



**STAFF REPORT
HOLLISTER PLANNING COMMISSION
MEETING DATE: March 27, 2025
REPORT # Community Development-2025-17**

AGENDA ITEM: 2. March 27, 2025 Planning Commission Staff Report wo Attachments.docx

DEPARTMENT HEAD: William Via, Public Works Director
STAFF CONTACT: Marco Martinez, Associate Engineer

RECOMMENDED ACTION: Deny the appeal, affirm staff’s determination, and direct the applicant to revise the Fence Extension Application (2409) to demonstrate the location of the rear yard fence is no closer than 10 feet from the property line.

CEQA: The appeal is exempt from CEQA pursuant to Section 15061(b)(3) as it does not have any potential for causing a significant effect on the environment.

PROJECT DESCRIPTION: Alan Leon (“Applicant”) has filed an appeal (**Attachment 4, Appeal Application 2025-1**) in accordance with Section 17.24.140 Appeals of the Hollister Municipal Code related to the administrative determination of the residential fence location at 1381 Carriage Road within Tract 341 Mirabella II Subdivision (Lot 91).

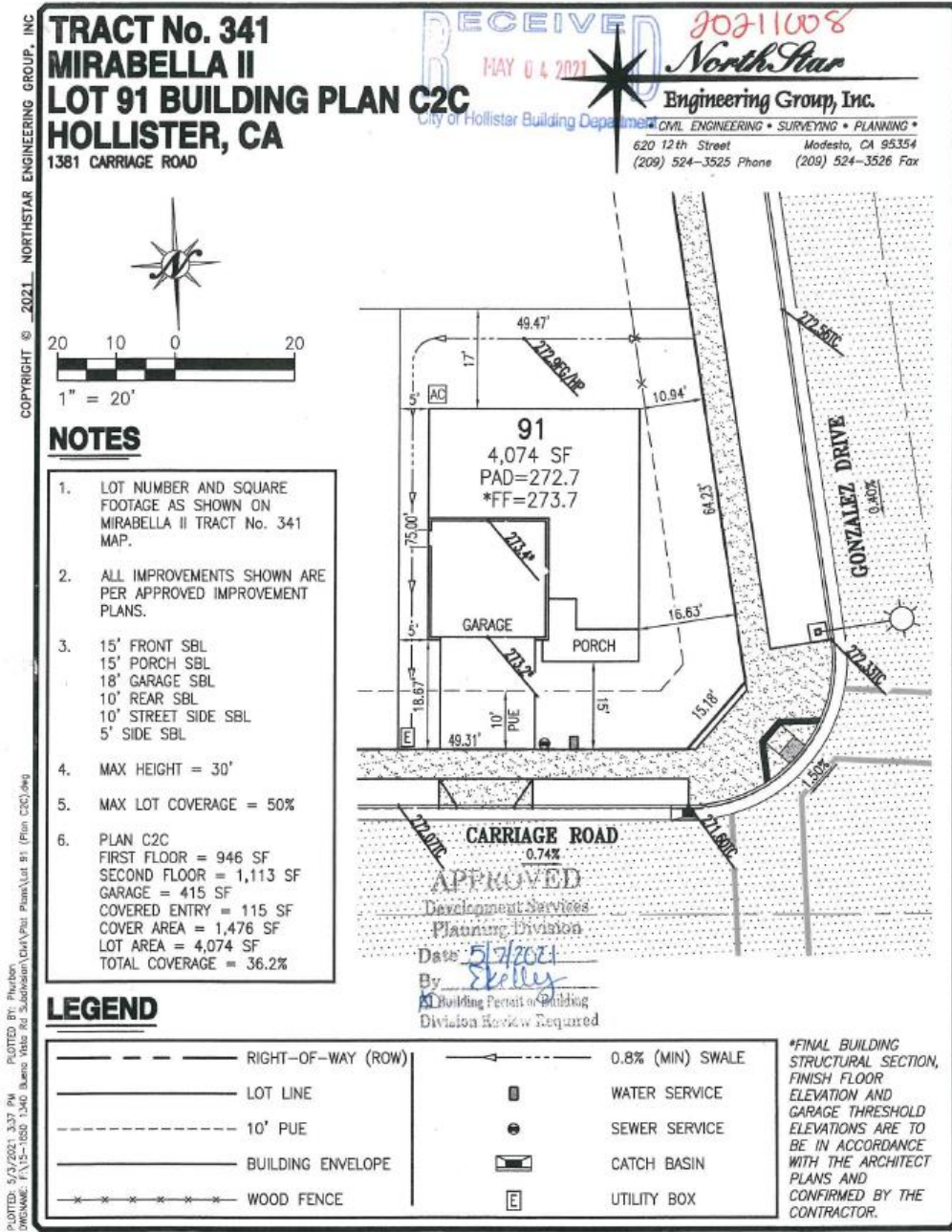
Figure

1.



