CITY OF HAYWARD
AGENDA REPORT

Meeting Date 9/9/04
Agenda Item 1

TO: Planning Commission

FROM: Tim R. Koonze, Assistant Planner

SUBJECT: **Variance No. PL-2004-0273 – Tom Palatino (Applicant/Owner) –** Request for Variances to Retain a 6-Foot-High Fence where a Maximum of 4 Feet is Allowed; to Retain an Accessory Structure 4 Feet from the Side Street Property Line Where at Least 10 Feet is Required and Within 1 Foot from the Dwelling where at Least 6 Feet is Required; and to Allow the Cumulative Square Footage of Accessory Structures to Exceed the Allowable Area.

The Property is Located at 921 Central Boulevard in a Single-Family Residential (RS) District

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.

2. Deny the variances subject to the attached findings.

DISCUSSION:

The property is located at the southwest corner of Central Boulevard and Del Mar Avenue within a single-family residential neighborhood. The property is rectangular in shape (50' by 112') and is relatively flat, similar to other corner lots in the area. The house located on this parcel was constructed in 1941 and has been owned by the current resident since 1961. A 6-foot-high solid board wood fence encompasses the rear yard. It extends to the back of sidewalk along Del Mar Avenue and includes a 13-foot-wide gate that provides access to a detached single-car garage with an attached 120 square-foot shed. More recently, the property owner erected a pre-manufactured, freestanding shed too close to the house and within the required side yard. The locations of the fence and the shed, which are not within allowable areas as cited in the City's Zoning Ordinance, came to the City's attention via a complaint to the Community Preservation staff.

The owner claims that a 6-foot-high fence was located at the back of sidewalk when he purchased the property in 1961. As such, the fence was considered a "legal, nonconforming" structure, that is, it was most likely allowed at the time it was constructed but is no longer permitted in that location. Nonconforming structures which are damaged to an extent of one-half or more of its replacement cost cannot continue to be maintained in their former location, and any new structure must conform to current requirements. The owner states that due to deterioration, he constructed a new fence in the same location and was not aware of the requirement to relocate it at least 10 feet from his side street property line. He states that other fences within his neighborhood have similar heights and setbacks and submitted photographs supporting his claim (see Attachment C).

The owner also installed a pre-manufactured, 150-square-foot free-standing shed without benefit of a building permit. It was installed in a location that violates setback requirements and exceeds the cumulative building area for accessory buildings. The Zoning Ordinance allows accessory structures as long as the cumulative square-footage of the accessory structures does not exceed one-half the square footage of the house. In this case, the house contains 921 square feet, allowing up to 460 square-feet of accessory structures, however, the cumulative area of the accessory structures is 490 square feet.

The applicant claims that the locations of the house and the garage/shed located behind the house limit the possibilities as to where the free-standing shed could be relocated. He states that to locate the freestanding shed in the rear yard would reduce the only sizeable recreation and landscaping area. He also mentions that there are other sheds in the neighborhood that encroach into required setback areas; however, he provided no evidence of this.

The owner is requesting four variances, one relating to the fence and three relating to the shed:

Fence

1. To retain a 6-foot-high fence where a maximum of 4 feet is allowed. The fence is located within the required 10-foot side street yard. To retain the fence in its current location, its height would have to be lowered to 4 feet. To maintain a 6-foot-high fence, it would have to be moved 10-feet back from the sidewalk.

Shed

2. To retain the shed located 4 feet from the side-street property line where at least 10 feet is required;
3. To retain the shed located 1 foot from the primary structure (the house) where at least 6 feet is required; and

4. To allow the accumulative building area of all accessory buildings to exceed 50 percent of the ground floor area of the primary building by 30 square feet (53 percent proposed).

To comply with the Zoning Ordinance, the fence must be lowered to a maximum of 4 feet or relocated 10 feet behind the sidewalk. With the 6-foot-high fence in its current location, it is not possible for the property owner to view on-coming pedestrians and vehicles when backing out of his garage; moreover, the visibility of his neighbor to the south is also impaired. The relocation of the fence or reduction of the fence height would improve the driving visibility for both properties.

