

**COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT**

**DATE:** May 9, 2018

**TO:** Planning Commission

**FROM:** Planning Staff

**SUBJECT:** EXECUTIVE SUMMARY: Consideration of an appeal of the Community Development Director's denial of a Fence Height Exception, pursuant to Section 6412.2 of the San Mateo County Zoning Regulations, for the legalization of an existing 6-foot high fence within the front yard setback. The project is located at 1796 Lexington Avenue in the San Mateo Highlands area of San Mateo County.

County File Number: PLN 2017-00476

**PROPOSAL**

The appellant has appealed the Community Development Director's decision to deny the legalization of an existing 6-foot high wooden fence within the front yard setback on the basis that the fence is compatible with the surrounding neighborhood, promotes or enhances good design, and will not jeopardize public welfare.

**RECOMMENDATION**

That the Planning Commission approve the appeal and approve the Fence Height Exception, County File Number PLN 2017-00476, by making the required findings and adopting the conditions of approval listed in Attachment A.

**SUMMARY**

On November 15, 2017, in response to a Violation Case (VIO 2017-00354), the applicant applied for a fence height exception to legalize an existing 6-foot fence within the front yard setback, where only 4 feet is allowed in the R-1/S-8 Zoning District. Pursuant to Zoning Regulations Section 6412.2, the Community Development Director denied the fence height exception because a written complaint was received from a member of the public.

On February 1, 2018 the applicant appealed the Community Development Director's decision on the basis that the fence will not jeopardize public safety; the fence is

compatible with the surrounding neighborhood; and the fence promotes good design, site relationships, and other aesthetic considerations.

Staff has conducted multiple site visits and has determined that the fence, as conditioned, complies with Zoning Regulations Section 6412.2 of the Fence Height Exception regulations. The fence does not jeopardize public safety, is not detrimental to the public welfare, and once re-constructed to comply with the conditions of approval, will promote good design. Staff was required to deny the initial application because a member of the public submitted a written objection to the exception request.

As conditioned, the fence complies with all other applicable Zoning Regulations. Staff therefore recommends that the Planning Commission approve the appeal and approve the Fence Height Exception.

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County File Number: PLN 2017-00476 (Jones)

**PROPOSAL**

The appellant has appealed the Community Development Director's decision to deny the legalization of an existing 6-foot high wooden fence within the front yard setback on the basis that the fence is compatible with the surrounding neighborhood, promotes good design, and will not jeopardize public welfare.

On November 15, 2017, in response to a Violation Case (VIO 2017-00354), the applicant applied for a fence height exception to legalize an existing 6-foot fence within the front yard setback, where only 4 feet is allowed in the R-1/S-8 Zoning District. Pursuant to Zoning Regulations Section 6412.2, the Community Development Director denied the fence height exception because a written complaint was received from a member of the public.

**RECOMMENDATION**

That the Planning Commission approve the appeal and approve the Fence Height Exception, County File Number PLN 2017-00476, by making the required findings and adopting the conditions of approval listed in Attachment A.

**BACKGROUND**

Report Prepared By: Helen Gannon, Project Planner, 650/363-1882

Appellant/Applicant/Owner: Maris Jones

Location: 1796 Lexington Avenue (San Mateo Highlands)

APN(s): 041-135-060

Size: 7,700 sq. ft.

Existing Zoning: R-1/S-8 (Single Family Residential/7,500 sq. ft. minimum parcel size)

General Plan Designation: Medium Low Density Residential Urban

Sphere-of-Influence: San Mateo

Existing Land Use: Residential

Flood Zone: Zone X (area of minimal flooding); FEMA FIRM Panel 06081C0304E; effective October 16, 2012.

Environmental Evaluation: Categorically exempt pursuant to Section 15303, new accessory structures.

Setting: The proposed project is located on a 7,700 sq. ft. parcel on the west side of Lexington Avenue. The residence is on a semi-sloped parcel, surrounded by other single-family residences.

