


TOWN OF LOS ALTOS HILLS
Staff Report to the Planning Commission

November 6, 2014

SUBJECT: A REQUEST FOR A FENCE HEIGHT VARIANCE. LANDS OF MUELLER;
26075 DUVAL WAY; FILE #375-13-ZP.

FROM: Nicole Horvitz, Assistant Planner 

APPROVED: Suzanne Avila, AICP, Interim Planning Director 

RECOMMENDATION: That the Planning Commission:

Approve the proposed fence height variance subject to the conditions of approval in Attachment 1 and findings of approval in Attachment 2.

BACKGROUND

The subject 1.79 acre property is located on the northerly side of Duval Way adjacent to Interstate 280. The existing 4,390 square foot residence with attached garage was constructed in 1985. There is a 25 foot wide easement for road purposes along the north side of the property, adjacent to the 280 right-of-way. The easement is used to access one neighboring property to the east and is not considered a private road.

In 1988 the Planning Commission approved a six foot wood fence for sound mitigation along the edge of the road easement. The property was not owned by the applicants at that time.

In November 2013, the property owner submitted an application to the Town to replace the failing fence with a new six foot high wood fence with a total length of 320 linear feet. Of that, 170 linear feet was proposed to be installed on top of a 2 foot high earth berm. The fence was administratively approved by staff on December 19, 2013. After construction started the applicants requested to install a double gate to provide access to the septic leach field. Staff approved the modification to the fence permit in September 2014 and construction was completed that month.

During construction the adjacent neighbor expressed concerns about the fence and gate. Staff met with the neighbor and applicants to discuss the concerns. Staff determined that location of the fence is not within the road easement and does not impede access to the neighbor's property. The gate opens inward into the rear yard, away from the roadway, and also does not obstruct access.

Staff forwarded this matter to the Commission because a portion of the fence was constructed on a berm and the overall height is greater than six feet. Fences higher than six feet that are located within a setback require approval of a variance. The applicants did not misrepresent their plans when the fence application was submitted. The approved plans show a berm with the fence located on top. The interpretation at the time of approval was that the fence could be constructed in this manner and the application was approved. However, in viewing the completed construction and given the location of the fence within the 30 foot setback, staff determined that a fence height variance is needed.

CODE REQUIREMENTS

Section 10-1.507 of the Municipal Code regulates fence type, height, and location for all properties in Town. In addition, pursuant to Section 10-1.1007(2) of the Los Altos Hills Municipal Code, the Planning Commission shall act as the authority to grant structure height variances.

DISCUSSION

Pursuant to Los Altos Hills Municipal Code Section 10-1.507 a fence means a structure serving as a barrier or screen constructed of wood, metal, wire, masonry, glass, plastic or any other material (not including graded berms or living hedges). In addition, fences and walls located on property lines or in setback areas shall not exceed a maximum height of six (6) feet.

The definition of structure height in Section 10-1.202 means the vertical distance at any point from:

1. The natural grade which existed prior to grading for the proposed structure;
2. Existing grade indicated on an approved grading plan, if different than the natural grade;
- or
3. The proposed building pad if excavated below natural grade, whichever elevation is lowest, to the highest part of the structure directly above.

After the fence was constructed, staff concluded that the approval of the six foot solid fence on top of a two foot landscape berm was made in error. Based on the fact that the newly constructed fence creates an overall height of eight feet within the property line setbacks, the permit approval for the fence conflicts with the Zoning Ordinance.

The applicant's intent is to reduce noise levels in their yard and inside the home. The additional height is key to providing needed noise mitigation. The property is adjacent to I-280 which is at a higher grade elevation than the residence. Therefore, an eight foot fence significantly reduces the noise impact from the freeway. The owners have stated that the increase of two feet has significantly improved the noise disturbance from the freeway. The owners also replaced old windows with new double pane windows to help reduce the interior noise levels. Staff conducted noise measurements on various portions of the property and along the adjacent easement after the new fence was built (see Attachment 3). The fence provides an 11-12 dB reduction in noise.

Conclusion

Staff has prepared findings of approval for the fence. Because the fence is adjacent to an easement and the freeway, there are no view impacts for surrounding neighbors, it allows the property owners to enjoy their outside/inside living areas with reduced freeway noise, and a fence is an authorized accessory use in the Town.

Public Comments

No comments have been received from the public since the project was noticed for the hearing,

CEQA STATUS

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act by Section 15303(e).

ATTACHMENTS

1. Recommended Conditions of Approval
2. Recommended Findings of Approval
3. Noise Reading Exhibit
4. Site Development Plans

ATTACHMENT 1

RECOMMENDED CONDITIONS OF APPROVAL FOR A FENCE HEIGHT VARIANCE
LANDS OF MUELLER, 26075 DUVAL WAY
FILE # 375-14-ZP

1. The location, height and materials of the fence shall be constructed according to the approved plans. Any changes to the location, height, or construction of any proposed fences or columns shall first be approved by the Planning Department.
2. The new fence shall not obstruct or encroach within any easements on the property.
3. The property owner shall be responsible for confirming that the new fence is not encroaching within the easement for road purposes and public utility easement along the north side of the property.
4. No new outdoor lighting is approved. Any additional outdoor lighting requires approval by the Planning Department prior to installation. No lighting may be placed within setbacks except for two driveway or entry lights.
5. The applicant shall be responsible for confirming all property line locations and verifying that the new fence is located within the property lines.

Upon completion of construction, the applicant shall arrange a final inspection with the Planning Department and Engineering Department within two weeks.

Please refer to the Conditions of Project Approval set forth herein. If you believe that these Conditions impose any fees, dedications, reservation or other exactions under the California Government Code Section 66000, you are hereby notified that these Conditions constitute written notice of a statement of the amount of such fees, and/or a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest such fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

ATTACHMENT 2

RECOMMENDED FINDINGS FOR APPROVAL OF A FENCE HEIGHT VARIANCE

LANDS OF MUELLER, 26075 DUVAL WAY

File #375-14-ZP

1. Because of exceptional or extraordinary circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, the strict application of the ordinance is found to deprive the property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications:

The property is adjacent to I-280 which is at a higher grade elevation than the residence. Therefore, an 8' height created with a 2' berm and 6' solid fence significantly reduces the noise impact from the freeway on the owners of the property and allows them to enjoy property privileges consistent with other properties in the vicinity.

2. That upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners.

The wood fence is not out of character of the neighborhood. The 8' barriers adjacent to the freeway and easement, therefore the 2' of additional height does not have a view impact on surrounding properties. The fence approval is not granting a special privilege to the owners who should be allowed to have use and enjoyment of their private yard and to have a livable interior noise level as is enjoyed by other properties in the area.

3. That granting the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district:

Granting the fence Variance for the subject property will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district. The proposed fence will be located 2' away from the previous fence location, allowing for additional space between the fence and the existing easement.

4. That the Variance will not allow a use or activity, which is not expressly authorized by the Zoning Ordinance:

Granting of the fence Variance for the subject property does not allow a use or activity, which is not expressly authorized by the Zoning Ordinance. A fence is an authorized accessory use and structure in the R-A zoning district and would be compatible with existing land uses in the surrounding area.