Staff Report
Appeal 2025-1
1381 Carriage Road, Fence Extension Appeal
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Figure 2. 1381 Carriage Road Plot Plan (Tract 341, Mirabella II, Lot 91)



ANALYSIS: On September 25, 2024, the City of Hollister Code Enforcement Department identified a violation of the City Ordinance 17.16.050 for property 1381 Carriage Road. Code Enforcement followed up with the City of Hollister’s Engineering Division and identified no fence extension permits for the site.

Under Code Enforcement Compliance Order (24-2522), the applicant was instructed to submit a fence extension application as a corrective action, on or before October 25, 2024, to rectify the unpermitted fence extension.

On October 17, 2024, the property owner, Alan Leon, submitted a fence extension application package to the Engineering Division. The submitted application requested for the legalization of the non-conforming fence as shown in Figure 3. The rear side fence fronting North Gonzales Drive is less than 1 foot away from the back of walk.

Figure 3: Unpermitted Extended Fence at 1381 Carriage Road
(Photo is facing North on along the Westernly Property Line fronting North Gonzales Drive)



On October 28, 2024, the City of Hollister's Engineering Division reiterated to the property owner, the extended fence was in violation of City's Municipal Code. Engineering's decision was based on Municipal Code Section 17.16.050, fence extensions must adhere to the required setbacks for the Medium Density Residential/Performance Overlay (R3/PZ) Zoning District. The required setback for the property located at 1381 Carriage Road (APN#052-390-0200) is 10 feet along North Gonzales Drive and 15 feet fronting Carriage Road. Please reference Figure 4: Residential Fence Guideline Exhibit illustrating the required setbacks.

Figure 4: Residential Fence Guideline Exhibit



City of Hollister
 Residential Fence Guidelines

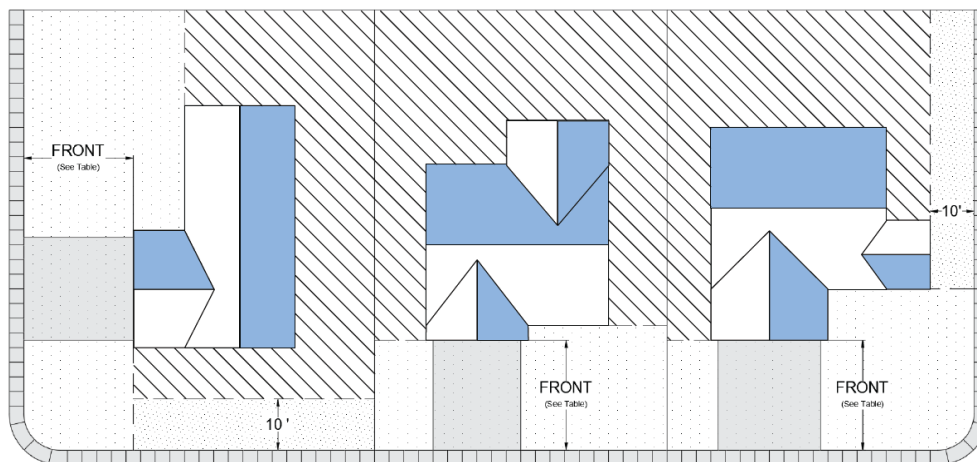


FIGURE 1.

TABLE 1. Fence Height		
Key	Max Height (No Permit Required)	Max Height with Fence Extension Approval by Engineering
Side/Rear	6' + 2' Lattice	No Exception
Front	3'	4'
10' Setback Streetside Corner	3'	6' + 2' Lattice

TABLE 2. Front Yard Setback by Zone						
Zoning District	R1*	R2	R3*	OT(M)	R4*	OT(H)
Front Yard Setback	18' to Residence 20' to Garage	18' to Residence 20' to Garage	15'	15'	15'	15'

*Properties within the Planned Development (PD) or Performance Overlay (R1-L/PZ, R3-M/PZ, R4-H/PZ) may have front yard setbacks that differ from the standard front yard setback. Contact the Planning Department at planning@hollister.ca.gov with questions.

September 2021

The applicant was informed they would need to revise their fence extension application (2409) to push back their unpermitted fence outside of the 10-foot Public Utility Easement (P.U.E.) and back out of the P.U.E.; the home was built in 2021 and had a side yard fence that abutted to the S/W corner of the home. Figure 2, 1381 Carriage Road Plot Plan from when the home was built depicts the 10-foot P.U.E. on the property and no side yard thus complying with the required 10-foot setback. Thereafter, Mr. Leon conveyed to city staff the need to seek legal advice from an attorney.

