County of Fresno

# Planning Commission Staff Report Agenda Item No. 7 February 16, 2017 

| SUBJECT: | Variance Application No. 4006-R |
| :--- | :--- |
|  | Allow a 10-foot front-yard setback (35-foot minimum required) and a <br> zero-foot side-yard setback (10-foot minimum required) to construct a <br> pool, spa and water feature, 6 -foot-tall solid wood and plaster wall, with <br> a portion of said wall encroaching into the side yard, and 12-foot-tall <br> portico structure and gate within the front-yard setback of a 16,117 <br> square-foot parcel in the R-1-B(nb) (Single-Family Residential,12,500 <br> square-foot minimum parcel size, Neighborhood Beautification Overlay) <br> Zone District. |
| LOCATION: | The project site is located on the west side of North Laguna Vista <br> Avenue, across from its intersection with West Pasa Tiempo Avenue, <br> and adjacent to the city limits of the City of Fresno (7523 North Laguna <br> Vista Avenue) (SUP. DIST. 2) (APN 500-110-02). |
| OWNER: | Lynn T. Oelsner <br> Ann Huber, Architect |
| APPLICANT: | Jeremy Shaw, Planner <br> (559) 600-4207 |
|  | Chris Motta, Principal Planner <br> (559) 600-4227 |

## RECOMMENDATION:

- Deny Variance No. 4006-R; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.


## EXHIBITS:

1. Conditions of Approval and Project Notes
2. Location Map
3. Existing Zoning Map
4. Existing Land Use Map
5. Variance Map
6. Site Plan
7. Floor Plan and Elevations
8. Applicant's Submitted Findings
9. San Joaquin Country Club Estates Owners Association Approval

## SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

| Criteria | Existing | Proposed |
| :--- | :--- | :--- |
| General Plan Designation | Medium-Low-Density Residential in <br> the County-adopted Bullard <br> Community Plan | No Change |
| Zoning | R-1-B(nb) (Single-Family <br> Residential, 12,500 square-foot <br> minimum parcel size, Neighborhood <br> Beautification Overlay) Zone District | No Change |
| Parcel Size | 16,117 square feet | No Change |
| Project Site | 16,117 square-foot parcel, single- <br> family residence | Reduced required <br> setbacks to allow a six- <br> foot-tall solid wood and <br> masonry wall with 12-foot- <br> tall portico structure, gate, <br> swimming pool and spa <br> with water feature |
| Structural Improvements | Single-Family Residence | Six-foot-tall solid wood and <br> masonry wall with 12-foot- <br> tall portico structure, gate, <br> swimming pool and spa <br> with water feature |
| Nearest Residence | Approximately eight feet northeast <br> of the subject parcel | No change |


| Criteria | Existing | Proposed |
| :--- | :--- | :--- |
| Surrounding Development | Single-family residences, golf <br> course | No change |

## EXISTING VIOLATION (YIN) AND NATURE OF VIOLATION: N

## ENVIRONMENTAL ANALYSIS:

It has been determined pursuant to Section 15305 of the California Environmental Quality Act (CEQA) guidelines that the proposed project will not have a significant effect on the environment and is not subject to CEQA.

## PUBLIC NOTICE:

Notices were sent to 57 property owners within 600 feet of the subject parcel, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

## PROCEDURAL CONSIDERATIONS:

A Variance (VA) may be approved only if four Findings specified in the Fresno County Zoning Ordinance, Section 877 are made by the Planning Commission.

Specifically related to a VA, in order to make Findings 1 and 2 , a determination must be made that the property is subject to an exceptional or extraordinary physical circumstance that does not apply to other properties in the same Zone District, and a substantial property right held by other property owners of like-zoned parcels in the area must be identified.

The decision of the Planning Commission on a Variance Application is final, unless appealed to the Board of Supervisors within 15 days of the Commission's action.