Chronology:

<u>Date</u>	<u>Action</u>
October 18, 2017	- Complaint received and violation case opened.
November 15, 2017	- Application for Fence Height Exception submitted.
December 13, 2017	- Application deemed complete. Objection to Fence Height Exception received.
January 19, 2018	- Project Decision Letter sent.
February 1, 2018	- Project appealed.
May 9, 2018	- Planning Commission Hearing date.

## **DISCUSSION**

### **A. KEY ISSUES**

#### **1. Community Development Director's Denial of Exception**

Section 6412.2 of the San Mateo County Zoning Regulations authorizes the Community Development Director to approve fence height exceptions to allow fences up to 6 feet high in the front yard unless members of the public submit a written objection to the exception request.

On December 13, 2017, an email objecting to the Fence Height Exception was received, and on January 19, 2018, the Community Development Director denied the Fence Height Exception.

2. Appellant's Basis of Appeal

- a. **The exception will not jeopardize public safety. The exception is needed as an accommodation for Ms. Jones' sister, who is suffering from a disability.**

Staff's Response: Staff conducted a site visit and it was determined that the fence does not jeopardize public safety. Public Works has conditionally approved the fence to be relocated onto the property line or onto private property. Refer to Attachment G for how the exception will accommodate Ms. Jones' sister's disability.

- b. **The exception is compatible with the surrounding neighborhood and will not jeopardize public welfare.**

Staff's Response: Staff conducted a site visit and noted multiple fences of this same height and magnitude in the surrounding neighborhood. However, these fences are setback from the adjacent street sidewalk on what appear to be the individual parcel property lines. Typically, there is some form of landscaping between the edge of the sidewalk and the fence. As originally constructed, the appellant's fence encroaches approximately 1-3 feet into the public right-of-way. As conditioned by County staff, the appellant's fence (if the appeal is upheld) must be moved out of the public right-of-way and the space between the sidewalk and the fence must be landscaped, consistent with other fences in the neighborhood.

- c. **The exception promotes or enhances good design, site relationships, and other aesthetic considerations, in accordance with San Mateo General Plan Policy 4.14.**

Staff's Response: The design, material, and color are very similar to multiple other fences along this block of Lexington Avenue.

3. Required Findings to Approve the Exception

The Community Development Director's criteria for deciding a Fence Height Exception request differentiate from the findings that the Planning Commission must make to decide on the appeal. Zoning Regulations Section 6412.2 of the Fence Height Exception regulations stipulates that upon appeal, the Planning Commission, at a public hearing, shall review the Community Development Director's decision, and may approve an exception, providing all the following findings can be made:

a. **Approving the exception will not jeopardize public safety.**

Staff's Response: Staff has determined that the fence (as conditioned) will not inhibit line-of-sight for drivers nor jeopardize public safety.

b. **Approving the exception will be compatible with the neighborhood surrounding the parcel where the fence or hedge would be placed and will not be detrimental to the public welfare.**

Staff's Response: Staff's research concludes that the placement of the fence (as conditioned) will not be detrimental to the public welfare. The Department of Public Works has conditionally approved of the project to be moved back onto the property line.

c. **The proposed fence promotes or enhances good design, site relationships and other aesthetic considerations, in accordance with San Mateo County General Plan Policy 4.14. In order to make this determination, the Planning Commission may condition the exception with certain requirements, including design, location, materials, colors and landscaping requirements.**

Staff's Response: Staff has determined the fence, once it is re-constructed to comply with the conditions of approval, will be aesthetically pleasing, and meets these criteria. The conditions of approval received by staff requires the applicant to provide landscaping along the front facade of the fence for aesthetic purposes, and to ensure that the fence height does not exceed 6 feet at any given point.

