



REPORT TO PLANNING COMMISSION City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

PUBLIC HEARING
July 28, 2011

To: Members of the Planning Commission

Subject: Zansa Design (P11-024): A request to allow a concrete patio and solid fencing in the front yard setback area of an existing single family home in on 0.17 acres in the Standard Single-Family (R-1) zone.

- A. Environmental Determination:** Categorical Exemption (CEQA Guidelines Section 15301, existing facilities);
- B. Variance** to exceed the 40% maximum front yard paving allowance for an existing single family home.
- C. Variance** to deviate from the front yard fencing requirements by providing a semi-closed tubular steel fence taller than 4 feet for an existing single family home.

Location/Council District:

6607 Heatherwood Way, Sacramento, CA 95831

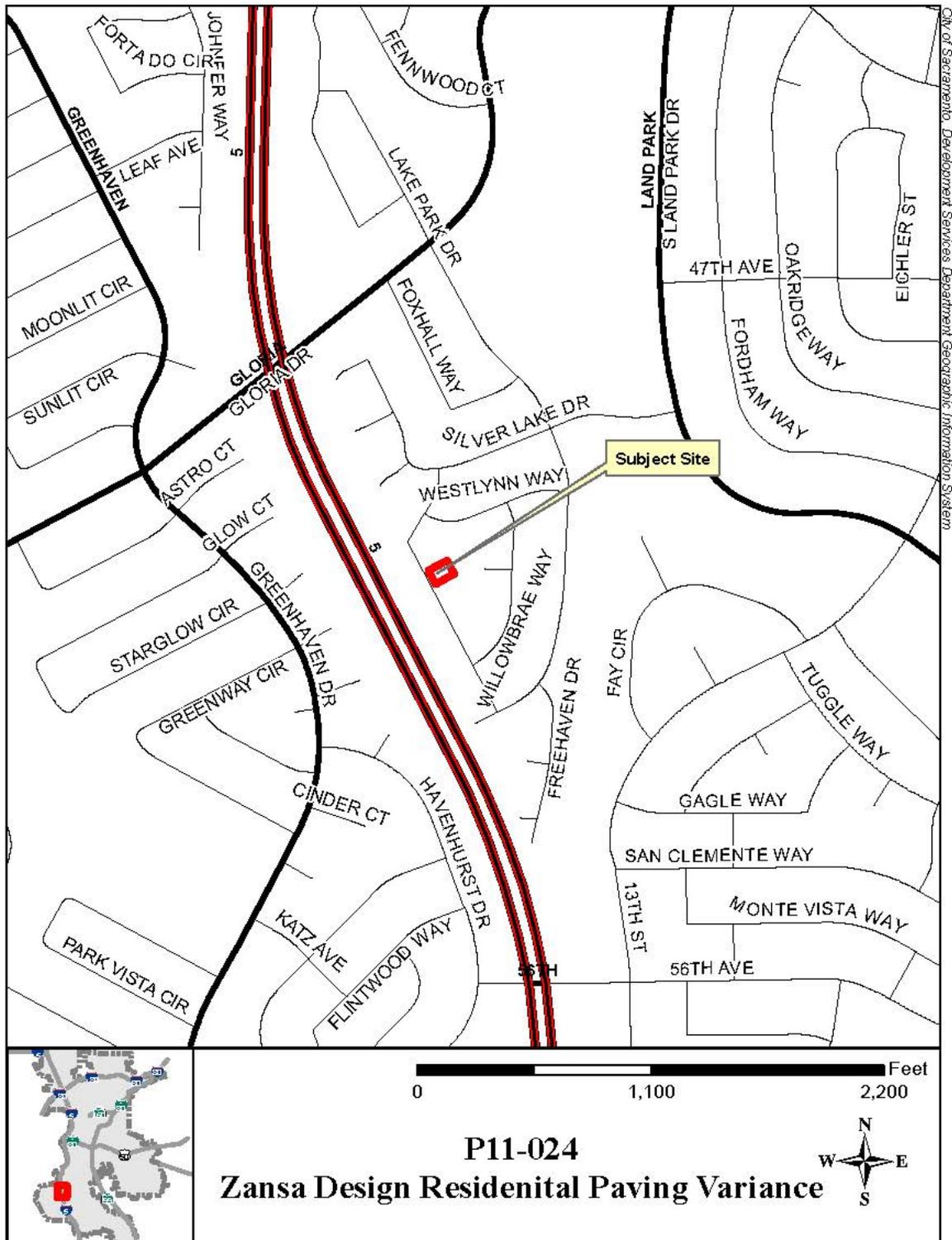
Assessor's Parcel Number: 029-0273-009

Council District 4

Recommendation: Staff recommends that the Commission approve the Variance to exceed the 40 percent maximum front-yard paving allowance and deny the Variance to provide a semi-closed tubular steel fence taller than 4 feet based on the findings and subject to the conditions listed in Attachment 1. The Commission has final approval authority over items A through B above and its decision may be appealed to City Council.

Contact: Antonio Ablog, Associate Planner, 808-7702; Lindsey Alagozian, Senior Planner, 808-2659

Applicant/Owner: Nance Curry Singleton, 6607 Heatherwood Way, Sacramento, CA 95831



Summary: On October 29, 2010, the applicant submitted plans requesting the construction of a swimming pool and patio in the front yard of the residence located at 6607 Heatherwood Way. These plans received an over-the-counter planning approval and were forwarded to the Building Department. At the time of the over-the-counter approval, it was not apparent to staff that the concrete patio associated with the deck would result in approximately 89% coverage of the front yard setback area. During construction, a Code Enforcement case was initiated related to the fencing construction and the applicant was issued a correction notice stating that the pool/patio project required the approval of several variances in order to proceed with the project.

Project Information
General Plan designation: Suburban Neighborhood Low Density (FAR 1.50 max)
Existing zoning of site: Standard Single-Family (R-1)
Existing use of site: Single Family Residence
Property area: 0.17 acres

Background Information: The subject site consists of a single-family residence on 0.17 acres in a single-family residential neighborhood. On October 29, 2010, Planning Staff conducted an over-the-counter review of plans to install a swimming pool in front of the residence. Staff noted that the pool was not in the front setback area and was an allowed use in that location. Staff also noted that a wrought iron fence around the pool area would be allowed. Planning Staff forwarded the project to the Building Department for the processing of building permits.