## BACKGROUND INFORMATION:

At the Planning Commission's regularly-scheduled hearing of November 10, 2016, the Commission approved a motion to continue this agenda item, at the request of the Applicant, to a later date to allow time to produce additional documentation from the San Joaquin Country Club Estates Owners Association in support of this project. The project application was rescheduled for the Planning Commission's regularly-scheduled hearing of December 8, 2016. Prior to the hearing date, the Applicant elected to submit a revised application in order to make modifications to the original proposal. The original proposal entailed setback reductions to 16 feet for the front yard ( 35 feet required) and 4 feet for the side yard (10 feet required); the revised proposal is requesting a reduction in required setbacks to 10 feet for the front yard ( 35 feet required) and zero feet for the side yard (10 feet required). Staff notes that during the Planning Commission Hearing, commissioners inquired as to whether the Home Owners Association had given their approval of the project. As part of the revised request, the Applicant has provided documentation of the Home Owners Association (HOA) approval, which is included as Exhibit 9. Staff notes that the HOA approval is contingent upon the approval of this Variance request by the County.

The subject parcel was created as Lot No. 6 of the San Joaquin Country Club Estates (Tract No. 2444), recorded in December 1974 following the approval of Amendment No. 2667 which rezoned the area from R-A (Single-Family Residential Agricultural, 36,000 square-foot minimum parcel size) to R-1-B (Single-Family Residential, 12,500 square-foot minimum parcel size). On December 31, 1976, Building Permits were issued for the construction of the single-family residence located on the subject parcel, and on August 17, 1993, Building Permits were issued for a 360 square-foot addition to the single-family residence. Said addition was constructed at the southwest corner of the residence, and did not encroach into required setbacks. It is noted by staff that Building Permits were issued on October 14, 2016 for an interior remodel of the single-family residence. Said Building Permits are currently active and have not received final inspection.

Sections 822.5.E.1 and 824.5.E.2(a) of the Fresno County Zoning Ordinance require a 35 -foot minimum front-yard setback for structural improvements located on parcels in the R-1-B Zone District.

Section 822.5.H.3(b) of the Fresno County Zoning Ordinance allows a three-foot maximum building height for fences and walls located within the 35 -foot front-yard setback of parcels in the R-1-B Zone District.

Section 824.5.D. 2 of the Fresno County Zoning Ordinance allows a 12-foot maximum building height for accessory structures located on parcels in the R-1-B Zone District.

Section 822.5.E.1(d)(1) of the Fresno County Zoning Ordinance prohibits the placement of swimming pools within the 35 -foot front-yard setback of parcels in the R-1-B Zone District.

Section 822.5.E.1(d)(2) of the Fresno County Zoning Ordinance prohibits the placement of swimming pools within five feet of the 35-foot front-yard setback of parcels in the R-1-B Zone District.

Section 822.5.E.1(d)(3) of the Fresno County Zoning Ordinance allows placement of swimming pools within the 10 -foot interior side-yard setback and 20-foot rear-yard setback of parcels in the R-1-B Zone District; however, placement of swimming pools within five feet of interior side property lines or rear property lines is prohibited.

Section 855.H.2(a) of the Fresno County Zoning Ordinance requires swimming pools to be entirely enclosed by fences or walls.

This proposal entails requests to allow a 10-foot front-yard setback for the construction of a six-foot-tall masonry wall with 12 -foot-tall portico, water fountain, in-ground swimming pool, and inground spa with water feature; and waive the side-yard setback for construction of the aforementioned in-ground spa with water feature.

