AGENDA
REGULAR MEETING OF THE
PLANNING COMMISSION

March 17, 2021 at 7:30 p.m.

VIA TELECONFERENCE
https://elcerrito.webex.com/elcerrito/j.php?MTID=m76987128e80ac3ac184efa7b8411bcc9
Event ID: 187 106 0148
Event Password: Planning

Or Join by Phone: 1-408-418-9388
Access code: 187 106 0148

7:30 p.m. CONVENE REGULAR MEETING

1. ROLL CALL – Chair Leslie Mendez; Members Brendan Bloom, Greg Crump, Erin Gillett, Daniel Hamilton, Linda Klein and Joy Navarrete

2. COUNCIL/STAFF LIAISON ANNOUNCEMENTS AND REPORTS
   The City Council Liaison or City staff may report on matters of general interest to the Planning Commission, Council policies, priorities and significant actions taken by the City Council.

3. ORAL COMMUNICATIONS FROM THE PUBLIC
   Remarks are typically limited to three minutes per person, and may be on anything within the subject matter jurisdiction of the body. Remarks on non-agenda items will be heard first, remarks on agenda items will be heard at the time the item is discussed.

4. ADOPTION OF MINUTES
   Approval of the February 17, 2021 meeting minutes.

5. COMMISSIONER COMMUNICATION/CONFLICT OF INTEREST DISCLOSURE
   This time on the agenda is reserved for Commissioners to disclose communications from individuals regarding specific agenda items or to state a potential conflict of interest in relation to a specific agenda item

6. PUBLIC HEARING: 929 SHEVLIN DRIVE CUP & AUP
   Application: PL21-0003
   Applicant: Han Li
   Location: 929 Shevlin Drive
   APN: 505-221-024
   Zoning: RS-5 (Single Family Residential)
   General Plan: Low Density Residential
   Request: Planning Commission consideration of a Conditional Use Permit to allow an extension of an exterior wall on the north side of an existing single-family house along an existing nonconforming side setback (19.27.050.B, ECMC) and an Administrative Use Permit to allow a new carport located in the front half of the property (19.06.030.N, ECMC).
CEQA: This project is categorically exempt from the provisions of CEQA pursuant to Section 15301 of the CEQA Guidelines, Class 1: Existing Facilities.

7. PUBLIC HEARING: 8701 DON CAROL DRIVE CONDITIONAL USE PERMIT
Application: PL20-0119
Applicant: Kelda Gragg & Mark Choi
Location: 8701 Don Carol Drive
APN: 505-322-031
Zoning: RS-10 (Single Family Residential)
General Plan: Low Density Residential
Request: Planning Commission consideration of a Conditional Use Permit for a proposed fence to the rear of an existing two-story house which exceeds 6 feet in height (19.06.030.U, ECMC). The fence is proposed to be a maximum of 8 feet tall.
CEQA: This project is categorically exempt from the provisions of CEQA pursuant to Section 15301 of the CEQA Guidelines, Class 1: Existing Facilities.

8. STAFF COMMUNICATIONS
Informational reports on matters of general interest, presented by City staff.

9. ADJOURNMENT

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Sean Moss at (510) 215-4330. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).

Any writings or documents provided to a majority of the members regarding any item on this agenda will be made available for public inspection.
MINUTES
REGULAR MEETING OF THE
PLANNING COMMISSION
February 17, 2021 at 7:30 p.m.

This meeting was held via teleconference.

7:30 p.m. CONVENE REGULAR MEETING

1. ROLL CALL – Chair Leslie Mendez; Vice-Chair Andrea Lucas; Members Brendan Bloom, Erin Gillett, Daniel Hamilton, and Joy Navarrete. Commissioner Greg Crump had an excused absence.

2. COUNCIL/STAFF LIAISON ANNOUNCEMENTS AND REPORTS
City Councilmember Lisa Motoyoma provided an update on the City’s budget.

3. ORAL COMMUNICATIONS FROM THE PUBLIC
Howdy Goudey provided public comment regarding greenhouse gas emissions thresholds of significance for the San Pablo Avenue Specific Plan (SPASP) Environmental Impact Report (EIR) update.

4. ADOPTION OF MINUTES

5. COMMISSIONER COMMUNICATION/CONFLICT OF INTEREST DISCLOSURE
Nothing was reported

6. PUBLIC HEARING: 7824 EUREKA AVENUE CONDITIONAL USE PERMIT
Application: PL20-0125
Applicant: Sunny Gao
Location: 7824 Eureka Avenue
APN: 504-403-011
Zoning: RS-5 (Single Family Residential)
General Plan: Low Density Residential
Request: Planning Commission consideration of a Conditional Use Permit for expansion of a nonconforming single-family house (Chapter 19.27 and Chapter 19.34, ECMC). The single-family house is legally nonconforming because it contains one covered parking space. The proposed project includes a three-story addition above and to the rear of an existing two-story house, resulting in more than three bedrooms.

CEQA: This project is categorically exempt from the provisions of CEQA pursuant to Section 15301 of the CEQA Guidelines, Class 1: Existing Facilities.
Senior Planner Jeff Ballantine presented the staff report and answered questions from the Commission.

The public hearing was opened.

The following speakers addressed the Commission:
Andreas Kathol, 7828 Eureka Avenue
Bryan Pirtle, 7824 Eureka Avenue

The public hearing was closed.

Moved/Second: Commissioner Lucas/Hamilton. Action: Passed a motion to adopt a resolution granting a Conditional Use Permit to allow the expansion of a single-family house with nonconforming covered parking resulting in more than three bedrooms at 7824 Eureka Avenue.


7. PUBLIC HEARING: 832 EVERETT STREET CONDITIONAL USE PERMIT
Application: PL20-0138
Applicant: Mehdi Arfa
Location: 832 Everett Street
APN: 503-255-024
Zoning: RS-5 (Single Family Residential)
General Plan: Low Density Residential
Request: Planning Commission consideration of a proposed two-story addition to rear of an existing two-story single family house that requires a Conditional Use Permit for exceeding building envelope requirements (Chapter 19.34, ECMC).
CEQA: This project is categorically exempt from the provisions of CEQA pursuant to Section 15301 of the CEQA Guidelines, Class 1: Existing Facilities.

Senior Planner Jeff Ballantine presented the staff report and answered questions from the Commission.

The public hearing was opened.

The following speakers addressed the Commission:
Shauna Falvey
Colin Sutton
Susan Wong
Charles Rockey
Stephanie Barbic

The public hearing was closed.

Moved/Second: Commissioner Gillett/Hamilton. Action: Passed a motion to adopt a resolution granting a Conditional Use Permit to allow an exception to the building envelope requirements for a two-story addition to the rear of an existing two-story single family house at 832 Everett Street, with the addition of the following condition of approval:
The applicant shall construct a 6 foot tall fence on the southern property line that separates the houses of 832 Everett Street and 828 Everett Street prior to issuance of a certificate of occupancy. The applicant shall obtain approval for a Fence Clearance from the Planning Division prior to constructing the fence.

**Ayes:** Commissioners Bloom, Gillett, Hamilton, Lucas, Mendez Navarrete.
**Absent:** Crump.

8. **STAFF COMMUNICATIONS**
   Planning Manager Sean Moss provided an update on a March 31, 2021 joint study session with the Planning Commission and Design Review Board for the San Pablo Avenue Specific Plan update.

9. **ADJOURNMENT**
   9:40 p.m.
DETAILS

Application Number: PL21-0003

Applicant: Han Li

Location: 929 Shevlin Drive

APN: 505-221-024

Zoning: RS-5 (Single Family Residential)

General Plan: Low Density Residential

Request: Planning Commission consideration of a Conditional Use Permit to allow an extension of an exterior wall on the north side of an existing single-family house along an existing nonconforming side setback (19.27.050.B, ECMC) and an Administrative Use Permit to allow a new carport located in the front half of the property (19.06.030.N, ECMC).

CEQA: This project is categorically exempt from the provisions of CEQA pursuant to Section 15301 of the CEQA Guidelines, Class 1: Existing Facilities and pursuant to Section 15303 of the CEQA Guidelines, Class 3: New Construction or Conversion of Small Structures.

EXECUTIVE SUMMARY

The requested entitlement for consideration by the Planning Commission is a Conditional Use Permit to allow an exception to the main building envelope and for expanding a nonconforming side setback for a proposed addition of an existing single-family house and an Administrative Use Permit to allow a proposed carport which is located in the front half of the property.

The project proposes to increase the height of the north side exterior wall by 2 ft. 3 in. so that the interior ceiling height will be 8 ft. tall. The project also proposes to construct a new 210 sq. ft. carport located in the front half of the property approximately 30 ft. from the front property line.

The existing house has a non-conforming side setback of 4 ft. on the north side, with a portion of the building projecting out to approximately 1 ft. 4 in. from the northern property line. The proposed height of the building at the northern side setback is 17 ft. 3 in. tall, whereas the daylight plane starts at a height of 15 feet at the side setback. The project would not exceed the base height of 25 feet.

Based on the evidence and analysis contained in this report, staff is recommending approval of the Conditional Use Permit and Administrative Use Permit.
Background

Site Location and Layout

The house at 929 Shevlin Drive is an approximately 2,046-square-foot single-story house. The house sits on a 11,440-square-foot lot in the RS-5 (Single Family Residential) zoning district. The existing lot coverage of the property is 18.8 percent. The lot slopes downwards from the front of the lot near Shevlin Drive towards the rear of the lot.

The existing house has a kitchen, dining room, living room, three bedrooms, two bathrooms, a laundry room, and an office space on the bottom level. The existing house has a non-conforming side setback of 4 feet on the north side, with a portion of the building towards the rear projecting out to approximately 1 foot, 4 inches from the northern property line.

The surrounding neighborhood contains single-family houses. The surrounding houses are a mixture of one-story and two-story houses. On the block of the project site, houses range in size from 1,250 sq. ft. to 2,600 sq. ft.

Vicinity Map
Adjacent Designations and Land Uses

**North:** Single Family Residential (RS-5) Zoning and Low Density Residential General Plan designation. Single family house.

**South:** Single Family Residential (RS-5) Zoning and Low Density Residential General Plan designation. Single family house.

**West:** Single Family Residential (RS-5) Zoning and Low Density Residential General Plan designation. Single family house.

**East:** Single Family Residential (RS-5) Zoning and Low Density Residential General Plan designation. Single family house.
Analysis

Project Description

The applicant is proposing to increase the height of the northern side exterior wall by 27 inches so that the interior ceiling height will be 8 feet tall. The proposed project would reconfigure the floor plan of an existing single-family home and would result in the same number of bedrooms and would create an open floor plan between the kitchen and living room. The proposed project also includes a new 210 square foot open carport at the front of the lot, 30 feet away from the front property line. The proposed carport requires an Administrative Use Permit to allow it to be located in the front half of the property, which is the only viable location for it, due to the slope of the lot.

The existing house has a nonconforming side setback on the north side. The addition would not comply with the required main building envelope (otherwise known as the daylight plane) and it would expand an existing nonconforming side setback by increasing the height of the entire building.

Table 1: Comparative Development Standards – RS-5 Zone and Proposed Project

<table>
<thead>
<tr>
<th>Development Standard</th>
<th>Zoning Ord. Requirement</th>
<th>Existing</th>
<th>Proposed</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height (maximum)</td>
<td>25’ maximum</td>
<td>20’-8.5”</td>
<td>No change</td>
<td>Yes</td>
</tr>
<tr>
<td>Height (at setback lines)</td>
<td>15’ maximum</td>
<td>15’ (at north side setback)</td>
<td>17’-3” (at north side setback)</td>
<td>No. Use Permit required.</td>
</tr>
<tr>
<td>Setbacks</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front</td>
<td>10’</td>
<td>52'-3”</td>
<td>No change</td>
<td>Yes</td>
</tr>
<tr>
<td>Side (north)</td>
<td>5’</td>
<td>4’ (Main Building) 1’-4” (Rear Corner)</td>
<td>No change</td>
<td>No. Use Permit required for expanding this nonconforming setback.</td>
</tr>
<tr>
<td>Side (south)</td>
<td>5’</td>
<td></td>
<td>No change</td>
<td>Yes</td>
</tr>
<tr>
<td>Rear</td>
<td>15’</td>
<td>94’</td>
<td>No change</td>
<td>Yes</td>
</tr>
<tr>
<td>Parking spaces (covered)</td>
<td>2 spaces</td>
<td>0 space</td>
<td>1 Space</td>
<td>No. Existing nonconforming condition. Proposal brings property closer into compliance.</td>
</tr>
<tr>
<td>Lot Coverage</td>
<td>50% maximum</td>
<td>18.8%</td>
<td>20.6%</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Main Building Envelope

Figure 19.06-B of the El Cerrito Zoning Ordinance establishes the permitted height limits and daylight planes for development in the RS zoning districts.

Maximum heights and daylight planes are dependent on the slope of the subject property. The subject property has an average lot slope of less than 10%. The permitted maximum building envelope, therefore, reaches a height of 15 feet at the required setback lines and then slopes toward the center of the property at a 45-degree angle (the required daylight plane), until it reaches a base height of 25 feet. The ‘base height’ is the maximum height permitted by-right.
The proposed addition exceeds the daylight plane along the side setback (see the Rear Elevation on Sheet A4.2 of Attachment 2). The northern side of the proposed addition is 4 ft. from the side property line and starts at 17 ft. 3 in. tall at the side setback, whereas the daylight plane starts at a height of 15 feet at the side setback. No portion of the existing house or of the proposed addition exceeds the base (by-right) 25-foot height limit (see images below).

**Front (East) Elevation**

![Front (East) Elevation Diagram](image1)

**Rear (West) Elevation**

![Rear (West) Elevation Diagram](image2)

The findings required for approval of the conditional use permit are discussed in detail below. In addition to the standard findings required for Conditional Use Permits, Section 19.06.030(D)(3)(a) of the El Cerrito Municipal Code (ECMC) contains an additional finding which is required for approval of Conditional Use Permits which grant exceptions to the main building envelope. This finding relates to solar access, view blockage and privacy, and these issues are discussed in greater detail below.
Solar Access

A shadow study was not prepared with this application because the overall increase in height of the proposed project is relatively minor. The project is proposing to raise the north side exterior wall by 27 inches and correspondingly increase the height of the roof ridge on the northern side of the building, and the rest of the building form would remain relatively unaltered. To the east of the property Shevlin Drive is located at a higher grade than the property, to the west of the property 950 Seaview Drive is located at a lower grade and is set back quite some distance from the shared property line. 933 Shevlin Drive is located to north of the property, where the height increase is being proposed, and is also setback quite some distance for the shared property line. 929 Shevlin Drive is also surrounded by trees for a majority of the property.

Consequently, the proposed addition is not anticipated to cause a significant adverse impact on adjacent residences with respect to solar access.

Views

The El Cerrito General Plan acknowledges the presence of views of bridges, the San Francisco and San Pablo bays, Mt. Tamalpais and Marin County, and of the East Bay hills from uphill locations in El Cerrito. Due to the gently sloping topography, location and scale of surrounding houses, and existence of trees on and adjacent to the project site, potential view impacts to residences of key landmarks that would result from the proposed addition appear to be limited. City staff note that this is based on staff’s assessment of the best available information. City staff did not have access to adjacent properties and were not able to observe the views from inside adjacent residences.

