

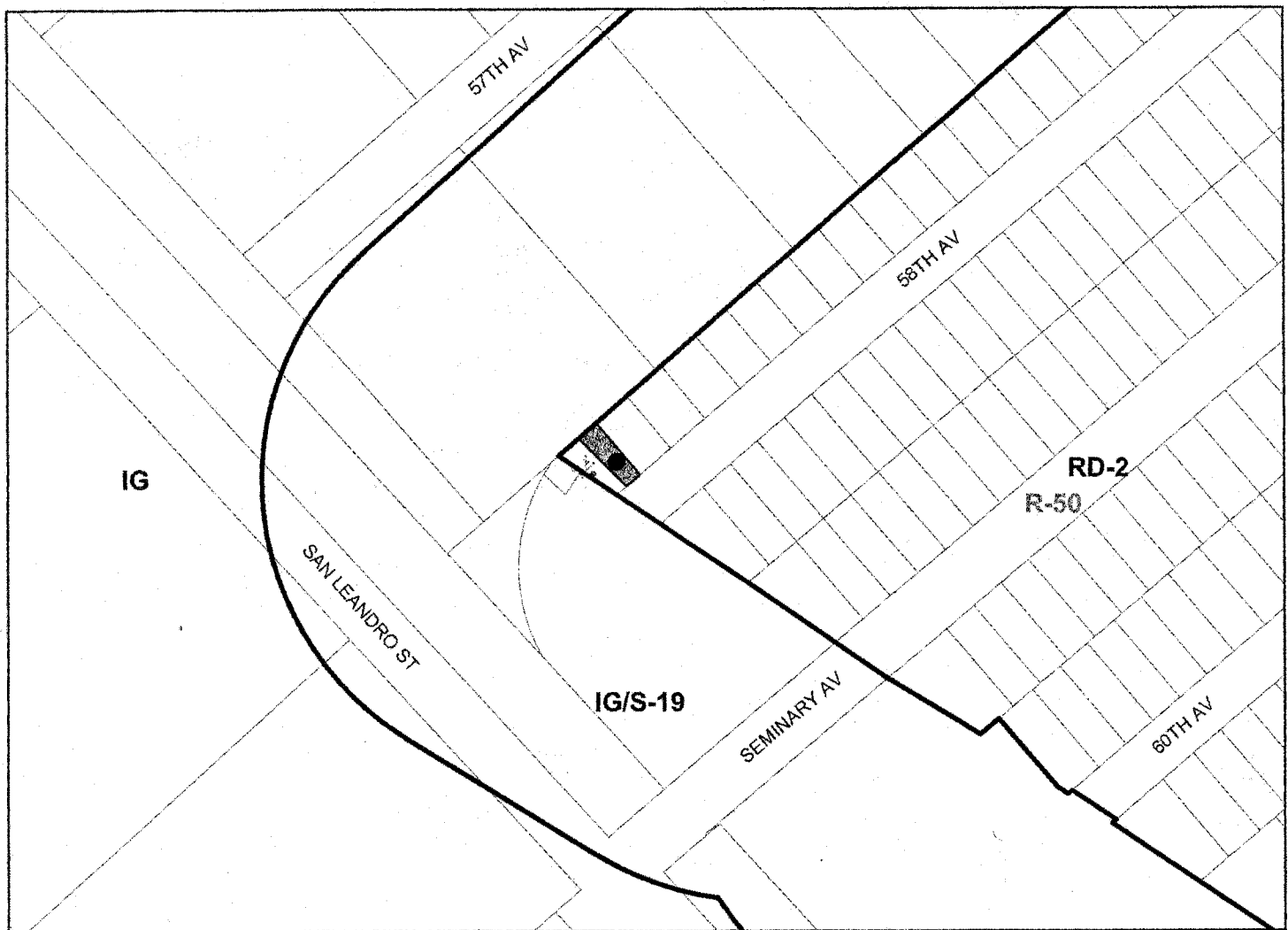
Location:	1101-58 th Avenue
Assessor's Parcel Number:	041 -3892-062-02
Proposal:	To appeal the Zoning Manager's decision to deny an application.
	The application requested Zoning approvals to convert a vacant lot located in a residential neighborhood for use as a rear driveway to a warehouse property (1100-57 th Avenue) located in an abutting industrial district. (Appeal of CDV08310 denied February 28, 2011)
Appellant/	Martin Johnson
Phone Number:	(510) 913-6126
Owner:	Martin Johnson
Planning Permits Required:	Minor Conditional Use Permit to extend a use (industrial) into an adjacent zone (residential); Regular Design Review for construction (fence); Minor Variances (2) for no driveway separations where 10-feet is required, both sides
General Plan:	Detached Unit Residential*
	<i>*General Industrial/Transportation at time application was submitted and deemed complete December 3, 2008</i>
Zoning:	RD-2 Detached Unit Residential Zone * (front)/ IG General Industrial Zone + S-19 Health and Safety Protection Overlay Zone (rear)
	<i>* R-50 Medium Density Residential Zone at time of Denial decision and Appeal submittal</i>
Environmental	Exempt, Section 15270 of the State CEQA Guidelines:
Determination:	Projects Which Are Disapproved
Historic Status:	No record (vacant lot)
Service Delivery District:	V
City Council District:	6
Date Filed:	March 10, 2011
Staff Recommendation:	To Deny the Appeal
Finality of Decision:	Final; not administratively appealable
For Further Information:	Contact case planner Aubrey Rose, Planner II at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

The appellant Mr. Martin Johnson (property owner) requests the Planning Commission grant an appeal of the Zoning Manager's decision to deny his application. The application requested a Minor Conditional Use Permit with additional findings pursuant to Oakland Planning Code 17.102.110, Regular Design Review and Minor Variances to allow the conversion of a vacant lot located in a residential neighborhood for use as a rear driveway to a warehouse property (1100-57th Avenue) located in an abutting industrial district.