On January 10, 2025, The City of Hollister attorney Jennifer P. Thompson and Mary Lerner met with Mr. Leon's attorney Jason Retterer regarding Engineering's decision based on the City's Municipal Code. During this meeting the applicant's counsel requested an exception from the City Engineer relying on clause from City Municipal Code Table 17.16-1 which indicates, "An exception to allow a fence height up to six feet in the ten-foot setback on the street side of a corner lot may be allowed with an administrative approval from the City Engineer which does not create a safety hazard and is consistent with easements and rights-of-way."

The City Engineer, Mark Falgout, was unable to grant an exception to this case as the P.U.E. within Lot 91 in Tract 341 is 10 feet. Granting an exception in this case's 10-foot

setback would not be consistent with the established easement, hence proving the City Engineer's inability to provide the exception. For instance, if the P.U.E. was 6 feet wide, the City Engineer would have the authority to grant the exception to allow a fence in the 10-foot setback whilst being consistent with the P.U.E. However, since the P.U.E. is 10 feet at 1381 Carriage Road, the City Engineer does not have the authority to provide such an exception, which deems the clause from Municipal Code Table 17.16-1 as unapplicable.

On January 15, 2025, Mr. Leon was provided with a letter from the City Engineer indicating the inability to provide an exception through the administrative approval process. The letter to Mr. Leon provided instructions on how to proceed with requesting an appeal process as shown in Section 17.24.140 of the City's Municipal Code.

APPEAL: On January 29, 2025, the applicant filed a timely appeal of the City Engineer's determination regarding the fence location and interpretation of the City's Municipal Code. The Applicant has stated the following.

A. Facts Relating to the Original Fence Line

Prior to the Leons purchasing the lot from the original home builders of Mirabella II in 2022, the home builder had installed a fence approximately 4.5 half into the 10-foot-wide public utility easement ("PUE"). Attached as Exhibit A is an aerial photograph depicting the home and the original fence line at the corner of N. Gonzales Drive and Cavalier Court, which is directly behind the Leon parcel. The fence that the home builder installed on the Leon property was aligned with the fence on the rear property. Both the Cavalier lot fence and the original Leon property fence were aligned and already approximately 5 ½ feet from the edge of the sidewalk and within the 10 ft. wide PUE. Had the home builder installed the fence back ten feet from the property line, which is the edge of the sidewalk, there would have been four inches of space between the rear corner of the house and the fence. Attached as Exhibit B are photos showing where the fence would be located relative to the Leon house if the Leons were required to set the fence back 10 feet from the edge of the curb. That distance would have made it impossible for anyone to physically access the backyard from the side yard along N. Gonzales Road. The Developer obviously installed the fence in a manner that would allow a pathway of a reasonable width to provide access to the rear yard of the property.

B. The Leon's Proposed Fence Encroachment

In order to capture a modest amount or an additional approximately four feet of usable space within the side yard setback area, the Leon's extended the fence closer to the edge of the sidewalk or the side property line. The Leons also replaced the fence with a nicer, sturdier and substantially more expensive fence. See Exhibit C. Mr. Leon did not realize that an approval was required from the City based on the other fences within the neighborhood that were installed at the edge of the sidewalk. Attached as Exhibit D are photographs of other fences within the neighborhood, including fences on corner lots like the Leons, that have

been installed along the edge of the sidewalk and within the P.U.E.

C. The Denial is Based on Criteria and Standards that Are Not Set forth in the Zoning Code and Is Not Supported By Substantial Evidence

According to Section 17.16.1, a fence height up to six feet within the ten-foot setback is allowed on the street side of a corner lot with an administrative approval provided that the fence does not create a safety hazard and is consistent with easements and rights of ways. Accordingly, the Code establishes only two bases for denying a fence extension into the setback area; either the encroachment will create a safety hazard or it is not consistent with an easement or right of way.

Despite the clear criteria set forth in Section 17.16.1, the City states that it is unable to grant the exception because the PUE that will be affected by the fence encroachment is ten feet wide. The City further states that the Code only applies to corner lots where the PUE is less than 10 feet wide. However, there is no language in Section 17.16.1 or elsewhere in the City's Code that states this exception only applies when the P.U.E. is less than 10 ft. It is unclear how the City arrived at this interpretation of its Code. Moreover, the City's interpretation is contradicted by the City's prior approval of a fence encroachment into a 10-foot-wide P.U.E. for a corner lot in the same subdivision located at the corner of Waterwheel Lane and Steeplechase Lane. Attached as Exhibit E is a copy of the approved fence extension application for that lot.