Privacy

The existing house has a non-conforming side setback of 4 ft. on the north side, with a portion of the building projecting out to approximately 1 ft. 4 in. from the northern property line. The applicant proposes to raise the existing house by approximately 2 ft. 3 in., such that the building is approximately 17 ft. 3 in. tall at the side setback line. There are currently four windows on the north side of the building. However, the proposal would remove all four of these windows. Thus, the proposed addition would reduce privacy impacts because the addition will no longer have any windows directly facing 933 Shevlin Drive.

Nonconforming Setback

As described above, the existing house has a non-conforming side setback of 4 feet on the north side, with a portion of the building projecting out to approximately 1 foot, 4 inches from the northern property line. The proposed addition would increase the height of the existing building by approximately 2 feet, 3 inches, in order to raise the interior ceiling height so that it is 8 feet tall. Pursuant to ECMC Section 19.27.050, a conditional use permit is required for additions and structural alterations that enlarge and extend a nonconforming structure when such enlargement does not comply with all applicable requirements. The proposed addition requires a conditional use permit for expanding the northern building wall that has a nonconforming side setback.

Carport

There are currently not any covered parking spaces on the project site. The property is considered nonconforming for parking spaces since ECMC Section 19.24.040 requires two covered parking spaces for single family houses. Pursuant to ECMC Section 19.27.050, a conditional use permit is required for additions and structural alterations that enlarge and extend a nonconforming structure when such
enlargement does not comply with all applicable requirements. The proposed addition requires a conditional use permit for expanding roof height of a house that is a nonconforming structure due to not have any covered parking spaces on the property.

The applicant is voluntarily proposing to construct a carport in front of the house that would accommodate one parking space. This would bring the property into closer compliance with the requirement for two covered parking spaces in ECMC Section 19.24.040. However, pursuant to ECMC Section 19.06.030.N, an Administrative Use Permit is required for a garage or carport located on the front one-half of the lot. Since the proposed carport is on the front half of the lot, an Administrative Use Permit is required for this application. Due to the location of the existing house, the only feasible location for covered parking is in front of the house.

Due to numerous large trees at the front of the property the proposed carport would only minimally be visible from the street. The proposed design of the carport is also simple with four posts and a roof and it would be harmonious and compatible with the surrounding neighborhood.

Typically, the Zoning Administrator makes determinations on Administrative Use Permit applications, pursuant to ECMC Section 19.34.030.B. However, the Zoning Administrator has determined to designate the Planning Commission as the review authority for this Administrative Use Permit application pursuant to ECMC Section 19.34.030.C since the proposed project requires Planning Commission action on the requested Conditional Use Permit for the proposed addition.

Public Notice and Comment

The required public notice for the project was published in the East Bay Times and mailed to owners of property within 300 feet of the project site on or before February 24, 2020. No public comments have been received to date.

Environmental Review

This project is categorically exempt from the provisions of CEQA pursuant to Section 15301 of the CEQA Guidelines, Class 1: Existing Facilities and pursuant to Section 15303 of the CEQA Guidelines, Class 3: New Construction or Conversion of Small Structures.

Compliance with the General Plan

The Conditional Use Permit to allow an exception to the main building envelope is consistent with the following policies of the El Cerrito General Plan:

**LU1.5: Suitable Housing.** Promote suitably located housing and services for all age groups within the City.

The proposed project would enlarge the common spaces of an existing single-family home, providing suitable housing for a large family or multi-generational household.

**CD1.1: Neighborhood Character.** Preserve and enhance the character of existing residential neighborhoods by limiting encroachment of new buildings and activities that are out of scale and character with the surrounding uses.

The project is not expected to have substantially greater impacts to views, solar access, and privacy than it would if it were designed to comply with the main building envelope requirements. The project’s exceedence of the main building envelope at the side setback allows the building massing to be located above the main living space of the house. The project does not exceed the
overall height limit for the RS-5 zoning district. The proposed design of the carport is also simple with four posts and a roof and it would be harmonious and compatible with the surrounding neighborhood.

**CD4.1: Compatibility in Building Scale.** Avoid big differences in building scale and character between developments on adjoining lots.

The building at 929 Shevlin Drive would remain a two-story house and would comply with the height limit and lot coverage regulations of the RS-5 zone that control building scale and character. The addition’s overall height and roof line would be consistent with many of the two-story buildings on the 900 block of Shevlin Drive. The addition’s materials, colors, and gabled-roof design would match those of the existing house.

### Required Findings

**Conditional Use Permit – Building Envelope & Nonconforming Setback**

In order to approve the Conditional Use Permit to allow an exception to the main building envelope and to expand an existing nonconforming setback, the Planning Commission must make the following findings, contained in Section 19.34.040 of the El Cerrito Municipal Code:

1. The location, size, design, and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

   The surrounding neighborhood predominantly contains single-family houses. The surrounding houses are predominantly single-family houses with a mixture of two-story and one-story houses. The proposed addition would not increase the floor area of the house and would result in a 2,096 square foot house on a 11,440 square foot lot. The location, size, and design of the proposed house addition are consistent with the scale and design of development in the surrounding neighborhood. As described in the staff report, the proposed addition has been designed to limit privacy, view, and solar access impacts to the adjacent properties.

2. The location and design of the proposal will provide a convenient and functional living, working, shopping, or civic environment that will be an attractive amenity for the City.

   The proposed project would reconfigure the floor plan of an existing single-family home and would result in the same number of bedrooms and would create an open floor plan between the kitchen and living room. The resulting house will be an attractive addition to the neighborhood.

3. The proposal is consistent with the purpose of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.

   The Conditional Use Permit will allow the expansion of a single-family home, which is a permitted land use in the RS-5 district and consistent with the district’s intent. The proposed project will implement the following policies of the El Cerrito General Plan: LU1.5: Suitable Housing, CD1.1: Neighborhood Character, and CD4.1: Compatibility in Building Scale.

In addition, to approve the Conditional Use Permit to allow an exception to the main building envelope, the Planning Commission must make the following findings in Section 19.06.030.D.3.i:

4. The proposal when viewed in its entirety represents a superior design solution to that which would be possible if the project were built in full compliance with the required standards for the
main building envelope and will not cause a significant adverse impact on residences to the side, rear or directly across the street with respect to solar access, view blockage and privacy.

The proposed house addition has been designed to limit privacy, view, and solar access impacts to the adjacent properties. It is not expected that the proposed house will significantly impact the solar access of adjacent houses due to the geographic context of the lot. Due to the sloping topography, location and scale of surrounding houses, and existence of trees on and adjacent to the project site, potential view impacts to residences of key landmarks that would result from the proposed addition appear to be limited. The proposed addition would remove four existing windows which would reduce privacy impacts such that there are no longer windows on the north side of the building that face 933 Shevlin Drive.

Administrative Use Permit – Carport

In order to approve the Conditional Use Permit to allow an exception to the main building envelope and to expand an existing nonconforming setback and an Administrative Use Permit to allow a carport in the front half of the property, the Planning Commission must make the following findings, contained in Section 19.34.040 of the El Cerrito Municipal Code:

1. The location, size, design, and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

   Due to numerous large trees at the front of the property the proposed carport would only minimally be visible from the street. The proposed design of the carport is also simple with four posts and a roof and it would be harmonious and compatible with the surrounding neighborhood.

2. The location and design of the proposal will provide a convenient and functional living, working, shopping, or civic environment that will be an attractive amenity for the City.

   The proposed carport would bring the property into closer compliance with the parking requirements in the City’s Municipal Code. The proposed design of the carport is also simple with four posts and a roof and it will be an attractive addition to the neighborhood.

3. The proposal is consistent with the purpose of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.

   The Administrative Use Permit will allow the construction of a carport in the front half of the property, and it will bring the property closer into compliance with the parking requirements in the City’s Municipal Code. The proposed carport will implement the following policies of the El Cerrito General Plan: CD1.1: Neighborhood Character.

Staff Recommendation

Based on the information contained in this report, staff recommends approval of Planning Application PL20-0138, as conditioned by the draft resolution in Attachment 1.

Proposed Motion

1. Move adoption of Planning Commission Resolution PC2021-03 approving a Conditional Use Permit to allow an exception to the main building envelope and for expanding a nonconforming
side setback for a proposed addition of an existing single-family house and an Administrative Use Permit to allow a carport in the front half of the property at 929 Shevlin Drive.

Appeal Period

Within ten (10) calendar days after the date of the decision, the Planning Commission action may be appealed to the City Council.

Attachments

1. Draft resolution
2. Project plans
Planning Commission Resolution PC 2021-03

APPLICATION NO.  PL21-0003

A RESOLUTION OF THE CITY OF EL CERRITO PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMITS TO ALLOW AN EXCEPTION TO THE MAIN BUILDING ENVELOPE AND FOR EXPANDING A NONCONFORMING SIDE SETBACK FOR A PROPOSED ADDITION OF AN EXISTING SINGLE-FAMILY HOUSE AND TO ALLOW A CARPORT IN THE FRONT HALF OF THE PROPERTY AT 929 SHEVLIN DRIVE

WHEREAS, the site is located at 929 Shevlin Drive; and

WHEREAS, the existing Assessor’s Parcel Number of the site is 505-221-024; and

WHEREAS, the General Plan land use classification of the site is Low Density Residential; and

WHEREAS, the zoning district of the site is RS-5 (Single Family Residential); and

WHEREAS, the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines, Class 1: Existing Facilities and pursuant to Section 15303 of the CEQA Guidelines, Class 3: New Construction or Conversion of Small Structures; and

WHEREAS, on January 6, 2021, Han Li (the “applicant”) submitted an application for a Conditional Use Permit to allow an exception to the main building envelope and for expanding a nonconforming side setback for an addition to an existing single-family house and for an Administrative Use Permit to allow a carport in the front half of the property; and

WHEREAS, on March 17, 2021, the Planning Commission, after due consideration of all evidence and reports and application materials offered for review does find and determine the following:

Conditional Use Permit Findings – Building Envelope & Nonconforming Setback

1. The surrounding neighborhood predominantly contains single-family houses. The surrounding houses are predominantly single-family houses with a mixture of two-story and one-story houses. The proposed addition would not increase the floor area of the house and would result in a 2,096 square foot house on a 11,440 square foot lot. The location, size, and design of the proposed house addition are consistent with the scale and design of development in the surrounding neighborhood. As described in the staff report, the proposed addition has been designed to limit privacy, view, and solar access impacts to the adjacent properties.

2. The proposed project would reconfigure the floor plan of an existing single-family home and would result in the same number of bedrooms and would create an open floor plan between the kitchen and living room. The resulting house will be an attractive addition to the neighborhood.

3. The Conditional Use Permit will allow the expansion of a single-family home, which is a permitted land use in the RS-5 district and consistent with the district’s intent. The proposed project will implement the following policies of the El Cerrito General Plan: LU1.5: Suitable Housing, CD1.1: Neighborhood Character, and CD4.1: Compatibility in Building Scale.

4. The proposed house addition has been designed to limit privacy, view, and solar access impacts to the adjacent properties. It is not expected that the proposed house will significantly impact the solar access of adjacent houses due to the geographic context of the lot. Due to the sloping topography, location and scale
of surrounding houses, and existence of trees on and adjacent to the project site, potential view impacts to residences of key landmarks that would result from the proposed addition appear to be limited. The proposed addition would remove four existing windows which would reduce privacy impacts such that there are no longer windows on the north side of the building that face 933 Shevlin Drive.

Conditional Use Permit Findings – Carport

1. Due to numerous large trees at the front of the property the proposed carport would only minimally be visible from the street. The proposed design of the carport is also simple with four posts and a roof and it would be harmonious and compatible with the surrounding neighborhood.

2. The proposed carport would bring the property into closer compliance with the parking requirements in the City’s Municipal Code. The proposed design of the carport is also simple with four posts and a roof and it will be an attractive addition to the neighborhood.

3. The Administrative Use Permit will allow the construction of a carport in the front half of the property, and it will bring the property closer into compliance with the parking requirements in the City’s Municipal Code. The proposed carport will implement the following policies of the El Cerrito General Plan: CD1.1: Neighborhood Character.

NOW, THEREFORE, BE IT RESOLVED, that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito Planning Commission hereby approves Application No. PL21-0003, subject to the following conditions:

Planning Division:

1. The project will be constructed substantially in conformance with the plans received by the City on February 9, 2021. Minor changes may be approved by the Zoning Administrator. All improvements shall be installed in accordance with these approvals. Once constructed or installed, all improvements shall be maintained as approved.

2. If the applicant constructs buildings or makes improvements in accordance with these approvals, but fails to comply with any of the Conditions of Approval or limitations set forth in these Conditions of Approval and does not cure any such failure within a reasonable time after notice from the City of El Cerrito, then such failure shall be cause for non-issuance of a certificate of occupancy, revocation or modification of these approvals or any other remedies available to the City.

3. These Conditions of Approval shall apply to any successor in interest in the property and Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this approval.

4. If not used, this approval shall expire two years from the date of this action.

5. A construction staging plan shall be submitted to the Zoning Administrator for review and approval prior to the issuance of a building permit. The construction staging plan shall illustrate where the construction equipment will be staged and the location of parking for the construction employees. This construction and staging plan may also require the submission of a Temporary Use Permit.
CERTIFICATION

I certify that this resolution was adopted by the El Cerrito Planning Commission at a regular meeting held on March 17, 2021, upon motion of Commissioner __________, second by Commissioner __________:

AYES:
NOES:
ABSTAIN:
ABSENT:

_________________________
Sean Moss, AICP
Planning Manager
ATTACHMENT 1

SHEVLIN

LARGE SCALE DRAWINGS TAKE PRECEDENCE OVER PROPOSED VALUES ON THE PLAN VIEW SHALL MATCH THE WINDOW TAG - WORK NOT PARTICULARLY DETAILED, MARKED OR SPECIFIED. CONFIRM ALL WINDOW SIZES WITH ACTUAL/EXISTING CONTRACTOR SHALL INFORM THE ARCHITECT & OWNER IN WRITING AND OBTAIN WRITTEN APPROVAL FOR ANY OMISSIONS OR CONFLICTS BETWEEN VARIOUS DOCUMENTS, OR WHICH MAY CONSTITUTE A HAZARD. THE FACT THAT THE CONSTRUCTION DOCUMENTS ARE BROUGHT TO THE ATTENTION OF THE DESIGNER BEFORE PROCEEDING WITH THE WORK.

CONTRACTOR'S RESPONSIBILITIES:

1. CONTRACTOR TO PROVIDE ALL WORK AND MATERIALS IN ACCORDANCE WITH THE LATEST REQUIREMENTS AS AMENDED BY ALL STATE AND LOCAL CODES, AND CALIFORNIA ADMINISTRATIVE CODE, TITLE 24, DISABLED ACCESS COMPLIANCE REGULATIONS.

