

RESOLUTION NUMBER R-281914

ADOPTED ON MAY 4, 1993

WHEREAS, on May 4, 1993, the Council of The City of San Diego considered the appeal of Michael S. Stotsky from the partial approval of the Board of Zoning Appeals for the request to maintain the following, in violation as of that date:

(1) maximum 9'-5" high, entryway structure observing a minimum 0'-0" front setback (portion encroaches into the public right-of-way) where 15'-0" is established; (2) maximum 8'-0" high, combination retaining wall/solid fence/gate not meeting design criteria within the 15'-0" established front setback, where a combined height of 8'-0" of combination retaining wall fence/gate is permitted provided that no single plane exceeds 6'-0" in height and that horizontal separations are provided in compliance with design criteria; and (3) portion of the combination retaining wall/solid fence/gate within the driveway visibility area, where 3'-0" is the maximum height permitted. The subject property is described as portions of Lots 2 and 3, Block 529, Old San Diego, Miscellaneous Map-40, as well as portions of closed Cherry Street, as reflected on Record of Survey 5442, and is located at 4479 Trias Street, northeast of Pine Street, in the R1-5000 zone within the Uptown Community Plan area; and

WHEREAS, in arriving at their decision, the City Council considered the staff report, decisions of the Zoning Administrator and the Board of Zoning Appeals, the plans and

materials submitted prior to and at the public hearing, and public testimony presented at the hearing; and

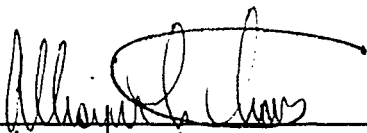
WHEREAS, in arriving at its decision, the findings of fact submitted by Mr. Stotsky and attached hereto as Exhibit A are hereby adopted by the City Council as their own findings; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that it hereby grants the appeal of Michael S. Stotsky in full, thereby overturning any decisions by the Board of Zoning Appeals inconsistent with this action.

BE IT FURTHER RESOLVED, that the decision of the City Council is final.

APPROVED: JOHN W. WITT, City Attorney

By



Allisyn L. Thomas
Deputy City Attorney

ALT:lc:pev
05/12/93
Or.Dept:Clerk
R-93-1817
Form=r-t

PROPOSED FINDINGS

- A. There are special circumstances or conditions applying to the land or buildings for which the adjustment is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to the land or buildings in the neighborhood. Such conditions shall not have resulted from any act of the applicant subsequent to the adoption of the applicable zoning ordinance.

The residence at 4479 Trias Street was constructed in the early 1900's and was the first structure built on Trias Street. As a result, the house is set back approximately 10 feet from the street property line. The detached garage to the north of the house is set back approximately 6 to 12 feet from the street property line. The relationship of the front of the house to the front of the garage, however, was dictated by a 40 to 45-foot offset, to the east, of the Trias Street cul-de-sac, immediately adjacent to the north side of the residence.

The 40 to 45-foot offset of the cul-de-sac which is parallel to the northerly wall of Dr. Stotsky's house, also physically creates a "side-yard" type condition along the north side of the residence. The zoning code, however, by definition incongruously classifies this physically-appearing side yard area as a front yard.

The topography of northerly "side yard" is such that a drop in elevation occurs from the street in front of the house and the cul-de-sac at the north side of the house, towards the house. These changes in elevation vary based upon location but the greatest differential, of 5 to 6 feet, occurs from the front of the house to the finished elevation of the floor of the garage. The primary access to the residence from the garage and from the front and side yard to the rear yard is via a paved walk between the garage and the residence.

Moreover, the elevation of Trias Street decreases by approximately 10 to 12 feet as one proceeds northerly from the southern property line of 4479 Trias Street into the cul-de-sac to a low point in front of Dr. Stotsky's garage.

The cumulative effect of each of the above factors upon the 4479 Trias Street property results in special circumstances or conditions peculiar to the Doctor's property and do not generally apply to the land or buildings in this particular neighborhood.

- B. The aforesaid circumstances or conditions are such that the strict application of the provisions of the ordinance would deprive the applicant of the reasonable use of the land or buildings and that the variance granted by the City is the minimum variance that will accomplish this purpose.

The design and placement of the fence have taken into consideration the decrease in elevation from the street in front and along the north side of Dr. Stotsky's residence to the rear of the parcel, the decreasing elevation of the street along the Trias Street cul-de-sac, Dr. Stotsky's unusually-configured parcel in relationship to Trias Street and the Trias Street cul-de-sac, and the substantial offset of Dr. Stotsky's garage to the east due to this unusually shaped and offset cul-de-sac.

Although the fence rises higher than 6 feet in the center of the structure where the gate is present, it is of an open design with small spaces between the bamboo and a large open space between the top of the fencing (and/or gate) and the decorative roofing. The fencing was specifically designed to be in harmony with the topography of the property and the design of Dr. Stotsky's house. The higher roofing above the gate was also required to shelter and protect a light fixture which provides security and safety lighting to this area.

The fence and the walls for which this variance is sought do not obstruct lines of sight within the driveway visibility areas. Moreover, the standard driveway visibility area depicted in illustration A of Section 101.0620 of the *San Diego Municipal Code* for interior lots with curved frontages is inapplicable in this physical situation because of the unusual offset of the Trias Street cul-de-sac, the location of Dr. Stotsky's garage in relationship to the street's curb lines and the unusual configuration of the right-of-way/property lines for Dr. Stotsky's parcel. In addition, the 4400 block of Trias Street is fully developed with single family residences, is isolated and is frequented only by residents, their guests and domestic help thus making the 4400 block of Trias Street relatively traffic free.

All of the above-listed factors contribute to essentially deprive Dr. Stotsky of the reasonable use of the "side yard" on the north side of his residence. Other property owners along this cul-de-sac are not deprived of such side yard usage.

- C. The granting of the variance will be in harmony with the general purpose and intent of the zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The fence and its surrounding landscaping has transformed Dr. Stotsky's corner lot into a beautiful garden that blends in with the rest of the neighborhood. The pergola/roofing atop the fence is in architectural harmony with Dr. Stotsky's house and garage. Although the fence rises higher than 6 feet in the center of the structure where the gate is present, it is of an open design with small spaces between the bamboo and a large open space between the top of the bamboo (and/or gate) and the decorative roofing/pergola. Because the land slopes, the fencing was constructed to be in harmony with the changes in grade and the fence's design has integrated into it architectural elements of the house. The pergola above the gate shelters and protects a light fixture which provides security lighting to that area and provides a lighted passageway into and along the depressed northerly side yard area. For these reasons and the reasons set forth in findings A and B above, we find that the fence is not injurious to the neighborhood or otherwise detrimental to the public welfare.

- D. The granting of the variance will not adversely affect the PROGRESS GUIDE AND GENERAL PLAN FOR THE CITY OF SAN DIEGO or the adopted community plan for the area.

For all of the foregoing reasons, we find that the fence does not adversely affect the Progress Guide and General Plan for the City of San Diego or the adopted community plan for the area.

P:\6\6097\44646\FINDINGS.278

Passed and adopted by the Council of The City of San Diego on MAY 04 1993
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Hartley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George Stevens	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tom Behr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valerie Stallings	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Juan Vargas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

(Seal)

SUSAN GOLDING
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

By *Charles G. Abdelnour*, Deputy.

Office of the City Clerk, San Diego, California

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