In addition to the subject application, there have been 11 other variance applications pertaining to setback requirements in the R-1-B Zone District filed within one mile of the subject parcel. The following table provides a brief summary of each of those variance requests, staff recommendations, and final actions:

| Application/Request | Date of <br> Action | Staff <br> Recommendation | Final Action |
| :--- | :---: | :--- | :--- |
| VA No. 3860: Allow a five-foot six-inch <br> side-yard setback (10-foot minimum <br> required) and a 33-foot front-yard setback <br> (35-foot minimum required). | $2 / 8 / 2007$ | Denial | Approved by <br> Planning Commission |
| VA No. 3603: Allow a four-foot side-yard <br> setback (10--foot minimum required) and an <br> eight-foot-tall retaining wall (six-foot <br> maximum permitted). | $2 / 5 / 1998$ | Approval | Approved by <br> Planning Commission |
| VA No. 3660: Allow a five-foot side-yard <br> setback (10-foot minimum required) for a <br> garage addition. | $3 / 25 / 1993$ | Approval | Approved by <br> Planning Commission |
| VA No. 2961: Allow a zero-foot side-yard <br> setback (10-foot minimum required) and <br> reduced front-yard setback (35-foot <br> minimum required). | $11 / 7 / 1985$ | Defer to Planning <br> Commission | Approved by <br> Planning Commission |
| VA No. 2867: Allow a 26-foot front-yard <br> setback (35-foot minimum required) and a <br> 17-foot rear-yard setback (20-foot <br> minimum required). | $10 / 4 / 1984$ | Defer to Planning <br> Commission | Approved by <br> Planning Commission |
| VA No. 2792: Allow a 13.5-foot front-yard <br> setback (35-foot minimum required) for a <br> garage addition. | $8 / 25 / 1983$ | Defer to Planning <br> Commission | Approved by <br> Planning Commission |
| VA No. 2660: Waive front-yard setback <br> (35-foot minimum required) and allow a <br> 7.5-foot side-yard setback (10-foot <br> minimum required) for a six-foot-tall fence <br> and swimming pool. | $8 / 13 / 1981$ | Defer to Planning <br> Commission | Approved by <br> Planning Commission |
| VA No. 2634: Allow a six-foot-tall fence <br> and swimming pool in front-yard setback. | $1 / 22 / 1981$ | Defer to Planning <br> Commission | Approved by <br> Planning Commission |
| VA No. 2473: Allow a six-foot-tall fence <br> and swimming pool in front-yard setback, <br> and seven-foot rear-yard setback (20-foot <br> minimum required). | $4 / 26 / 1979$ | Defer to Planning <br> Commission | Approved by <br> Planning Commission |
| VA No. 2467: Allow a six-foot-tall fence <br> and pool in front-yard setback, and allow a <br> seven-foot rear-yard setback (20-foot <br> minimum required). | $1 / 25 / 1979$ | Denial |  |
| VA No. 2395: Allow a five-foot front-yard <br> setback (35-foot minimum required) for a <br> six-foot-tall fence, related pergolas and a <br> swimming pool. | $4 / 27 / 1978$ | Denial | Denied by Planning <br> Commission |

Although there is a history of variance requests within proximity of the subject parcel, each variance request is considered on its own merit, based on unique site conditions and circumstances.

Findings 1 and 2: $\quad$ There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other property in the vicinity having the identical zoning classification; and

Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity having the identical zoning classification.

|  | Current Standard: | Proposed Operation: | Is Standard <br> Met (y/n) |
| :--- | :--- | :--- | :--- |
| Setbacks | Front: 35 feet <br> Side: 10 feet <br> Rear: 20 feet | Front (east property <br> line): 10 feet <br> Side (north property <br> line): 10 feet <br> Side (south property <br> line): 0 feet <br> Rear (west property <br> line): 20 feet | No (proposed <br> improvements <br> encroach into <br> front-yard <br> setback) |
| Parking | N/A | N/A | N/A |
| Lot Coverage | 35 percent maximum | 34 percent | Yes |
| Space Between <br> Buildings | N/A | N/A | N/A |
| Wall Requirements | N/A | N/A | N/A |
| Septic Replacement <br> Area | N/A | N/A | N/A |
| Water Well <br> Separation | N/A | N/A | N/A |

## Reviewing Agency/Department Comments:

Zoning Section of the Fresno County Department of Public Works and Planning: Building permits will be required for the proposed improvements. The building plate height for the proposed portico cannot exceed 12 feet, measured from the finished grade to the highest point of the portico (plate height cannot be measured from the finished floor to the highest point of the portico). This requirement has been included as a Condition of Approval.