The building permit was issued on November 16, 2010 with construction commencing shortly thereafter. On February 11, 2011, during construction of the pool and patio area, a complaint was filed with the Code Enforcement Division related to the construction of a concrete masonry wall at the property. The Code Enforcement Division inspected the property and issued a correction notice to the property owner on March 2, 2011. The correction list noted the following violations:

- The concrete patio associated with the pool exceeded the allowed 40% paving coverage of the front yard setback area.
- The fence height within the front setback area exceeded the allowed 4-foot height for solid walls and/or fences.
- The fence height exceeded the allowed 4-foot height requirement for clear zones adjacent to driveways.

The applicant submitted for the required variances on March 29, 2011. Upon submittal, staff reviewed the Planning, Building, and Code Enforcement records related to the project. In reviewing the pertinent documents, staff determined that:

- The swimming pool location met all setback requirements.
- A building permit was issued for construction of the pool and associated patio without Planning Staff properly notifying the applicant about the 40 percent maximum paving area for the front yard setback.
- Staff originally noted that the pool in front of the house would be surrounded by a fence constructed of wrought iron. What was constructed, however, was a 4-foot tall masonry wall with the upper 2 feet to be filled in with horizontal metal fencing.
- The height of walls and fences is measured from the highest adjacent finished grade. The masonry portion of the partially constructed fence measures 4 feet in height as measured from the finished patio. This meets the 4-foot maximum height requirement for fences in the front yard setback area and within the driveway clear zone. With the horizontal metal fencing that the applicant is proposing in the upper portion, staff has determined that it does not meet the definition of *open* wrought iron or tubular steel that is allowed to extend up to 6 feet in height.

At the time of submittal to the Planning Department for the appropriate Variances, the pool was only partially constructed. The applicant requested to move forward with plastering the pool and filling it with water. The applicant was allowed to move forward with the completion of the pool as staff recognized that the pool was not the subject of the required variances and that not doing so could result in major structural issues. Though the fence was not completed, staff allowed the applicant to complete a minimal level of work to the fence in order to properly secure the pool with the understanding that the fence and security gates would still be subject to the variance process and a hearing before the Planning Commission.