B. REVIEWING AGENCIES

Building Inspection Section  
Department of Public Works

ATTACHMENTS

- A. Recommended Findings and Conditions of Approval
- B. General Location and Parcel Map
- C. Site Plan and Elevations
- D. Site Photos
- E. Letter of Concern from neighbor, dated December 5, 2017
- F. Community Development Director's Decision Letter, dated January 19, 2018
- G. Appellant's Appeal, dated January 31, 2018

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County of San Mateo  
Planning and Building Department

**RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL**

Permit or Project File Number: PLN 2017-00476

Hearing Date: May 9, 2018

Prepared By: Helen Gannon  
Project Planner

For Adoption By: Planning Commission

**RECOMMENDED FINDINGS**

Regarding the Fence Height Exception, Find:

**1. Approving the exception will not jeopardize public safety.**

Staff has determined that the fence, as conditioned, will not inhibit line-of-sight for drivers nor jeopardize public safety.

**2. Approving the exception will be compatible with the neighborhood surrounding the parcel where the fence would be placed and will not be detrimental to the public welfare.**

Staff's research concludes that the placement of the fence, as conditioned, will not be detrimental to the public welfare. The Department of Public Works has conditionally approved of the project to be moved back onto the property line.

**3. The proposed fence promotes or enhances good design, site relationships and other aesthetic considerations, in accordance with San Mateo County General Plan Policy 4.14. In order to make this determination, the Planning Commission may condition the exception with certain requirements, including design, location, materials, colors and landscaping requirements.**

Staff has determined the fence, once it is re-constructed to comply with the conditions of approval, will be aesthetically pleasing, and meets these criteria. However, staff recommends that the applicant provide landscaping along the front facade of the fence for aesthetic purposes and that the fence height does not exceed 6 feet at any given point.

**RECOMMENDED CONDITIONS OF APPROVAL**

Current Planning Section

1. This approval applies to the project as described on the plans and documents submitted to the Current Planning Section on November 15, 2017. Any revisions

to these plans must be submitted to the Current Planning Section for review and approval prior to implementation.

2. Within 60 days of this approval, the applicant shall provide a landscaping plan, for review and approval by the Community Development Director that identifies the type and location of plants that will be installed to soften the appearance of the fence. All plants to be installed shall be drought resistant, non-invasive, and grow no taller than 6 feet at maximum height.
3. The applicant shall lower the existing fence such that the fence measures no higher than 6 feet on any side. Planning and Building staff will verify height upon completion.
4. The applicant shall complete landscaping, relocate the fence, and lower the existing fence to 6 feet within four (4) months of the approval of this permit.

#### Department of Public Works

5. The applicant shall relocate the fence to the property line or onto private property. Any work done in the right-of-way shall be inspected by the County Road Inspector prior to the completion of the project.

