

## RDMD/Planning and Development Services

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**DATE:** March 24, 2005 (Continued from March 10, 2005)

**TO:** Orange County Zoning Administrator

**FROM:** RDMD/PDS/Land Use Planning

**SUBJECT:** Public Hearing on Planning Application PA04-0096 for Use Permit

**PROPOSAL:** The applicant requests approval of a Use Permit to allow an existing fence and gate that exceeds the height limit in the front setback area to remain. The Orange County Zoning Code permits walls and fences to a height of 42 inches in the front setback area. The applicant's fence ranges in height from 42 inches to 64 inches with pilasters ranging in height from 54 inches to 76 inches. Orange County Zoning Code Section 7-9-137.5 "Fences and Walls" permits modification to the wall and fence height standard, subject to the approval of a Use Permit.

**LOCATION:** The project is located in north central Orange County, west of Newport Boulevard and east of Crawford Canyon Road. The site address is 10511 Easter Hill Drive, Santa Ana. Third Supervisorial District.

**APPLICANT:** Melvyn A. Horwitt, property owner  
Charles Hyland, agent

**STAFF CONTACT:** William V. Melton, Project Manager  
Phone: (714) 834-2541 FAX: (714) 834-3522

**SYNOPSIS:** This proposal was continued from the March 10, 2005 Zoning Administrator Hearing because neither the property owner nor the agent were able to attend the hearing. PDS/Current and Advance Planning Services recommends Zoning Administrator approval of PA04-0096 subject to the attached Findings and Conditions of Approval.

### **BACKGROUND:**

The subject property is 27,000 square feet in area, measuring approximately 100 feet wide by 270 feet deep. The subject property is part of Tract 8934 recorded in 1977, which includes a total of 19 lots for single-family development; 18 lots, including the applicant's lot, have access from the private street system. The recorded tract map shows that all lots in the tract have a minimum of 20,000 square feet. The zoning on the site was changed for AR-20,000 District to E4-20,000 (PD) 20,000 District in 1976 in anticipation of the property owner obtaining approval of a 19 unit Planned Development. The Planned Development proposal was never completed and the property is now developed with custom single-family homes. The site and the entire tract is still zoned E4-20,000 (PD) 20,000. The rear half of the property has a steep down slope. The site is developed with a dwelling that appears to be similar in scale to the 15 other homes in the tract.

In 1999 and 2002, the applicant obtained approval of a building permit for retaining walls, swimming pool and for what was shown as “perimeter walls”. The existing fence, pilasters and gates, according to the applicant, were shown on the site plans for which the permit was issued. The front yard fence was then built in accordance with the approved plans. In April 2003, County Code Enforce issued a violation (CE040054) to the applicant stating that the fence and gates in the front setback area exceeded the 42-inch height limit. Please refer to the Applicant’s Letter of Explanation, Exhibit 1 for additional background information.

**SURROUNDING LAND USE:**

| Direction    | Zoning  | Existing Land Use  |
|--------------|---|--|
| Project Site | E4-20,000 (PD) 20,000 (Small Estates-20,000 sq. ft. min. lot size (Planned Development Overlay) 20,000 sq. ft. per dwelling unit) | Single-family dwelling   |
| North        | E4-20,000 (PD) 20,000   | Single-family dwelling with one lot used as a garden and lawn area |
| South        | E4-20,000 (PD) 20,000   | Single-family dwelling   |
| East         | E4-20,000 (PD) 20,000   | Single-family dwelling   |
| West         | AR-20,000 (Agricultural Reserve-20,000 square feet minimum lot size)  | Single-family dwelling   |



**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to one County Division (Traffic Review). As of the writing of this staff report, no comments raising issues with the project have been received. Staff received one comment letter from a property owner located outside of the subject tract that is in support of the proposal (Exhibit 2).

**CEQA COMPLIANCE:**

The proposed project is Categorically Exempt (Class 3, construction of limited numbers of new small structures or facilities) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

**DISCUSSION/ANALYSIS:**

The plans for this Use Permit proposal are the same plans prepared by the landscape architect for the series of permits applied for in 1999 and again in 2002. Records show that the last permit applied for on the subject property was RW020049, which was shown as “perimeter walls”. Staff was unable to locate the site plans associated with the previously issued building permits. The applicant asserts that these permits were issued and were inspected in accordance with the approved plans. The walls have been constructed. However, staff was unable to locate County records showing the perimeter wall in the front setback area was issued a building permit or the constructed fence/gate/or pilasters ever received a final building inspection and approval. Consequently, Code Enforcement Violation No. CE040053 is still active. Approval of this Use Permit proposal would grant approval for the fence structure and eliminate the code violation.

The existing fence and front entry gate is constructed of decorative wrought iron between 24 inch square pilasters with a stucco finish matching the stucco finish of the dwelling. Ivy type plants have grown over the wrought iron fence portion making it appear as a solid fence. The wrought iron fence ranges in height from 42 inches to 64 inches. The pilasters range in height from 53 inches to 76 inches. The front entry gate is 68 inches high. The pilasters are located no closer than 30 inches from the back of street curb.

The fence and pilasters of this proposal is similar to other lots in this subdivision. The photos in Exhibit show the subject site and other sites that have similar pilasters in the front yard. Many of the homes have a pilaster with a light on top that exceeds the 42-inch height limit for such structures. Some pilasters have address plates and/or mailboxes installed in them. Other properties have fences in the front setback that exceed the 42-inch height limit, such as the property adjacent to the north (Note: site planning staff was unable to locate any permits for this structure).

The applicant’s proposed (existing) fence structure is maintained in good appearance and is compatible with similar structures in the subdivision. However, before the Zoning Administrator can approve this proposal, Zoning Code Section 7-9-137.5 (5) “Modification Permit” requires the following two findings must be made:

*1. That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.*

*2. That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.*

Regarding Finding 1 above, Traffic Review staff commented that there is no traffic hazard associated with the existing wall. In regards to Finding 2 above, the applicant submitted letters (see Exhibit 1) signed by the homeowners in the tract indicating that they have no objections to the existing walls or the proposed Use Permit to let the walls remain.

Staff is of the opinion that the Zoning Administrator is able to make the two required findings necessary for project approval. Staff's recommendation is follows.

**RECOMMENDED ACTION:**

LUP/Current and Advance Planning Services recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA04-0096 for Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Charles M. Shoemaker, Chief  
LUP/Current and Advance Planning

WVM

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**APPENDICES:**

- A. Recommended Findings
- B. Recommended Conditions of Approval

**EXHIBITS:**

- 1. Applicant's Letter of Explanation, including attachments
- 2. Letter dated March 3, 2005 from Mark C. Johnson
- 3. Site Photos
- 4. Site Plans

**APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the RDMD/Planning and Development Services.