Public/Neighborhood Outreach and Comments: The project was noticed to the South Land Park Neighborhood Association and to all property owners within a 500 foot radius of the subject site. As of the date of this report, staff has not received any opposition to this project.

Environmental Considerations: The Community Development Department, Environmental Planning Services Division has reviewed this project and determined that this is exempt from the provisions of the California Environmental Quality Act (CEQA) Section 15301, existing facilities. The project consists of the construction of a new pool and patio as accessory structures to an existing single-family home.

Policy Considerations:

2030 General Plan

The 2030 General Plan Update was adopted by City Council on March 3, 2009. The 2030 General Plan's goals, policies, and implementation programs define a roadmap to achieving Sacramento's vision to be the most livable city in America. The 2030 General Plan Update designation of the subject site Suburban Neighborhood Low Density, which provides for low density housing between 3.0 and 8.0 units per acre. At a density of 5.8 units per acre, the project represents a compatible residential use. The proposed variances to allow a paved patio and fencing are not prohibited by the General Plan.

The General Plan Floor Area Ratio (FAR) for Suburban Neighborhood Low designation is a maximum of 1.50. The total project square footage is 1,576 square feet. With the 0.17± net acre site, the FAR for this project equals 0.21, meeting the General Plan FAR requirement.

The proposed project meets the 2030 General Plan goals and policies related to the Suburban Neighborhood Low land use designation in that the proposed project is a single family residential use with a new accessory pool and patio.

Project Design/Land Use:

The project consists of a pool, patio, fencing and planter area that is located in front of an existing single-family home. The pool sits outside of the front-yard setback area with the associated pumps and filters located to the rear of the existing home. Between the pool and the front property line is a large, 20'x40' raised concrete patio. A raised, 5-foot wide planter separates the new patio area from the street. The applicant had also originally wanted to build a patio cover over the new paved area, but Staff discouraged this as it would require an additional Variance that would not be supported by staff.

The project requires variances to exceed the 40% paving allowance for the front-yard setback area for the patio and to install a semi-closed metal fencing in the upper portion of the surrounding. As summarized in the project background, the applicant constructed the concrete patio for the pool not knowing that it exceeded the 40 percent paving maximum for the front yard setback area. With the installation of the patio, approximately 89% of the front-yard setback area is covered with concrete. Once the code enforcement case was initiated for the site, the paving of the patio was completed.

When the code issues were first brought to planning staff, the wall surrounding the patio was erected, but not completed. The wall consisted of unfinished concrete masonry blocks. Horizontal metal tubing was installed in several places (see attachment 3) only to secure the pool area. Staff met the applicant at the site to review the work that had been done and offered design suggestions that would soften the look of the wall. These recommendations included finishing the masonry blocks with plaster or stucco, and installing landscaping in the planter that would partially screen the new wall. Since this meeting, the applicant has followed staff's recommendation and has finished the wall with a coat of smooth plaster and has installed large palm trees in the planter area. Staff believes that the effort the applicant's response to Staff's recommendations has helped to mitigate the project's impact upon the surrounding neighborhood. Staff believes that this could be taken one step further if the applicant complied with code and

provided open wrought iron or tubular steel fencing in the upper portion of the masonry wall. Since the masonry portion of the wall does not exceed 4 feet, it is consistent with code. Open wrought iron or vertical tubular steel is allowed up to a height of 6 feet. Staff has determined that the horizontal tubular steel bars the applicant is proposing do not meet the definition of “open”. If the applicant were to provide the typical, open, wrought iron fencing, it would further mitigate the height of the wall.

Section 17.68.010 of the zoning code allows for a maximum of 40 percent of the front setback area to be paved for off street parking or driveways with an additional 10 percent of the front setback area allowed to be paved for walkways or uncovered patios. As the project patio exceeds these allowances, a variance is required. In considering the Variance, the following guidelines are observed:

- A. No Special Privilege. A variance cannot be a special privilege extended to one individual property owner. The circumstances must be such that the same variance would be appropriate for any property owner facing similar circumstances.**

The circumstances involved with this variance are unique in that the applicant began construction of the project with the understanding that the project was consistent with all aspects of the zoning code. The applicant maintains that the rear yard of the subject property was inadequate to accommodate the level of improvements that she wished to construct as the rear yard is only 15 feet deep with a 5-foot easement for overhead power lines. Due to these limitations, the applicant submitted a design to improve the front yard of the residence.