Staff recommends the Planning Commission deny the appeal. As described in this report, staff finds the proposed industrial use to be inappropriate for this residential neighborhood.

CITY OF OAKLAND PLANNING COMMISSION



Case File: A11-041 (Appeal of CDV08-310 denied February 28, 2011)
Applicant: Martin Johnson
Address: 1101 - 58th Avenue
Zone: R-50 (current zoning RD-2), IG/S-19

PROPERTY DESCRIPTION

The property is a vacant residentially zoned lot at the end of 58th Avenue, a dead end street. The street consists of small single family homes on both sides included directly to the east (right) and across the street (south) from the site. The lot lies three blocks south of International Boulevard. It measures approximately 17'-6" in width by 66' in depth (1,331 square-feet in area) and the Sanborn map indicates a dwelling unit existed there as recently as 1964. To the north is the rear side of larger industrially zoned properties along 58th Avenue which is also a dead end street. The abutting property (1101 57th Avenue) contains a 40,000 square-foot warehouse on a 1.86-acre lot. That industrial property has an open rear yard which appears to be accessible from both along the side of and through the warehouse.

BACKGROUND

The request was to utilize the vacant lot as a rear driveway to 1100 57th Avenue. The project would allow increased accessibility to the rear parking lot at the warehouse. The project would have featured a mechanical gate at the front property line.

The request required a Minor Conditional Use Permit with additional findings to extend a use (industrial) into an adjacent zone (residential), a Regular Design Review for construction (fence) associated with a Conditional Use Permit and Variance, and Minor Variances (2) for no separation from existing driveways on adjacent lots where 10-feet is required, in this case on both sides. Additional findings for the Conditional Use Permit were required to extend a use into an adjacent zone and to apply the industrial General Plan designation to the residentially zoned front portion of the property.

Staff analyzed the request in light of the site, surroundings, General Plan policies, and Planning Code findings. Staff did not find conversion of the vacant lot from residential to industrial use to be appropriate as it is surrounded by single family homes that are already impacted by transportation / circulation uses to the south (railroad, BART) and north (International Boulevard) and industrial uses to the west (57th Avenue), and associated noise and air quality impacts. The City does not consider it to be good policy for the development of strong and healthy residential neighborhoods to open them up as direct access roads for surrounding industrial properties. The General Plan for this area calls for development to remain residential in character and that new permits issued in this area should enhance that. The warehouse located at 1100 58th Avenue was constructed in 1930 is already accessible from the front. Staff informed the applicant/property owner that for these reasons, the request would be denied. Staff offered the applicant an opportunity to withdraw the application and thus receive a partial refund of fees. The applicant chose to sustain the request and be denied, for an opportunity to appeal the decision. Numerous residents residing along 58th Avenue provided written protest to the City of the request during the public notification period.

SUMMARY OF APPEAL AND STAFF RESPONSE

The bases of the appeal, as described in more detail in the KEY ISSUES AND IMPACTS—ISSUES RAISED ON APPEAL section of this report, are that the property could be improved for neighborhood compatibility as a result of the project and that impacts to neighbors would be minimal. The appellant asserts that transgressions could be handled by permit revocation and that a denial is onerous to small business.

As elaborated in the KEY ISSUES AND IMPACTS section of this report, staff disagrees with the appellant's position. Denial of the use of residential property for industrial purposes is consistent with the purpose and intent of the zoning regulations, and alternate access is available (and in use for many years) from a non-residential street. Moreover, the appellant essentially admits the project would adversely impact the neighborhood. Several proposed operational characteristics would be extremely difficult to enforce and the industrial property has operated in its current physical configuration since 1930. In addition, the fact that a permit could be revoked is not a basis for approving a project that fails to satisfy the required findings for approval and to conform to the General Plan and Planning Code.

GENERAL PLAN ANALYSIS

The proposal does not conform to the following Objective and Policies of the General Plan's Land Use & Transportation Element, as described below:

RESIDENTIAL AND NON-RESIDENTIAL ACTIVITIES

Objective N5

Minimize conflicts between residential and non-residential activities while providing opportunities for residents to live and work at the same location.

Policy I/C4.1 Protecting Existing Activities.

Existing industrial, residential, and commercial activities and areas which are consistent with long term land use plans for the City should be protected from the intrusion of potentially incompatible land uses.

Policy I/C4.2 Minimizing Nuisances.

The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create nuisance impact to on surrounding residential land uses should be minimized through appropriate siting an efficient implantation and enforcement of environmental and development controls.

Policy N5.2 Buffering Residential Areas.

Residential areas should be buffered and reinforced from conflicting uses through the establishment of performance-based regulations, the removal of non-conforming uses, and other tools.

SAFETY

Objective T6

Make streets safe, pedestrian accessible, and attractive.

Policy N7.1 Ensuring Compatible Development

New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.

Policy N7.4 Designing Local Streets.

Local streets should be designed to create an intimate neighborhood environment and not support high speed or large volumes of traffic. Providing on-site parking for cars and bicycles, planting and maintaining street trees, and landscaping, minimizing the width of driveway curb cuts, maintaining streets, bike routes, and sidewalks, and orienting residential buildings toward the street all contribute to the desired environment.

Regarding Local Streets, the LUTE indicates: "...Their importance is in providing access to abutting property in residential neighborhoods...should discourage through traffic...and minimize impacts to the environment...should contribute to neighborhood quality..." (p. 128)

The project would exacerbate negative issues at the residential/industrial interface where residences would bear the brunt of through traffic to and from this business.