2. CONTRACTOR SHALL MAKE SITE INSPECTIONS AND BE RESPONSIBLE FOR ALL NEW AND DEMOLITION WORK, WHETHER DETAILED BY THE SPECIFICATIONS AND DRAWINGS, OR IMPLIED BY EXISTING CONDITIONS.

3. ANY DISCREPANCIES IN THE CONSTRUCTION DOCUMENTS AS COMPLETE WITH ACTUAL SITE SITUATION SHALL BE BROUGHT TO THE ATTENTION OF THE DESIGNER BEFORE PROCEEDING WITH THE WORK.

4. CONTRACTOR SHALL PROVIDE ALL TEMPORARY SHORING OR UNDERPINNINGS AS NECESSARY, WORK TO BE PERFORMED UNDER SEPARATE PERMIT.

5. CONTRACTOR SHALL BE RESPONSIBLE TO COORDINATE AND PERFORM THEM IN A SAFE AND ORDERLY MANNER, WITH THE LEAST POSSIBLE DISRUPTION AND INTERFERENCE WITH NEIGHBORING TENANTS.

6. CONTRACTOR SHALL BE RESPONSIBLE FOR DISPOSING OF ALL ASSEMBLIES AND RE-CONNECTIONS WHERE RE-USE IS POSSIBLE.

7. CONFIRM ALL WINDOW SIZES WITH ACTUAL/EXISTING CONDITIONS PRIOR TO ORDERING WINDOWS.

8. SLOPE ALL FLOORS/ROOFS TO DRAIN IN A MINIMUM OF 1/4" PER 1' IF UNSPECIFIED.

9. CONTRACTOR IS RESPONSIBLE TO PROVIDE TRUE INDUSTRIAL SAFETY PERMIT FOR ANY WORK OVER 6' IN HEIGHT, INCLUDING EXCAVATION OVER 6' AS OTHERWISE REQUIRED.

10. CONTRACTOR IS RESPONSIBLE FOR ALL WATERPROOFING DESIGN AND INSTALLATION FOR CONCRETE WALL ENCLOSING CONDITIONED SPACE AND AT FLOORS WITH CRAWL SPACES OTHERW size.

11. CONTRACTOR IS RESPONSIBLE FOR COMPLIANCE WITH ALL LOCAL EXTERIOR ASSEMBLY INSTALLATIONS REGULATIONS INCLUDING BUT NOT LIMITED TO ORDING INSTRUCTIONS AND TESTS AS REQUIRED BY STATE, CITY OR ANY OTHER APPROPRIATE AGENCY.

12. CONTRACTOR IS RESPONSIBLE FOR DESIGNING COPING 

WALLS ENCLOSING CONDITIONED SPACE

R VALUES ON THE PLAN VIEW SHALL MATCH THE R VALUES ON CF. THE R VALUES SHALL BE FOR RESIDENTIAL PACKAGE D, CF FORM

R-13 IN 2x4 STUDS / R-22 IN 2x8 STUDS /

WALLS BETWEEN GARAGE AND ROOMS ABOVE, AND AT FLOORS WITH CRAWL SPACES, OTHERWISE.

ON THE COMPUTER, THE "A" R-15 IN 2x6 STUDS / R-29 IN 2x10 STUDS/ IS DETERMINED BY THE CF FORM PERFORMANCE METHODS (ZGC 015-101-C) OR D AND REFERENCE APPENDICES THE "A" FORM.

ON THE COMPUTER, THE "A" R-15 IN 2x6 STUDS / R-29 IN 2x10 STUDS/ IS DETERMINED BY THE CF FORM PERFORMANCE METHODS (ZGC 015-101-C) OR D AND REFERENCE APPENDICES THE "A" FORM.

2. PROVIDE MAXIMUM 1.2 GALLONS PER MINUTE FOR ALL NECESSARY, WORK TO BE PERFORMED UNDER SEPARATE PERMIT.

3. CONTRACTOR SHALL PROVIDE DUST COVERS AS NEEDED TO PROTECT FINISH MATERIALS.

4. CONTRACTOR IS RESPONSIBLE FOR COMPLIANCE WITH ALL STATE, CITY AND LOCAL CODES, INCLUDING BUT NOT LIMITED TO ORDING INSTRUCTIONS AND TESTS AS REQUIRED BY STATE, CITY OR ANY OTHER APPROPRIATE AGENCY.

5. CONTRACTOR SHALL PROVIDE ALL TEMPORARY STORAGE AREAS IN A SAFE AND FULLY OPERATIONAL CONDITION.

6. CONTRACTOR SHALL PROVIDE WRITTEN DIRECTION AS HOW TO PROCEED IN EACH CASE.

7. ALL PLUMBING, ELECTRICAL & HEATING SYSTEM TO BE DESIGNED/BUILT BY THE CONTRACTOR.
SUBJECT PROPERTY:

929 SHEVLIN DR
(APN: 505-221-024)

ADJACENT PROPERTY:

923 SHEVLIN DR
(APN: 505-221-023)

ADJACENT PROPERTY:

933 SHEVLIN DR
(APN: 505-221-025)

SHEVLIN DR

(E) DRIVEWAY
15'-0" REAR SETBACK LINE

5'-0" SIDE SETBACK LINE

5'-0" SIDE SETBACK LINE

10'-0" FRONT SETBACK LINE

EXISTING ROOF FRAMING TO BE MOVED.
CONSTRUCTION AREA FOR INCREASING SIDE WALL HEIGHT

EXISTING ROOF CONSTRUCTION AREA: 700 SF

PROJECT:

SHEVLIN
929 Shevlin Dr,
El Cerrito, CA 94530

APN: 505-221-024; Zoning: RS-5

OWNER:

Jiayang Li; 415.994.0663; jiayangli1988@hotmail.com

DESIGNER:

HAN DESIGN STUDIO
157 SUMMIT WAY
SAN FRANCISCO, CA 94132
T: 415.987.0596
E: HAN@DESIGNSTUDIOHAN.COM

ORIGINAL DATE:

12/12/20

SHEET TITLE:

SITE PLAN

SHEET NO.:

A 1.0

REV.: 1.0

SCALE: 1" = 10'-0"
SUBJECT PROPERTY:
929 SHEVLIN DR
(APN: 505-221-024)

ADJACENT PROPERTY:
923 SHEVLIN DR
(APN: 505-221-023)

ADJACENT PROPERTY:
933 SHEVLIN DR
(APN: 505-221-025)

10'-0" FRONT SETBACK LINE
5'-0" SIDE SETBACK LINE
5'-0" SIDE SETBACK LINE
10'-0" FRONT SETBACK LINE

SHEVLIN DR

10'-0" FRONT SETBACK LINE

PROJECT:
SHEVLIN
929 Shevlin Dr,
El Cerrito, CA 94530

APN: 505-221-024; Zoning: RS
date 12/13/20

OWNER:
929 Shevlin Dr, El Cerrito, CA 94530

APN: 505-221-024; Zoning: RS

Jiayang Li; 415.994.0663; jiayangli1988@hotmail.com

DESIGNER:
HAN DESIGN STUDIO
1ST SUMMIT WAY
SAN FRANCISCO, CA 94132
T: 415.397.0296
E: HAN@DESIGNSTUDIOHAN.COM

ORIGINAL DATE:
SHEET NO.:
SHEET TITLE:
REVISIONS:

SITE PLAN

11/10/20

1" = 10'-0"

A NEW RESIDENCY shall be located in the proposed area of the subject property. The new residence shall not interfere with the use and enjoyment of any existing, or future, structure or lot located on the subject property. The new residence shall have access to utilities located on the adjacent properties. The new residence shall be separated from the subject property by a minimum of 10'-0" setback from the front property line.

A NEW GAS METER shall be located in the proposed area of the subject property. The new gas meter shall not interfere with the use and enjoyment of any existing, or future, structure or lot located on the subject property. The new gas meter shall have access to utilities located on the adjacent properties. The new gas meter shall be separated from the subject property by a minimum of 10'-0" setback from the front property line.

A NEW RACEWAY shall be installed to accommodate a 208/240 volt dedicated branch circuit. The raceway shall not be less than trade size 1". The raceway shall originate at the main service panel serving the area, and shall terminate in close proximity to the proposed location of the charging equipment and into a listed suitable cabinet, box, enclosure or equivalent.

A NEW RESIDENTIAL USE ELECTRIC VEHICLE CHARGING STATION shall be installed in the proposed area of the subject property. The charging station shall comply with all applicable regulations and codes.

NEW BUILD COVERED OPEN CARPORT
SIZE: 20' X 10'-6"

A NEW RACEWAY CAPABLE OF ACCOMMODATING A 208/240 VOLT DEDICATED BRANCH CIRCUIT. THE RACEWAY SHALL NOT BE LESS THAN TRADE SIZE 1". THE RACEWAY SHALL ORIGINATE AT THE MAIN SERVICE PANEL SERVING THE AREA, AND SHALL TERMINATE IN CLOSE PROXIMITY TO THE PROPOSED LOCATION OF THE CHARGING EQUIPMENT AND INTO A LISTED SUITABLE CABINET, BOX, ENCLOSURE OR EQUIVALENT.

SITE PLAN - PROPOSED
Provide listed 1 3/8" schedule 40 pipe and fittings for all plumbing systems.

Provide listed 1 3/8" 20 minute fire resistant door and frame.

Provide at least one 20 amp branch circuit to supply bathroom/powder/laundry receptacle outlets.

Provide self-closing, self-sounding rated bathe fans. Bathe fans shall be switched "on" and "off" for each bath room.

Provide a 30" side to side clearance and a minimum 24" in front of the toilet. New toilet must be water conserving 1.28 gal. to 5.7 sf.

Provide clothes dryer moisture exhaust duct (min. 4" in diameter) to dryer in laundry closet. Duct length is limited to 14 ft., with 2 elbows or provide in line booster fan if more than 14'.

Provide clothes dryer moisture exhaust duct (min. 4" in diameter) to dryer in laundry closet. Duct length is limited to 14 ft., with 2 elbows or provide in line booster fan if more than 14'.

A. B. C. See note 124:

1) By a horizontal distance of not less than 24" where the wall or partition is constructed of a min. no. 26 gauge sheet steel or other non-absorbent sheet materials. Provided in bench higher side.

2) By a horizontal distance of not less than 24" in residential, non-absorbent non-self-sounding rated, recessed fixtures shall be installed so that the re-circulation path is not blocked. Re-circulation path is protected with listed putty pads. 3) By a horizontal distance of not less than 24" in residential, non-absorbent non-self-sounding rated, recessed fixtures shall be installed so that the re-circulation path is not blocked. Re-circulation path is protected with listed putty pads.

Provide all listed 1 3/8" schedule 40 pipe and fittings for all plumbing systems.

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ELECTRICAL

PROVIDE A 30" SIDE TO SIDE CLR. AND A MIN. 24" IN FRONT OF THE TOILET. NEW TOILET MUST BE WATER CONSERVING 1.28 GAL.

CEILING SEPARATING THE DWELLING FROM THE GARAGE SHALL BE HALF OF THE COMMON WALL BETWEEN THE GARAGE AND DUCTS IN THE GARAGE AND DUCTS PENETRATING THE WALL OR CEILINGS OTHER ABOVE THE DWELLING.

PLUMBING

PROVIDE GLASS DOOR FOR SHOWER STALL. GLASS MUST BE TEMPERED GLASS WITH SMOKE DETECTORS ALONG THE ENTRANCE TO THE SHOWER STALL. DISTRIBUTION OF WATER SUPPLY AND SANITARY WASTE SYSTEM.

MECHANICAL

PROVIDE APPROVED TILE BACKER MATERIALS AND GYPBOARD IN STAIRWAY. PROVIDE SAFETY GLASS DOOR FOR SHOWER STALL. DOOR MUST HAVE A FINISHED FLOOR TO WINDOW OPENING HEIGHT OF NOT MORE THAN 44".

PROVIDE MIN. 26 GA. GALV. SHEET METAL HEATING SUPPLY DUCTS AT GARAGE. BOTTOM OF HEATING DUCT OR FURRING SHALL NOT BE LOWER THAN 7'.

PRODUCE PLUMBING OPENINGS IN WALLS AND CEILINGS FOR TILE OR PAINT FOR COMPARTMENT WITH INDIVIDUAL NONCOMMUNICATING STUD CAVITIES. 2) BY A HORIZONTAL DISTANCE OF NOT LESS THAN 100 SQ. IN. FOR MAKEUP AIR SHALL BE PROVIDED IN EACH DWELLING UNIT.

PROVIDE MIN. 26 GA. GALV. SHEET METAL HEATING SUPPLY DUCTS AT GARAGE. BOTTOM OF HEATING DUCT OR FURRING SHALL NOT BE LOWER THAN 7'.

WATER HEATER SHALL BE WRAP WITH R-12 INSULATION. STRAP AT THE LOWER POINT SHALL BE INSTALLED 4 FEET AWAY FROM THE WATER HEATER CONTROLS. WATER HEATER SHALL BE WRAP WITH R-12 INSULATION.

PROVIDE 1 SCONE SOUND RATING.

NEW TOILET MUST BE WATER CONSERVING 1.28 GAL.

PROVIDE A 30" SIDE TO SIDE CLR. AND A MIN. 24" IN FRONT OF THE TOILET. NEW TOILET MUST BE WATER CONSERVING 1.28 GAL.

PROVIDE SAFETY GLASS DOOR FOR SHOWER STALL. DOOR MUST HAVE A FINISHED FLOOR TO WINDOW OPENING HEIGHT OF NOT MORE THAN 44".

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WATER HEATER SHALL BE WRAP WITH R-12 INSULATION. STRAP AT THE LOWER POINT SHALL BE INSTALLED 4 FEET AWAY FROM THE WATER HEATER CONTROLS. WATER HEATER SHALL BE WRAP WITH R-12 INSULATION.

PROVIDE A 30" SIDE TO SIDE CLR. AND A MIN. 24" IN FRONT OF THE TOILET. NEW TOILET MUST BE WATER CONSERVING 1.28 GAL.
EXISTING - REAR ELEVATION

PROPOSED - REAR ELEVATION
The mounting height of the charging station is not to exceed 48", but not less than 42". This provides convenient access and operation of the charging station, and meets ADA requirements for access.
# Planning Commission Conditional Use Permit Report

**March 17, 2021**

**8701 Don Carol Drive**

## DETAILS

<table>
<thead>
<tr>
<th>Application Number:</th>
<th>PL20-0119</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant:</td>
<td>Kelda Gragg &amp; Mark Choi</td>
</tr>
<tr>
<td>Location:</td>
<td>8701 Don Carol Drive</td>
</tr>
<tr>
<td>APN:</td>
<td>505-322-031</td>
</tr>
<tr>
<td>Zoning:</td>
<td>RS-10 (Single Family Residential)</td>
</tr>
<tr>
<td>General Plan:</td>
<td>Very Low Density Residential</td>
</tr>
</tbody>
</table>

**Request:** Planning Commission consideration of a Conditional Use Permit to allow a fence in the rear yard of 8701 Don Carol Drive which exceeds 6 feet in height (19.06.030.U, ECMC). The fence is proposed to be a maximum of 8 feet tall.