Zoning Section also indicated concerns with property development standards relating to front and side-yard setbacks and fence height, which are being addressed by this Variance Application.

## Analysis:

In support of Findings 1 and 2, the Applicant states that because the lot is oriented such that its rear property line abuts the golf course, installation of a six-foot-tall solid fence for a secured pool location would be inappropriate. As such, installing the fence in the front yard is necessary for the preservation and enjoyment of the acoustical and visual rights associated with this property configuration.

With regard to Findings 1 and 2, staff does not agree that the subject property's back yard being adjacent to the golf course creates an exceptional or extraordinary circumstance, as there are 24 other neighboring single-family parcels that have rear property lines abutting the golf course. Of those 24 parcels, there are 13 parcels that have swimming pools in the rear yard, eight that have swimming pools in the front yard, and one has a pool in the side yard.

Approval of a variance application is intended to preserve a substantial property right of the Applicant that is shared by other properties in the area having the same zoning classification. In this case, the stated reason for requesting the variance relates to the inability of the property owner to build a six-foot-high solid fence for pool security in the back yard due to a restriction by the golf course on solid fences. Since this restriction would apply to other properties that have rear property lines abutting the golf course, staff could not identify any exceptional or extraordinary circumstances relating to the subject parcel which do not apply generally to other parcels in the vicinity that would constitute a deficit of a substantial property right, thereby generating the need for a variance.

A consideration in addressing variance applications is whether there are alternatives that would avoid the need for the variance. In this case, staff believes the Applicant could choose to build the pool and shade structure in the back yard, which could possibly meet the 20 -foot minimum rear-yard setback requirement. An alternative to a solid fence for pool security could be a "see through" type of fencing such as wrought iron or other material, which could provide pool security while preserving views of the golf course. Additionally, such improvements would be permitted by right, or with the approval of a minor variance for limited encroachments to setbacks and/or lot coverage.

Based on the above analysis, staff is unable to make Findings 1 and 2.

## Noteworthy Recommended Conditions of Approval:

See recommended Conditions of Approval attached as Exhibit 1.

## Conclusion:

Findings 1 and 2 cannot be made.
Finding 3: $\quad$ The granting of a variance will not be materially detrimental to the public welfare or injurious to property and improvement in the vicinity in which the property is located.

| Surrounding Parcels (from east to west) |  |  |  |  |
| :--- | :--- | :--- | :--- | :--- |
|  | Size: | Use: | Zoning: | Nearest Residence: |
| Northeast | 16,284 <br> square feet | Residential | R-1-B | Approximately eight feet |
| Southwest | 16,560 <br> square feet | Residential | R-1-B | Approximately 10 feet |
| East | 13,320 <br> square feet | Residential | R-1-B | Approximately 67 feet |
| Northwest | 118.88 <br> acres | Recreational <br> (Golf Course) | City of <br> Fresno | None |

## Reviewing Agency/Department Comments:

Building and Safety Section of the Fresno County Department of Public Works and Planning: If approved, plans related to construction of the project shall be submitted to the Development Services Division of the Fresno County Department of Public Works and Planning for review and approval in order to acquire building and installation permits, and necessary inspections. This requirement has been included as a Project Note.

Design Division of the Fresno County Department of Public Works and Planning: No concerns with the proposal.

Development Engineering Section of the Fresno County Department of Public Works and Planning: Laguna Vista Avenue is a private road and is not County maintained. According to FEMA, FIRM Panel 0776G, the subject parcel is subject to flooding from the 1\%-chance storm. Any additional runoff generated by the proposed development cannot be drained across property lines and must be retained or disposed of per County Standards. A Grading Permit or Voucher shall be required for any grading activity associated with this proposal. These requirements have been included as Project Notes.