ZONING ANALYSIS

The request is not consistent with required findings for the following necessary approvals as follows:

- Minor Conditional Use Permit to extend a use (industrial) into an adjacent zone (residential): staff does not find an industrial use a "substantial improvement in, or to provide superior environmental relationships among other uses in the vicinity. On the contrary, a potential residential use at this site would be superior to the proposal, as it is located on a dead end street and serving single family homes on both sides.

Following are findings to extend or expand a use that are not met by this proposal:

17.102.110 Conditions for expansion of use into adjacent zones.

The following regulations shall apply to activities which are conditionally permitted by the applicable individual zone regulations near a zone boundary and subject to the conditions set forth in this section:

A. Substantial Improvement in, or Superior, Environment. A conditional use permit for such a use may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134 and that the location, size, design, and other characteristics of the entire use as proposed will substantially improve or provide superior environmental relationships among all uses in the immediate vicinity.

B. Preservation of Privacy. A conditional use permit for such a use may be granted only upon determination that the design and site planning of all buildings, open areas, parking, service areas, paths, stairways, accessways, corridors, and balconies will be so designed as to not adversely affect the privacy, safety, or environmental amenities of adjacent properties.

Following are general conditional use permit findings that are not met by this proposal:

17.134.050 General use permit criteria.

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.

- Regular Design Review for construction (fence) associated with a Conditional Use Permit and Variance: staff does not find an electric gate at zero lot line adjacent to an existing single family home to be appropriate in terms of design and use given potential noise and traffic.
- Minor Variances (2) for no driveway separations where 10-feet is required both sides: staff sees no justification for a 17'-6" wide driveway at a lot of the same width where 10-feet conforms to Code for a single family home.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines statutorily exempt projects which are disapproved (Section 15270) and the proposal is therefore not subject to Environmental Review requirements.

KEY ISSUES AND IMPACTS—ISSUES RAISED ON APPEAL

Following are the appellant's bases for appealing the Zoning Manager's decision, as distilled from the Appeal letter (Attachment B) into Issues described below and shown in **bold**. Staff's responses, which relate to Findings For Denial from the decision letter (Attachment A), are shown in *italics*.

Appellant's Issue # 1

The Appellant asserts that converting the vacant lot into a rear driveway accessing an abutting warehouse property will be compatible with the single-family home residential neighborhood due to improved appearance resulting from the project. The property owner is willing to work with neighbors and the City to convert the property to access that is park-like (revisions to proposed landscaping, fences, gates as necessary), above and beyond the elements contained in the proposal that was denied.

Staff Response

The existing lot is a vacant parcel. Records indicate that its last use was as a residential lot. As described in Findings For Denial, a commercial or industrial driveway is not compatible with a single family neighborhood in terms of use (traffic, noise, air quality) and design (mechanical gate adjacent to small wooden wartime tract single family homes) and cannot be redesigned to be compatible. The proposal would introduce through- traffic for the employees of an adjacent industrial property, negatively impacting the otherwise quiet and low scale nature of the property and street. This alone outweighs any supposed benefits from landscaping the lot. Should the property owner desire to landscape the vacant lot for neighborhood compatibility, they are presently able to do so without the project. Otherwise, the property owner has the duty of keeping the lot in a clean and blight free condition at all times so that it does not become a nuisance to the neighborhood. As a result, the project would not provide a substantially improved or superior environment to that currently authorized under the applicable zoning.

Issue # 2

The Appellant asserts that the driveway will be accessed infrequently, during daylight hours only and by light vehicles only. Transgressions can be handled by revocation

Staff Response

The Appellant essentially admits the project would adversely impact the neighborhood, but proposes to attempt to offset impacts by improving the site. As described in Findings For Denial, vehicle trips through the neighborhood and proposed driveway and the project would be expected to result in noise, privacy, and air impacts to the neighborhood. The goal of both the Zoning Regulations and the General Plan are to create relatively compatible and harmonious uses. The applicant's proposal would add business traffic passing through this neighborhood, both east to International Blvd and south to Seminary Ave, which is in conflict with General Plan policies concerning Local Streets which actively seeks to discourage through- traffic in neighborhoods such as these.

Issue # 3

The Appellant asserts that the project is warranted for consideration under the prior General Plan designation applying to the property at the time of application submittal

Staff Response

The Appellant seems to be confusing General Plan and Zoning designations. While the lot's General Plan designation was industrial at the time the application was deemed complete for review, the front of the lot abutting 58th Avenue is and always was under residential zoning. It is under City regulations for the residential zone that the proposal is not in conformance. The specific residential zoning designation was changed during the Citywide update; however, both the prior designation and the current designation were residential. Therefore, the proposal complies with neither the residential zoning in effect either at the time the application was complete nor the current zoning. Furthermore, the General Plan, when mapped, was generally applied and the boundaries were not intended to be taken as surveyed boundaries. Due to this broad application, the nuances of block by block situations were not always resolved adequately when reviewing the General Plan map. This section of town was particularly egregious and several blocks were designated as General Industry and Transportation even though the neighborhood has, for decades, consisted of dozens of single family dwellings on lots ranging from 2,500 to 5,000 square feet. These properties were not suitable for Heavy Industrial uses without the demolition of the homes and large scale lot consolidation, which was never contemplated by the General Plan during its policy creation or mapping phase.

Issue # 4

The Appellant asserts that the property is entitled to special consideration given traffic issues on 57th Avenue due to heavy vehicle maneuvering. The City is being onerous to small businesses by not allowing the project. The project would in fact provide a turn-around at the dead end.