In addition, there are several other corner lots within the Mirabella II subdivision that currently have fences or walls that have been installed to the edge of the sidewalk within the 10-foot setback areas. Included in Exhibit D are aerial photos of at least three other corner lots where fences have been installed right to the edge of the sidewalk within the PUE.

The City also appears to be denying the application based on the second criterion that fences must be consistent with any easements or right of ways. However, the City acknowledges that there are no City owned utilities within the easement and indicates that it is unknown whether any other utilities might have systems located within the easement. However, and as noted above, the presence of potentially unknown utilities was not a factor in the City's approval of the other fence within the PUE. Moreover, there are many other parcels within Mirabella II subdivision with fences that are encroaching into the PUE. Simply stated, the Leons would like to be treated like the other homeowners within Mirabella II that have installed fences within the PUE and the 10-foot setback areas.

Exhibit A

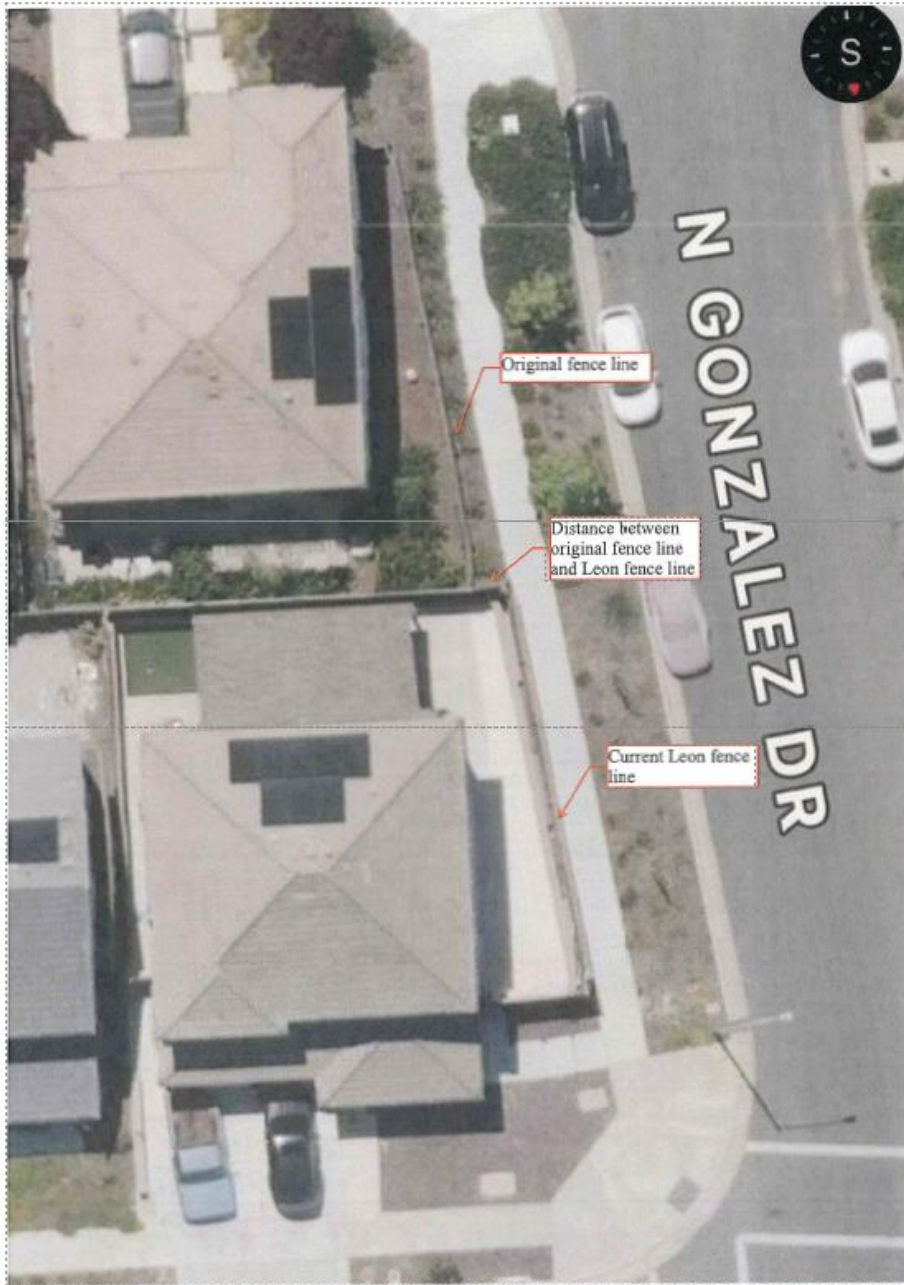


Exhibit B



Exhibit C

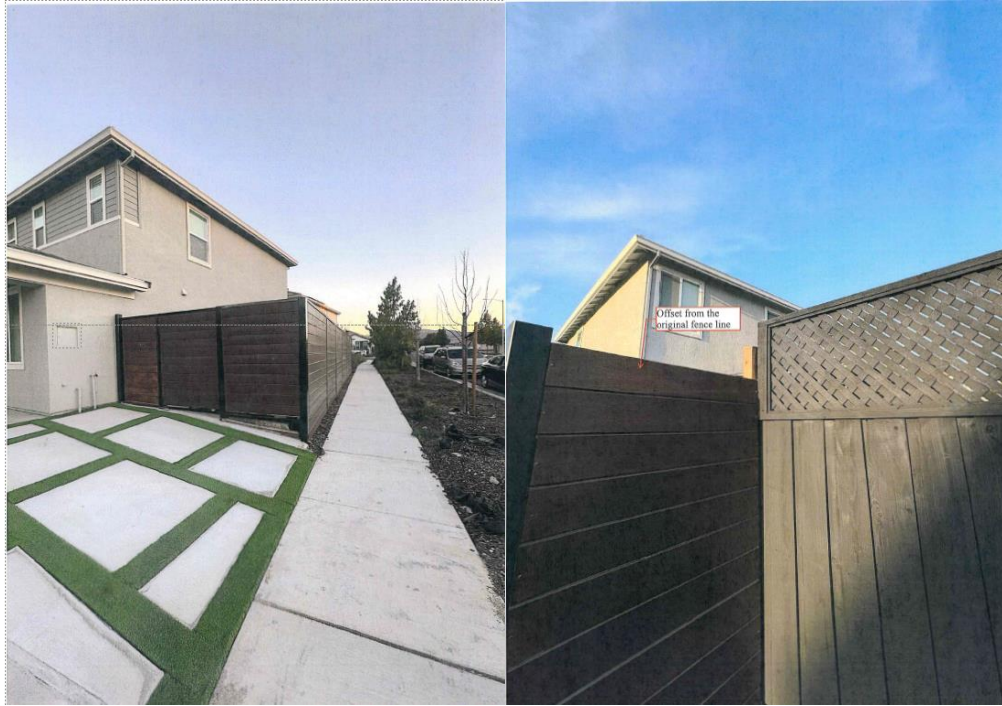


Exhibit D



Exhibit D (Continued)

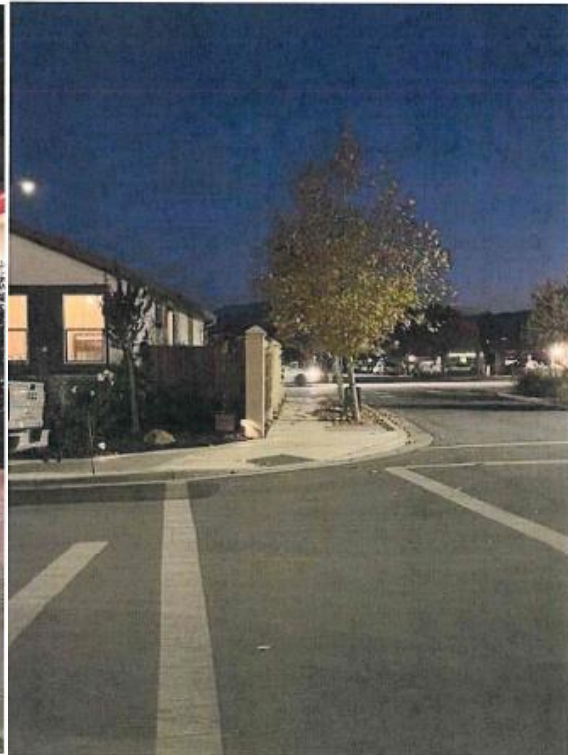
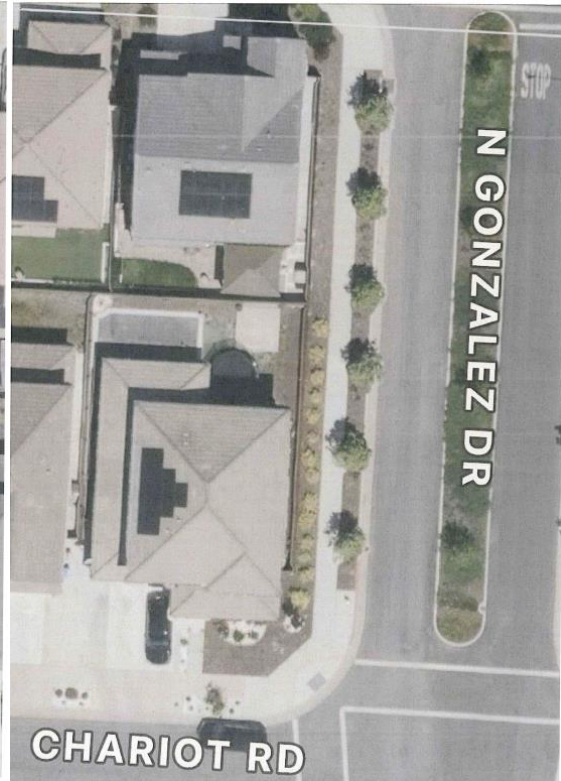
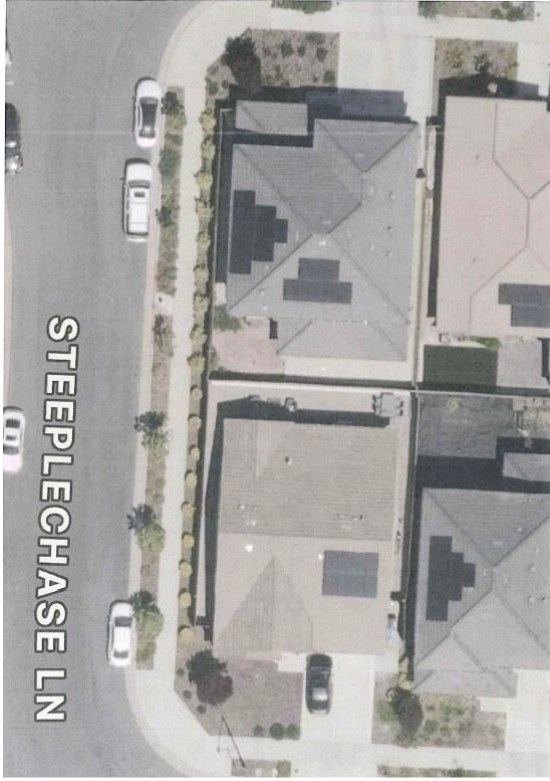