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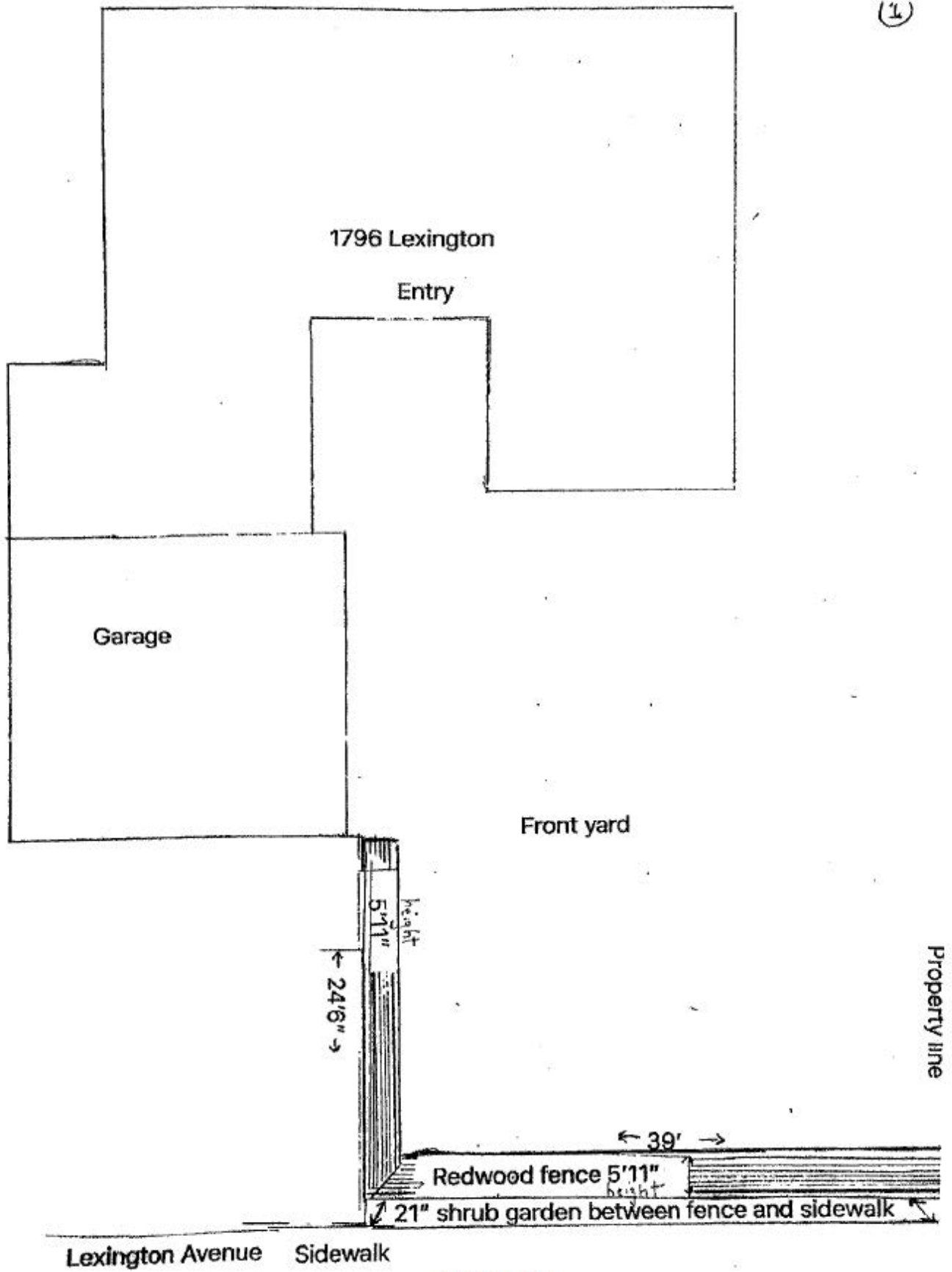