**CEQA:** This project is categorically exempt from the provisions of CEQA pursuant to Section 15303 of the CEQA Guidelines, Class 3: New Construction or Conversion of Small Structures.

## EXECUTIVE SUMMARY

The requested entitlement for consideration by the Planning Commission is a Conditional Use Permit to allow a fence in the rear yard of 8701 Don Carol Drive which exceeds 6 feet in height. The proposed fence would be a maximum of 8 feet tall. The fence material consists of metal posts with metal wires that form small squares within the posts. As discussed in detail in this report, the project is not harmonious or compatible with abutting properties and the surrounding area and it adversely affects the livability of abutting properties and the surrounding neighborhood.

Based on the evidence contained in this report, staff recommends denial of the Conditional Use Permit.
Background

Site Location and Layout

The subject property at 8701 Don Carol Drive is in the hills of El Cerrito and is close to Wildcat Canyon and the City’s eastern limits. A two-story single-family house is located on the approximately 0.21-acre parcel. The house was constructed in 1965 by renowned structural engineer and UC Berkeley professor T.Y. Lin. The house was designed by Lin and architect Claude Oakland and is the world’s first residence constructed of pre-stressed concrete and a prominent example of mid-century architecture. The lot is up-sloping away from Don Carol Drive. The surrounding neighborhood consists of single-family houses, typically with wooden fences separating each property.

Vicinity Map
Fence Photos

Facing East from Rear Yard of Project Site

Facing Southwest from 1033 Leneve Place

Adjacent Designations and Land Uses


Analysis

Project Description

The applicant is requesting approval for an eight-foot-tall metal fence in the rear yard of the project site (see Attachments 2 and 3). A metal fence ranging in height from 7 feet to 9.5 feet tall was constructed in September 2020 without any permits or approvals from the City of El Cerrito (see fence photos in Attachment 4 and Attachment 5). The fence is uniquely shaped in how it is made of metal panels protruding up in rectangles, such that the top of the fence is not a continuous straight or curved line.

The property owners of 8701 Don Carol Drive submitted an application for a Conditional Use Permit in October 2020 requesting to allow a fence taller than 6 feet in the rear yard, in order to start the process of obtaining required approvals for this nonconforming fence. The fence material consists of thick metal posts with metal wires between the posts that create small squares. As shown in Attachment 2, the new fence spans roughly 176 feet 8 inches on the eastern (rear) property line and 10 feet on the southern (side) property line.

On December 22, 2020, City staff informed the applicant that the required findings for approval for the existing fence could not be made for the following reasons:

1. The fence is very tall and is almost 10 feet tall in at least a couple of areas. To the knowledge of City Staff, historically, approvals for Conditional Use Permits for fences in rear yards have generally not exceeded 8 feet in height.

2. Experiencing this fence from the neighbors’ properties that are east of the fence made it clear that it is an imposing structure for these properties. In particular, for 1045 Leneve Place, the fence is not very far from the back of the house.

In response to these concerns expressed by City staff, the applicant is proposing to reduce the height of this existing fence such that it is no taller than 8 feet at any given point (see Attachment 2). However, the proposed fence at 8 feet tall would still be substantially taller that the 6-foot-tall fences of abutting properties and in the surrounding area. In addition, the proposed fence material of thick metal posts with metal wire would not be harmonious with the wood fences of abutting properties and in the surrounding area. It is possible to integrate metal fencing into a residential area in a harmonious manner. However, the combination of the large size, white color, and design of the posts with wires of the fence are such that it stands out and is not harmonious with fences of abutting properties and the surrounding neighborhood.

Furthermore, as shown in the photos in Attachment 5, the proposed fence would be visually prominent to abutting properties and would impact the views and the livability particularly of properties located immediately to the east of the fence (1045, 1033, and 1027 Leneve Place). Although the proposal would reduce portions of this existing fence by revising the existing fence such that it is no taller than 8 feet, the proposed fence would still be visually prominent to these properties and impact the views and livability of these properties.

The applicant has provided photos of wildlife that entered their backyard at different times, prior to the construction of this fence to provide justification for the need for a taller fence (see Attachment 4). There are specific findings in ECMC Section 19.06.030.U.2 for allowing a fence to exceed 3 feet in height in a front yard. One of these findings applies to lots where deer and other animals intrude into yards on a regular basis. However, these findings are only applicable to fences that exceed 3 feet in height in a front yard, and this is not applicable to the proposed fence.
Fence Height Requirements

Table 19.06-G of the El Cerrito Zoning Ordinance allows fences outside front yard and street side yard setback areas to exceed 6 feet in height, allowing up to 10 feet with a Conditional Use Permit. All segments of the proposed fence are located outside of the required front yard setback. The proposed fencing would not exceed 8 feet in height.

Public Notice and Comment

The required public notice for the project was published in the East Bay Times and mailed to owners of property within 300 feet of the project site on or before February 24, 2021. Staff received numerous written comments for this project (see Attachment 6 and Attachment 7). These comments raise concerns with the application including, but not limited to:

- The fence impacts views of neighbors
- The fence is not harmonious with the neighborhood and stands out in an aesthetically unpleasant manner
- There are other options for protecting children and plants from wildlife than tall fences
- The fence is a public safety hazard by impeding emergency personnel from accessing Leneve Place from Don Carol Drive and by impeding emergency evacuation from Leneve Place, in the event that the Leneve Place roadway is blocked.
- No one else in the neighborhood has a fence taller than 6 feet to keep out wildlife
- The property owners constructed the fence without contacting City staff and approving it would encourage others to seek approval only after a project is completed

City staff agree with many of these comments. As described in the staff report and as shown in the attachments to the staff report, the proposed fence would impact views of neighbors and it would not be harmonious with the neighborhood. City staff visited the backyards of 8701 Don Carol Drive and the neighbors to the east along Leneve Place. On this visit, City staff were able to observe immediately surrounding fences. However, City staff were not able to view all of the backyard fences in the surrounding area to confirm whether or not all fences are no taller than 6 feet.

Environmental Review

This project is categorically exempt from the provisions of CEQA pursuant to Section 15303 of the CEQA Guidelines, Class 3: New Construction or Conversion of Small Structures.

Compliance with the General Plan

The Conditional Use Permit to allow an exception to the maximum fence height is not consistent with the following policies of the El Cerrito General Plan:

**CD1.1: Neighborhood Character.** Preserve and enhance the character of existing residential neighborhoods by limiting encroachment of new buildings and activities that are out of scale and character with the surrounding uses.

As proposed, the fence would be taller than the fences in the surrounding area and the metal posts and wire material would be a different material from the wood fences in the fences in the surrounding area. The combination of the large size, white color, and design of the posts with wires of the fence are such that it stands out and is not harmonious with fences of abutting properties and the surrounding neighborhood.
Required Findings

In order to deny the Conditional Use Permit to allow an exception to the maximum fence height, the Planning Commission must demonstrate that it cannot make the following findings, contained in 19.34.040 of the El Cerrito Zoning Ordinance:

1. The location, size, design, and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

   As proposed, the fence would be taller than the fences in the surrounding area and the metal posts and wire material would be a different material from the wood fences in the fences in the surrounding area. The combination of the large size, white color, and design of the posts with wires of the fence are such that it stands out and is not harmonious with fences of abutting properties and the surrounding neighborhood. In addition, the fence would impact the views of properties immediately east of the fence. Consequently, the proposed fence is not harmonious with fences of abutting properties and the surrounding neighborhood and it would adversely affect the livability of abutting properties.

2. The location and design of the proposal will provide a convenient and functional living, working, shopping, or civic environment that will be an attractive amenity for the City.

   The proposed fence would stand out aesthetically with regards to height and materials and would not be considered as an attractive amenity.

3. The proposal is consistent with the purpose of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.

   As proposed, the fence would be taller than the fences in the surrounding area and the metal posts and wire material would be a different material from the wood fences in the fences in the surrounding area. The combination of the large size, white color, and design of the posts with wires of the fence are such that it stands out and is not harmonious with fences of abutting properties and the surrounding neighborhood. The proposed fencing is not consistent with policy CD1.1: Neighborhood Character of the El Cerrito General Plan.

Staff Recommendation

Based on the information contained in this report, staff recommends denial of Planning Application PL20-0119.

Proposed Motion

1. Move adoption of Planning Commission Resolution PC2021-04 denying a Conditional Use Permit to allow a fence taller than 6 feet in the rear yard at 8701 Don Carol Drive.
Appeal Period

Within ten (10) calendar days after the date of the decision, the Planning Commission action may be appealed to the City Council.

Attachments

1. Draft Resolution
2. Proposed Fence
3. Project Summary
4. Wildlife Photos
5. Fence Photos
6. Applicant Comment – Kelda Gragg
7. Neighbor Comment – Barbara and Kenneth Berniker
8. Neighbor Comment – Marie Cherwin and Jason Arbeiter
9. Neighbor Comments – Compiled
10. Neighbor Comment – Frank Bellows
Planning Commission Resolution PC2021-04

APPLICATION NO. PL20-0119

A RESOLUTION OF THE CITY OF EL CERRITO PLANNING COMMISSION DENYING A CONDITIONAL USE PERMIT TO ALLOW A FENCE TALLER THAN 6 FEET IN THE REAR YARD AT 8701 DON CAROL DRIVE

WHEREAS, the General Plan land use classification of the site is Very Low Density Residential;

WHEREAS, the zoning district of the site is RS-10 (Single Family Residential);

WHEREAS, the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the CEQA Guidelines, Class 3: New Construction or Conversion of Small Structures;

WHEREAS, the site is located at 8701 Don Carol Drive;

WHEREAS, the Assessor’s Parcel Number of the site is 505-322-031;

WHEREAS, on October 21, 2020 the applicant submitted an application for a conditional use permit to allow for a fence taller than six feet in the rear yard;

WHEREAS, on March 17, 2021, the Planning Commission, after due consideration of all evidence and reports offered for review does find and determine the following:

1. As proposed, the fence would be taller than the fences in the surrounding area and the metal posts and wire material would be a different material from the wood fences in the fences in the surrounding area. In addition, the fence would be prominent and visible from surrounding properties and it would impact the views of properties immediately east of the fence. Consequently, the proposed fence is not harmonious with fences of abutting properties and the surrounding neighborhood and it would adversely affect the livability of abutting properties.

2. The proposed fence would stand out aesthetically with regards to height and materials and would not be considered as an attractive amenity.

3. As proposed, the fence would be taller than the fences in the surrounding area and the metal posts and wire material would be a different material from the wood fences in the fences in the surrounding area. In addition, the fence would be prominent and visible from surrounding properties. The proposed fencing is not consistent with policy CD1.1: Neighborhood Character of the El Cerrito General Plan.

NOW, THEREFORE, BE IT RESOLVED, that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito Planning Commission hereby denies the requested Conditional Use Permit to allow a fence taller than six feet in the rear yard of 8701 Don Carol Drive as part of Application No. PL20-0119:

CERTIFICATION
I certify that this resolution was adopted by the El Cerrito Planning Commission at a regular meeting held on March 17, 2021, upon motion of Commissioner __________, second by Commissioner __________:

AYES:
NOES:
ABSTAIN:
ABSENT:

________________________
Sean Moss, AICP
Planning Manager
1. TYP. SUPPORT POST EVERY 4'-5". (SEE SAMPLE)

2. FENCE WILL FOLLOW NATURAL SLOPES OF HILLSIDE AND NOT BE OVER 8'-0" TALL.

3. PLAN AND ELEVATION N.T.S.

--- REVISED/PROPOSED FENCE LOCATION

**ANY AND ALL INFORMATION ON THIS DRAWING IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS DEEMED RELIABLE, BUT NOT GUARANTEED. ALL INFORMATION REQUIRE INDEPENDENT VERIFICATION.**
Project Summary for 8701 Don Carol Drive

The fence is located along the back of the property and a +/- 12'-0” section along the top south property line. The fence is +/- 176'-0” long at the back property line. The design of the fence is extremely transparent unlike a wood fence, please see fencing samples provided to city planner Jeff Ballantine. This fence design is common around the city of El Cerrito and harmonious because of its extreme transparency quality. The purpose of the fence is to keep coyote, deer and wildlife out of the yard. Previously there was a 6’-0” chain-link fence that did not keep wildlife out and created a number of close call situations for our family. Have large deer and coyotes in the yard is specifically dangerous for our 5 year old twins and pets. We have lost our vegetable garden countless times and fruit trees have been eaten down to their trunks. Below is a list of other properties in El Cerrito with fences over 6’-0”. Most of these fences are either at the back or sides of properties.

7380 Stockton
868 Shevlin
872 Shevlin
840 Contra Costa
7320 Pebble Beach
1764 Arlington
1768 Arlington
1774 Arlington
970 Arlington
1369 Summit Park
8413 Buckingham
1214 Contra Costa
1050 Contra Costa
7750 Earl
821 Galvin
7564 Terrace
7747 Stockton
7606 Leviston
112 Seaview
206 Seaview
210 Seaview
7828 Eureka
1549 Arlington
7701 Potrero
7705 Potrero
Fence Photos

View from sidewalk of Don Carol Blvd. facing east
View from driveway of 8701 Don Carol Blvd. facing east

View from backyard of Don Carol Blvd. facing east
View from backyard of 1045 Leneve Place facing west
View from backyard of 1033 Leneve Place facing northwest

View from backyard of 1033 Leneve Place facing southwest
View from backyard of 1027 Leneve Place facing west
March 11, 2021

We have requested a conditional use permit for our home located at 8701 Don Carol Drive in El Cerrito. As you can see from our application and attached photos we have encountered deer, coyote, and other wildlife frequently in our yard. Previously we had a 6'-0" chain link fence at the rear of our property which was not keeping wildlife out of our yard. We are a family with two small children and are just trying to protect our family and property from danger.

The city of El Cerrito clearly states in the Summary of Regulations and Permits for Fences and Walls in the section titled Exceptions for Taller Fences, lots where deer and other animals intrude into yards on a regular basis owners can obtain a Conditional Use Permit (see below for this section).

Property owners may apply for a Conditional Use Permit to construct a fence or decorative wall taller than 3 feet, up to a maximum of 6 feet, in front and street-facing side setbacks, if one or more of the following special circumstances applies to the property:

a. Lots that front on major arterials as identified in the General Plan.
b. Lots that front on heavily used pedestrian routes and ways, including those on public streets.
c. Lots where deer and other animals intrude into yards on a regular basis.

Enclosed are the following items,

1. A petition signed by over 90 El Cerrito homeowners/residents that support our request to try to keep our family and property safe.
2. A signed letter from neighbors stating that we constantly have deer and coyote in our neighborhood.
3. Photos of a neighbors fences (two houses north of 1045 Leneve Place) that are 12'-0" high and another metal fence that is 7'-0". Showing that we are not the only people in the neighborhood asking for a fence over 6'-0".
4. A text message from our next door neighbor warning us that there was a coyote in our backyard.
5. A flyer from the California Department of Fish and Wildlife where they recommend an 8'-0" fence to discourage deer from frequenting your yard.
6. Photos of the old chain link fence located at the rear property line.
7. A flyer for Coyote Management Strategies For Homeowners that states homeowners should install 7'-6"-8'-0" tall fences.
8. Photos of our vegetable garden we are trying to protect.
9. Photos of fruit trees in our yard that were eaten by deer.
10. A letter from the three houses behind us where they threaten us to permanently and completely withdraw our Conditional Use Permit application or they will send disparaging and career damaging letters to Marks employer, the Department of Real
Estate, the National Association of Realtors, the California Association of Realtors, and post online reports. These types of threats would affect our family’s livelihood.

