



Land Use and Planning Committee
Task Force Report to Venice Neighborhood Council Board of Officers
June 6, 2007

FENCES & HEDGES “CURRENT POLICY” TASK FORCE REPORT

I. INTRODUCTION

The Fences & Hedges “Current Policy” Task Force is comprised of three Land Use Planning Committee (LUPC) members: (1) Maury Ruano, Jed Pauker; and (3) Ruthie Seroussi. The task force may be contacted at fencesandhedges@grvnc.org. This Report seeks to provide: (1) a brief history of the current state of law regarding frontage barriers (i.e., front yard fences, hedges and walls) in Venice, California; (2) relevant sections of the Los Angeles Municipal Code (LAMC) and the Venice Coastal Zone Specific Plan (VCZSP); and (3) case studies of several recent Zoning Administrator (ZA) and West Los Angeles Area Planning Commission (APC) decisions regarding frontage barrier height variance requests in Venice. The next iteration of the FHTF will study and offer policy recommendations for enforcing Venice frontage barrier height laws.

II. BRIEF HISTORY

The LAMC and VCZSP recognize that fences, walls and hedges serve several purposes in residential neighborhoods. Besides defining public versus private space, they can define property borders and establish security barriers. The LAMC and VCZSP also recognize that fences, walls, and hedges can alter the character of a neighborhood, affect the sense of community, openness, space and light, diminish day-to-day safety and interfere with enforcement duties of the Los Angeles Police Department (LAPD). The current ordinances represent an attempt to achieve a realistic compromise among these sometimes-conflicting interests. This compromise was, in part, brought about as follows.

In 1981, the City of LA adopted frontage barrier limits to govern a proliferation of interest in erecting fences in the required front yard. This area, between the public right-of-way and a property’s prevailing setback (generally, the front of the dwelling) is specified by the LAMC to be a visual buffer zone between private and public space: The inhabitant’s use of this area is exclusive, while the “viewline” into it is a public right.

Notwithstanding the LAMC’s 1981 frontage barrier limits (referenced, in part, herein), many stakeholders in high-density areas erected fences, grew hedges and/or allowed shrubbery to grow tall and dense at the borders of their required front yards, contending that they provided greater security. The excess height of these encroachments caused conflicts among neighbors, safety issues for the LAPD (partially as a result of poor visibility into and onto properties), and enforcement difficulties for Building and Safety.

In 1996, to address these concerns and to clarify and codify the use of frontage barriers for security in residential areas, the City Council – by way of motion - directed the Departments of City Planning and Building

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and Safety, consulting with LAPD and the City Attorney, to define a way for stakeholders in high-crime areas to preserve their security, while keeping their neighborhoods from losing public and community character, and allowing the LAPD to do its job. [See Exhibit "1," 1996 Motion].

Several years after the City Council's Motion, Ordinance 172460 passed. Among other things, it amended the LAMC to allow for the creation of a new supplemental use district – a Fence Height District. The Fence Height (FH) District permits open wrought iron fences in front yards of residential-zone properties to extend higher than normally permitted by the LAMC in areas where special circumstances, such as a high rate of burglary or other crimes, or the character of the neighborhood, necessitates the erection of those fences. [See LAMC, § 13.10]. With these amendments, the City's municipal, planning, legal and enforcement departments crafted a compromise which preserved both property security and neighborhood character, and which addressed the LAPD's concerns regarding safety and visibility.

III. LAMC AND VCZSP REQUIREMENTS REGARDING FENCES AND HEDGES

The LAMC defines "fences" and "walls" as latticework, ornamental fences, screen walls, hedges or thick growths of shrubs or trees. It also states that fence and wall height shall be measured from the natural ground level. [LAMC § 12.22.C.20.f.1].

The LAMC states that front yard fences may not be more than three and one-half feet (3'6") in height above the natural ground level. [LAMC § 12.22.C.20.f.2]. The only two exceptions allowed per the Code, besides those authorized by a Zoning Administrator pursuant to Section 12.24-X.7¹, are (1) the higher limits in the Agricultural (A) and Suburban (RA) zones (Suburban zone) [LAMC § 12.22.C.20.f.2] and (2) the FH District [LAMC § 13.10].

As noted above, FH Districts permit open wrought iron fences over 3'6" in height in areas where special circumstances dictate. To permit the maximum allowable height under the Ordinance, fences in FH Districts must satisfy eleven (11) development regulations (e.g., among other things, the fence must be substantially open, allowing a significant amount of visibility). [See § 13.10C of the LAMC and Ordinance 172460].