At the time of the initial public counter plan review, staff failed to recognize that the project plans were in violation of the paving allowances for the front setback area. Had this discrepancy been noticed, the applicant could have reevaluated the plans to look at other options such as moving the project to the rear of the house, or reducing the scale of the patio. It was not until a substantial portion of the work was done that the code violations were discovered.

- B. Use Variance Prohibited. The consideration of “use variances” is specifically prohibited. These are variances which request approval to locate a use in a zone from which it is prohibited by ordinance.**

The variance to exceed the paving allowance does not constitute a use variance as an outdoor patio is an allowed use in the Single-Family (R-1) zone.

- C. Disservice Not Permitted. A variance must not be injurious to public welfare, nor to property in the vicinity of the applicant.**

The intent of the maximum paving allowance for single-family residence is to prevent the front setback from being paved for the purposes of providing driveways or extra parking areas. An extra 10 percent paving allowance is included in the city code regarding uncovered patios.

The outdoor patio has been designed such that it cannot be used as a driveway or parking area. The constructed patio will serve as an outdoor recreation area for the residents. With the improvements made to the wall and fencing, the applicant has given the project a residential feel to be consistent with the surrounding neighborhood. Staff does not believe that the current patio design adversely affects any nearby properties.

Aside from aesthetics, not supporting the variance would result in the removal of the patio to within approximately 5 feet of the pool. This could result in structural deficiencies in the pool that could affect the overall safety of the site.

D. Not adverse to General Plan. A variance must be in harmony with the general purpose and intent of this title. It must not adversely affect the general plan or specific plans of the city, or the open space zoning regulations.

The Variance does not conflict with the General Plan. The Variance is for an accessory patio to an existing single-family residence. Such uses are not prohibited by the General Plan.

Section 17.76.020 of the Zoning Code allows walls and fences up to four feet in height to be located in the front yard setback area. An exception is given for open, decorative wrought iron and tubular steel fences, which are allowed up to 6 feet in height. The height of such fences is measured from the highest adjacent finished grade. The proposed wall meets the height requirements, but the upper fencing proposed by the applicant is not consistent with the provision for open, decorative fencing. The semi-closed fencing requires a Variance. In considering the Variance, the following guidelines are observed:

A. No Special Privilege. A variance cannot be a special privilege extended to one individual property owner. The circumstances must be such that the same variance would be appropriate for any property owner facing similar circumstances.

At the time of the original counter review, it was noted by staff that a 6 foot wrought iron fence would be provided around the pool. Staff noted that there were no planning issues as the fence complied with the fencing standards. When the site was inspected by Code Enforcement, however, it was discovered that a combination masonry wall/tubular steel fence was constructed at the site. Planning staff evaluated the fencing when the Variance request was submitted by the applicant. Staff informed the

applicant that the upper portion of the fence should be finished with open wrought iron or vertical tubular steel in order to be more consistent with the city code. The applicant maintains that the fencing that she is requesting is required to provide privacy and security for the outdoor pool/patio area.

The fencing guidelines are in place to discourage enclosing the front yard with a solid wall. The code allows solid walls up to 4 feet with open fencing up to 6 feet in height. These requirements allow property owners to retain some privacy and screening without closing the yard off from the public street. These regulations also maintain walls and fences at a residential and pedestrian scale.

Though portions of this fencing have been installed in order to secure the pool area, staff has determined that upper horizontal tubular steel fencing material proposed by the applicant is not compatible with the requirement for open, decorative fencing. Staff does not support this fencing and has recommended that the applicant install typical wrought iron or vertical tubular steel fencing (see Attachment 6 for typical wrought iron/tubular steel fence).

B. Use Variance Prohibited. The consideration of “use variances” is specifically prohibited. These are variances which request approval to locate a use in a zone from which it is prohibited by ordinance.

The variance to provide non-open fencing does not constitute a use variance as walls and fences are an allowed use in the Single-Family (R-1) zone.

C. Disservice Not Permitted. A variance must not be injurious to public welfare, nor to property in the vicinity of the applicant.