11. A sample of the disparaging letter the three houses behind us threaten to send to Marks employer.

12. A copy of the, what we see as a one sided letter multiple neighbors gave us that was sent out to our entire neighborhood.

Again, the only thing we are trying to do is protect our family and property from wildlife threats. In light of all the recent coyote attacks on both adults and children accompanied by adults we feel this fence is needed to keep our family safe.

Kelda Gragg & Mark Choi
8701 Don Carol Drive
El Cerrito, CA 94530
Support 8701 Don Carol Drive coyote and deer fence

93 people have signed this petition. Add your name now!

As a home owner/resident of El Cerrito I support the owners of 8701 Don Carol Drive in their application for a conditional use permit for a fence over 6'-0" tall. Throughout the city one can see numerous fences made of metal and over 6'-0" tall. I support the owners in trying to protect their family and property from coyote and deer that frequent El Cerrito.

Share for Success

24 COMMENTS

Marion Lippsold

Of course a higher fence is needed in our area of El Cerrito. Look around, many homes are increasing the height of their fences due to coyotes. Let's be realistic.

Kristin Celesia
Mar 11, 2021
I totally support this petition. Just makes sense!

Jay Perera
Mar 11, 2021
8 feet high fences keep children safe from wild animals such as deer & coyote

Brian Valmonte
Mar 11, 2021
I think they are doing what is right to protect their family.

Bertrand Pellegrin
Mar 11, 2021
I can completely understand their concern as I also worry about these animals taking over our yard and the possibility of coyotes attacking our dog.

Nadim Jessani
Mar 10, 2021
Deer and coyote are super active around this neighborhood and we need to be able to maintain ways to keep our yards, families and pets safe.

Lynn Armstrong
Mar 10, 2021
Coyotes are becoming more aggressive and are a serious danger to small children and pets.

Alessandro Chiara
Mar 10, 2021
For the safety of the neighborhood children.

Pamela Bouton
Mar 9, 2021
Many animals have been lost to coyote predation. We support this request.

Karine reed
Mar 9, 2021
I support this request. Thank you.
Deer regularly jump 6' fences. It's a safety issue.

Corryna Caballero
Mar 09, 2021
upvote reply show

In light of coyotes getting much bolder. A fence is a logical and useful tool to detour them.

Roger Sorensen
Mar 09, 2021
upvote reply show

Many homes in the El Cerro hills have protective fences exceeding 6 feet.

Carleen Sorensen
Mar 09, 2021
upvote reply show

Keep the children safe! Approve the fence!

Emma Yee
Mar 09, 2021
upvote reply show

Fence over 6' tall is fitting to the landscaping at 8701 Don Carol, and protective of the small children there from coyote.

Francesca Cavanaugh
Mar 09, 2021
upvote reply show

Fence is super important for safety.

Lori Schweitzer
Mar 09, 2021
upvote reply show

Keida and Mar's efforts to improve the safety and sustainability of their neighborhood should be supported by both the community and the City of El Cerro

William Gragg
Mar 09, 2021
upvote reply show

In light of the recent attacks by coyotes on small children we need to take the wildlife threat seriously. This fence is not an obstruction.

Jeffrey Dutton
Mar 09, 2021
upvote reply show

Give these folks a break.

Louie Vallerza
Mar 09, 2021
upvote reply show
Very much needed

Karen Djahan  
Mar 09, 2021

Best of luck

Shaion Gragg  
Mar 09, 2021

This is an area with constant coyote sightings during daylight as well as evening hours.

Kate Persons  
Mar 09, 2021

Save the fence!

Elsa Morse  
Mar 09, 2021

Absolutely! I unconditionally support a fence to protect a family.

Sign in to comment

93  SIGNATURES

18 hours ago  
Marion Lippold United States
18 hours ago  
Escor United States
18 hours ago  
Kristin Celestia United States
18 hours ago  
Jay Perera United States
19 hours ago  
Karen Owoc United States
20 hours ago  
Brian Valmantine United States
20 hours ago  
Bertrand Pollevrin United States
20 hours ago  
Ryana yanagisawa United States
1 day ago  
Nadm Jessani United States
1 day ago  
2 days ago  
Lynn Armstrong United States
2 days ago  
Katie Epps United States
2 days ago  
Maria Rossi United States
2 days ago  
tyler United States

Attention City of El Cerrito Planning Commissioners:

Brendan Bloom  
Greg Crump  
Erin Gillett  
Daniel Hamilton  
Linda Klein  
Leslie Mendez, Chair  
Joy Navarrete

Neighbors of 8701 Don Carol Drive would like to express the presence of coyote and deer that frequent our neighborhood. It's known that there is a pack of at least five coyotes on the vacant land at the end of Clark Place which abuts the cul-de-sac on Don Carol Drive.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ben Cole</td>
<td>8741 Don Carol Dr</td>
<td>6/9/2022</td>
</tr>
<tr>
<td>Alex Cole</td>
<td>8741 Don Carol Dr</td>
<td>6/9/2021</td>
</tr>
<tr>
<td>Brian Epps</td>
<td>8661 Don Carol Dr</td>
<td>3/9/2021</td>
</tr>
<tr>
<td>Joe Clifford</td>
<td>8653 Don Carol Dr</td>
<td>3/9/2021</td>
</tr>
<tr>
<td>Christina</td>
<td>8731 Don Carol Dr</td>
<td>3/9/2021</td>
</tr>
<tr>
<td>Josh Greene</td>
<td>8740 Don Carol Dr</td>
<td>3/9/2021</td>
</tr>
<tr>
<td>Lisa Greene</td>
<td>8740 Don Carol Dr</td>
<td>3/9/2021</td>
</tr>
<tr>
<td>Joe Greer</td>
<td>8740 Don Carol Dr</td>
<td>3/9/2021</td>
</tr>
<tr>
<td>Lisa Greer</td>
<td>8740 Don Carol Dr</td>
<td>3/9/2021</td>
</tr>
</tbody>
</table>
Good morning. Just saw a coyote in your back yard.

Oh goodness, thanks for the heads up! Hope you guys are doing well with this SIP.
Feeding deer is a bad idea. It’s also criminal.

Despite the fact that some local feed stores sell commercially produced “deer chow,” it is actually illegal in California to feed big game mammals (Title 14, section 251.3). Breaking the law could result in a citation and hefty fines.

www.keepmewild.org

For More Information
Contact the California Department of Fish and Wildlife

Northern Region
Redding – (530) 223-2300

North Central Region
Rancho Cordova – (916) 358-2900

Bay Delta Region
Napa – (707) 944-5500

Central Region
Fresno – (559) 243-4005 ext. 151

South Coast Region
San Diego – (858) 467-4201

Inland Deserts Region
Ontario – (909) 484-0167

Sacramento Headquarters – (916) 322-8911

To order more pamphlets, please call (916) 322-8911 or email publications@wildlife.ca.gov.

Alternate communication methods are available upon request. If reasonable accommodation is needed, contact the California Department of Fish and Wildlife, (916) 322-8911 or the California Relay Service serving deaf and hearing-impaired residents using TTY/TDD phones, end speech-impaired callers, at (800) 735-2929.

A campaign for all wild animals.
Feeding deer is against the law... and does more harm than good.

Wild animals naturally fear people and keep their distance. But once they become accustomed to humans, they lose their natural ways and can become dangerous. By intentionally feeding wildlife on your property, you are setting the stage for conflict.

Deer that have grown dependent on artificial food sources can become aggressive with humans, pets, and each other. They are more likely to become entangled in fences, hammocks and swing sets, and the potential for property damage and deer/vehicle collisions skyrocket. Deer that congregate are also more susceptible to illness and disease.

Remember: where there are deer, there are mountain lions! If you are feeding deer, you may also be attracting hungry predators to your property.

How to discourage deer from making themselves at home

There are steps you can take to discourage deer from frequenting your yard:

☐ Check hardware stores for deer-proof fencing material (electric, or eight-foot tall fencing) and motion-sensitive lights and sprinklers that will frighten away deer.

☐ Remove attractants like fallen tree fruit and bird feeders.

☐ Consider using commercially prepared deer repellents (available at garden supply stores).

☐ Refer to CDFW’s “A Gardener’s Guide to Preventing Deer Damage” (online at www.dfg.ca.gov/keepmewild/deer.html) for deer-resistant landscaping ideas.

If you care, leave them there (in the wild, that is!).

In the spring, does leave their young fawns unattended for many hours at a time as they forage for food. If you find a fawn in the wild, never assume that it has been abandoned. If a fawn appears to be injured or you are certain the mother is not coming back, do not attempt to touch it or move it. Please contact the California Department of Fish and Wildlife or a local wildlife rehabilitation group (a list of these can be found online at CDFW’s website) for further instruction.

If in doubt about what to do, ask your local wildlife officer or biologist.

You Can Help

Please visit www.keeppmewild.org for downloadable posters, newspaper advertisements and other Keep Me Wild™ materials.
EXISTING (OLD) 6'-0" CHAIN LINK FENCE.
Coyote Management Strategies For Homeowners

Posted by jennifer smith on 5th Dec 2017

In reading the news, a story came out from outside of Seattle, Washington in which a coyote attacked and bit a 3-year-old girl. Luckily, the girl’s father fought off the coyote; and the girl only suffered a small scratch on her arm. Terrifying, nonetheless.

“The city of Snoqualmie says within the past 24 hours they’ve had seven reports of coyote sightings.” Q13 Fox

Coyotes are cousins of wolves; and share the same eating habits as dogs and other members of the wolf pack. (AKA: they will eat anything, anywhere, anytime.) So, what can stop a coyote from venturing onto yards and potentially harming family members, livestock and domestic pets?

Welded Wire Fence

Wire fencing is the most effective means for coyote management. The fence material is chew-proof and strong enough to stop deer, coyotes and other wildlife. Coyotes can jump between 5-7 feet heights without touching the fence line; so, it’s recommended that homeowners install a 7.5’ - 8’ foot tall metal fence.

Experts say there are some ways to keep your livestock safe. Use dogs, llamas and donkeys and keep them in the pasture with the sheep. The coyotes shy away from herds with any of these animals included.

The use of a fence will stop coyote damage in gardens and will reduce the risk of coyotes venturing onto landscapes.
OUR VEGETABLE GARDEN IN FULL BLOOM
Fruit Trees Eaten by Deer
TO: Mark P. Choi and Kelda Gragg  
FROM: Marie Cherwin Arbeiter, Jason Arbeiter, Rita Rubin, Barbara Berniker, and Kenneth Berniker  
SUBJECT: Your illegal fence at 8701 Don Carol Drive, El Cerrito  

December 7, 2020  

The two of you have shown a complete lack of personal and professional integrity with regard to the illegal fence you constructed along the rear property line of 8701 Don Carol Drive in El Cerrito. Your behavior is illegal, unprofessional, disrespectful of our property rights, and infuriating. You have caused us and many others to expend a great deal of time and energy to get you to comply with the law. You created this problem and you have ignored our polite request that you fix it. Therefore, we now give you until 4 p.m. on December 18th, 2020 to meet ALL the following conditions:  

1. **Permanently and completely withdraw your application** to the City of El Cerrito for a conditional permit for this or any other fence or barrier higher than 6 feet along or near the rear property line of 8701 Don Carol Drive, and provide proof that you have done so. (Note that city offices are closed on Fridays.)  
2. **Reduce the height of the existing illegal fence to no more than the legal limit of 6 feet at every point along its entire length.**  
3. **Give us at least one day’s notice** of when you will do any remedial work on the fence.  
4. **Conduct all remedial work on the fence with the utmost precautions to protect life and property.**  

If ALL the above conditions have not been met by 4 p.m. on December 18, 2020, then:  

1. **We will report your behavior** to Compass, the California Department of Real Estate, the National Association of Realtors®, the California Association of Realtors®, and perhaps others - sample to Compass enclosed. These letters will be amended to reflect any further disagreeable behavior by either of you, or others acting at your behest,
including, but not limited to, any threats, name-calling, shaming, harassment, or other retaliation.

2. We will file appropriate complaint forms online.

3. We will post online reports of your unprofessional and unethical behavior.

We sincerely hope that you will quickly comply with these conditions so that this unpleasantness will go no farther. We truly wish to maintain harmony with all of our neighbors, as you have claimed you also do.

Marie Cherwin Arbeiter and Jason Arbeiter
14023 Ipava Drive, Poway, CA 92064
858-748-6030; <marie.arbeiter@protravelinc.com>,
<jasonarbeiter@stanfordalumni.org>;
representing Charles Cherwin, owner, 1027 Leneve Place, El Cerrito 94530

Rita Rubin, owner, 1033 Leneve Place, El Cerrito 94530. 510-527-0772;
<ritarubin@comcast.net>

Barbara and Kenneth Berniker, owners, 1045 Leneve Place, El Cerrito 94530.
510-508-8504; <ken.berniker@gmail.com>
December 18, 2020

Mr. Michael Schwartz
Compass - Delaware Berkeley Office
801 Delaware Street
Berkeley, CA 94710

Re: Complaint about your real estate agent Mark P. Choi

Dear Mr. Schwartz:

We wish to inform you of highly UNPROFESSIONAL AND UNETHICAL CONDUCT by one of your agents, Mark P. Choi, DRE #01433100.

Mr. Choi and his wife, Kelda Gragg, own and occupy the residential property at 8701 Don Carol Drive, El Cerrito, CA 94530. Lately they have willfully and blatantly disregarded local building codes by:

- failing to obtain a fence clearance for new fence construction as required, and
- constructing a metal fence that far exceeds the allowable height of 6 feet along their entire rear property line, which abuts three uphill properties.

"The City of El Cerrito requires a Fence Clearance through the Planning Division for any new or replacement fence. A Fence Clearance will only be approved if the proposed fence meets all applicable regulations." - The City of El Cerrito Summary of Regulations and Permits for Fences and Wails

This prison-like fence interferes with spectacular views of San Francisco Bay for the three affected neighbors, and is also unattractively visible to at least one other neighbor. Our property values are at risk. See photos below.

Choi and Gragg ignored written requests two months ago from the affected parties to lower their fence to no more than the allowable 6' limit, and have caused the other parties to expend a great deal of time and energy in an effort to get Choi and Gragg to comply.

Choi and Gragg clearly felt that they were above the law. They showed their total disdain for the laws and regulations governing real property by ignoring the permit process and building code requirements. They hoped that their illegal fence would go unopposed. Now that all the uphill neighbors have objected, Choi and Gragg are applying AFTER THE FACT for a permit that would make their fence legal. This application obliges the rest of us to continue the battle in opposition, and could
cause a dozen or more additional neighbors to waste their time and energy through the required notification process.