City of Fresno Planning and Development Department: No concerns with the proposal.
Fresno Metropolitan Flood Control District (FMFCD): The project is located within FMFCD Drainage Zone DF. FMFCD reviewed this proposal and issued a Notice of Requirements (NOR) with the condition that no on-site retention of storm water runoff is required, provided the developer can verify to the County of Fresno that any runoff can be safely conveyed to the Master Plan inlet(s).

Fresno County Department of Public Health, Environmental Health Division: No comments.
Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning: No concerns with the proposal.

Fresno Irrigation District (FID): FID does not own, operate or maintain any facilities located within the limits of the subject parcel.

Water/Geology/Natural Resources Section of the Fresno County Department of Public Works and Planning: No concerns with the proposal.

## Analysis:

In support of Finding 3, the Applicant states that the proposed fence and landscaping will complement and enhance the visual qualities of the surrounding area. There will be a generous strip of landscaping between the curb face and the proposed fence. The extra landscape strip is because North Laguna Vista Avenue has a 32-foot wide right-of-way west of the centerline, and also due to the existence of a 10 -foot wide public utilities easement which traverses the front yard north to south as shown on the Site Plan.

In analyzing this proposal, staff considered the intent of the restrictions on setbacks. A primary purpose of the setback standard is to protect the aesthetic character of an area by providing an offset of structures from the adjacent properties. In this case, the proposed additions would encroach into the required front and side-yard setbacks, which would differ visually from some of the neighboring properties. However, there are six other properties in the immediate vicinity that also have front yard fences and swimming pools; one of those is next door to the south of the subject property, the other five are all within approximately 600 feet of the subject property. The project would preserve most of the existing mature landscaping on both sides of the subject property, which would partially obscure the additions from neighboring properties and be consistent with the aesthetic character of the neighborhood; therefore, staff does not believe that the granting of this Variance will have a detrimental effect on property and improvement near the subject property.

## Noteworthy Recommended Conditions of Approval:

## See recommended Conditions of Approval attached as Exhibit 1.

## Conclusion:

Finding 3 can be made.

## Finding 4: $\quad$ The granting of such a Variance will not be contrary to the objectives of the General Plan.

## Reviewing Agency/Department Comments:

Policy Planning Section of the Fresno County Department of Public Works and Planning: There are no General Plan or Williamson Act issues with the application.

## Analysis:

In support of Finding 4, the Applicant states that the proposed Variance would not be contrary to the Bullard Community Plan designation of medium-low density residential uses in this area. Staff notes that the Bullard Community Plan does not include any policies that specifically relate to yard setbacks in areas designated as Medium-Density Residential.

The General Plan includes policies relating to the use and sizes of parcels, but does not include guidance on required setbacks. Therefore, staff believes that the proposal is consistent with the General Plan.

Based on this analysis, staff is able to make Finding 4.

## Noteworthy Recommended Conditions of Approval:

See recommended Conditions of Approval attached as Exhibit 1.

## Conclusion:

Finding 4 can be made.
PUBLIC COMMENT:
None.

## CONCLUSION:

Based on the factors cited in the analysis, staff is unable to make all of the required Findings for granting the Variance. Staff therefore recommends denial of Variance No. 4006-R.

## PLANNING COMMISSION MOTIONS:

## Recommended Motion (Denial Action)

- Move to determine that the required Findings cannot be made and move to deny Variance No. 4006-R; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Alternative Motion (Approval Action)

- Move to determine the required Findings can be made (state basis for making the Findings) and move to approve Variance No. 4006-R, subject to the Conditions of Approval and Project Notes listed in Exhibit 1; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.


## Recommended Conditions of Approval and Project Notes:

See attached Exhibit 1.

## JS:jem

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Variance Application (VA) No. 4006-R Conditions of Approval and Project Notes

| Conditions of Approval |  |
| :--- | :--- |
| 1. | Development shall be in substantial compliance with the site plan, floor plan and elevations, as approved by the Planning <br> Commission. |
| 2. | The building plate height for the proposed portico cannot exceed 12 feet, measured from the finished grade to the highest point of the <br> portico (plate height cannot be measured from the finished floor to the highest point of the portico). |

Conditions of Approval reference recommended Conditions for the project.