The intent of the code requirements is to allow fencing for privacy and security without negatively impacting neighboring properties or safety. Staff believes that the lack of openness of the proposed tubular metal fencing is detrimental to the overall design of the project. The fencing closes the property off from the adjacent street and gives the effect of a solid wall. Staff believes that privacy for the patio can be provided by alternative means such as landscape screening. Furthermore, with the raised height of the patio, the masonry wall is approximately 7 feet tall if measured from the street side. Staff believes that this height provides adequate security and privacy for the pool and patio.

D. Not Adverse to General Plan. A variance must be in harmony with the general purpose and intent of this title. It must not adversely affect the general plan or specific plans of the city, or the open space zoning regulations.

The Variance does not conflict with the General Plan. The Variance is for a fence for an existing single-family residence. Such uses are not prohibited by the General Plan.

Conclusion

The applicant is seeking a variance to exceed the 40% front yard paving limitations and to allow r the existing fenced patio area to remain, which is not consistent with the code requirements for paving and fencing in the front yard. The applicant has followed several staff recommendations to make the patio and fencing blend in with the surrounding neighborhood. Staff supports the variance that would allow the patio to remain. Staff does not support the fence variance as Staff believes that providing more open fencing along the top portion of the wall would further mitigate the visual impact of the project upon the street.

Respectfully submitted by: 
Antonio Ablog
Associate Planner

Approved by:

LINDSEY ALAGOZIAN
Senior Planner

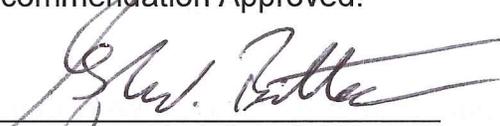
Recommendation Approved:

GREGORY BITTER, AICP
Principal Planner

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Attachment 1 – Recommended Findings and Conditions**Findings of Fact****A. Environmental Determination: Exemption**

Based on the determination and recommendation of the City's Environmental Planning Services Manager and the oral and documentary evidence received at the hearing on the Project, the Planning Commission finds that the Project is exempt from review under Section 15301 (Existing Facilities) of the California Environmental Quality Act Guidelines as follows:

The project consists of the construction of a swimming pool and patio.

B. The **Variance** to exceed the 40% maximum front yard paving allowance for an existing single family home in Standard Single-Family (R-1) zone is **approved** based on following Findings of Fact:

1. The variance is not considered a special privilege extended to one individual property owner. The circumstances involved with this variance are unique in that the applicant began construction of the project with the understanding that the project was consistent with all aspects of the zoning code. At the time of the initial public counter plan review, staff failed to recognize that the project plans were in violation of the paving allowances for the front setback area, so the applicant was not provided the opportunity to reevaluate the plans.
2. The variance to exceed the paving allowance does not constitute a use variance as an outdoor patio is an allowed use in the Single-Family (R-1) zone.
3. The variance will not be injurious to public welfare, nor to property in the vicinity of the applicant in that the outdoor patio has been designed such that it cannot be used as a driveway or parking area. The constructed patio will serve as an outdoor recreation area for the residents. With the improvements made to the wall and fencing, the applicant has given the project a residential feel to be consistent with the surrounding neighborhood. Staff does not believe that the current patio design adversely affects any nearby projects.
4. The Variance does not conflict with the General Plan. The Variance is for an accessory patio to an existing single-family residence. Such uses are not prohibited by the General Plan.

C. The **Variance** to deviate from the front yard fencing requirements by providing a semi-closed horizontal tubular steel fence taller than 4 feet is **denied** based upon the following findings:

1. Issuing the Variance would constitute a special privilege afforded to an individual property owner. Only a minor portion of the fencing was completed when staff was made aware of the code compliance issues. Staff informed the applicant that the upper portion of the fence should be finished with open wrought iron or vertical tubular steel. Staff has determined that upper fencing material proposed by the applicant is not compatible with the requirement for open, decorative fencing. Staff does not support this fencing and has recommended that the applicant install typical wrought iron or vertical tubular steel fencing.
2. The variance to provide non-open fencing does not constitute a use variance as walls and fences are an allowed use in the Single-Family (R-1) zone.
3. The Variance must not be injurious to public welfare, nor to property in the vicinity of the applicant. Staff believes that the lack of openness of the proposed metal fencing is detrimental to the overall design of the project. The fencing closes the property off from the adjacent street and gives the effect of a solid wall. Staff believes that privacy for the patio can be provided by alternative means such as landscape screening. Furthermore, with the raised height of the patio, the masonry wall is approximately 7 feet tall if measured from the street side. Staff believes that this height provides adequate security and privacy for the pool and patio.
4. The Variance does not conflict with the General Plan. The Variance is for a fence for an existing single-family residence. Such uses are not prohibited by the General Plan.