***San Mateo County Planning Commission Meeting***

Owner/Applicant: \_\_\_\_\_

Attachment: \_\_\_\_\_

File Numbers: \_\_\_\_\_



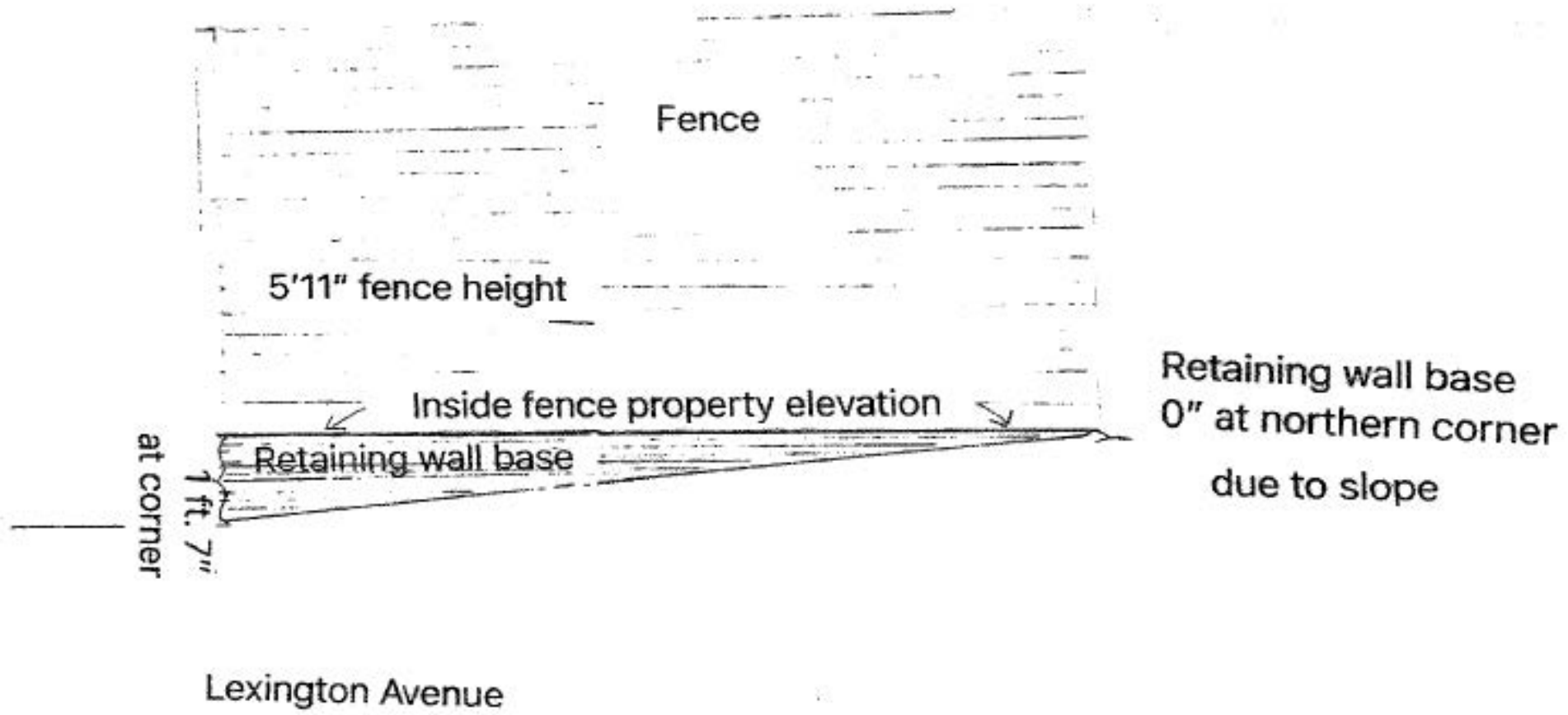
**San Mateo County Planning Commission Meeting**

Owner/Applicant: \_\_\_\_\_

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**San Mateo County Planning Commission Meeting**

Owner/Applicant:	Attachment:
File Numbers:	



***San Mateo County Planning Commission Meeting***

Owner/Applicant:

Attachment:

File Numbers:

Helen Gannon

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**From:** [REDACTED]  
**Sent:** Tuesday, December 05, 2017 1:47 PM  
**To:** Helen Gannon  
**Subject:** CONFIDENTIAL comment re PLN2017--00476

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms. Gannon,  
As a follow-up to our phone conversation, I am submitting this **confidential** comment for Planning Case No. PLN2017-00476, with the project title: Fence Exception. The owner is Jones Maris and the APN is 041135060.

My husband and I are neighbors. We would like to comment that we believe the 6-foot high fence is not consistent with the aesthetic appeal of other similarly constructed fences that have been erected by other property owners in the area with the purpose of enclosing the front yard area. Specifically, the height differential of this particular fence makes it appear to have a barricade quality. Thank you for your time. Regards, a Highlands resident.