Choi’s illegal and selfish behavior makes a mockery of the building codes and the permit process, and is totally disrespectful of our property interests. This behavior reflects very poorly on real estate agents in general, and on Compass in particular. If Choi’s conduct is in any way a reflection of Compass’ standards, we urge everyone to take their business elsewhere.

Sincerely,

Marie Cherwin Arbeiter and Jason Arbeiter
14023 Ipava Drive, Poway, CA 92064. 858-748-6030;
<marie.arbeiter@protravelinc.com>, <jasonarbeiter@stanfordalumni.org>;
representing Charles Cherwin, owner, 1027 Leneve Place, El Cerrito 94530

Rita Rubin, owner, 1033 Leneve Place, El Cerrito 94530. 510-527-0772;
<ritarubin@comcast.net>

Barbara and Kenneth Berniker, owners, 1045 Leneve Place, El Cerrito 94530.
510-508-8504; <ken.berniker@gmail.com>

Illegal fence measured at 9’ 9” in 1033 Leneve Place rear yard
Person standing by illegal fence at 1033 Leneve Place rear yard gives sense of scale

View from 1033 Leneve Place bedroom window - illegal fence interferes with view of San Francisco Bay
View from 1027 Leneve Place deck off master bedroom - illegal fence protrudes above existing railing, obstructs view of San Francisco Bay.

View from rear yard of 1045 Leneve Place - illegal fence protrudes above existing 6' wooden fence, obstructs view of San Francisco Bay.
Illegal fence seen from 1015 Leneve Place

CC: Ms. Kamini Lane, President
Compass West
527 W. Seventh Street, Suite 301
Los Angeles CA 90014

Regional Director
Compass Regional Headquarters
891 Beach Street
San Francisco CA 94109
Dear Don Carol Drive Neighbor:

An important issue is coming before the El Cerrito Planning Commission. The owners of 8701 Don Carol Drive lately built a metal fence up to 9’ 9” tall across their entire rear property line of 176’, abutting three properties above on Leneve Place. The owners, who are a real estate agent and an architectural designer fully aware of the rules, did this without applying for city permission to build any fence, let alone one exceeding the standard height limit of 6’. The fence is an eyesore from four Leneve Place properties.

Illegal fence seen from 1015 Leneve Place
Appearance from 1033 Leneve Place

Appearance from rear yard of 1045 Leneve Place - new metal fence protrudes above existing Leneve Place 6' wooden fence
Soon after, the Leneve Place owners asked the fence owners to lower their fence to no more than 6’. The fence owners then applied to the City after the fact for a special “Conditional Use Permit” that would allow a fence up to 10’ tall. Such a permit requires that “The location, size, design ... of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood” and “…conforms in all significant respects with the El Cerrito General Plan.”

The fence owners state that they need this fence to protect their property and family from wildlife, specifically deer and coyotes. There is no provision in El Cerrito regulations for a fence over 6’ high on the basis of wildlife.

City Planner Jeff Ballantine performed a site visit and advised the fence owners that he would not accept the fence as it stands. The owners then submitted a revised application requesting permission to keep the same fence 8’ high at all points. The Leneve Place owners above the fence continue to object totally to any fence higher than 6’.

There are numerous reasons for the Planning Commission to reject the application for any fence greater than 6’ high, including:

- No one else in the area has such a fence - the owners want a special privilege.
- Granting this application for work already done in blatant disregard of the rules would set a very bad precedent for EC owners to ignore the permitting process.
- Granting this application to protect against wildlife would mean that anyone in the hillside area and beyond could expect permission for an 8’ high fence, and soon the 6’ height limit would be meaningless.
- The presence of such a fence cannot help the value of adjacent properties, and by extension will eventually diminish neighboring property values.
- The California Dept of Fish and Wildlife message for preventing coyote attacks is, “Do not leave small children or pets outside unattended.” DFW does not say anything about fences. Recent reports of coyote attacks indicate the attacks have occurred on open ground; we have seen no mention of a coyote climbing over a fence to attack someone, let alone over a 6’ fence.

We the undersigned urge you to oppose the application for a Conditional Use Permit at 8701 Don Carol Drive for any fence higher than 6’, and a 6’ wood fence.
would be preferable. Anyone is allowed to comment. If you agree, please send an
email to the EC Planning Commission and Senior Planner Jeff Ballantine
<JBallantine@ci.el-cerrito.ca.us> with a copy to <ken.berniker@gmail.com>.
Put “8701 Don Carol Drive fence” as the subject and then a statement such as
“I urge El Cerrito City Planner Jeff Ballantine and the EC Planning
Commission to reject the application for a Conditional Use Permit for a fence
more than 6’ high at 8701 Don Carol Drive” or the equivalent. Feel free to add
more if you wish. Be sure to include your name(s) and address. Feel free to
forward this to others who may be interested.

There will also be a Zoom public hearing on 3/17, open to the public. Join at

We are happy to answer any questions.

Thanks in advance for your support, and we wish you all good health!

Marie Cherwin Arbeiter and Jason Arbeiter, representing Charles Cherwin, 1027
Leneve Place, <marie.arbeiter@protravelinc.com>, <jason.arbeiter@hp.com>

Rita Rubin, 1033 Leneve Place

Barbara and Ken Berniker, 1045 Leneve Place; 510-508-8504 C; 510-524-8149 H;
ken.berniker@gmail.com>

Jeremy Dahl, 1015 Leneve Place
WE URGE THE EC PLANNING COMMISSION AND SENIOR PLANNER JEFF BALLANTINE TO REJECT THE CUP APPLICATION FOR A FENCE HIGHER THAN 6’ AT 8701 DON CAROL DRIVE

Summary of events:

1. In or about September, 2020, real estate agent Mark P. Choi came to the door of Rita Rubin, 1033 Leneve Place, and told her he was constructing an 8’ along the rear property line they share.

2. 9/27/2020 - We at 1045 Leneve Place observed the sudden appearance of a worker on the abutting 8701 Don Carol property constructing this metal fence by welding and power grinding, generating showers of sparks in all directions on a high fire danger day, seemingly without precautions. **The fence was an immediate and continuing eyesore from 1045 Leneve Place.**

3. 10/6/2020 - We and the Cherwin/Arbeiters (at least) sent letters to Choi/Gragg asking them to lower the fence to no more than 6’, and to do so with proper safety precautions.

4. 10/2020 - Gragg asked to speak to KJB and announced her intention to apply to the City of El Cerrito Planning Department for a Conditional Use Permit. Public hearing tentatively set for January.

5. 12/1/2020 - Jeff Ballantine, EC senior planner, made a site visit.

6. 12/23/2020 - Ballantine stated in email that on the previous day he informed Choi/Gragg that he would recommend against approving the fence as it exists, and that Choi/Gragg then expressed their intention to amend their application. After much delay, Ballantine received an amended application to request that this same fence be allowed at 8’ high throughout. Hearing set for March.

7. As of 3/8/2021 - no apparent modification of eyesore fence despite earlier rejection of it as it stands.

Illegal fence measured by EC Planner Jeff Ballantine in 1033 Leneve Place rear yard
Illegal fence seen from 1015 Leneve Place

The fence owners state that they need this fence to protect their property and family from wildlife, specifically deer and coyotes. There is no provision in El Cerrito regulations for a fence over 6’ high on the basis of wildlife. The applicants also state that their illegally constructed fence is “transparent”. If we happen to look through the fence, this is what we might see -

Illegal 8701 Don Carol Drive fence projects above 1045 Leneve Place 6’ wooden fence
There are so many reasons for the Planning Commission to reject the application for this fence, and any fence greater than 6’ high, including:

1. The fence fails to meet the standard required for a CUP: “The location, size, design ... of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood”. (EC MC 19.34.040) - Instead, this fence:
   a. Is not harmonious with the neighborhood, in our opinion, and the opinion of many others;
   b. Is not compatible with the neighborhood, as above;
   c. Does affect the livability and appropriate development of abutting properties and the surrounding neighborhood - given that we have looked at, and continue to look at, this eyesore everyday.

2. EC regulations on fences provide for a front setback fence up to 6’ tall, rather than 3’ tall, on the basis of wildlife. There is no comparable provision for a rear setback fence to be higher than 6’. This demonstrates that:
   a. The authors of the regulations took wildlife into account;
   b. The authors specifically did not provide for a rear setback fence higher than 6’ on the basis of wildlife when they had the opportunity to do so.

3. Despite the fact that several coyote attacks on people have lately been reported:
   a. Overall, coyote attacks on people are uncommon. 
   b. The California Dept of Fish and Wildlife message for preventing coyote attacks is, “Do not leave small children or pets outside unattended.” <https://wildlife.ca.gov/keep-me-wild/coyote>
   c. DFW does not say anything about fences as a means of preventing coyote attacks.
   d. Recent reports of Bay Area coyote attacks indicate the attacks have occurred on open ground; we have seen no mention of a coyote climbing over a fence to attack someone, let alone over a 6’ fence.
4. Regarding deer, the applicants stated in October, 2020 that, “We have lost our vegetable garden countless times and fruit trees have been eaten down to their trunks.”
   a. “Countless times” is improbable given that the applicants acquired their property in November, 2018.
   <https://www.zillow.com/homedetails/8701-Don-Carol-Dr-El-Cerrito-CA-94530/18530526_zpid/>
   b. The applicants can protect their vegetable beds from deer and other animals with focused enclosures as tall as they wish, as long as they are not within the setback and conform to other regulations. The applicants could then enjoy total peace of mind about their vegetables without intruding on their neighbors.
   c. The applicants can apply suitable repellents to their favored plants. One of us (BBB) is an experienced gardener, formerly president of the Berkeley Garden Club, and can provide a simple, cheap, natural, and effective deer repellent recipe to prepare at home, without harmful chemicals.
   d. The applicants can construct suitable cages around the trunks of vulnerable trees to provide protection while not offending their neighbors.
   e. We are not allowed to go to every imaginable length to protect against hazards. For example, we are not allowed to build 30’ water towers on our properties even though we are at risk of wildfires.

5. This impenetrable metal fence presents a potential public safety hazard by impeding emergency personnel from accessing Leneve Place from Don Carol Drive, and by impeding emergency evacuation from Leneve Place, in the event of earthquake, wildfire, or other disaster, if the Leneve Place roadway is blocked.

6. The applicants include a list of 25 EC properties supposedly with fences higher than 6’, which we examined, and we requested all EC CUP approvals for rear setback fences higher than 6’ in the past five years. One of us (KJB) visited several and spoke to current residents where possible:
   a. 7701 Potrero - CUP granted for privacy concerns per the owner - property adjacent to a public path that sits on higher ground.
   b. 7705 Potrero abuts the other side of the same public path.
   c. 978 Arlington - CUP granted for privacy concerns per the owner - contentious neighbor on the opposite side of fence on higher ground.
d. 1764 and 1768 Arlington - resident at 1768 stated that neither has an unusually high fence.

e. 1774 Arlington - property was for sale in late December, 2020. No unusual fence visible on the entire right side of property or part of the rear yard visible from the street. Pictures on Zillow did not suggest any unusual fence.

f. 112, 206, 210 Seaview, 7828 Eureka - all abut the cemetery in the rear, which includes higher ground for some, if not all. New occupants at 112 and 206 could not speak to any history, but inspection of those rear yards made it obvious that privacy would be an issue. It wasn’t clear if the fences even are higher than 6’.

7. The applicants have not demonstrated that anyone else in the area has a comparable fence.
   a. No one else in the neighborhood has seen the need for a fence higher than 6’ to keep out wildlife.
   b. The owners want a special privilege.

8. **Granting this application for an 8’ fence to protect against wildlife would set a new precedent, and would mean that anyone in the hillside area and beyond could expect permission for an 8’ high fence, and soon the 6’ height limit would be meaningless.** Additionally, being a real estate agent, applicant Choi would be in a favored position to instruct buyers of EC property on the way to claim the need for a fence higher than 6’.

9. The presence of such a fence or others like it cannot help the value of adjacent properties.

10. We and our Leneve Place neighbors have paid taxes to El Cerrito cumulatively for many decades. In exchange we expect, among other things, that the City of El Cerrito will maintain rules and regulations for the common good, and will enforce those regulations.

11. These knowledgeable applicants have willfully and blatantly chosen to flout those rules by failing to apply in advance for the necessary permits, and by constructing a fence of illegal height.

12. You, the commissioners, must not give your blessing to this illegal behavior, which would send the message to all of El Cerrito that the rules may be freely flouted without consequence.
Therefore, we respectfully call on you to reject completely the CUP application for any fence higher than 6’ in the rear setback of 8701 Don Carol Drive.

We ask that you mandate that any and all remedial work on this existing fence be done according to the highest safety standards to protect people and property.

We also respectfully ask that you have it be properly recorded that 8701 Don Carol Drive will never be allowed a rear setback fence higher than 6’, so that we and successor owners of all the affected Leneve Place properties will not suffer a similar ordeal as this again.

Sincerely,

Barbara B. Berniker and Kenneth J. Berniker, owners
1045 Leneve Place
El Cerrito, CA 94530
Charles Cherwin, represented by Marie Cherwin Arbeiter and Jason Arbeiter

1027 Leneve Pl    El Cerrito

March 9, 2021

To the El Cerrito Planning Commission and Senior Planner Jeff Ballantine:

We strongly urge El Cerrito City Planner Jeff Ballantine and the El Cerrito Planning Commission to reject the application for a fence higher than 6 feet at 8701 Don Carol Dr.

Any fence over 6 feet significantly obstructs what was previously an unobstructed panoramic bay view at 1027 Leneve Pl and also obstructs the bay views of the adjacent neighbors. Such an eyesore harms the property values of the affected properties, and by extension, the values of the entire neighborhood.

The owners of 8701 Don Carol Dr claim that they needed to build such an excessively tall fence (nearly 10 feet in portions) in order to better keep out undesirable wildlife. Every neighbor on Leneve Pl who objects to the ugly, view blocking fence, lives directly across the street from Wildcat Canyon, closer to where the animals originate. Nevertheless, in over 50 years, none of the other homeowners on Don Carol Dr or Leneve Pl has felt the need to protect their own landscaping with a fence higher than 6 feet. If a 6 foot fence is sufficient for everyone else on Don Carol Dr and Leneve Pl, it should be for the owners of 8701 Don Carol Dr. as well.

We urge the Planning Commission to reject their application for a CUP for anything higher than a 6 ft fence, which all the neighbors support, which would preserve our beautiful bay views. The couple who built this illegally high fence are knowledgeable professionals, e.g. an architect and a Realtor. They know that City codes must be followed, and willfully chose not to do so. We also feel that rewarding the owners’ unscrupulous behavior by granting them a CUP would not only be wrong, but would set a bad precedent of allowing future code violations by these two homeowners or by others.
1027 Leneve Place
El Cerrito

Current view from the railing near the gazebo.