Staff response

As described in Findings For Denial, circulation issues in an industrial area should not be redirected to a residential area as this unfairly shifts the burden to a neighborhood by adding through traffic to these smaller streets. These streets measure approximately 30-feet in width and are not designed to handle through traffic to a business. The proposal called for a gate at the front of the property and would not allow a turn-around. If the lot were not gated to provide a turn-around, this would impact the adjacent neighbor as cars would turn around and/or park in the lot at any given time.

Issue # 5

The Appellant asserts that the property is entitled to special consideration given City tax contributions of their business.

Staff response

Special consideration for businesses is not under the purview in the Planning and Zoning Division's review of an application for industrial use of a residential property, nor is it a basis for approving a land use application that fails to satisfy the required findings for approval. All businesses pay City taxes, as do homeowners. Zoning is concerned with balancing competing land use issues to prevent incompatible uses from impacting each other. In hindsight, the City would not place heavy industrial right next to single family homes as they are often not complimentary with each other. As in many cases however, the properties exist, are developed and have been for many years. Thus, the City has the responsibility to manage any conflicts between such activities and to try to minimize and/or avoid the impacts between them. In this case, the City did not approve the Conditional Use Permit as it was found that the impacts of opening up the neighborhood behind this industrial use to the traffic of said use was not appropriate and not in keeping with either the Planning Code or the goals, objectives and policies of the General Plan. Indeed, as found above, the goals, objectives and policies of the plan consider moving through-traffic through local residential streets designed to serve the houses that front them to be inappropriate and to have a negative impact on that neighborhood.

Issue # 6

The Appellant asserts that the property is entitled to special considerations given the value of their property relative to adjacent residential properties and given the claim by the appellant that their building is worth in value the equivalent of at least eight of the nearby houses and he has been burdened by huge costs of renovating his historic property.

Staff's response

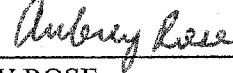
Special consideration for the relative value of a property to that of adjacent parcels not under the purview in the Planning and Zoning Division's review of an application for modifications to a residential property, nor is it a basis for approving a land use application that fails to satisfy the required findings for approval. There is no authority for the City give special consideration to one land owner over another simply because their property may be worth more. Further, the matter of the warehouse and its historic status are not at issue here; the impacts on the surrounding properties of the proposal are what the City is required to analyze when they assess this or any other project. The City views this proposal as an unwarranted impact on this community, not in conformance with either the Residential Zoning Regulations or with the goals, objectives and policies of the General Plan.

In conclusion, staff does not feel the Appeal has provided a reasonable basis for overturning staff's determination, as reflected in the Findings For Denial. Staff recommends that the Planning Commission uphold the Zoning Manager's decision and deny the Appeal.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Uphold the Zoning Manager's decision and Deny the Appeal.

Prepared by:



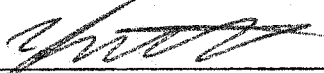
AUBREY ROSE
Planner II

Approved by:



SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:



ERIC ANGSTADT
Deputy Director
Community and Economic Development Agency

ATTACHMENTS:

- A. Applicant's site photographs
- B. Administrative decision letter by Zoning Manager (denial) dated February 28, 2011
- C. Appeal letter submitted March 10, 2011

12/1/08 4:15pm

1105 58th ave

Globe
Plumbing

parcel owned by
Alameda County
Flood Control
District

1101 58th ave



1101 and 1105 58th ave

12/1/08 4:15pm

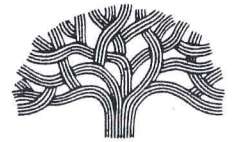


ATTACHMENT A



58TH AVENUE ODD-NUMBERED HOUSES

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 839-6451

PROJECT DENIAL

February 28, 2011

Martin Johnson
1101 57th Avenue
Oakland, CA 94621

RE: CASE FILE NO. CDV08310; 1101 58th Avenue (APN: 041 -3892-062-02) (12/3/08)

Dear Mr. Johnson,

Your application requesting use of a vacant lot located at 1101 58th Avenue as a driveway featuring a mechanical gate at the front property line for use by light vehicles to access the open rear portion of 1100 57th Avenue (industrial property with warehouse) has been **DENIED**.

The application does not comply with the Conditional Use Permit Procedure/General use permit criteria (OMC Sec. 17.134.050), Conditional Use Permit Procedure/Conditions for expansion of use into adjacent zones (OMC Sec. 17.102.110), General Provisions of Planning Code and General Plan Conformity/Proposals clearly in conformance with General Plan (OMC Sec. 17.01.100), and Design Review Procedure/Regular design review criteria (OMC Sec. 17.136.050(B)) of the Oakland Planning Code (OMC Title 17). Attachment A contains the findings required for this approval that cannot be made and the reasons your proposal does not satisfy them. This denial is effective ten (10) days after the date of this letter unless appealed as explained below.