Exhibit E

Filing Fee: \$47.50
 # 276-19
 4121-005
 GLACCT001000440039

Fence Extension Application

1. Property Owner (s) Richard Diaz, Rhea Tuazon
 Address: 1460 Waterford Lane
 City: Hollister State: CA Zip Code: 95023
 Telephone: (831) 921-1816 / (831) 877-8823
 Email: richard.diaz10@hotmail.com; rheasadtuazon@gmail.com

2. Site plan: Attach a site plan illustrating the following:
 a. Dimensions of property & show North arrow
 b. Location and height of proposed fence extension. Identify the proposed setback from the back of sidewalk.
 c. Location of existing fences, retaining walls or similar structures in the front yard and street side of the property.
 d. Location of any off-site driveways or structures within twenty feet of the proposed extension request.
 e. Location of any easements in the area of the fence extension request. Tree Planting & Maintenance Easement (TPME) and Public Utility Easement (PUE).
 f. Location of any existing city street trees in the area of the fence extension request.

After: All persons, before performing any work within city rights-of-way, shall notify the city engineer of their desire to do so, designating particularly the locality where it is desired to do such work and the extent, nature and purpose of the same, and shall pay an encroachment permit fee, which shall be fixed by the city council from time to time, by resolution, and obtain an encroachment permit therefor. (Prior code § 17-25)

4. Property Assessor Parcel No. 050-400-066
 5. Zoning District: R3-MF2

Certification: The facts, maps and documents submitted herewith are true, correct and accurate to the best of my knowledge. If the request is granted, I (we) agree that the provisions of City and State Law will be complied with and the conditions, if any, upon which this permit is granted will be carefully observed.

Applicant's signature: [Signature] Date: 10-7-21
 Official's signature: [Signature] Date: 10-7-21

APPLICATION WILL NOT BE ACCEPTED UNLESS SIGNED BY THE PROPERTY OWNER

Fence Extension (Administrative Review Permit) March 2018

RECEIVED
 OCT 07 2021

City of Hollister Engineering Dept

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Filing Fee: \$47.50
 GLACCT001000440039

CAN I BUILD MY FENCE WITH ANY MATERIAL I WANT? Depends. The following materials are prohibited: Sheet or corrugated iron, steel, aluminum, bamboo or asbestos, baled wire, razor wire, electrified or similar type. However, an exception of ornamental fences may be allowed if approved by the Development Service Director.

HOW SHOULD YOU MEASURE THE FENCE HEIGHT?
 The fence height shall be measured as the vertical distance between the finished grade at the base of the fence and the top edge of the fence material.
 The height of the fence atop a wall shall be measured from the base of the wall.
 Where the ground elevation within six feet of the base of a fence differs from one side of the fence to the other (e.g. retaining wall or base of slope), the height shall be measured from the side with the lowest grade.