In addition to the exceptions permitted by the LAMC, the VCZSP allows higher fences in the Ballona Lagoon West Bank, Ballona Lagoon (Grand Canal) East Bank and the Lagoon Buffer Strip of the Silver Strand, [VCZSP §§ 10.A., B, C.3]. Although the Venice Community Plan and the VCZSP do not discuss the design of fences for other neighborhoods subject to these Plans, leaving these matters to the LAMC, their express intent is to preserve and enhance the varied and distinct residential character and integrity of existing residential neighborhoods. They note that existing residential neighborhoods should be protected from encroachment by uses that are incompatible as to scale and character, or would otherwise diminish quality of life.

IV. CASE STUDIES OF RECENT ZA & APC DETERMINATIONS RE: FRONTAGE BARRIER HEIGHT VARIANCE REQUESTS IN VENICE

Three recent decisions by the APC in response to frontage barrier height variance requests demonstrate the City's adherence to the LAMC and VCZSP - that Venice fences, hedges and walls must be 3'6" or less in height, absent unique and extenuating circumstances, as considered on a case by case basis. This trio of cases, and several cited by the applicants, are discussed herein and prove instructive.

¹ LAMC 24-X-7 grants a ZA, and the APC as the appellate body, the authority to approve an over-the-height fence (up to 8') based on unique and extenuating circumstances. The ZA must find that the over-the-height fence is in conformity with the public necessity, convenience, general welfare and good zoning practice and that the action will be in substantial conformance with the various elements and objectives of the General Plan. The ZA must also consider the environmental effects and appropriateness of materials, design and location of any proposed fence or wall, including any detrimental effects on the view which may be enjoyed by the occupants of adjoining properties, and security to the subject property.

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A. South McKinley Trio – 2337, 2329 & 2325 S McKinley

Three adjacent, yet very different properties located on South McKinley Avenue (in the "Silver Triangle" in the Southeast Venice Sub-Area of the VCZSP) were cited by Building & Safety in 2006 for maintaining over-the-height frontage barriers. The LAMC governs the height requirements for these properties. As they are not in a Suburban or Agricultural Zone or a FH District (there are no FH Districts in Venice), the LAMC dictates that they must be, at most, 3'6" in height. As such, all three property owners, facing Orders to Comply, requested variances pursuant to LAMC Section 12.24-X.7. All three requests were ultimately denied by the APC. The property owners must either remove their fences or bring them into compliance at 3'6".

1. 2325 S. McKinley, ZA 2006-6927, is a single lot, with a single family dwelling, recently constructed or remodeled, with a new eight-foot fence. After receiving an Order to Comply on May 9, 2006, the property owner requested a variance for a 4'6" high wood fence over a 3'6" stucco, concrete block wall and gate, for a total height of 8'. On December 26, 2006, the ZA DENIED THE VARIANCE REQUEST. In doing so, it expressly rejected arguments that the LAMC's 1981 frontage barrier requirements are outdated. Granting the variance request would erode the LAMC's 3'6" frontage barrier requirement to the detriment of (1) long-term general public welfare, and (2) property owners who had invested in the area based on character guaranteed by the LAMC and VCZSP. The ZA also cited testimony from LAPD and residents regarding the false sense of security provided by high fences. If worried about privacy, the owner could make personal design choices behind the prevailing front yard setback without subjecting the community to loss of the required front yard view line. Further, the ZA found that the over-the-height fence was *not* a legally-permitted, established local practice as suggested by the applicant. Finally, the ZA found that approval of the request would be materially detrimental to safety, character and view otherwise enjoyed by abutting neighbors. The applicant APPEALED this determination. On February 21, 2007, the APC DENIED THE APPEAL and UPHHELD the ZA's Determination in its entirety, by a 5-0 vote. The fence must come down or, at least, be lowered to 3'6".