The following table summarizes the proposed project:

Proposal:	To utilize a vacant lot adjacent to a single-family home as a rear driveway to 1100 57 th Avenue (warehouse). The project would allow an otherwise inaccessible rear parking lot at the warehouse to be utilized for employee parking only. The project would feature a mechanical gate at the front property line. No heavy vehicles would be allowed.
Planning Permits Required:	Minor Conditional Use Permit to extend a use (industrial) into an adjacent zone (residential) (OMC Sec. 17.24.060(E), 17.102.110, 17.134.020(B)); Regular Design Review for construction (fence) associated with a Conditional Use Permit and Variance (OMC Sec. 17.24.040, 17.136.040(A)(2)); Minor Variances (2) for driveway separations of 10-feet where 25-feet is required, both sides (OMC Sec. 17.116.210, 17.148.020(B))
General Plan:	Detached Unit Residential* <i>*General Industrial/Transportation at time application was submitted and deemed complete</i>

ATTACHMENT B

Zoning:	R-50 Medium Density Residential Zone (front)/ IG General Industrial Zone + S-19 Health and Safety Protection Overlay Zone (rear)
Environmental Determination:	Exempt, Section 15270 of the State CEQA Guidelines: Projects Which Are Disapproved
Historic Status:	No record (vacant lot)
Service Delivery District:	V – Central East Oakland
City Council District:	6 – Councilmember Brooks

An Appeal to the City Planning Commission of this Administrative Case decision may be submitted within ten (10) calendar days after the date of this letter, and by 4:00 p.m. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Aubrey Rose, Planner II**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Administrator or wherein his/her decision is not supported by substantial evidence and must include payment of **\$1,352.91** in accordance with the City of Oakland Master Fee Schedule. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you from raising such issues during your appeal and/or in court. If you challenge a Commission decision in court, you may be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the Appeal hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the Commission's final decision.

If you have any questions, please contact the case planner, **Aubrey Rose, Planner II** at (510) 238-2071 or arose@oaklandnet.com.

Sincerely,



SCOTT MILLER
Zoning Manager

Attachments:

- A. Findings for Denial

CC:

Antonio R. Martinez (1105 58th Street, Oakland CA 94621)
Eraido Madriz (1106 58th Street, Oakland CA 94621)
Eugenio and Kathy L Sanchez (1109 58th Street, Oakland CA 94621)
Arnoldo Madriz (1110 58th Street, Oakland CA 94621)
R.Z. and Maria E. Uribe (1116 58th Street, Oakland CA 94621)
Adrian Martinez (1118 58th Street, Oakland CA 94621)
Tarsicio Serna (1121 58th Street, Oakland CA 94621)
Owner or tenant (1122 58th Street, Oakland CA 94621)
Marilyn Gonzalez (1123 58th Street, Oakland CA 94621)
Juan (1126 58th Street, Oakland CA 94621)
Owner or tenant (1131 58th Street, Oakland CA 94621)
Jose C. Casian (1135 58th Street, Oakland CA 94621)
Erica (1147 58th Street, Oakland CA 94621)
M. Arreola/J. Rodriguez (1150 58th Street, Oakland CA 94621)
Ramon S. Pena (1151 58th Street, Oakland CA 94621)
J. Rodriguez (1166 58th Street, Oakland CA 94621)
Maria de la Paz (1100 58th Street, Oakland CA 94621)

ATTACHMENT A: FINDINGS FOR DENIAL

This proposal does not meet all the required findings under the Conditional Use Permit Procedure/General use permit criteria (OMC Sec. 17.134.050), Conditional Use Permit Procedure/Conditions for expansion of use into adjacent zones (OMC Sec. 17.102.110), General Provisions of Planning Code and General Plan Conformity/Proposals clearly in conformance with General Plan (OMC Sec. 17.01.100), and Design Review Procedure/Regular design review criteria (OMC Sec. 17.136.050(B)) of the Oakland Planning Code (OMC Title 17) as set forth below and which are required to approve your application. Required findings that cannot be made are shown in **bold** type; reasons your proposal does not satisfy them are shown in normal type.

CONDITIONAL USE PERMIT PROCEDURE/GENERAL USE PERMIT CRITERIA (OMC SEC. 17.134.050)

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

This finding cannot be made. The subject site is located at the terminus of 58th Avenue. 58th Avenue is comprised solely of residential development, primarily single-family dwellings. The only way to access the site is to travel through at least three residential blocks. The site is zoned residentially, has typical residential dimensions and could be developed with a single-family dwelling consist with the development pattern along 58th Avenue.

The proposed project would allow the use of the site as access drive to an industrial building which fronts on, and has access from, 57th Avenue. Access would be controlled with mechanical gates located within the front yard of the site and along the rear property line. Existing chain link fencing located along the side property lines and asphalt paving would remain. There would be no controls on number of vehicles/vehicular trips or times of travel. The proposal requires a Minor Conditional Use Permit to extend an industrial use into an adjacent residential zone.

The majority of the subject lot is located in the R-50 Medium Density Residential Zone. Allowing industrial activities, including driveways to industrial uses, is completely inconsistent with the R-50 zoning designation which is intend *"to create, preserve, and enhance areas for apartment living at medium densities in desirable settings, and is typically appropriate to areas of existing medium density residential development."* The proposal would introduce industrial traffic along a residential street resulting in increased traffic which would cause traffic conflicts between residents and industrial users. The proposal would also a result in unnecessary increases in noise, privacy and air quality impacts to this residential neighborhood. Introducing industrial traffic along a residential street would be harmful to the residential character of 58th Avenue and could result in further erosion of the residential aspects of the area by setting a precedent for future requests for encroachments of industrial uses along this residential street.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant;

This finding cannot be made. A paved vacant lot is not an attractive visual element in a district consisting of single-family homes. Introducing industrial traffic along a residential street would be harmful to the residential character of 58th Avenue and would generate negative impacts such as decreased air quality and increased traffic conflicts.

C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

This industrial site already has access from 57th Street. Allowing additional access to the site through a residential neighborhood would not enhance, but would be detrimental to, the success of this residential neighborhood.

D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.

See below.

