

To: Mayor and Ross Town Council
From: Elise Semonian, Senior Planner
Re: MJC Ventures I, LLC, Design Review and Variance, 61 Sir Francis Drake
Boulevard, File 1852
Date: February 2, 2012

II. Project Summary:

Applicant: Andrew Johnson, MJC Ventures I, LLC
Location: 61 Sir Francis Drake Blvd.
A.P. Number: 73-101-20
Zoning: R-1:B-20 (Single Family Residence, 20,000 sq. ft. lot size)
General Plan: Low Density (1-3 Units/Acre)
FEMA Flood Zones: Zone A and X (partially within the 1-percent annual chance floodplain)

II. Project Description:

Design review for a new 6-foot tall, solid wood, front yard fence. The fence would replace the existing low brick wall, which is located within the public right-of-way. The project also involves landscaping within the right-of-way. The applicants also request design review and variances to allow improvement of the basement level with living space with a finished floor below the base flood elevation.

Lot area	11,900 square feet
Existing Floor Area Ratio	18.3%
Proposed Floor Area Ratio	26.5% (15% permitted)
Existing Lot Coverage	18.3%
Approved/Proposed Lot Coverage	21.5% (15% permitted)
Existing Impervious Areas	27.3%
Approved/Proposed Impervious Areas	18.5%

The existing structures are nonconforming in setbacks.

III. Discussion

The Town Council approved the project under construction at the site in November 2011.

Design Review and Encroachment Permit for Fence

The applicants are requesting approval to replace the existing low brick wall with a new 6-foot tall redwood fence. The fence would align, generally, with the existing brick wall. The applicant proposes to replant the street trees west of the pathway to improve street parking and allow the trees to be connected to site irrigation.

The Town's design review ordinance states that fences and walls "should be aesthetically attractive and not create a walled-in feeling or a harsh, solid expanse when viewed from adjacent vantage points. Front yard fences and walls should be set back a sufficient distance from the

property line to allow for installation of a landscape buffer to soften the visual appearance” (R.M.C. §18.41.100(g.)) As a result, the Town Council has not traditionally been supportive of solid fencing or walls along most roadways in excess of four feet in height. Six foot tall solid fences have, however, been approved along Sir Francis Drake Boulevard due to the noise concerns associated with the heavy traffic flow along this right-of-way.

Although staff is not concerned with the aesthetic impact of an appropriately landscaped solid fence on Sir Francis Drake, staff is concerned with the safety of users on the pedestrian pathway. The Town designed the new path along Sir Francis Drake and widened shoulder to provide children with a safe path to travel to and from school, and to encourage walking and bicycling. Staff is concerned that solid fencing may reduce the sight lines of vehicles backing out of the tandem driveway at 61 Sir Francis Drake Boulevard. It is possible that vehicles will not see children walking or biking down the path until the vehicles are in the path.

The Town Council established the policy for considering encroachments in the public right-of-way by Council Resolution 1490 (2002, attached), which provides:

[I]n order to continue to provide safe circulation, parking, drainage and preserve existing vegetation, the Town supports the retention of existing right-of-way areas in an unimproved condition, and not improved as additional yard area or parking area by the adjacent property owner; and

... notwithstanding this policy, any work which is permitted by the Public Works Department within a right-of-way shall only be allowed when it does not compromise Town policies expressed above related to public safety, drainage, parking, landscape preservation, provision of emergency services and retention of Town character...

Staff is not in favor of allowing residents to construct structures in the right-of-way or enclosing right-of-way for personal use. Staff recommends that the Town Council only permit fencing at the property line. Staff is not opposed to landscaping in the area between the fence and the path, so long as the property owner agrees to maintain the landscaping off the public path and so long as it does not impair visibility.

Basement Variance application

The rear yard and a corner of the residence are located in a FEMA Flood Hazard Zone A. A surveyor has estimated that the lowest/basement floor is approximately 4 feet below the base flood elevation and could be subject to flooding. The main floor is elevated about five feet above the base flood elevation. Staff does not know if the site flooded in the past.

The residence has a large basement with sufficient ceiling height to create new habitable space with little excavation. The plans submitted to the Council include new basement living space that would be dry flood proofed to prevent water from entering the area.

The new Basement Exception ordinance does not apply to development of basement areas in flood hazard zones or areas known for flooding. In addition, FEMA regulations and the Town Floodplain Management regulations require "substantially improved" structures to have the

lowest floor (including basement) at or above the base flood elevation. The applicants have submitted evidence to demonstrate that the project will not be a “substantial improvement.” However, even if it is not a substantial improvement, staff does not believe that allowing development under the base flood elevation is good public policy. In addition, staff does not believe the Council can make the required findings to approve a floor area ratio variance to approve the living space.

In order to approve a variance the Town Council must find:

1. That there are special circumstances or conditions applicable to the land, building or use referred to in the application.
2. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights.
3. That the granting of the application will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. (RMC §18.48.030)

The site is not unique. The lot has a standard shape. The lot is undersized for the 20,000 sq. ft. minimum lot size zoning district. However, the five lots to the north and four lots to the south are also undersized for the zoning district. Granting the application is not necessary to preserve property rights as the site is developed with a single-family residence and garage. The structures already exceed the floor area permitted for the site. Granting the application would allow development below the base flood elevation, which goes against the intent of the Town floodplain management regulations and may be detrimental to the public welfare or improvements.

If the Town public works director/building official determines that the project is not a substantial improvement, staff does not object to allowing the applicants to maintain and flood proof the laundry room on the basement level.

IV. Recommendation, Findings, & Conditions

Staff recommends the town council deny the floor area ratio and other variances associated with the basement addition for the reasons set forth in the staff report.

Staff recommends that the Town Council allow Town staff to work with the applicants to approve a modified fence and landscape plan if staff can find that it meets the following conditions:

1. The fence may be solid and up to 6 feet tall
2. The fence shall be located out of the public right-of-way
3. The applicants shall record a revocable encroachment permit prior to any work or planting within the right-of-way.
4. Landscaping is required to soften the appearance of the fence. The property owner shall commit to maintaining the landscaping to screen the fence and not impair travel on the path.

5. The applicants shall demonstrate to the satisfaction of staff that the fence design and location and/or landscaping in the right-of-way will not reduce visibility for vehicles backing out of the site and preserves the safety of those using the path.
6. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.