2. 2329 McKinley, ZA 2006-6927, is a large, double lot, with a one story house. The property owners built –without the requisite permits - a 6'3" fence, made of opaque white prefabricated vinyl plastic along the front property line. Responding to a neighbor's complaint, the City cited the applicant with an Order to Comply on July 28, 2006. The applicant sought to legalize the fence by requesting a variance pursuant to LAMC Section 12.24-X.7, citing security, similar local fences and personal health-related disability issues. On December 6, 2006, the ZA CONDITIONALLY GRANTED the 6'3" over-in-height fence, stating that the property owner must remove the white plastic fence, replace it with something that conforms to the neighborhood's character, and that the new fence must be substantially open and allow visibility. Notwithstanding its conditional grant of the variance, the ZA found the property owner's arguments in favor of the variance (security reasons and submission of a physician's letter citing personal health issues) to be weak. The neighborhood is insular from major boulevards and commercial areas, with a low incident of crime, and an enclave of low density residential uses, surrounded by multi and single family homes. The ZA's Determination was APPEALED. On February 21, 2007, the APC GRANTED THE APPEAL, OVERTURNING the original determination by a 5-0 vote. The fence must come down or be lowered to 3'6". In so ruling, the APC found no special circumstances pertaining to this property. Maintenance of the front yard view and setback contributes to the character of the area, established per conformance with existing zoning regulations. The fact that there has been no attempt to repeal the LAMC's 1981 frontage barrier regulation, or to establish a Fence Height District in this area, establishes the continuing effectiveness and value of the 1981 regulation. Indeed, the erection of this fence, in response to two non-conforming, adjacent over-height fences, demonstrates that the LAMC's 3'6" frontage barrier requirement is subject to quick erosion unless it is consistently enforced. Granting the request for the private benefit of an applicant would establish an undesirable precedent to the

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detriment of the long-term general public welfare. Regarding security, the commission cited repeated testimony from LAPD against visual barriers which provide cover for intruders who, once behind the barriers, have ultimate freedom to operate as they please. Testimony from area residents revealed that local intrusions occurred (over high fences) in the rear yard. The APC cited the General Plan's effort to preserve and enhance existing neighborhood character. It also confirmed that over-the-height fences are not a legally permitted, established practice in the immediate neighborhood. Regarding the stated disability issue, the Commission referred the applicant to the City Attorney, who advised the applicant of the procedure for seeking reasonable accommodation under applicable fair housing laws.

3. 2337 S McKinley, ZA 2006-6447, is a double corner lot with a two-story single family dwelling. Without the requisite permits, the residents built an 8' high, opaque block wall fence along their front property line, which wraps around the corner and extends to the rear alley. The fence has a two-door gate that is higher by approximately one (1) to two (2) feet. On July 2, 2006, Building & Safety issued an Order to Comply. The residents sought a variance request to permit the over-the-height fence. On October 5, 2006, the ZA postponed its determination following the hearing to allow LUPC and the VNC to make findings and recommendations. On February 27, 2007, the ZA issued its determination, DENYING THE VARIANCE REQUEST and finding that the proposed wall/fence is not in conformance with the public necessity, convenience, general welfare and good zoning practice. The ZA agreed that the "wall looks like a barricade" and affects "the character of the neighborhood resulting in a 'closed-in' environment." The wall/fence did not conform to the General Plan as it affects the visual quality of the residential environment and is out of scale with surrounding uses and the neighborhood's character. In making its determination, the ZA did not find persuasive the applicant's arguments that, among other things, there were other over-the-height fences in the neighborhood or that most neighbors supported the fence. The applicant APPEALED the ZA's Determination. On May 16, 2007, the APC DENIED THE APPEAL, SUSTAINING the ZA's Determination by a 5-0 vote. In reaching this decision, the APC supported the ZA's conclusion that prior grants cited by the applicant were either non-persuasive or inapplicable, as was the applicant's contention that, due to the property's close proximity to the beach, the area was riddled with crime, vandalism, transients, tourists, trash, litter, and traffic. The ZA concluded here, and in the other McKinley cases, that the area was relatively free of these conditions.

B. Various Cases Cited by One or More of the Applicants in the South McKinley Trio

The applicants in the three South McKinley cases cited - to no avail - various grants as precedent for their over-the-height fence variance requests. These cases differ from the McKinley cases in several ways. Each was *conditionally granted* based upon unique and extenuating circumstances particular to each property. Among other things, the first four cases did not stem from an Order to Comply (as did the South McKinley Trio), but rather were requested during the design development process. The cases also differ as follows.