CONDITONAL USE PERMIT PROCEDURE/CONDITIONS FOR EXPANSION OF USE INTO ADJACENT ZONES (OMC SEC. 17.102.110)

1. Substantial Improvement in, or Superior, Environment. The location, size, design, and other characteristics of the entire use as proposed will substantially improve or provide superior environmental relationships among all uses in the immediate vicinity:

This finding cannot be made. Use of a lot located in a residential neighborhood as an industrial driveway is not superior to use of the site. The proposal would negatively impact the use and enjoyment of the adjoining single-family dwelling. Introducing industrial traffic along a residential street would be harmful to the residential character of 58th Avenue and could result in further erosion of the residential aspects of the area by setting a precedent for future requests for encroachments of industrial uses along this residential street.

2. Preservation of Privacy. The design and site planning of all buildings, open areas, parking, service areas, paths, stairways, accessways, corridors, and balconies will be so designed as to not adversely affect the privacy, safety, or environmental amenities of adjacent properties:

This finding cannot be made. An industrial driveway enclosed with chain link fencing and iron gates would negatively impact the use and enjoyment of the adjoining single-family dwelling. The proposal would introduce industrial traffic along a residential street resulting in increased traffic which would cause traffic conflicts between residents and industrial works. The proposal would also a result in unnecessary increases in noise, privacy and air quality impacts to this residential neighborhood.

9. Screening and Buffering. The exterior perimeter of the expansion area shall be provided with screening and buffering devices including, but not limited to, established trees:

This finding cannot be made. No screening or buffering is proposed.

GENERAL PROVISIONS OF PLANNING CODE AND GENERAL PLAN CONFORMITY/PROPOSALS CLEARLY IN CONFORMANCE WITH GENERAL PLAN (OMC SEC. 17.01.100)

1. That the proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area;

This finding cannot be made. The proposal involves a lot split by a residential-industrial zoning boundary and was located in an industrial area of the General Plan at the time that the application was deemed complete. Therefore, a Minor Conditional Use Permit is required. A driveway for light vehicle use to pass through residential lot adjacent single-family home to access rear of abutting industrial lot is not appropriate for neighborhood: it will increase non-residential traffic, times of use cannot be regulated, and it will negatively impact the use and enjoyment of adjacent residential property in particular. It is clearly not the intent of the General Plan for industrial traffic to pass through a residential neighborhood.

2. That the proposal is clearly consistent with the intent and desired character of the relevant land use classification or classifications of the General Plan and any associated policies;

This finding cannot be made. The proposal does not conform to the following Objective and Policies of the General Plan's Land Use & Transportation Element, as described below:

RESIDENTIAL AND NON-RESIDENTIAL ACTIVITIES

Objective N5

Minimize conflicts between residential and non-residential activities while providing opportunities for residents to live and work at the same location.

Policy I/C4.1 Protecting Existing Activities.

Existing industrial, residential, and commercial activities and areas which are consistent with long term land use plans for the City should be protected from the intrusion of potentially incompatible land uses.

Policy I/C4.2 Minimizing Nuisances.

The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create nuisance impact to on surrounding residential land uses should be minimized through appropriate siting an efficient implantation and enforcement of environmental and development controls.

The project would exacerbate negative issues at the residential/industrial interface where residences would bear the brunt.

DESIGN REVIEW PROCEDURE/REGULAR DESIGN REVIEW CRITERIA (OMC SEC. 17.136.050(B))

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

This finding cannot be made. The proposal requires Regular Design Review for construction (fence) associated with a Conditional Use Permit and Variance. Use of a residentially zoned property that is surrounding by single-family homes for industrial purposes is not consistent of the follow Purpose of the Zoning Regulations:

To protect residential, commercial, industrial, and civic areas from the intrusion of incompatible uses, and to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services (OMC Sec. 17.07.030(C))

The proposal would clearly be contrary to this Purpose as it features the introduction of an industrial use (warehouse circulation) into a residential neighborhood. A vacant lot paved with asphalt and surrounded by iron gates and chain linking fence would not relate well to the single-family residential development located 58th Avenue.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

This finding cannot be made. Surrounding homes are small wartime tract homes with wooden siding and small or no fences. A six-foot mechanical gate at a front and rear property lines, chain link fencing along the side property lines and asphalt paving is not compatible with the development pattern along 58th Avenue.

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

This finding cannot be made. The proposal does not conform to the following Design Guidelines:

CRITERION 11: STREET FRONTING FENCES AND FREESTANDING WALLS

- (a) Street fronting fences and freestanding walls shall not be overly dominant within the streetscape and shall relate well to buildings landscaping and other streetscape design features

- (b) Fences and freestanding walls within front yards and the front portions of street side yards on corner lots shall complement the architectural style of the adjacent residence

Surrounding homes are small wartime tract homes with wooden siding and small or no fences. The proposed fence will be massive and incompatible. The design and mechanical equipment would not complement the adjacent home located at 1105 58th Avenue.

PETITIONER'S APPEAL OF PROJECT DENIAL. BASIS FOR APPEAL. PROPOSED MODIFICATION OF PROJECT TO BRING IT INTO COMPLIANCE. DISPUTE OF CERTAIN FINDINGS BY THE ZONING MANAGER.

SUMMARY: For those sections of the Planning Code which appellant concurs are at variance with said Code, appellant wishes to modify the project proposal to substantially bring it into compliance. These modifications will be undertaken in consultation with the 58th Avenue residents. The modified proposal will move the driveway to one side of the tract and the other side improved for use by the community as a sort of "pocket park". Elements such as fruit trees and/or grass and/or benches may be included as residents desire. Fence design will be modified to comply by removal of the front fence and suitable modification of the rear fence. Side fences are currently owned by other parties. Appellant disputes certain findings of the Zoning Manager. Operating hours will be restricted to daylight.

Onerous restrictions by the City on the nature of the 57th Avenue warehouse are inconsistent with the City's aim to attract taxpaying businesses.