The shed could comply with setback regulations if the freestanding shed were relocated elsewhere in the rear yard. If the shed were located to the southwest corner of the property, it would still allow a for a 900-square-foot usable rear yard. Any freestanding shed in excess of 120 feet would require a building permit. If the variances were approved the shed wall closest to the house must be modified to meet Uniform Building Code one-hour fire wall requirements.

In order for the Planning Commission to approve a variance, the following three findings must be made:

1. There are special circumstances applicable to the property including size, shape, topography, location, or surroundings, or other physical constraints;

2. Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity under the same zoning classification; and

3. The variance does not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the same vicinity and zone in which the property is situated.

As a standard rectangular, relatively flat property, it possesses no special circumstances or physical constraints that would justify the approval of the variances. The property is similar in shape and size to other properties in the area and throughout the City. City records reveal that no variances to fence heights, the location of fences or sheds, or the allowable coverage of accessory structures have been approved in this neighborhood. Staff observed that the majority of properties in the area conform to the fence and shed requirements. The properties with potential violations have been directed to Community Preservation for enforcement action.

The facts that the owner reconstructed the fence higher than the permitted height without knowledge of City ordinances, that there was no intention to violate City codes and that there may be other illegal fence heights in the area are not justifications for approving a variance. Granting these variances would allow this property owner to have a special privilege inconsistent with other properties in the neighborhood.

Environmental Review:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alterations of Land Use Limitations.

Public Notice:

On, May 24, 2004, a notice of the variance requests was mailed to all property owners and tenants within 300 feet of the subject property and to all interested parties. On July 9, 2004, a Notice of Public Hearing for the Planning Commission meeting was mailed. There have been no responses as a result of the notices.

Conclusion

It is staff's opinion that this standard rectangular, flat property possesses no special circumstances or physical constraints that would justify the approval of the variances. The property is similar in shape and size to other properties in the area and throughout the City. The fence and shed could be relocated and modified to meet all zoning requirements. For these reasons staff recommends that the Planning Commission deny the variances. If the Planning Commission were to approve the variances, findings would have to be made accordingly.

Prepared by:

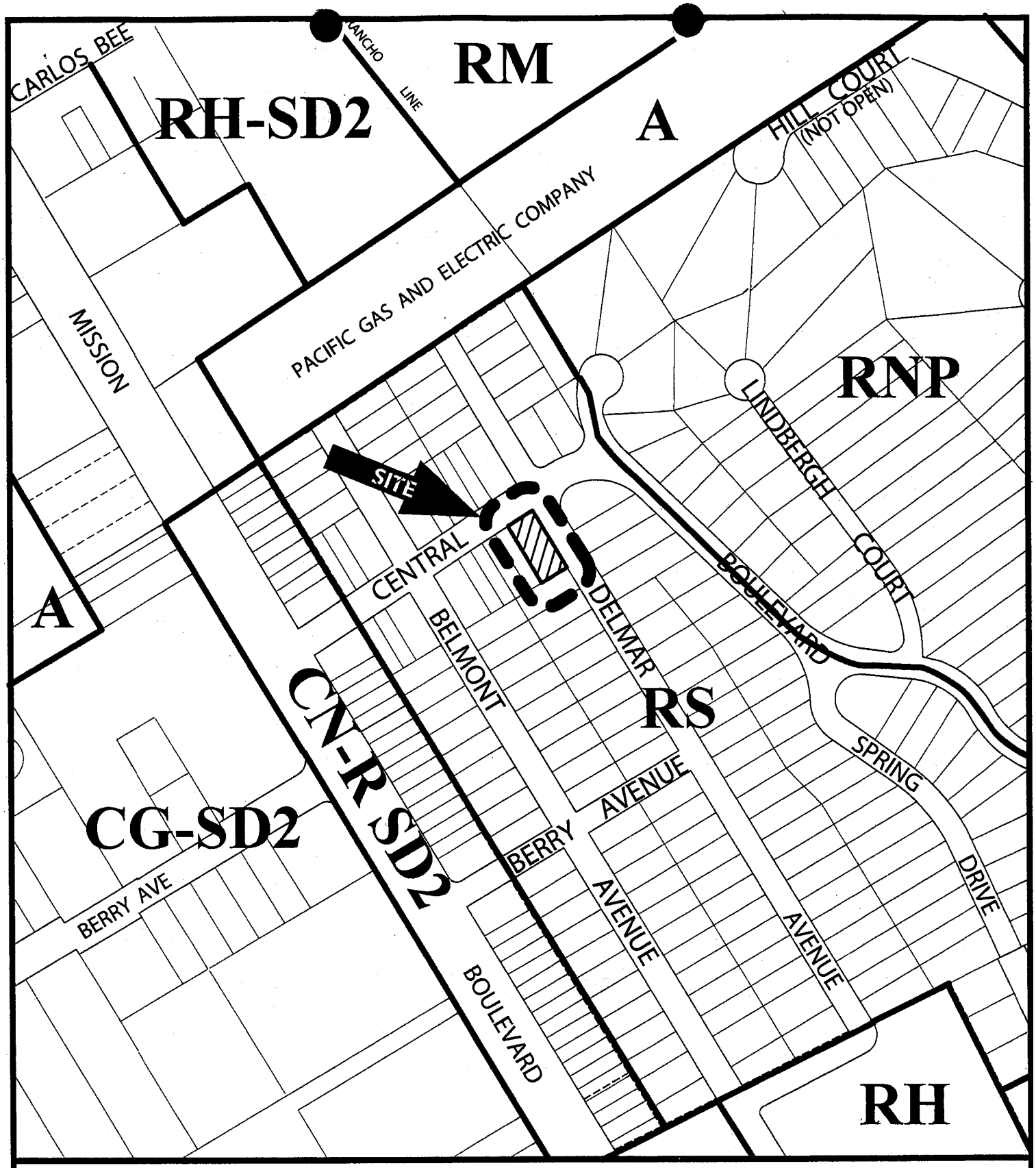
Tim R. Koonze
Assistant Planner

Recommended by:

Dyana Anderly, AICP
Planning Manager

Attachments:

A. Area Map
B. Site Plan
C. Findings for Denial
D. Applicant's analysis with Photographs

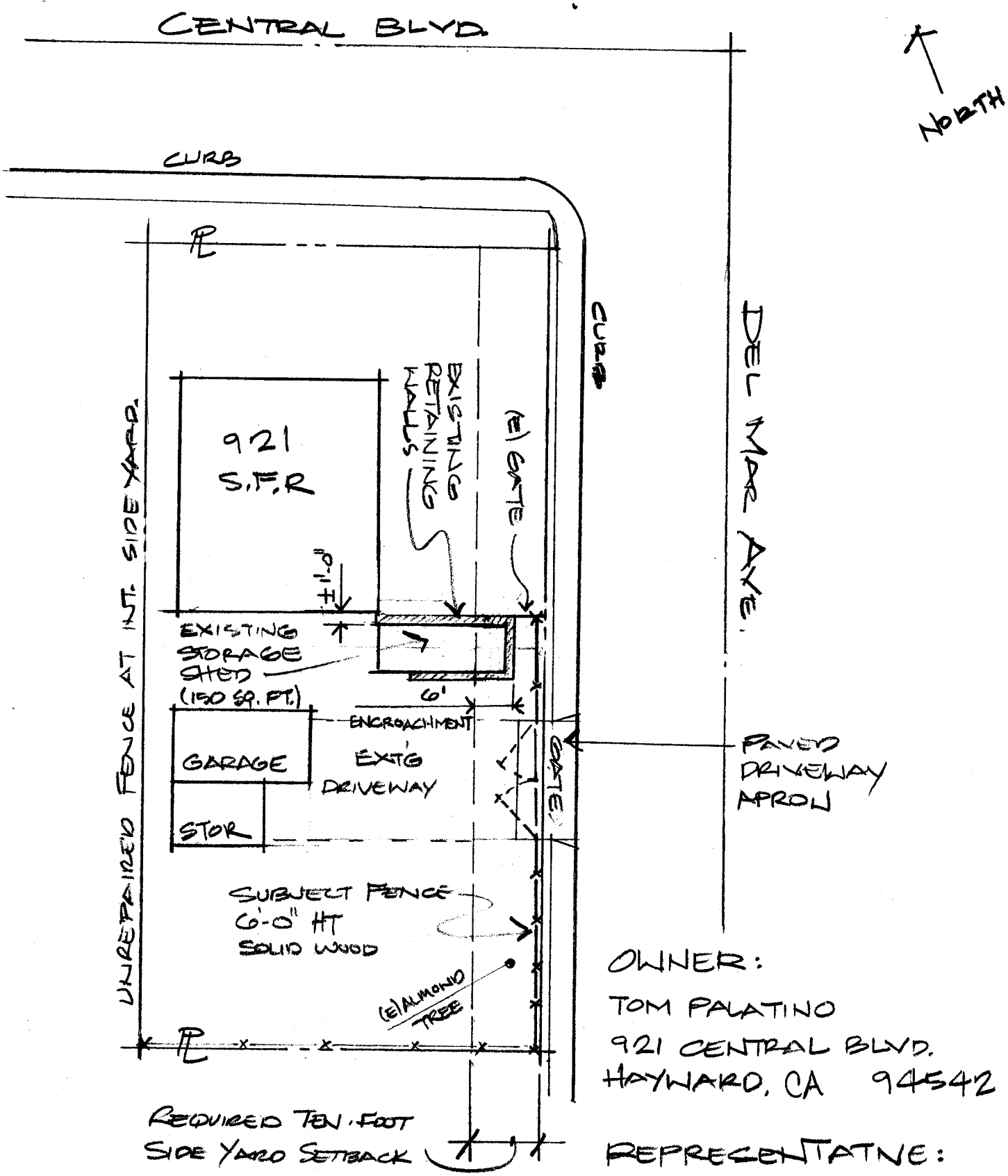


Area & Zoning Map
PL-2004-0273 VAR
Address: 921 Central Blvd.
Applicant: Tom Palatino
Owner: Tom Palatino

A-Agricultural-ABSA,AB10A,AB100A,AB160A
CG-General Commercial
CN-Neighborhood Commercial
CN-R-Neighborhood Commercial-esidential
RH-High Density Residential RHB 7
RNP-Residential Natural Presevation
RM-Medium Density Residential RMB 3.5, RMB 4
RS-Single-Family Residential,RSB4,RSB6
SD-Special Design

North

ATTACHMENT A



OWNER:
TOM PALATINO
921 CENTRAL BLVD.
HAYWARD, CA 94542

REPRESENTATIVE:
STEVE GOINS. 925.216.632

SITE PLAN
1" = 20'

RECEIVED
MAY 17 2004

Project #
PL-2004-0273 VAR

ATTACHMENT B

FINDINGS FOR DENIAL
Variance No. Pl-2004-0273
Tom Palatino (Applicant/Owner)
July 20, 2004

A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.

B. There are no special circumstances applicable to the property regarding these variance requests in that the property is relatively flat and typical in size and shape to other properties in this residential development.

C. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that no other properties in the vicinity have been granted a variance to fence heights, the location of fences or sheds, or to the square footage of accessory buildings.

D. The granting of a variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated in that other properties in the vicinity are required to maintain the required fence heights, side street yards, and square footage of accessory buildings.

Attachment "A"

Variance Application – Height of the fence at the street side yard

Palatino Residence: 921 Central Boulevard

Summary: This Variance request is to permit a fence within the RS Zoning District and within a required street side yard exceeding four feet in height, and a storage shed to be located six feet within a required street side yard setback and less than six feet from the primary structure.

Background: Mr. Palatino has owned and resided at the subject residence for several years. The subject fence has historically been a solid wood fence, located directly behind the sidewalk at the street side yard, and approximately six feet in height. During the time Mr. Palatino has owned the property the fences have aged, and in recent years windstorms have resulted in sections of the side yard fence being blown down. Mr. Palatino has filed claims with his homeowners insurance to have the blown down sections of the fence repaired; however his insurance company informed him that they would not renew his policy if he continued to file claims for repairs to the aging fence and suggested that he instead have the entire fence replaced. To avoid the potential of having his insurance policy lapse, he decided to heed the advise of his insurance agent and replace the side yard fence. Mr. Palatino was not aware of current City zoning policies concerning fences, or that the existing fence was an existing non-conforming condition.

