the parking of vehicles on public streets in such a manner as to interfere with the free flow of traffic.*

**RESOLUTION NO.**

**PAGE 3**

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Arroyo Grande hereby approves Variance 15-002, with the above findings and subject to the conditions as set forth in Exhibit "A", attached hereto and incorporated herein by this reference.

On motion by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and by the following roll call vote, to wit:

**AYES:**

**NOES:**

**ABSENT:**

the foregoing Resolution was adopted this 6<sup>th</sup> day of October, 2015.

\_\_\_\_\_  
**LAN GEORGE**  
**CHAIR**

**ATTEST:**

\_\_\_\_\_  
**DEBBIE WEICHTINGER**  
**SECRETARY TO THE COMMISSION**

**AS TO CONTENT:**

\_\_\_\_\_  
**TERESA McCLISH**  
**COMMUNITY DEVELOPMENT DIRECTOR**

**EXHIBIT "A"**  
**CONDITIONS OF APPROVAL**  
**VARIANCE 15-002**  
**221 EAST BRANCH STREET**

This approval authorizes the construction of a fence on top of an existing retaining wall not to exceed six feet (6') in height as measured on from the project site at 221 East Branch Street.

**COMMUNITY DEVELOPMENT DEPARTMENT**

1. The applicant shall ascertain and comply with all Federal, State, County and City requirements as are applicable to this project.
2. The applicant shall comply with all conditions of approval for Variance 15-002.
3. This Variance approval shall automatically expire on October 6, 2017 unless building permits are issued or an extension is granted pursuant to Section 16.12.140 of the Development Code.
4. The applicant shall agree to indemnify and defend at his/her sole expense any action brought against the City, its present or former agents, officers, or employees because of the issuance of said approval, or in anyway relating to the implementation thereof, or in the alternative, to relinquish such approval. The applicant shall reimburse the City, its agents, officers, or employees, for any court costs and attorney's fee's which the City, its agents, officers or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his/her obligations under this condition.
5. Development shall conform to the Village Core Downtown (VCD) zoning requirements, except as otherwise allowed by this approval.
6. Development shall comply with the Secretary of the Interior Standards for the treatment of Historic properties.

**ARCHITECTURAL REVIEW COMMITTEE**

7. The fence shall be up to six feet (6') in height as measured from the flower bed on the applicant's side; and
8. Fence section 1 should have an open treatment on top, such as lattice, to allow openness and light, similar to existing fence detail on site.

**BUILDING AND LIFE SAFETY DIVISION**

9. The project shall comply with current California Building and Fire Codes, as adopted by the City of Arroyo Grande, including structural calculations for the attachment of a fence to the existing retaining wall.
10. **Prior to installation of the fence**, the applicant shall apply and be approved for a building permit.

11. Building plans shall include plans and calculations signed and stamped by a Registered Civil Engineer or Structural Engineer

**ENGINEERING DIVISION**

12. The applicant shall provide a maintenance agreement to the City with provisions requiring the applicant to do the following:
  - a. Maintain the new fence;
  - b. Abate graffiti on the new fence; and
  - c. Remove the fence upon written notification for retaining wall maintenance needs.
13. The applicant shall install lighting and warning strips on step nose in public walkway area due to the blocking of illumination resulting from fence installation.