***San Mateo County Planning Commission Meeting***

Owner/Applicant: \_\_\_\_\_

Attachment: \_\_\_\_\_

File Numbers: \_\_\_\_\_

January 19, 2018

Maris Jones  
1796 Lexington Avenue  
San Mateo, CA 94402

Dear Ms. Jones:

SUBJECT: Fence Height Exception  
1796 Lexington Avenue  
APN 041-135-060; County File No. PLN 2017-00476

Staff has completed its review of your application in response to VIO 2017-00354 for a Fence Height Exception, to legalize a 6-ft. tall wooden fence in the front yard, where 4 feet is the maximum allowable height. The required pre-decision public notice was sent on November 20, 2017. The public comment period ended on December 11, 2017. One complaint was received, therefore, consistent with Section 6412.2(3) of the Zoning Regulations, this application has been denied.

Staff has denied the project, subject to the following findings:

**FINDINGS**

After reviewing this application and accompanying materials, it is found that:

1. For the Denial of the Fence Height Exception

The fence on this project, which exceeds the height limit set forth in Section 6412 by 2 feet, has been reviewed under and found to be in compliance with the provision and findings stipulated in Section 6412.2 with the exception of 6412.2(3) in the County Zoning Regulations:

- a. **Written notification of the exception request shall be sent to all owners of property located within 300 feet of the parcel where the fence or hedge is proposed to be placed, and to any member of the public requesting such notification.**

Written notification was sent to all owners of property located within 300 feet of the parcel where the fence is located, and to any member of the public requesting such notification, on November 20, 2017.

- b. **Written notification of the exception request shall be sent to all recognized organizations or associations that have been established to represent the property owners in the neighborhood surrounding the parcel where the fence or hedge is proposed to be placed, and to any organization or association**



***San Mateo County Planning Commission Meeting***

Owner/Applicant:

Attachment:

File Numbers:

**requesting such notification. An organization or association shall be considered recognized if it has been in existence for at least six months, and has scheduled meetings.**

No recognized organizations or associations have been established to represent the property owners in the neighborhood that surround the parcel.

- c. No member of the public nor organization or association has submitted to the Community Development Director written objection to the exception request.**

Staff received one comment from a concerned neighbor who wishes to remain anonymous. The member of the public believes that the height of the fence is not consistent with the aesthetic appeal of the other constructed fences in the neighborhood.

- d. After consultation with the Director of Public Works, the Community Development Director finds that approving the exception will not jeopardize public safety.**

The Director of Public Works has conditionally approved the fence so that the fence is relocated onto the property line.

- e. After viewing the parcel where the fence or hedge is proposed, the Community Development Director finds that approving the exception will be compatible with the neighborhood surrounding that parcel, and will not be detrimental to the public welfare.**

Staff completed a site visit and found that there are multiple fences of this height and magnitude in the surrounding neighborhood. The fence does not protrude into the public right-of-way and so will not be detrimental to the public welfare.

- f. The Community Development Director finds that the proposed fence or hedge promotes or enhances good design, site relationships, and other aesthetic considerations, in accordance with San Mateo County General Plan Policy 4.15. In order to make this determination, the Community Development Director may condition the exception with certain requirements, including design, location, materials, colors, and landscaping requirements.**

After staff completed a site visit, it was determined that the proposed fence promotes good design that will be compatible with the neighborhood. The design, material, and color are very similar to multiple other fences along this block of Lexington Avenue.

As stated previously, the Zoning Regulations for a fence height exception specifically state that if a member of the public submits a written objection to the exception request, then the fence height exception must be denied.

***San Mateo County Planning Commission Meeting***

Owner/Applicant:

Attachment:

File Numbers:

This denial may be appealed by the applicant or any aggrieved party on or before **5:00 p.m., on February 2, 2018**, the tenth working day following this action by the Community Development Director. An appeal is made by completing and filing a Notice of Appeal, including a statement of grounds for the appeal, with the Planning and Building Department, and paying the applicable appeal fee.

Further information may be obtained by calling Helen Gannon, Project Planner, at 650/363-1882 or by email at [hgannon@smcgov.org](mailto:hgannon@smcgov.org).

To provide feedback, please visit the Department's Customer Survey at the following link: <http://planning.smcgov.org/survey>.