The storage shed is a 10' by 15' metal storage shed, typically sold for storing garden and lawn care equipment in the back yard of a residence. The shed is approximately six feet in height; however, because the existing grade slopes away from Del Mar Avenue, Mr. Palatino built a retaining wall of up to two feet in height on three sides of the shed pad area, which permits the shed to be level. The result is that the top of the shed is lower than the existing fence, so the shed can't be seen from the street (see photos and Site Plan). Mr. Palatino was also not aware of any required setbacks when he placed the storage shed in its present location.

Code Requirements: Hayward Municipal Code (HMC) Section 10-1.230 requires a minimum street side yard of ten feet for properties with the RS Zoning District, and HMC Section 10-1.245.f. (1) limits the height of fences within a required street side yard, including any portion of the rear yard, to a height of not greater than four feet. For fences located outside the required street side yard, the maximum allowed height is six feet. HMC Section 10-1.245.a. (7) requires accessory structures to observe the required street side yard of ten feet, and requires a minimum six-foot (6') separation between accessory structures and the primary structure.

Site Conditions: The existing residence is within an established residential neighborhood. Mr. Palatino's garage is a detached structure in the rear portion of the lot, with the direct access from the house to the garage provided in the general location of the subject fence. The applicant has provided a Site Plan depicting the existing site conditions, and photos of the existing conditions as well as other neighboring properties that have similar fences located within a required street side yard.

Mr. Palatino believes there are benefits to allowing the fence at this height within the required street side yard, and for allowing the shed in its present location, which are provided in the following Variance findings:

1. **There are special circumstances applicable to the property including size, shape, topography, location, or surroundings, or other physical constraints.**

   Fence: The City of Hayward recognizes that portions of older neighborhoods have built conditions that do not conform with the current HMC. In this case, an existing fence of six-feet in height has historically been located within a required street side yard, as defined by the current HMC. It is not clear if the HMC addresses making repairs to existing non-conforming improvements, but the degraded state of the fence created a condition that the property owner needed to address.

   Shed: The existing residence is positioned on the front half of the lot. The existing garage and shed (circa ±1930's) bisect the rear yard area. There is not enough room in this location to provide the required six feet of separation between the primary residence and the storage shed without placing the storage shed into the driveway access to the garage. Moving the shed outside of the required street side yard would significantly constrict access from the primary residence to the rear yard.

2. **Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity in the same zone classification.**

   Fence: There are a number of residences in the property vicinity with street side yards (corner lots) where a fence of greater than four feet in height is located within ten feet of the property line (see attached photos). Several of these fences appear to be fairly new, indicating that the property owner has either repaired an existing fence, or that the property owner built a new section of fence which does not conform to the current HMC.

   Making repairs to the fence represented an improvement and investment to the property and the neighborhood. The property owner prefers the six-foot fence in the present location, as it has been for decades. Mr. Palatino should be able to repair an existing fence and improve his property, as several other neighbors have done, without losing the added privacy and sense of security that the existing fence provided.

   Shed: The historic location of the garage, storage building and access driveway, when combined with the required street side yard significantly reduce the total usable, private area within the rear yard, and limit the optional locations for placement of a storage shed. The portion of yard south of the driveway represents that only sizable recreation/landscaping area in the rear yard. Strict application of the HMC would essentially require the storage shed be placed within this area, thus reducing the viability for other uses of this space.

3. **The Variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone which the property is situated.**

   Fence: As stated above, several residences in the area currently have a six-foot fence within the required street side yard. These neighbors have not been required to conform to the current HMC Standards, or to obtain a Variance to repair or replace portions of an exiting fence. To not approve this Variance request would require Mr. Palatino to conform to standards that have not been historically imposed upon other property owners in the vicinity.

   Shed: As with the existing fence, the shed represents an existing condition that does not comply with current HMC standards. The City does not require other property owners in this neighborhood or city-wide to alter existing improvements for conformance with current standards. To allow an existing shed to remain in its present location would not represent granting of special privilege.

DUE TO THE LENGTH OR COLOR OF THE REFERENCED EXHIBIT, IT HAS BEEN ATTACHED AS A SEPARATE LINK.