1. 900 West Harding Ave, ZA 2005-0105 (Lot A), 904 West Harding Ave, ZA 2005-0100(ZAA)(ZAD) (Lot B), and 2614 Grandview, ZA 2005-0098(ZAD) (Lot C), are three separate, adjacent lots. The applicant is developing them for simultaneous personal use. On June 27, 2005, pursuant to LAMC Section 12.24-X,7, the ZA CONDITIONALLY GRANTED approval of a 6'-0" high fence for Lots A and B, and an 8'-0" high masonry wall/fence for Lot C in conjunction with the construction of a single-family dwelling. The ZA's conditional approval mandated, among other things, that (1) the applicant provide a **10-foot landscaped setback** for the wall/fence; (2) the fence/wall be constructed of masonry blocks finished with stucco and planted with a wall clinging vine so that it appears to be a *living wall*; and (3) prior to the issuance of any permit, the applicant must submit a landscape and automatic irrigation plan and details for the fence/wall for the ZA's approval. The ZA appeared influenced by the fact that the property owner was an internationally-known architect and swayed by the applicant's privacy concerns here. The ZA noted that the applicant's projects are constantly photographed and he lacked privacy at his current dwelling, with interested persons appearing at his

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windows to take photographs of the family even at the dinner table. Notwithstanding testimony by *surrounding* neighbors who strongly opposed the project, the ZA stated that the *adjacent* neighbors were consulted and were enthusiastic, and that the project conforms to the VCZSP. The ZA also noted that the 10 foot landscaped setback and the living wall would be attractive and consistent with over height hedges and existing vegetation in the area.

2. 2416 McKinley Avenue, ZA 2001-2593, is a single lot. At the time the variance was sought by the applicant – for a 7' high fence, among other things – the applicant proposed to demolish the existing single-family dwelling and build a new one which was to be tied - via a bridge - to the adjacent lot (2420 McKinley Ave, ZA 95-0484),² where a new dwelling had been constructed in 1996. On April 9, 2002, the ZA CONDITIONALLY GRANTED the applicant's request for an over-the-height fence, limiting the construction to 6', mandating that any portion of the fence over 3'6" had to be substantially open and provide visibility (e.g., wrought iron fence or translucent panels), that the fence be setback from the property line by at least 1', which area must be landscaped with an automatic irrigation system, and any opening in the fence must be set back 1' to 2' further. The ZA noted that its ruling here was peculiar to this property as the dwelling extended across two lots, which was not typical of development in the neighborhood. Moreover, the 6' fence *enclosed a pool*, requiring security fencing around it by law. Due to the relative locations of the existing and proposed dwellings, the pool had to extend into the front yard setback. The ZA stated, however, that establishment of this fence must not signal a substantial change in the neighborhood's character.

3. 2621 South Grandview Avenue, ZA 2001-5756, is a corner lot - across from Couer d'Alene Elementary School - developed with a one-story remodeled single-family dwelling located toward the rear of the lot. The applicant submitted a variance request for a 6' high wooden front yard fence. On March 15, 2002, the ZA CONDITIONALLY GRANTED the applicant's request, requiring the fence to be *setback at least 3' or greater from the property line* so as to preserve the existing row of very tall (at least 15'), mature Italian Cypress trees already located along the entire perimeter of the property, set back roughly 3' from the property line. The ZA also noted that, because the dwelling was located on the rear of the lot, a higher front yard fence was necessary here for the convenience and general welfare of this resident. Further, because the corner lot across the street had a 15' high hedge around it, the 6' fence would not be materially detrimental to other properties in the neighborhood. The ZA recognized that a 6' high fence on a corner lot might obstruct vehicular visibility, but felt that the 3' or greater setback would alleviate this danger.

4. 2409 Clement Ave, ZA 95-0236, is a single family dwelling on a substandard lot. On July 13, 1995, the ZA CONDITIONALLY GRANTED approval of an over-the-height fence to replace *an existing 6'* high fence, which had deteriorated and was in need of repair or replacement. The ZA also appeared swayed by security concerns, as the property had been burglarized twice (as evidenced by two police reports). Ironically, however, the burglaries occurred despite the applicant's existing 6' fence. The ZA ruled that the entire fence must be made of translucent structoglass, to promote visibility and soften its appearance.

5. 2335-2337 Boone Avenue, ZA 97-0507 is a two story duplex. Following an Order to Comply, the owner requested a variance to keep a 5'9" front yard fence. On August 7, 1997, the ZA CONDITIONALLY GRANTED the request because of the applicant's young son's medical condition. Since the lot has no backyard space, the fence and the front yard space allowed for safe and private daily physical and occupational therapy sessions, which required large pieces of movable equipment. However, the fence must remain wood, the top 1'3" and the 4' wide gate must be of open trellis lattice work.

² On September 8 1995, the ZA CONDITIONALLY GRANTED approval of a 6' over-the-height fence at 2420 S McKinley, holding that any part of the fence over 3'6" must be substantially open and visible. The decision was based, in part, on the irregular lot shape (different size and shape than other lots in the neighborhood) and the location of the alley. The ZA specified, however, that his determination was not to serve as precedent; each request must be decided on a case by case basis.