FOR STEVE MONOWITZ  
COMMUNITY DEVELOPMENT DIRECTOR, By:



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Melissa Ross, Senior Planner

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***San Mateo County Planning Commission Meeting***

Owner/Applicant: \_\_\_\_\_

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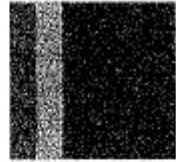


TIMOTHY W. MOPPIN, ESQ  
2015 Junction Avenue, El Cerrito, California 94530  
Tel: (510) 232-0442 E-mail: timmoppin@aol.com

**RECEIVED**

FEB 01 2018

**San Mateo County  
Planning Division**



January 31, 2018

VIA FACSIMILE AND HAND DELIVERY (650) 363-4849

Melissa Ross  
County of San Mateo Planning and Building Dept.  
County Government Center  
455 County Center, 2<sup>nd</sup> Floor  
Redwood City, California 94603

Re: **Maris Jones**  
**Fence Height Exception, 1796 Lexington Avenue**  
**APN 041-135-060; County File No. PLN 2017-00476**

Dear Melissa Ross:

Please be advised that I am the attorney for Maris Jones, who has retained me to assist her with the resolution of the above-referenced matter. Please direct all future communications in this matter to my attention.

This letter will supplement, and is hereby incorporated into, the Application For Appeal ("Appeal") which is submitted herewith. The Appeal is being presented to challenge the decision of the County of San Mateo Planning and Building Department ("Planning Department") to deny the project at issue, i.e., to legalize a wooden fence constructed in the front yard of 1796 Lexington Avenue, which decision was communicated to Ms. Jones by letter dated January 19, 2018 ("January 19 letter").

We feel that the Planning Department should reverse its decision and should legalize the fence.

1. The exception will not jeopardize public safety. As stated in the January 19 letter, "there are multiple fences of this height and magnitude in the



### ***San Mateo County Planning Commission Meeting***

Owner/Applicant:

Attachment:

File Numbers:

surrounding neighborhood. The fence does not protrude into the public right-of-way and so will not be detrimental to the public welfare.”

In fact, the exception is needed as an accommodation for Ms. Jones’ sister, who is suffering from a disability. As you are aware, the Planning Department is required to accommodate individuals with disabilities under Section 504 of the Rehabilitation Act of 1973. Ms. Jones’ sister is disabled with an autoimmune disease, CNS Lupus, that causes inflammation of the vessels affecting all of her body systems and CVID (common variable immune deficiency). Her sister needs a walker, as she has balance issues limiting her mobility. She sometimes requires a wheelchair. She has high sensitivity to light, sound, and stressful situations. She cannot drive. She needs to be able to safely move around in the yard to maintain her well-being. The fence will provide a necessary barrier that will protect her and is a necessary accommodation for her disability.

2. The exception is compatible with the surrounding neighborhood and will not jeopardize public welfare. This was noted in the January 19 letter, as stated above. The Planning Department and Public Works Director approve of the fence.
3. The exception promotes or enhances good design, site relationships, and other aesthetic considerations, in accordance with San Mateo General Plan Policy 4.14. The January 19 letter notes that “after staff completed a site visit, it was determined that the proposed fence promotes good design that will be compatible with the neighborhood. The design, material, and color are very similar to multiple other fences along this block of Lexington Avenue.” This factor is clearly met.

For the above specified reasons, Ms. Jones hereby requests that the Appeal be granted, that the decision of the Planning Department be reversed, and that the Planning Department legalize her fence as originally requested.

## ***San Mateo County Planning Commission Meeting***

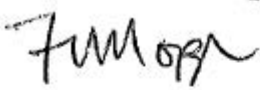
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You may contact me at your convenience with any questions or comments. Thank you for your anticipated cooperation and consideration.

Sincerely,



Timothy W. Moppin

Cc: Client



***San Mateo County Planning Commission Meeting***

Owner/Applicant: \_\_\_\_\_

Attachment: \_\_\_\_\_

File Numbers: \_\_\_\_\_