WHAT ARE THE REQUIREMENTS FOR A RETAINING WALL?
 Location: Requires approval of Engineering Department
 Materials: Wood prohibited
 Height: No permit: two feet or less (4'-2 feet)
 Administrative Engineering approval: over two feet (2'-6 feet)

Embedments: Embedments to be retained shall not exceed a height of 36 inches and each trench is a minimum width of 36 inches.

Fence Extension (Administrative Review Permit) March 2018

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Filing Fee: \$47.50
 GLACCT001000440039

STAFF USE ONLY

Fence Extension Approved by: [Signature] Date: 10/14/21
 Application No. 21-005 \$47.50 fee Receipt No. _____

Notes: If you plan to build a retaining wall, the height of the fence is measured from the side of the wall with the lowest grade - not the top of the wall.

WHAT FACTORS ARE REVIEWED WITH A FENCE EXTENSION?

1. Traffic safety (Typical requirements):
 a. The fence height will be regulated to assure that the fence will not block the visibility of approaching pedestrians or vehicles at the corner intersection.
 b. The fence height will be regulated to assure that your fence will not block visibility when your neighbor backs out of their driveway.

2. Easements
 a. Many sewer homes have a ten-foot public utility easement. The increase in height may be approved with a requirement for the fence to be at least ten feet from the back of the sidewalk.

LOCATION - WHERE MAY BE FENCE EXTENSION ALLOWED?

Residential zoning districts:
 Front yard: Increase maximum fence height from three feet to four feet
 Street side/corner lot: Increase maximum fence height up to six feet

Commercial or Industrial zoning districts:
 Fence height higher than six feet

Fence Extension (Administrative Review Permit) March 2018

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PHOTOGRAPH ADDENDUM

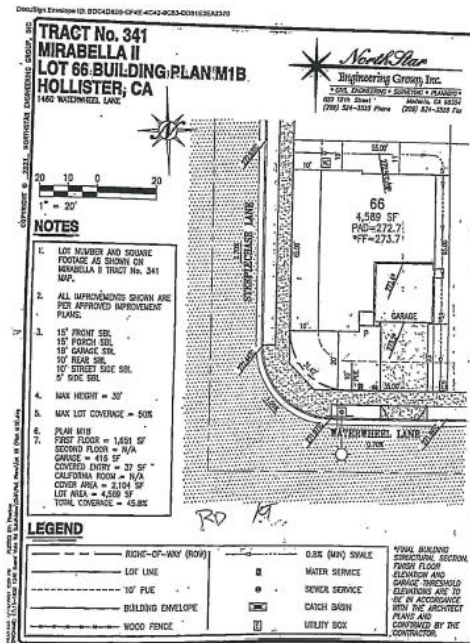
Property Owner: RHEA MADE GINEZ TUAZON
 Property Address: 1460 WATERFORD LANE
 City: HOLLISTER County: SAN BENITO State: CA Zip Code: 95023
 Title: MASONRY SUFFER MORTGAGE CORP.

SUBJECT PROPERTY SIDE VIEW
 SUBJECT PROPERTY SIDE VIEW
 SUBJECT PROPERTY STREET VIEW

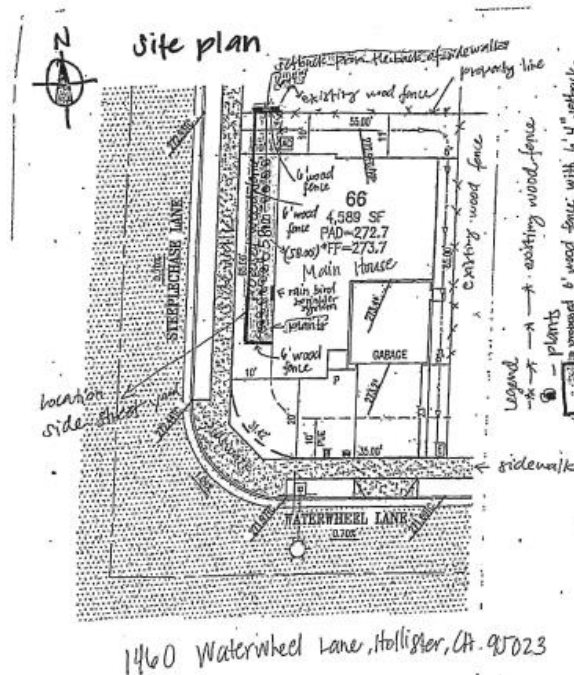
proposed fence extension

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Exhibit E (Continued)



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CEQA: The location of fencing which is the subject of the appeal is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA guidelines as it does not have any potential for causing a significant effect on the environment.