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EXHIBIT 1

File Number

96-2217

Last Changed Date

02/06/2003

FENCES AND WALLS / RESIDENTIAL NEIGHBORHOODS

Initiated by Goldberg Mover 1996 / Bernson

Motion – Fences and walls in residential neighborhoods serve several purpose. They provide enclosure for private space, definition of property borders and privacy to the front and rear yards. They also establish physical barriers for security purposes by preventing unauthorized entry onto private property. The Los Angeles Municipal Code (LAMC) currently restricts the height of fences and walls in Residential Zones within the front yard to 3 feet and 6 inches. However, there is widespread confusion regarding the zoning rules which regulate fence height because a building permit is not required to construct a fence or wall. Seeking security protection, owners of property in areas characterized by high population densities have installed front yard fences or have allowed shrubs and plants to grow tall and dense within the front yard. In many cases, these barriers exceed the current height limit, causing conflict between neighbors and enforcement difficulties for the Building and Safety Department. The City should preserve the option for private owners to establish enhanced security protection. At the same time, the City should recognize that walls and fences often contribute to the character of the public street and general neighborhood. The encroachment of incompatible walls and fences into expanses of front yard open space should be avoided or mitigated.

THEREFORE MOVE that City Planning Department, in consultation with the Building and Safety Department, Los Angeles Police Department (LAPD) and City Attorney, prepare and present an amend to the Los Angeles Municipal Code to include the following provision: The height of a wall or fence in the front yard in a Residential Zone shall be permitted to exceed three feet six inches if it is substantially open or allows a significant amt of visibility.

FURTHER MOVE that a report on this matter be presented to the Planning and Land Use Management Committee within 60 days.

Date Received

10-29-98

File History

11-19-96 - This days Council session

11-19-96 - Ref to Planning and Land Use Management Committee - Set for Planning and Land Use Management Committee on December 17, 1996.

11-19-96 - File to Planning and Land Use Management Committee Clerk

11-19-96 - File to Bernson per Planning and Land Use Management Committee Clerk request.

12-13-96 - File to Planning and Land Use Management Committee Clerk for report

12-17-96 - Planning and Land Use Management Committee disposition - Referred to Planning staff.

12-18-96 - File to Planning Department - Attention: Con Howe per Planning and Land Use Management Committee Clerk letter

4-14-98 - File and City Attorney Report R98-01171 re: Draft ordinances amending Los Angeles Municipal Code (LAMC) to permit open fences up to six feet in height by right in the required front yard in the R Zones and adding to Los Angeles Municipal Code to allow for the creation of a supplemental use district - to Planning and Land Use Management Committee Clerk.

5-8-98 - Set for Planning and Land Use Management Committee on May 19, 1998

5-19-98 - Planning and Land Use Management Committee Disposition - OK "A" ordinance with Building and Safety Department modifications.

5-21-98 - File to Planning Department - Attention: Con Howe per Planning and Land Use Management Committee Clerk letter.

7-22-98 - File to Planning and Land Use Management Committee Clerk

11-10-98 - CONTINUED TO November 17, 1998

11-17-98 - Entire Matter CONTINUED TO December 15, 1998

10-29-98 - City Attorney R98-0335 report re: An ordinance amending Sections 12.04 D and 13.00, renumbering Section 13.10 and adding a new Section 13.15 to the Los Angeles Municipal Code to allow for the creation of a new supplemental use district to permit *open* fences up to six feet in height in the required front yards of properties in the R Zones – to Planning and Land Use Management Committee Clerk.

12-15-98 - Entire Matter CONTINUED TO January 29, 1999

1-29-99 - **Planning and Land Use Management Committee report ADOPTED TO PRESENT and ADOPT accompanying Ordinance, amending Sections 12.04D and 13.00, renumbering Section 13.19 and adding a new Section 13.15 to the Los Angeles Municipal Code to allow for the creation of a new supplemental use district to permit open fences up to six feet in height in the required front yard of properties in the R Zones - General Exempt**

ADOPTED - Findings ADOPTED - Ordinance OVER ONE WEEK TO February 5, 1999.

2-5-99 - Ordinance ADOPTED

2-9-99 - File to Mayor for signature

2-24-99 - File to Planning and Land Use Management Committee Clerk OK

2-25-99 - File in files

Ordinance 172460 (Effective: 03/22/1999)