



STAFF REPORT

CITY of YORBA LINDA

Community Development Department

DATE: SEPTEMBER 21, 2021

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM: DAVID BRANTLEY, AICP
DIRECTOR OF COMMUNITY DEVELOPMENT
PREPARED BY: ASHANTI MASON-WARREN, ASSISTANT PLANNER**

**SUBJECT: RESOLUTION NO. 2021-5761 - APPEAL OF CONDITIONAL USE PERMIT
2021-13 – ZHANG**

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 2021-5761 upholding the Planning Commission's decision to approve Conditional Use Permit 2021-13 – Zhang.

BACKGROUND

In March 2021 the applicant, Xiuqin Zhang, submitted an application to exceed the maximum three-foot (3') height limitation for walls/fencing within the front yard setback to permit a six-foot (6') high stucco and wrought iron fence and six-foot (6') high metal vehicular gate, for the property addressed as 19404 Via Del Caballo. By the time this conditional use permit (CUP) application came to the attention of Planning staff, most of the improvements were already installed, including most of the front yard fencing, aside from the vehicular gates which had not yet been installed. It is noted that this fence, in large part, replaced a previously existing three-foot (3') high fence that had been erected in the same location on the property many years ago by a prior owner.

This project first came to staff's attention during a routine building inspection on an unrelated permit. On February 9, 2021, a stop work notice was issued by a City building inspector, and a code enforcement case was opened with the Community Preservation Division. The applicant was instructed to remove the fencing exceeding three feet (3') in height within the front yard setback or obtain a Conditional Use Permit (CUP) from the Planning Commission to permit the height exceedance, as required by Zoning Code Section 18.10.130.A.

In response, the applicant submitted a CUP application to the Planning Division and on May 26, 2021, the Planning Commission approved the applicant's request for a CUP to allow walls/fencing up to six feet (6') tall within the front yard setback, thereby bringing the unpermitted work into compliance with zoning requirements.

On June 8, 2021, a neighboring property owner, Mr. Michael Rosenthal, submitted an appeal of the Planning Commission's decision to approve CUP 2021-13 – Zhang.

DISCUSSION

Project Description

The applicant, Ms. Zhang, requested a conditional use permit to exceed the maximum three-foot (3') height limitation for walls/fencing within the front yard setback to permit a six-foot (6') high stucco and wrought iron fence and six-foot (6') high metal vehicular gate. She stated she is raising small children and that the fence was built to secure the property from wildlife and protect the front yard from vehicle traffic. Staff recommended approval of the applicant's request because the fencing was attractive in design and no line-of-site or other traffic safety issues were identified by the City Traffic Engineer. **For a complete discussion of the approved conditional use permit, please refer to the attached Planning Commission staff report and minutes of May 26, 2021, which have been included as Attachments 2 and 3.**

Planning Commission Review

At the Planning Commission meeting of May 26th, staff explained to the Planning Commission that the proposed fencing replaces an existing three-foot (3') high picket fence located along the front (north), left (west), and right (east) sides of the property and would include the installation of new vehicular gates across the existing driveway along Via Del Caballo. The fencing is 6 feet tall, consisting of a two foot (2') tall stucco block wall and four-foot (4') wrought iron fence situated on top with pilasters interspersed. Staff explained to the Planning Commission that the fencing under CUP review is already installed (except for the vehicular gate). Letters were received from some neighbors expressing concerns related to potential line of sight/visibility conflicts at the corner of Via Del Caballo and Palm Avenue as well as potential queuing and traffic impacts resulting from the proposed vehicular gate. The site conditions and proposed vehicular gate were reviewed by the City Traffic Engineer. No traffic safety impacts were identified, and the fencing met safe sight distance requirements. Visibility obstruction from existing vegetation on the applicant's property was noted as a concern but was addressed by the applicant to the satisfaction of the Traffic Engineer prior to the Planning Commission hearing.

To further ensure traffic safety, the Engineering Division suggested conditions of approval requiring the "vision triangle" be maintained at the corner of Via Del Caballo and Palm Avenue at all times and the vehicular gate be setback 15 feet behind the fence to allow for adequate queuing without obstructing the Vial Del Caballo private street easement, which the applicant agreed to adhere to.

Staff explained that the fence is consistent with the quality of design desired by the Planning Commission based on past approvals of similar projects and presented no impediments to traffic safety. In fact, staff noted that a similar fence with gated access was approved on a neighboring property at 19426 Via Del Caballo in 2016 by CUP 2016-23. Also included in the approved conditions for the project was a requirement to obtain an encroachment permit prior to building permit issuance since a portion of the subject fence projects into the Palm Avenue right-of-way.