A conditional use permit is revocable and should uses under the permit be in excess of those allowed, the permit can be revoked.

Appellant desires to act in concert and concord with the residents of 57th Avenue.

Details are outlined below.

RECITATION OF, AND RESPONSE TO, PROJECT DENIAL ATTACHMENT "A":

City Codes and required findings are shown in black type; Denial is shown in red type; appeal is shown in green type.

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

This finding cannot be made. Appellant does not concur. A modified driveway proposal will be compatible with, and will provide benefit to, the surrounding neighborhood in terms of a well manicured and kept green space for general use. Traffic impact will be minimal, less than one car per hour on average and at peak times, perhaps one car every twenty minutes.

The subject site is located at the terminus of 58th Avenue. 58th Avenue is comprised solely of residential development, primarily single-family dwellings. The only way to access the site is to travel through at least three residential blocks. The site is zoned residentially, has typical residential dimensions and could be developed with a single-family dwelling consist with the development pattern along 58th Avenue.

The proposed project would allow the use of the site as access drive to an industrial building which fronts on, and has access from 57th Avenue. Access would be controlled with mechanical gates located within the front yard of the site and along the rear property line. Existing chain link fencing located along the side property lines and asphalt paving would remain. There would be no controls on number of vehicles/vehicular trips or times of travel. **Appellant disputes the latter. Operating hours limited to daylight.** The proposal requires a Minor Conditional Use Permit to extend an industrial use into an adjacent residential zone.

The majority of the subject lot is located in the R-50 Medium Density Residential Zone. Allowing industrial activities, including driveways to industrial uses, is completely inconsistent with the R-50 zoning designation which is intend *"to create, preserve, and enhance areas for apartment living at medium densities in desirable settings, and is typically appropriate to areas of existing medium density residential development."* The proposal would introduce industrial traffic along a residential street resulting in increased traffic which would cause traffic conflicts between residents and industrial users. The proposal would also a[sic] result in unnecessary increases in noise, privacy and air quality impacts to this residential neighborhood. **This is the most important of all objections raised by Zoning and presumably by the residents of 58th Avenue. Appellant contends that commuter traffic impact will be minimal, less than one car per hour, and will consequently have minimal impact on the nearby community. Such impact will be mitigated by the proposed improvements to be made at the plot of land on which the driveway is to be sited, to net positive effect for the neighborhood.**

Introducing industrial traffic along a residential street would be harmful to the residential character of 58th Avenue and could result in further erosion of the residential aspects of the area by setting a precedent for future requests for encroachments of industrial uses along this residential street. **Appellant contends this argument is specious. Appellant was informed by Planning and Zoning at the time of application that his application would not be accepted after the City Council voted on the zoning changes in the Master Plan. Any other such application would hence be summarily refused.**

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant;

This finding cannot be made. A paved vacant lot is not an attractive visual element in a district consisting of single family homes. Introducing industrial traffic along a residential street would be harmful to the residential character of 58th Avenue and would generate negative impacts such as decreased air quality and increased traffic conflicts. **There is already a paved vacant lot at the site. It's topped with barbed wire so that fence hoppers and dumpers can't get in (anymore). Appellant agrees that it is unsightly, and proposes to remedy the visual element aspects of the Porposal to enhance the lot's appearance. The modified lot design will provide benefits to the local residents, such as fruit trees and/or a grassy area, with benches, depending on residents' preference. The lot would then make a positive contribution to the residential character of 58th Avenue, and will be substantially more attractive than the present lot.**

C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

This industrial site already has access from 57th Street[sic]. Allowing additional access to the site through a residential neighborhood would not enhance, but would be detrimental to, the success of this residential neighborhood. Access from 57th avenue is possible but anybody who routinely navigates that street is well aware of the 20 minute delays that can ensue from congested Big Rigs and unloading trucks near the end of the street. The whole point of the proposal is to relieve that congestion for the 57th Avenue warehouse and enhance its attractiveness for occupants, who pay much needed taxes to the City. Nowhere in the Project Denial is allowance made for the "successful operation" of businesses in the surrounding area.

Appellant contends that attracting and retaining businesses and their attendant tax revenues are a “basic community function” and very much an “essential service”, given the current fiscal mess.

D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.

See below.

CONDITONAL USE PERMIT PROCEDURE/CONDITIONS FOR EXPANSION OF USE INTO ADJACENT ZONES (OMC SEC. 17.102.110)

1. Substantial Improvement in, or Superior, Environment. The location, size, design, and other characteristics of the entire use as proposed will substantially improve or provide superior environmental relationships among all uses in the immediate vicinity:

This finding cannot be made. Use of a lot located in a residential neighborhood as an industrial driveway is not superior to use of the site. The proposal would negatively impact the use and enjoyment of the adjoining single-family dwelling. Introducing industrial traffic along a residential street would be harmful to the residential character of 58th Avenue and could result in further erosion of the residential aspects of the area by setting a precedent for future requests for encroachments of industrial uses along this residential street.

Given the proposed modifications of the Application, the appellant does not concur. The adjacent single-family dwelling will benefit most from the proposed modifications, traffic aside. The term “Industrial Traffic” is somewhat misleading. Only cars and pickups of less than 1 ton will be allowed though, and only during daylight hours. This is more than offset by the beautification of the lot upon which the proposed driveway is to be sited. Additionally, the presence of an open and unoccupied driveway at the end of 57th Avenue will provide a turnaround point for cars. At present it’s a dead end and is congested. Residents there will finally have a place to conveniently maneuver their vehicles.

The issue of “further encroachments” was discussed above.