## Notes

The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.

| 1. | Plans related to construction of the project shall be submitted to the Development Services Division of the Fresno County <br> Department of Public Works and Planning for review and approval in order to acquire building and installation permits, and necessary <br> inspections. |
| :--- | :--- |
| 2. | Any additional runoff generated by the proposed development cannot be drained across property lines and must be retained <br> on site or disposed of per County Standards. |
| 3. | A Grading Permit or Voucher shall be required for any grading activity associated with this proposal. |
| 4. | No on-site retention of storm water runoff is required provided the developer can verify to the County of Fresno that any runoff <br> can be safely conveyed to Fresno Metropolitan Flood Control District (FMFCD) Master Plan inlet(s). |

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VARIANCES MAP









## EXHIBIT 8

Oelsner Home
APN 500-110-02
December 8, 2016

COUNTY OF FRESNO PLANNING DEPARTMENT VARIANCE APPLICATION
Condifions necessary for the granting of a Variance

## 1. Exceptional or Extraordinary Circumstances

The lot is situated on the San Joaquin Golf Course where private backyards with six foot high solid fences would be inappropriate on an open green space environment. Deed restrictions for lots on the golf course prohibit solid fences are warranted as this prevents visual obstructions of other properties also sited on the golf course. However these deed restrictions prevent pool privacy in the back yard.

## 2. Preservation of a Substantial Property Right

The courtyard and pool with six foot fence in the front yard is necessary for enjoyment of the acoustical and visual rights associated with single family housing; that these rights would be impaired due to the Golf Course adjacent to the back yard restricting six foot high solid fence installations for pool security. Other properties in the area have obtained variances for six foot high fences and pools in their front yards substantiating the right to some enclosed private outdoor space on the property.

## 3. Adverse Effects

The design of the courtyard is 2600 square feet, 16 percent of the total property area of 16.284 square feet, just a small piece of privacy on a lot that is mostly open to the green space in the area. Due to Laguna Vista constructed as a twenty foot wide one way road in lieu of a forty foot wide two way road, allows for a twenty-nine foot landscape setback from the back of curb to the fence. The superior landscaping will be well appointed in Spanish/Mediterranean style and designed with water conservation planting. The proposed fence and portico, is finely dressed with the red Spanish tile, rod ion lighting, thick plaster wall and heavy wood scrolled beams. The overall design of the courtyard with portico and gate, complements the newly remodel Spanish home, adding a welcoming feature, a signal of warmth in the community.

## 4. General Plan Opjectives

The proposed variance would not be contrary to the Bullard Community Plan recommendation for low density residential uses in this area.

## EXHIBIT 9

## SAN JOAQUIN COUNTRY CLUB ESTATES OWNERS ASSOCIATION <br> C/O ROBERT L. JENSEN \& ASSOCIATES <br> 2160 NORTH FINE AVENUE <br> FRESNO, CALIFORNIA 93727 <br> (559) 252-4525 FAX (559) 252-2089

December 22, 2016
Lynn Oelsner
7523 N. Laguna Vista Ave.
Fresno, CA 93711
Re: Change to Architectural Change Lot 2444-06
Dear Lynn Oelsner,
The San Joaquin Country Club Estates Architectural Committee has review and approved your application:

Update setback to previously approved new front courtyard.
The approval is contingent upon you receiving any required approvals for the country set back.

Sincerely,


André Nicole
Property Supervisor
Cc: Board of Directors (5) via email
ARC (3) via email
Enclosure

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Please provide a drawing and layout for any improvements, additions or changes to your property on the attached graph. You must provide the exact location of the project on your property, with dimensions and measuremnets to your property lines. Please attach any architectural plans or other pertinent documents to this application.

San Joaquin Country Club Estates Owners Association
Architectural Review Application