Previously our view was just like the view on the city seal:
1027 Leneve Place

Notes:

1) Comparison of Bay View with and without new industrial fence
2) City of SF view, including Transamerica tower, greatly diminished

Note: 1) Nice SF Bay view above existing railing
Bay view is greatly diminished through new industrial fence

2) View of Transamerica tower and full SF skyline is above existing railing but blocked by industrial fencing
This most objectionable part of the fencing is 7ft 9”
PETITION TO OPPOSE APPLICATION FOR ANY FENCE HIGHER THAN 6’ AT 8701 DON CAROL DRIVE

To El Cerrito Senior Planner Jeff Ballantine and the El Cerrito Planning Commission - we urge you to reject the application for any fence higher than 6’ at 8701 Don Carol Drive.

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<td>Kathy Fujimoto</td>
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<td>2223 Pincher Way</td>
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<td>Natalia Pizón</td>
<td></td>
<td>746 Lenova Place</td>
<td><a href="mailto:nataliapizon@gmail.com">nataliapizon@gmail.com</a></td>
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<tr>
<td>William Dowling</td>
<td></td>
<td>1036 Lenova Place</td>
<td><a href="mailto:wordowling@gmail.com">wordowling@gmail.com</a></td>
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<tr>
<td>Edward Wilson</td>
<td></td>
<td>1600 Lenova Place</td>
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<td>Grant Gullberg</td>
<td></td>
<td>720 Kensington Rd</td>
<td><a href="mailto:lgullberg@gmail.com">lgullberg@gmail.com</a></td>
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<td>Kathleen Gullberg</td>
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<td>320 Kensington Rd</td>
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March 2, 2021

To the El Cerrito Planning Commission and Senior Planner Jeff Ballantine:

1. I wish to register my total objection to the CUP application for any fence higher than 6’ in the rear setback of 8701 Don Carol Drive.

2. I prefer that any fence constructed there be of wood, not metal.

3. I request that it be properly recorded that 8701 Don Carol Drive may never be allowed a rear setback fence higher than 6’.

4. Because I will not be able to speak for myself on this issue at the Planning Commission hearing, or any subsequent hearings, I request that my allotted time be given to any of Marie Cherwin Arbeiter, Jason Arbeiter, or Kenneth J. Berniker.

Sincerely,

Rita Rubin
Dear Jeff Ballantine,

Those of us that live in the El Cerrito hills treasure our beautiful views of the bay. I do not believe that anyone should build something that would obstruct someone's view.

David Viale
1055 Leneve Place
El Cerrito, CA 94530
Hi Mr. Ballentine,

I am writing to urge you and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive. The fence is neither harmonious with the neighborhood nor is it compatible (basically it is an eyesore). Not only is it ugly (it is a cheap, chain-link fence) it is terribly obtrusive in that it is enormous, far exceeding the legal 6 foot legal limit.

Yours truly,
Jeremy Dahl
1015 Leneve Place
El Cerrito
Jeff Ballantine:

We urge you and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive. The existing fence, something akin to a giant animal cage, is neither harmonious nor compatible with abutting properties and the surrounding neighborhood.

Dick Patterson & Stephanie Burman
1080 Leneve Place
El Cerrito, CA
Hello Mr Ballantine and the El Cerrito Planning Commission,

We live at 1007 Leneve Pl in El Cerrito and are weighing in on the fence issue at the above address. Two things stand out for me, the fence is not harmonious with the neighborhood and there are other ways to protect plants and small children from deer and coyotes (which do exist in this urban interface, but we have not viewed them as an imminent threat to our pets).

We also have deer in our yard, but protect our raised beds and pots with netting and it has worked well. Other friends have built nice enclosures around their garden areas that keep out deer, pets, and small children from flowers and vegetables. Possibly the owners of the property could be encouraged to find alternatives to a fence of that design and height.

In summary, we urge El Cerrito City Planner Jeff Ballantine and the El Cerrito Planning Commission to reject the application for a conditional use permit for a fence more than 6 ft high at 8701 Don Carol Dr.

Sincerely,

Barbara Fitzgerald DVM
Ronn Patterson
1007 Leneve Pl
El Cerrito, CA 94530
Hello Mr. Ballantine,

I am writing regarding the pending application for a Conditional Use Permit for a fence more than 6 feet in height at 8701 Don Carol Drive.

My husband and I have lived in our home on Leneve Place since 2004. Those of us who are fortunate enough to be able to live in the El Cerrito hills area enjoy the proximity to Wildcat Canyon and understand that living in the wildland urban interface means we have wildlife neighbors, too, who sometimes make their way to our streets, yards and medians. We've had wild turkeys, foxes, coyotes and deer in or near our yard many times, of course, and none has ever lingered or presented any threat.

In our peaceful neighborhood (which backs up directly to Wildcat Canyon Regional Park), many of us have managed to maintain beautiful gardens, yards and landscaping, in part, by being thoughtful about what we plant and grow and how we design our garden beds. My husband used to work at a nursery in Lafayette and often advised customers looking for plants that deer do not like to eat.

We walk through the neighborhood daily and are still always struck by how virtually every house, while unique, is generally harmonious with the natural landscape and reflects a gentle and light touch that doesn’t detract from the peaceful setting, including as to fencing elements. I have not seen neighbors feel the need to build fortress-like structures above heights permitted by City codes for protection from wildlife or ease of gardening in the past.

Although I am commenting in my capacity as a neighbor and not as a commercial real estate lawyer, I hope you will duly apply the applicable code requirements and not make an exception for something that is not harmonious with the neighborhood and appears to us at least, not to have any compelling justification. Accordingly, I urge you, as an El Cerrito City Planner, and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive.

Thank you for considering input from the community.

Kind regards.

--Christine Chavez
To the Attention of the El Cerrito Planning Commission

We urge El Cerrito City Planner Jeff Ballentine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive. We are distressed that a fence over the six foot limit in our area is under consideration. Furthermore, it is offensive that the fence was built illegally and only now, under pressure, are the owners asking for permission after the fact.

We are long time residents of El Cerrito. It is our opinion that a Conditional Use Permit for a fence over six feet high in our neighborhood would set an unacceptable precedent and send a message to home owners that standards set by the Planning Commission can be ignored without consequence.

Sincerely,
Carole and Cote Reese, owners
1000 Leneve Place, El Cerrito
Dear Mr. Ballantine,

We recently learned about a newly erected fence at 8701 Don Carol Drive, a property owned by Mark P. Choi and Kelda Gragg. We would like to address this new structure in two parts. The first is the Special Use Permit request for an illegal (over height) fence, which obstructs the current view of the neighbors living on Leneve Place. The fence was erected without the required notification and consultation with the adjoining property owners (CA Civil Code Section 841).

The proposed fence obstructs the views of those neighbors, who purchased their properties with the existing views in place as part of their home purchase. Constructing a fence, which obstructs or mars the neighbors’ views immediately diminishes their property values. The Don Carol owners cite the need for a fence for several reasons.

1. Deer have been stripping the bark of their fruit trees. There are solutions to this problem, some of which are very inexpensive and include buying plastic drainage pipe, slicing it and placing it around the tree trunk. The male deer cannot rut against the base and remove the bark. The Don Carol owners should perform an Internet search for very easy solutions.

2. Vegetables are being eaten. Plants can be protected using screens as we have done, after we learned that it was the birds who were eating our lettuce. Again, there are solutions that do not involve tall fencing around the property. Talking with neighbors and using the Internet will solve this problem. Use the Cooperative Extension, which gladly helps the public!

3. Mr. Choi and Ms. Gragg cite a need for the fence because of their two children and the potential for coyotes reaching their property. They purchased their home knowing the proximity to Wildcat Canyon, a county park. With that purchase came the knowledge that there are wild animals that will move from park to the neighborhood, and these include deer, coyotes, raccoons, fox, hawks and vultures. (As a realtor, Mr. Choi has intimate knowledge of our neighborhood.) We, who have purchased in this neighborhood, have done so because we enjoy the pastoral beauty that the park brings with it. As 40-year residents, To our knowledge none of the children in the neighborhood have ever been attacked by any of these wild animals. Some of us have kept large to small dogs without incident. We don’t have unsightly fences that are not in keeping with the ambiance of the neighborhood.

4. The erected fencing is not transparent; it does block the views of the neighbors on Leneve. Fencing that is built into existing properties must be agreed upon by both parties. In this case, both parties have not agreed, and therefore this is unacceptable. A better solution must be found. The second point that we would like to address is what we consider a very deliberate disregard of El Cerrito’s rules on fencing, which we also experienced this past year. In our absence, a new neighbor tore down our existing fence, removed the fence and plantings on our property, erected a solid 6 ft
fence on our adjoining property as well as on our property and that of a third person’s without consulting us. The contractor/owner, who obviously knew the rules, created havoc and emotional distress between neighbors, and lied to us and the third party. Our attempts to engage the city in this process were futile as the city departments were closed due to the pandemic and later were operating on a diminished budget. Eventually after several phone calls, we were told to work it out with this unreasonable contractor/neighbor. Only after he put the house up for sale, after previously stating he needed the fence for privacy, and we erected a sign indicating that the fence was illegal, did he then negotiate a remedy. However, over a four-month period, we spent many hours in discussion with lawyers, writing letters, and losing sleep over the issue. Ultimately, with new neighbors, we rebuilt the fence at our own cost with the agreement of the parties involved.

We share this story, because we think that in this time of budget constraints in El Cerrito as well as the pandemic squeeze, we believe that some contractors and realtors are taking advantage of the city’s stressful situation and running roughshod over their good neighbors. They are hoping the city will look the other way because it doesn’t have the manpower to deal with all of the issues that are arising. The Don Carol fence issue follows the six-foot curbside, illegal fence erected on an Ivy Ct. property, which was corrected only after a sign was put up by a neighbor telling the owners that the fence was illegal. It was obvious in that case that the owner had not obtained a permit to erect a six foot fence at the front of their property. As far as we know, the city never came by to inspect the property, even though there was on-going construction that included the fence.

In conclusion, we think the city of El Cerrito must clamp down on illegal fences and re-strengthen its rules on protection of views. Good neighbor fences are important and lead to a better community.

With kind regards,

Michele Radcliffe, Ph.D.        Lawrence Radcliffe, D.D.S.

955 Leneve PL
El Cerrito Ca.
To the El Cerrito City Council,

This letter is in support of the neighbors on Ivy Court asking that an illegal fence in the rear of their property be adjusted (taken down, reduced to legal heights) to conform to City codes. The fence was constructed by the owners of the property at 8701 Don Carol Drive, Mark P. Choi, a real estate agent with Compass realty, and Kelda Gragg, an architectural designer, without permission and exceeds the legal 6 foot standard. The fence interferes with several Ivy Court neighbors’ views and is an eyesore to the neighborhood. It decreases the property value of the homes in the immediate vicinity and of homes in the entire community.

Armando and Carol Picciotto
1127 Ivy Court
El Cerrito, CA 94530
I urge El Cerrito City Planner Jeff Ballentine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive

Carlos and Melinda Quirino
904 Leneve Pl
El Cerrito, ca 94530
Dear El Cerrito City Council members,

Please do not allow these new residents on Don Carol Drive to leave their 10’ high fence to remain as it is. The rest of us comply to the city’s rules which benefit other our neighbors. Please consider their thoughtlessness and inconsiderate attitude and behavior. Remember, we are all near Wildcat canyon and we deal with the same problems but find other ways to deal with them that maintain views and property values.

Sincerely yours,
Gary and Kay Anderson
975 Leveve Place
El Cerrito, CA 94530
To the El Cerrito Planning Commission and Mr. Jeff Ballantine:

We urge the rejection of the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carlos Drive, El Cerrito.

Some 20 years ago, the parcel of open land on Arlington, Kensington near El Cerrito, was auctioned on site by bidders. When the ensuing bids rose to a sum of $1 million the auctioneer said, “Now that we have determined the price of the view, let us start bidding on the land!”

Views do have real values. Hillside properties do have that added value and the property tax is partially based directly on the view factor. Those values should not be significantly diminished later by abutting neighbors’ desire to add tall structures or growing vegetation around the pertinent property. A boxed-in property will definitely suffer a real loss of value. A devalued property will reflect a lowering of its property tax. It is a lose-lose situation for the owner and the City.

I am an elderly (90) and mobility challenged near neighbor to 1027 Leneve. I’ve been a 95% shut-in since prior to the coronavirus crisis. The full view of the Bay was one of the major and vital factor for the well being of my mental state. That view is now significantly reduced with the loss of the north Marin shores view caused by our Don Carol Drive neighbor’s tall fruit tree. How does one measure mental well-being loss?

Sincerely,
John and Nancy Woo
987 Leneve Place
El Cerrito, CA
I urge El Cerrito City Planner Jeff Ballantine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6' high at 8701 Don Carol Drive.

David and Jane Micallef
997 Leneve Pl, El Cerrito, CA 94530
We urge El Cerrito City Planner Jeff Ballentine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive.

We think that the actions of the builders of the fence are acting in a high-handed and contemptuous defiance of the laws and wishes of the community. Take the fence down, please.

Damian I. Cano
Guadalupe Cano
Gabriel Cano

970 Leneve Place, El Cerrito, CA 94530
(510) 528-7714 Home
(510) 913-6884 Mobile
Dear El Cerrito City Planners and Planning Commission Members,

I am writing to urge you, Mr. Ballantine, and the El Cerrito Planning Commission, to reject the application for a Conditional Use Permit for a fence more than 6 feet high at 8701 Don Carol Drive. First, there is no need for any fence to be higher than 6 feet. Such a fence would be an eyesore, it would not be harmonious and compatible with the abutting properties and the surrounding neighborhood. Second, it would also negatively impact the natural beauty of the neighborhood, and could potentially ruin the views from many neighboring properties. I would be furious if there was such a fence anywhere near my property. Who wants to be forced to look at a barricade that would transform an attractive property into an ugly fortress? No home needs a fence to be higher than 6 feet in El Cerrito! Please reject this application.

Sincerely,

Paulette Erickson
958 Leneve Place
El Cerrito
To Whom This May Concern:

We urge El Cerrito City Planner Jeff Ballantine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive. Their reasons for the Conditional Use Permit are not justified. When the city established the regulations on the limit of fence height at 6 feet, the safety of the residents were considered. We have lived in El Cerrito for more than 35 years, and for the last 32 years on the edge of El Cerrito hills, not too far from the said property. We had raised chickens without having to build an 8 feet tall fence around our property to keep our chickens safe. We have also cultivated a garden with fruit trees and vegetables as well as roses which deer love to eat without having to build a fence taller than 3 feet. Therefore using safety as a reason to build this extra tall fence is not justified.

The fact that the applicant built the fence fully knowing that it was against the regulation, then applied for the Conditional Use Permit after being complained disturbed us greatly. This kind of practice is apparently a manipulation of the laws. Granting this permit will only encourage more residents to build whatever they want without taking the regulations into consideration, nor complying with them. This will surely lead to more complaints and lawsuits against the city. We do not feel it’s fair to other residents, as we would have to ultimately pay for the lawsuits as well as your extra time and effort in dealing with further complaints.