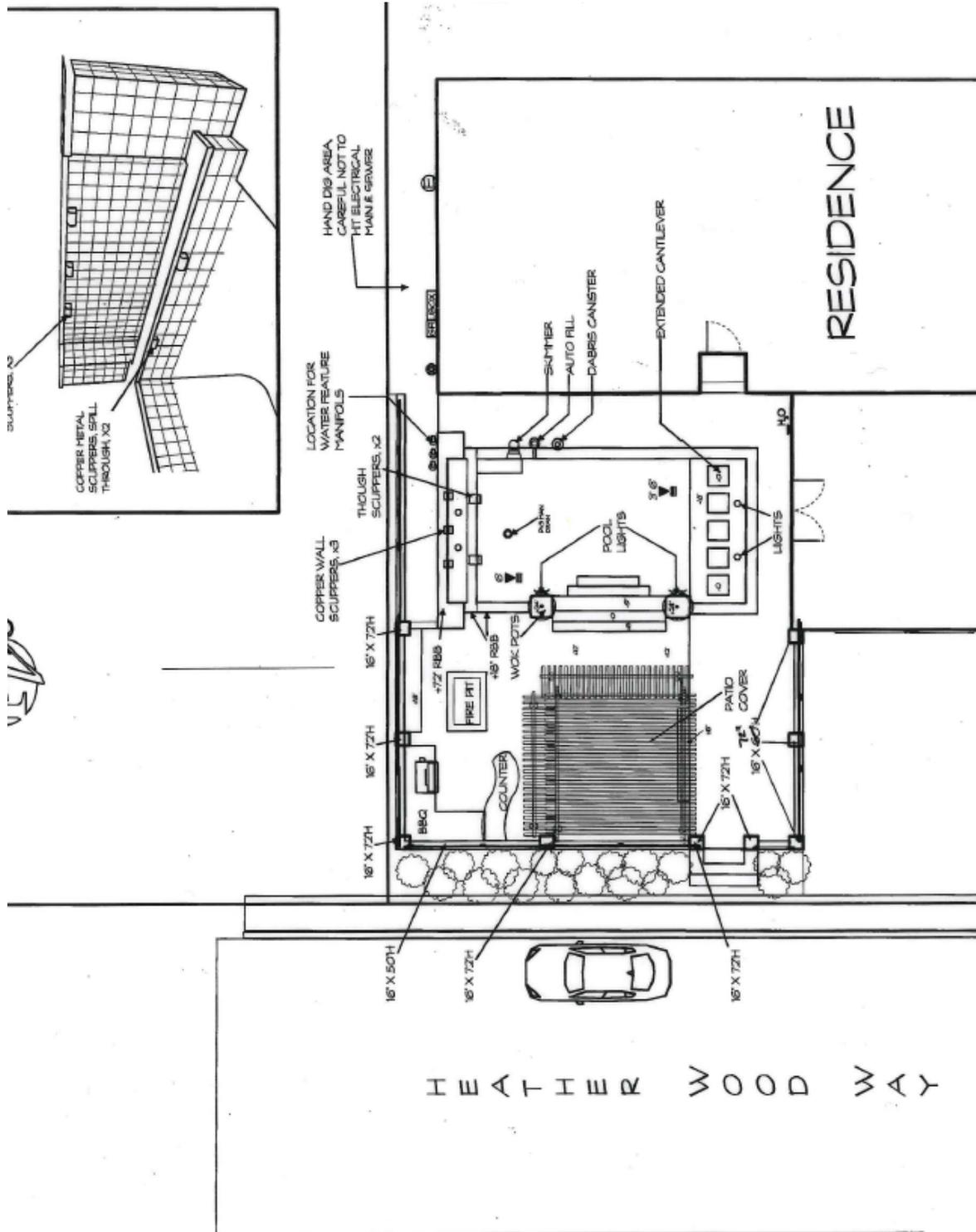
Conditions of Approval:

B. The **Variance** to exceed the 40% maximum front yard paving allowance for an existing single family home in Standard Single-Family (R-1) zone is approved subject to the following conditions:

Planning:

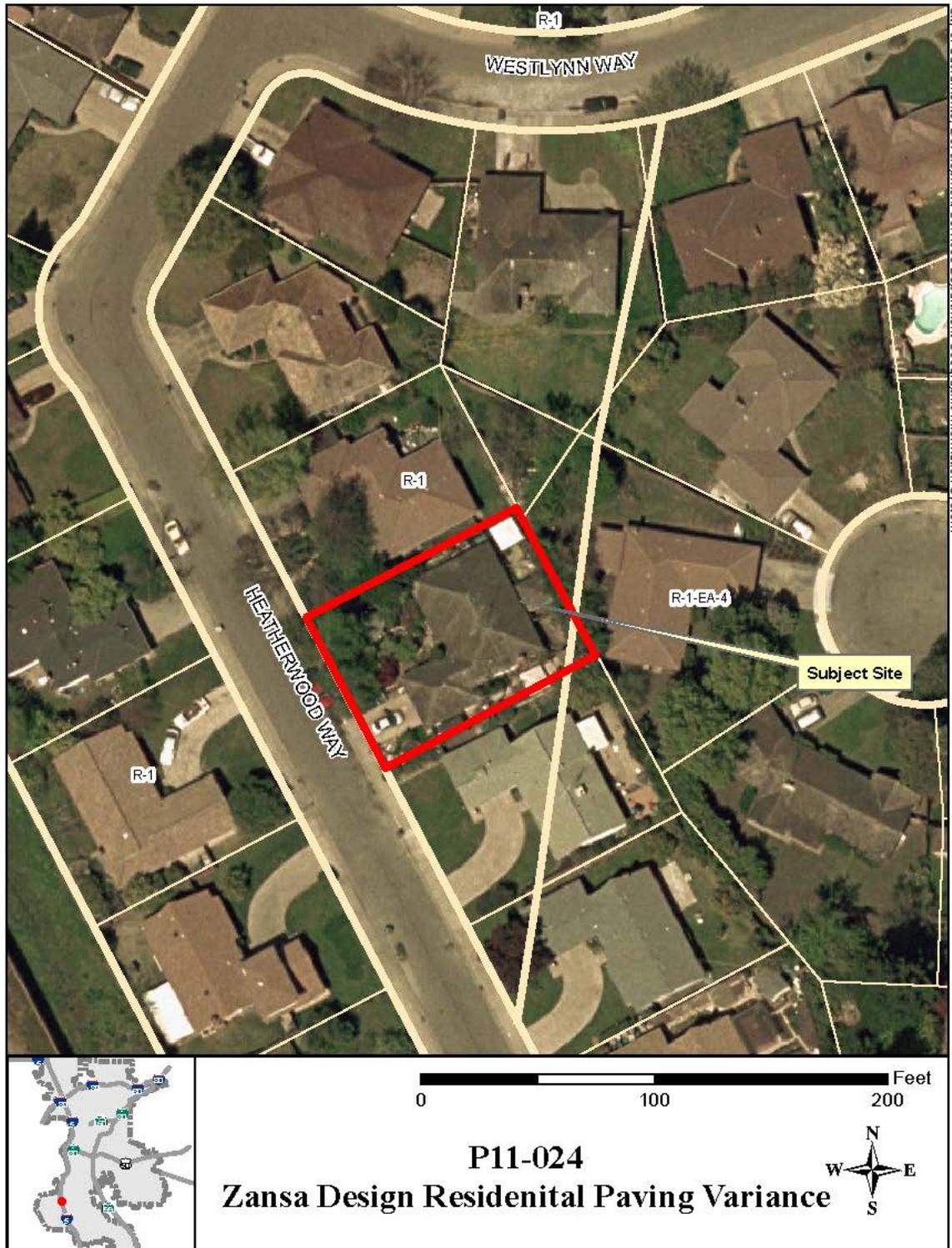
B1. The patio cover structure depicted on the plans shall not be allowed. Such structure requires an entitlement to locate a patio cover within the front yard setback.