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In terms of public comment, Tina Vaccher, neighbor to the Zhang property, stated that Via Del Caballo is a busy street, and the 6-foot fence would exacerbate the poor visibility at the corner of Via Del Caballo and Palm Avenue. She stated that the trimming of the vegetation between the fence and Palm Avenue helped the visibility issue, but the vegetation is still a traffic safety issue. She also expressed concern that the vehicle gate along Via Del Caballo would encumber traffic along the private roadway. These concerns were not shared by the City Traffic Engineer, however.

Barbara Fox, neighbor to the Zhang property, stated she relates to the Zhang's desire to secure their property with a 6-foot front yard fence for privacy and safety. She further stated that the new fencing is attractive and does not present any visibility or traffic safety issues.

Commissioner Pease stated he was on the Planning Commission when they approved the previously mentioned CUP for 6-foot front yard fencing and a vehicle gate down the street from the Zhang property (CUP 2016-23); there was opposition to that fence as well, he noted. Considering the past approvals of fencing along Via Del Caballo and today's testimony, he was supportive of the request.

Chair Masterson stated he visited the property and did not find an abundance of traffic in the area. He also noticed gates on other properties in the area and stated he was supportive of the request. Accordingly, the Planning Commission adopted a resolution approving CUP 2021-13 – Zhang by a 5-0 vote.

Appeal Action

In accordance with Section 18.36.820 of the Yorba Linda Zoning Code, on June 8, 2021, Michael Rosenthal appealed the Planning Commission's approval of Conditional Use Permit 2021-13. The appellant stated that the plans presented to the Planning Commission do not accurately represent the location of the property lines and roadway easements. The fencing improvements along Via Del Caballo are approximately 12 feet into the private street easement. The letter also states that the east property line wall is shown as *existing* on the plans, but it is not existing fencing. He also states that the fencing along Via Del Caballo and Palm Avenue are shown as *existing* on the plans, but the fencing is not existing. A copy of Mr. Rosenthal's appeal has been included as Attachment 4. Staff notes that Mr. Rosenthal's concerns were taken into account at the Planning Commission hearing. Staff was aware of these errors on the applicant's plans and had suggested conditions of approval to clarify these concerns. Including among the suggested conditions was a requirement to obtain an encroachment permit for the segment of fencing along Palm Avenue. With respect to the concern that the Via Del Caballo segment of fencing is located within the private street easement, the Planning Commission did not believe this was a problem. The easement is much wider than is necessary to accommodate the paved roadway, and the applicant's fence encroachment is typical of several other properties along Via Del Caballo.

Post Planning Commission

Following the approval of Conditional Use Permit 2021-13, the applicant met with staff to discuss the steps necessary to obtain an encroachment permit for the Palm Avenue fencing. Staff explained that the applicant would need to have a survey conducted and revise the

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plans to accurately represent property lines and easement locations. Engineering staff confirmed the location of the fencing improvements within the private street easement leaves adequate pavement width for ingress and egress of traffic. Therefore, there are no traffic safety concerns related to the location of the fencing improvements within the private street easement.

Following the appeal of Conditional Use Permit 2021-13, the applicant had a survey done of the subject property and submitted a revised site plan that accurately represents the location of the property lines and the location of the Palm Avenue public street right-of-way and Via Del Caballo private street easement per the site survey. Staff shared the revised site plan with the appellant since accuracy of the plans was noted as the primary reason for the submitted appeal. The appellant nevertheless wished to continue to bring this matter to the City Council for review.

SUMMARY

The Planning Commission approved Conditional Use Permit 2021-13 on May 26, 2021, based on the findings recommended by staff that the location of the fencing will not have negative impacts in that the fencing and gates do not cause any line-of-sight visibility or other traffic safety risks and is attractively designed. Staff maintains this position and recommends upholding the Planning Commission's approval of Conditional Use Permit 2021-13. Resolution 2021-5761 has been provided for Council's adoption, accordingly.

ENVIRONMENTAL ANALYSIS

As this project is for the deviation from a zoning code setback requirement, it qualifies as a Class 3 (New Construction) Categorical Exemption, and is, therefore exempt from CEQA pursuant to the provisions of Title 14 CCR § 15303.

FISCAL IMPACT

None

ALTERNATIVES

Alternatively, the City Council may:

1. Provide direction to staff relative to the City Council's determination on the requested application. Options in this regard may include incorporation of additional design modifications or referring the matter back to the Planning Commission for further review and consideration.
2. Deny the conditional use permit request and provide staff with findings for denial in order to prepare a resolution of denial for adoption by the City Council at the next regular City Council meeting.

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ATTACHMENTS

- 1) Locator Map
 - 2) Staff Report from the May 26, 2021, Planning Commission Meeting
 - 3) Minutes from the May 26, 2021, Planning Commission Meeting
 - 4) Appeal Application from Mr. Rosenthal
 - 5) City Council Resolution No. 2021-5761 upholding the Planning Commission's approval decision of Conditional Use Permit 2021-13
 - 6) Plans
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