2. Preservation of Privacy. The design and site planning of all buildings, open areas, parking, service areas, paths, stairways, accessways, corridors, and balconies will be so designed as to not adversely affect the privacy, safety, or environmental amenities of adjacent properties:

This finding cannot be made. An industrial driveway enclosed with chain link fencing and iron gates would negatively impact the use and enjoyment of the adjoining single-family dwelling. Appellant concurs and wishes to modify the Proposal to create a more harmonious plan, with net positive impact on the adjacent dwelling. The proposal would introduce industrial traffic along a residential street resulting in increased traffic which would cause traffic conflicts between residents and industrial works. The proposal would a result in unnecessary increases in noise, privacy and air quality impacts to this residential neighborhood. Appellant contends these impacts will be minimal as outlined above.

9.[sic] Screening and Buffering. The exterior perimeter of the expansion area shall be provided with screening and buffering devices including, but not limited to, established trees:

This finding cannot be made. No screening or buffering is proposed. Appellant concurs and wishes to modify the Proposal to include screening and buffering elements in the form of green space as outlined above.

GENERAL PROVISIONS OF PLANNING CODE AND GENERAL PLAN CONFORMITY/PROPOSALS CLEARLY IN CONFORMANCE WITH GENERAL PLAN (OMC SEC. 17.01.100)

1. That the proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area;

This finding cannot be made. The proposal involves a lot split by a residential-industrial zoning boundary and was located in an industrial area of the General Plan at the time that the application was deemed complete. Therefore, a Minor Conditional Use Permit is required. A driveway for light vehicle use to pass through residential lot adjacent single-family home to access rear of abutting industrial lot is not appropriate for neighborhood: it will increase non-residential traffic, times of use cannot be regulated, and it will negatively impact the use and enjoyment of adjacent residential property in particular. It is clearly not the intent of the General Plan for industrial traffic to pass through a residential neighborhood. **Appellant does not concur. The surrounding area is clearly industrial along the north side and no consideration has been given to the needs of its community, namely, the ability to access. Cars going to the warehouse will be coming from residences themselves and are more properly labeled as commuter traffic rather than industrial traffic. Appellant understands and appreciates the concerns of the adjacent residential property and wishes to modify the Proposal to create a more attractive visual environment which will provide a much more pleasant next door experience than the one there now. The cars will go through rarely. The green space, as it were, will be there perennially.**

2. That the proposal is clearly consistent with the intent and desired character of the relevant land use classification or classifications of the General Plan and any associated policies;

This finding cannot be made. The proposal does not conform to the following Objective and Policies of the General Plan's Land Use & Transportation Element, as described below:

RESIDENTIAL AND NON-RESIDENTIAL ACTIVITIES

Objective N5. Minimize conflicts between residential and non-residential activities while providing opportunities for residents to live and work at the same location.

Policy I/C4.1 Protecting Existing Activities. Existing industrial, residential, and commercial activities and areas which are consistent with long term land use plans for the City should be protected from the intrusion of potentially incompatible land uses.

Policy I/C4.2 Minimizing Nuisances. The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create nuisance impact to on surrounding residential land uses should be minimized through appropriate siting an efficient implantation and enforcement of environmental and development controls.

The project would exacerbate negative issues at the residential/industrial interface where residences would bear the brunt. **Appellant proposes to act in concert with the residences to achieve consensus as to the best disposition of the lot in question.**

DESIGN REVIEW PROCEDURE/REGULAR DESIGN REVIEW CRITERIA (OMC SEC. 17.136.050(B))

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

This finding cannot be made. The proposal requires Regular Design Review for construction (fence) associated with a Conditional Use Permit and Variance. Use of a residentially zoned property that is surrounding by single-family homes for industrial purposes is not consistent of the follow Purpose of the Zoning Regulations:

To protect residential, commercial, industrial, and civic areas from the intrusion of incompatible uses, and to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services (OMC Sec. 17.07.030(C))

The proposal would clearly be contrary to this Purpose as it features the introduction of an industrial use (warehouse circulation) into a residential neighborhood. **Appellant contends the modified Proposal will provide a mutually beneficial relationship.** A vacant lot paved with asphalt and surrounded by iron gates and chain linking fence would not relate well to the single-family residential development located 58th Avenue. **Appellant concurs and wishes to modify the Proposal as outlined above to better relate to the residences.**

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

This finding cannot be made. Surrounding homes are small wartime tract homes with wooden siding and small or no fences. A six-foot mechanical gate at a[sic] front and rear property lines, chain link fencing along the side property lines and asphalt paving is not compatible with the development pattern along 58th Avenue. **Appellant concurs and wishes to modify the Proposal to preserve the value of the nearby homes. Appellant wishes to point out that preservation of the value of his “Historic” warehouse is of import as well. It’s worth about 8 of those houses; it would have been worth a lot more if the City had allowed its demolition and construction of a more modern structure. Appellant has made a substantial investment (about \$1MM) in bringing the Warehouse up to code. Will consideration be given to protecting the value of Appellant’s investment?**

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

This finding cannot be made. The proposal does not conform to the following Design Guidelines:

CRITERION 11: STREET FRONTING FENCES AND FREESTANDING WALLS

(a) Street fronting fences and freestanding walls shall not be overly dominant withill the streetscape and shall relate well to buildings landscaping and other streetscape design features

(b) Fences and freestanding walls within front yards and the front portions of street side yards on corner lots shall complement the architectural style of the adjacent residence

Surrounding homes are small wartime tract homes with wooden siding and small or no fences. The proposed fence will be massive and incompatible. The design and mechanical equipment would not complement the adjacent home located at 1105 58th Avenue. **Appellant concurs and wishes to modify the Proposal to eliminate the southern fence, and to reduce the height of the North fence. Side fences are preexisting and belong to others.**