Exhibit 1A: Site Plan



1/8" = 1'-0"

Attachment 2 – Land Use Map



City of Sacramento, Development Services Department, Geographic Information System

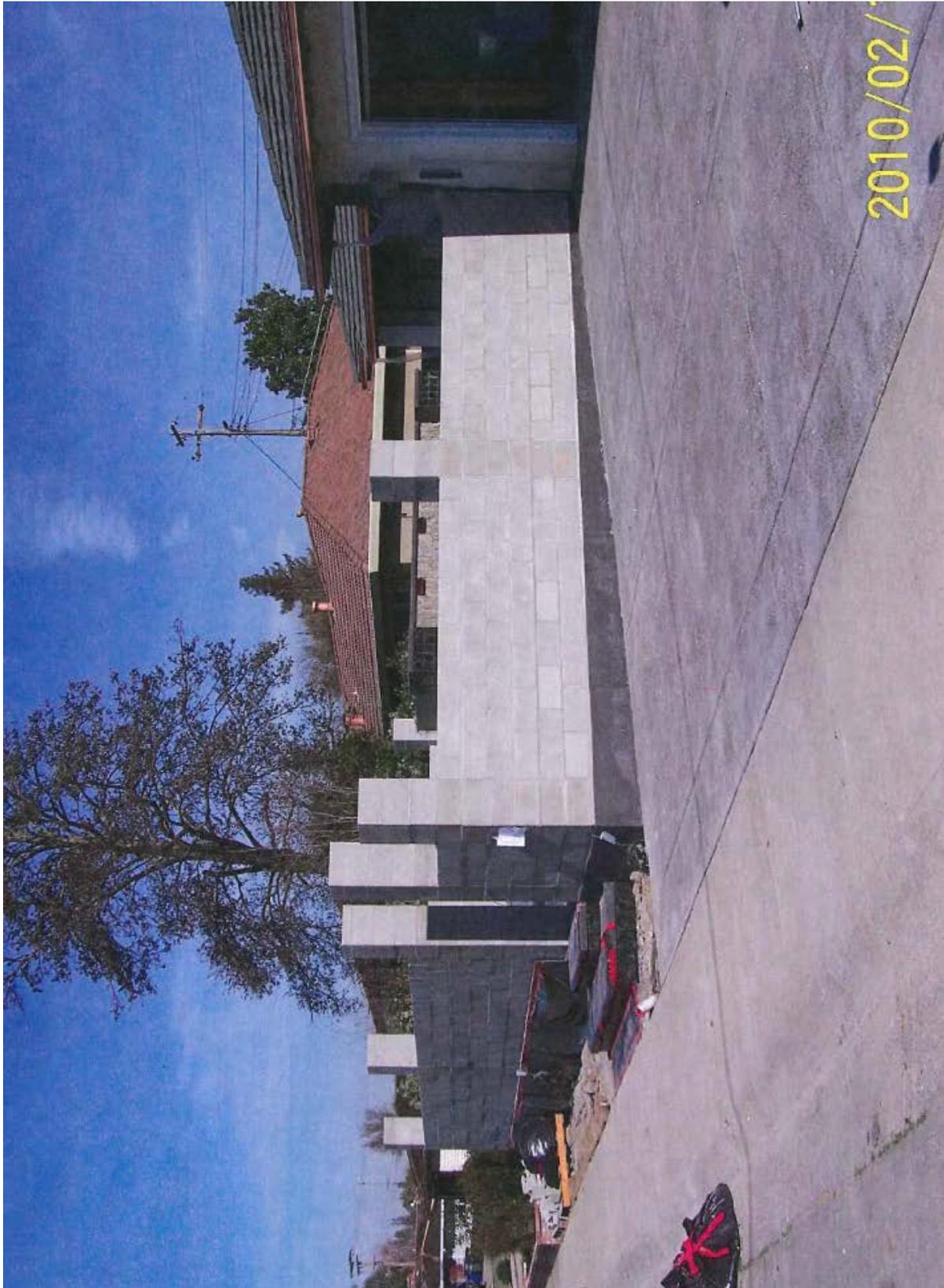
Attachment 3 – Fencing Materials



Attachment 4 –Interior Patio View



Attachment 5 – Street View



Attachment 6 –Wrought Iron/Tubular Steel Consistent with Code