According to the regulation, the fence should be harmonious and compatible with the surrounding neighborhood. This extra tall fence certainly is not harmonious, nor compatible with the surrounding houses. As long time residents traveling around the neighborhood frequently, we do not think it is acceptable for the city to grant this conditional use. We can see that the fence has protruded and blocked the view of the rear deck of the house located 1027 Leneve Place.

Sincerely,

Grace Lin and Linda Lin, residents of 924 Leneve Place
Jeff Ballantine,

I am writing in regards to the illegal fencing installed at 8701. I strongly urge you and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive. In addition to being in violation of the city’s regulations, I’m dismayed that the process was ignored by someone who has a professional understanding of these rules. Furthermore, any high fencing, particularly in this area, presents very real risks to emergency services access, and should never be permitted, in my opinion.

Regards,
Ari & Rachel Myers, 923 Leneve Place, 510-708-0781
I urge El Cerrito City Planner Jeff Ballantine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive.

Sincerely, Maj-Britt Hilstrom, 8665 Don Carol Drive, El Cerrito
Hello,

I urge El Cerrito City Planner Jeff Ballantine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6' high at 8701 Don Carol Drive.

Thank you for your consideration.

Sincerely,
Jorien and Travis Campbell
8633 Arbor Dr, El Cerrito, CA 94530
Mr Ballantine and EC planning commission,

We would like to address an issue on Don Carol St. That has come to our attention. A fence over 6' has been constructed, which to my understanding is not within El Cerrito code. It is an eye sore, especially industrial metal type, is not harmonious or compatible with our beautiful natural environment! A Chain link fence of any height and especially at the height of 10', is unnecessary in our neighborhood, it is more reminiscent of a prison and no one wants to see that in their sight every day! Not to mention why was it permitted to be put up in the first place!

I urge El Cerrito City Planner Jeff Ballantine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6' high at 8701 Don Carol Drive

Lori and Erv Levin
1101 Ivy Court
El Cerrito, ca 94530
I urge El Cerrito City Planner Jeff Ballantine and the El Cerrito Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6' high at 8701 Don Carol Drive.

Anne Wiesen-Lyle

1126 Ivy Ct.

El Cerrito
Dear Mr. Ballantine and the City of El Cerrito Planning Commission,

We are writing to respectfully urge you to **DENY** the application for a fence higher than 6 feet at 8701 Don Carol Drive. The almost 10 foot plus metal fence, as it stands now, is an eyesore and in no way conforms with the existing neighborhood design and negatively impacts all adjoining properties. The fence has a strong urban feel as if it’s saying “KEEP OUT” like one would see in a high crime area or used to secure a secret laboratory, not a home in the soft rolling hills. There are other ways to accomplish your children’s safety than to build an unsightly nearly 10 foot metal fence! Besides the fact that their arguments for such a tall fence are filled with nonsense, wildlife doesn’t honor fencing and will always find a way in, around, under or above. They moved into a neighborhood that is close to open space and need to accept the fact that there is wildlife in the area, as they are the newcomers here. It is no surprise that the homeowners at 8701 Don Carol Drive did not build the same unattractive fence in their front yard ... it would block their view and truly make their home truly look like a detention center as it now does from the back. Given that the homeowner is a local real estate agent, it is absurd to think for one minute that they were not keenly aware that their fence exceeded height restrictions and negatively impacts the enjoyment and value of neighboring properties.

Please do not allow this to become a precedent for selfish neighbors to negatively impact their neighbors and neighborhoods. Please require that the fence be reduced to a 6 foot maximum height.

Thank you for your time and consideration,

Gloria and Steve Schliesser
1151 Ivy Court
El Cerrito, CA  94530
Dear Jeff,

I urge you, Jeff Ballantine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6’ high at 8701 Don Carol Drive.

I modified my fence plans to insure they were in compliance with El Cerrito guidelines. I believe everyone should comply or be forced to comply. By allowing this fence to stand it would be setting a precedent that could lead to several negative consequences.

Sincerely,

Richard Patrick
1130 Ivy Ct
El Cerrito, CA 94530
I am a resident of Leneve pl. and I vehemently oppose the unauthorized construction of this fence or any structure that hinders the view of the bay for all neighbors.

Not only was that knowingly unlawful it is very inconsiderate to your neighbors. There are many ways to deter wildlife from coming into your yard that does not impede the view for neighbors that have lived here for many years.

Respectfully  Christopher Currie
Jeff Ballantine,

I strongly suggest that you and the EC Planning Commission reject the application for a Conditional Use Permit for a fence more than six feet high at 8701 Don Carol Drive. As a homeowner in EC I have had to abide by the rules concerning fences on my own property and anything over six feet high definitely impinges on neighbors quality of life. I have seen the fence and it is not harmonious with the neighborhood. These people knew the rules and should abide by them, no exceptions. Also being a good neighbor counts for something I hope!

Sincerely,

Eleanor Young
8901 Terrace Dr, El Cerrito, CA 94530
Ken,

Thanks for bringing this matter to our attention. I agree with the neighbors that such a fence damages the value of the Leneve Place properties and are, in general, unattractive. The code is very clear regarding limits on fence structures. The arguments raised by the couple owning the fence are not reasonable nor even logical in some cases. The fact that they consulted no one, especially including the city code committees, is inexcusable and generally not neighborly.

The request to the city and its staff for a Conditional Use Permit by the owners at 8701 Don Carol Drive should be denied. The existing fence should be modified to comply with city code requirements.

Please feel free to forward this message to El Cerrito City Planner Jeff Ballentine and the El Cerrito Planning Commission.

Thank you for alerting us.

Floyd Sam
Judy Sam
8821 Terrace Drive
El Cerrito, CA 94530
Dear city senior planner Jeff Ballantine.

We ask you to reject the request for conditional use permit and require a fence no higher than ‘6. Having just seen pictures of the results, we must agree with the residents on Leneve Dr that their views and property values have been compromised.

The new residents at 8701 Don Carol, a former neighbor and truly wonderful people, I am sure thought this fence would do no harm and not cause the problem it has for 4 homes and believe they will do the right thing by their neighbors.

A ‘6 fence should not be a problem for them as stated. Looking at Google earth of fencing of homes in that area should make it clear that this is unnecessary and inappropriate. We do have to be responsible for our children and pets.

The letter from the Leneve Dr families is well thought out and compelling for every reason.

Please require a fence no higher than ‘6.

Sincerely,

Michael and Marilyn Harryman
947 Arlington Blvd, El Cerrito, Ca 94530
519-882-8540 cell
Dear El Cerrito City Planner Jeff Ballantine,

I’m Ryk Tanalski, a homeowner in the El Cerrito Hills for 34 years. The main reason my wife and I chose our home in El Cerrito, is the view. It’s a “nothing special” ranch home, but the view of 5 bridges makes it very special. Fences are very important in a neighborhood, particularly with regards obstructing a view. Our views are supposed to be protected here in El Cerrito. I would be horrified if a neighbor were to construct an illegal, unpermitted, non-code compliant fence which obstructed my view. These homeowners know better, they are real estate professionals. They can’t even claim that they were unaware of the regulations, and “ignorance of the law excuses no one” as the ancient Romans used to say. Robert Frost in 1924 wrote “good fences make good neighbors.” Please insist that these people be good neighbors by building a good fence.

The nine foot high fence illegally installed at 8701 Don Carol Drive cannot be harmonious and compatible with the abutting properties and surrounding neighborhood. The fence is clearly an eyesore for the neighbors who own the abutting properties. Allowing any property owner to build a fence that is not code compliant, and then sanction it by granting a Conditional Use Permit is ludicrous. One of the reasons we have building codes that are approved by our cities, is to promote harmonious and compatible building. If you don’t enforce the existing codes, and allow an “it’s easier to ask for forgiveness than permission” mindset in the population, it’s anarchy. We agree to live in a city with the idea there is a certain rule of law; we can expect a certain level of compliance with the norms of the community or neighborhood. Clearly, the homeowners who built the non compliant, inharmonious fence knew what they were doing: violating the building code in hopes that they could “get away with it.” The strong message from our city officials needs to be that it is NOT ACCEPTABLE to build whatever you want, and then think that it can be permitted after the fact. The social contract needs to be defended; that is your job. Please do it.

I urge the El Cerrito City Planner Jeff Ballantine and the EC Planning Commission to reject the application for a Conditional Use Permit for a fence more than 6 feet high at 8701 Don Carol Drive. The poet Robert Frost in 1924 wrote “good fences make good neighbors.” Please insist that these people be good neighbors by building a good (code compliant harmonious with the neighborhood) fence. Good neighbors get permission first, and don’t need to ask for forgiveness.

Respectfully,
Ryk Tanalski
1325 Brewster Dr.
El Cerrito, CA 94530

P.S. I want to build a 15 foot high shop/ RV garage on the front of my property. Should I start construction thinking that it’s really OKAY, and I can get it permitted later, or that permits don’t really matter?
March 10, 2021
To: El Cerrito Planning Commission for public hearing on March 17, 2021
From: Cindy Spring, El Cerrito resident living at 1063 Leneve Place
Re: Conditional Use Permit hearing for 8701 Don Carol Drive (Application PL20-0119)

To Planning Commission:
I wish to make comments regarding the permit being requested by Keida Gragg and Mark Choi for a conditional use permit for their fence bordering Leneve properties, a fence that is already built. Here are my thoughts:

- From what I’ve seen of the fence, it is certainly not in keeping with the neighborhood values. It is too tall.
- The fact it was constructed without consulting neighbors affected tells us that the people who own the fence have little regard for the neighborhood’s values of friendliness and mutual support. Before COVID, our neighborhood had several “Night Out” gatherings with EC policemen coming to talk with us. Each gathering drew 40-50 people.
- The fact is that the fence is at variance with EC codes. How can the Planning Commission approve something that was against code from the start?
- We have gone through three summers of wildfires nearby and our area is at risk. We need all the escape routes possible. An 8-foot fence makes us more vulnerable.
- My husband and I have lived on Leneve since 2014, and I have always worked with the neighbors I have on Don Carol to make sure views are preserved or improved and fences are within legal limits. We recognize that the bay views are one of the reasons our area is so desirable. Blocking views, as this fence does, reduces the value of all surrounding properties (and lowers property tax evaluation.)

I submit these views as a citizen of El Cerrito who cares about this lovely city we live in. Please make decisions that are in keeping with this value.

Sincerely,
Cindy Spring
(510) 527-1353
I live at 823 Craft Avenue, El Cerrito CA 94530. I would like to state that fences should not be higher than six feet. That height is practical for preventing animals from invading yards and high enough to keep pets safe in their yards. I don’t understand the purpose for higher fences. We must live civilly in our neighborhood. We should all be allowed to enjoy our views.

Thank you.

Pansy Kwong, MD
I object to the fence since it is not built to the 6 ft limit. It is an illegal fence and should be removed.
thanks

jc
1027 Leneve Place
El Cerrito

Stepping back from the railing
Re: Application for Conditional Use Permit, 8701 Don Carol Drive, El Cerrito CA
Before the Planning Commission, March 17, 2021

To Whom It May Concern:

Before the El Cerrito Planning Commission is the application for a Conditional Use Permit, referenced above, to allow for a fence that exceeds the city’s height limit on an interior lot line. As a resident of the city I wish to register my strongest objection to this application.

I wish to provide some background for my objection:

I am an architect, California License C-6714. I have lived in El Cerrito continually since 1977 when I built my home on Ivy Court. I was a member of the Planning Commission and the Design Review Board for a total of almost twelve years until December 1994 and served as Chair of the PC a total of six years. I have continued to follow and have interest in matters affecting the built environment of our shared community.

Historically, fences are categorically exempt in the California Building Code (both in the current edition of the International Building Code and the precursor Uniform Building Code) *as long as they are not over six feet in height*. El Cerrito, and other communities have modified the restrictions of the CBC to prevent even that height in some locations, presumably because of traffic visibility safety concerns or aesthetic considerations.

As with every rule, exceptions are sometimes necessary, as evidenced by El Cerrito Municipal Code Table 19.06.G that allows fences on interior lot lines up to 10 feet in height with a Conditional Use Permit, as long as “Special Circumstances (must) Exist” and with a reference to “Exceptions for Taller Fences” and “Conditional Use Permits” in the code. It is worth noting that El Cerrito, in its modifications to the standard codes, limits the heights of fences to three feet in certain front yard and side yard locations and the “Exceptions for Taller Fences” *does not address increasing the height of a fence over six feet, but is limited to increasing the height of a THREE FOOT HIGH FENCE TO SIX FEET*. One of the conditions that is cited as cause for exception is that wildlife, such as deer, often intrude onto the subject property (the applicant has stated that their fence that is up to 10 feet high was constructed to keep out the deer and coyotes). *(There is no mention of any special circumstances that are necessary for extending any fence above six feet in height, thereby making the issue of wildlife moot in this application. Further, the ‘Special Circumstances’ necessary for a CUP are not addressed in the “Exceptions for Taller Fences” paragraph, and are necessarily addressed by the findings necessary for a CUP.)*
It is obvious, on its face, that a three foot high fence is ineffective in deterring wildlife from entering a property, and it is noted that the “Exceptions” reference applies only to the same line in the table where increasing height from three to six, and not to the ten foot fence allowed under CUP. Therefore, the “Exceptions” provisions simply does not apply in the instant application.

We must then turn to the other reference in the table, the requirements for a CUP:

19.34.040 Required Findings:
“A. Findings for Approval. A Use Permit...shall only be granted...” if the following findings are made.

1. The location, size, design and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the liveability or appropriate development of abutting properties and the surrounding neighborhood.

2. The location and design of the proposal will provide a convenient and functional living, working, shopping or civic environment that will be an attractive amenity for the city.

3. The proposal is consistent with the purpose of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.

Clearly the proposal is not harmonious with its surroundings and does adversely affect the (financial) appropriate development of surrounding properties, and does by impacting the views of neighbors formerly enjoyed adversely affect the liveability of the surrounding neighborhood.

Clearly the proposal is not an attractive amenity for the city. It is only a benefit for the proponents to the detriment of its neighbors.

Clearly the proposal is inconsistent with the purpose of the district in which it is located and is in conflict with the General Plan and the concomitant codes and ordinances of the city.

Not to be overlooked in this application, is all language in our codes and ordinances use the word “proposed”. It does not say “proposed or illegally existing”, which is in fact the intent of this application. The applicant is a scofflaw, who without permit from the city caused to have constructed a ten foot high fence that negatively impacted its neighbors, and only upon formal complaint to the city did make the application for CUP. It is understood the applicant purports to be an architectural designer, which further indicates the applicant intended to construct the fence illegally.

If this were a variance application, like a CUP, findings would be necessary for approval, one of which is that the allowance would not be the granting of special privilege. There can be no other understanding of the applicants’ request than to be granted a special privilege. Certainly, to allow a fence higher than 6 feet in this location is to tell to all
citizens in El Cerrito, "ignore the rules, build what you want, and the city will allow it because, after all, it already exists."

The applicant has attempted to apply exceptions that do not exist in our codes and ordinances and ignores the need to comply with ALL the required findings where NONE are actually met. There is no other reasonable action by the city than to deny without exception the application.

Sincerely,

Frank W Bellows, NCARB