CONCLUSION: Staff have reviewed the applicant's request for the placement of the rear yard fence of Lot 91 in the Mirabella Subdivision, within the 10-foot street side setback of the lots and within the established P.U.E., and pursuant to Section 17.16.050 have determined that placement of the fence on the property line would create potential safety hazards and is inconsistent with the P.U.E. dedicated on the subdivision properties.

While City records indicated that there are no City owned utilities within the easement, other utility providers may have utility systems located within the easement. However, the city cannot make determinations on behalf of other utility providers. The City's residential Fence Guidelines were established to protect Public Utility Easement in residential subdivisions. Public Utility Easements are an essential part of any development and are established to provide Utility providers access to maintain and expand their systems as regulated by the California Public Utility Commission.

The applicant makes reference to a fence extension application (21-005), where the City allowed the exception for a fence in the Public Utility Easement at 1460 Waterwheel Lane. The applicant from 1460 Waterwheel Lane followed proper procedure and applied for a fence extension permit before conducting the work. On the other hand, Mr. Leon proceeded to extend the property fence using unpermitted fence materials up to the back of walk and establish a new side yard area that included a retaining wall and outdoor bar shed. The exception at 1460 Waterwheel Lane was also conditionally issued to maintain a 6'4" set back from the property line. This exception by Engineering was granted under the direction of the Community Development Services Director at the time. The City's Engineering division now pertains to the Public Works Department and has worked to reinforce its decisions based on the Municipal Code. This exemption under different leadership and does not justify a reason to violate the Municipal Code Section 17.16.050.

The applicant also argues the placement of the Mirabella II (Tract 341) sound wall in Exhibit D of the appeal. The sound wall is located at the back of walk, however the wall is maintained by the City and was installed as part of the subdivision's improvement agreements to reduce noise pollution. Mr. Leon also refers to other corner lots within the Mirabella II subdivision, but code enforcement has already made contact with the violating lots as well. Code Enforcement has provided the same treatment to other violators within the subdivision.

Based on Figure 2. 1381 Carriage Road Plot Plan, the home was originally built to without a side yard to prevent any obstruction in the 10' Utility Easement.

The Applicant also claims the City's interpretation of Section 17.16.1, which states "a

fence height up to six feet within the ten-foot setback is allowed on the street side of a corner lot with an administrative approval provided that the fence does not create a safety hazard **and** is consistent with easements and rights of ways.” To re-iterate, the language from the municipal code states uses the term “**AND**” therefore Mr. Leon’s request needs to comply with both safety requirements and easement dedications.

The Applicant has appealed this request and asks the Planning Commission to overturn the City’s determination and allow a residential fence to be placed on the West-most property line of Lot 91 of the Mirabella Subdivision in accordance with Municipal Code Section 17.16.050.

Under the provisions of [Section 17.24.140 Appeals](#), the Planning Commission may affirm, affirm in part, or reverse the action, decision or determination that is the subject of the appeal.

Staff recommend that the Planning Commission deny the appeal, affirm staff’s determination based on the Municipal Code Section 17.16.050 regarding the location of fencing, and direct the Applicant to revise their fence extension application to relocate the fence back to the original placement as shown in Figure 2, from when the home was built.

PREVIOUS COUNCIL OR COMMISSION ACTION: None

PLANNING COMMISSION OPTIONS:

The Planning Commission have the following options regarding the Appeal:

1. Adopt a resolution denying Appeal 2025-1 based on the findings contained in the draft resolution.
2. Adopt a resolution approving the Appeal and reversing the determination of staff based on findings established by the Planning Commission.
3. Continue the item and request additional information or clarification from staff.

Staff recommend the Planning Commission select Option 1 for this item.

ATTACHMENTS:

1. Resolution of Denial of Appeal 2025-1
2. Code Enforcement Compliance Order (#24-2522), 1381 Carriage Road
3. Fence Extension Application - 1381 Carriage Road
4. Fence Extension Denial Letter from City Engineer
5. Appeal Application 2025-1

GENERAL INFORMATION:

Applicant	Alan Leon
Property Owner	Alan Leon
Location/Address	1381 Carriage Road (Lot 91, Mirabella II Subdivision)
Assessor Parcel Number(s)	052-390-0200
General Plan Designation	Medium Density Residential
Zoning District	R3-M/PZ (Medium Density Residential/Performance Overlay) Zoning District

SURROUNDING USES:

Location	Zoning Designation	General Plan Land Use	Current Use of Property
Project Site	R3-M/PZ	Medium Density Residential	Residential
North	R3-M/PZ	Medium Density Residential	Residential
South	R3-M/PZ	Medium Density Residential	Residential
East	R3-M/PZ	Medium Density Residential	Residential
West	R3-M/PZ	Medium Density Residential	Residential