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Decision Date: November 14, 2023

Appeal Period Ends: November 29, 2023

Sue Leung (A)(O)  
906 South 3rd Avenue  
Los Angeles, CA 90019

CASE NO. DIR-2023-6417-RAO  
REASONABLE ACCOMMODATION  
906 South 3rd Avenue  
Wilshire Community Plan  
Zone : R1-1-HPOZ  
D. M. : 132B189  
C. D. : 5  
CEQA : ENV-2023-6418-CE  
Legal Description: Lot 215, Tract 2000

Pursuant to California Environmental Quality Act, I hereby DETERMINE:

based on the whole of the administrative record, that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15061(b)(4), projects which will be rejected or disapproved by a public agency and by Statutory Exemption, Section 15270 (Projects which are Disapproved).

Pursuant to Los Angeles Municipal Code (LAMC) Section 12.22 A.27, I hereby DENY:

the requested Reasonable Accommodation to a person with a disability to allow existing six-foot-high gates, hedges, and fences in the front yard 1) in lieu of the requirements of LAMC Section 12.21 C.1(g), and 2) without otherwise required Historic Preservation Overlay Zone review, pursuant to LAMC Section 12.20.3 G, on a lot with an existing two-story single-family dwelling in an R1-1-HPOZ Zone.

## FINDINGS OF FACT

After thorough consideration of the statements contained in the application, and the plans submitted therewith, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find as follows:

### BACKGROUND

The subject property is a rectangular-shaped, approximately 7,155 square-foot lot with a frontage of 55 feet on 3rd Avenue and a depth of approximately 130 feet. The subject property is located within the Wilshire Community Plan with a land use designation of Low II Residential density and is zoned R1-1-HPOZ. The property is located within the Wilshire Park Historic Preservation Overlay Zone (HPOZ), an Urban Agriculture Incentive Zone, and within 1.4 kilometers of the Puente Hills Blind Thrust Fault Zone.

The property is improved with a two-story, single-family dwelling with a detached garage. On April 21, 2021, the Department of City Planning's Office of Historic Resources issued an administrative compliance letter stating that the HPOZ Board reviewed the applicant's request for Conforming Work on Non-Contributing Elements, involving a 1,073 square-foot addition, window replacements, and new sheathing materials to the existing dwelling, and determined that the request conforms with the Preservation Plan for the Preservation Zone and meets at least one of the review criteria. On November 8, 2021, a building permit (Permit No. 21010-10000-03697) was issued in conjunction with the proposed 1,073 square-foot addition to the existing home. As of the writing of this determination letter, construction on the addition appears to have been completed, though a new Certificate of Occupancy is still pending.

According to Google Street View imagery, there has been a hedge of varying heights along the front property line since at least 2014. On or around February 2023, the subject applicant also installed a swinging gate and fence along the walkway and driveway sliding gate (each six feet in height) in the front yard.

The subject property is subject to Los Angeles Municipal Code (LAMC) Section 12.21 C.1(g), which stipulates that the required front yard must be open and unobstructed from the ground to the sky. While LAMC Section 12.22 C.20(f)(2) allows exceptions for fences and landscape architectural features of not more than three and one-half feet in height in the required front yard, these features on the subject property exceed this allowance. The property has not received any zoning approvals to allow for these projections in the front yard that otherwise deviate from the requirements of the LAMC. The property is also subject to HPOZ review pursuant to LAMC Section 12.20.3 G for projects involving the addition, alteration, construction, demolition, reconstruction, rehabilitation, removal, or restoration of the exterior of any building, structure, landscaping, natural feature, or lot within the preservation zone. There has similarly been no HPOZ review for these front yard improvements to date.

In correspondence dated October 4, 2023, attached to the subject case file, DBS reported that they received a complaint for overgrown bushes and a fence over five feet at the property line. No citation was issued because there are open permits, but DBS referred the property owner to the HPOZ staff for review.

As a result, and as part of this subject request, the applicant is now seeking a Director's Determination granting Reasonable Accommodation to legalize the six-foot high hedges in the front yard connecting to a three-foot wide by six feet in height pedestrian swinging gate and one-foot, 10-inch wide by six feet tall fences on both sides of the gate at the walkway, and a 13-foot wide by six feet tall sliding wrought iron vehicular access gate in the required front yard, in lieu of the requirements of LAMC Section 12.21 C.1(g), and without otherwise required Historic Preservation Overlay Zone review, pursuant to LAMC Section 12.20.3 G.

3rd Avenue is a Standard Local Street, dedicated to a width of 60 feet and improved with a paved roadway, concrete curb, gutter, sidewalk and parkway.

**Previous permits/ zoning related actions on the site include:**

ADM-2021-2678-CWNC – On April 21, 2021, the Department of City Planning's Office of Historic Resources issued an administrative compliance letter stating that the HPOZ Board reviewed the applicant's request for Conforming Work on Non-Contributing Elements and determined that the request conforms with the Preservation Plan for the Preservation Zone and meets at least one of the review criteria. The request included a new 1,073 square-foot addition, window replacements, and new sheathing materials.

Permit No. 21010-10000-03697 – On November 8, 2021, a building permit was issued for a major remodel involving a first and second-story addition to an existing two-story single-family dwelling.

**FINDINGS**

In order for the Reasonable Accommodation to be granted, all of the legally mandated findings delineated in LAMC Section 12.22 A.27 must be made in the affirmative. Following (highlighted) is a delineation of the findings and the application of the relevant facts of the case to same.

The designee of the Director of Planning has hereby **DENIED** the subject request on the basis that Finding Nos. 1, 2, and 4 **CANNOT** be made in the affirmative.

1. **The housing, which is the subject of the request for Reasonable Accommodation, will NOT be used by an Individual with a Disability protected under the Acts.**

LAMC Section 12.22 A.27 defines "Individual with a Disability" as a person who has a physical or mental impairment that limits one or more major life activities,

anyone who is regarded as having that type of impairment or, anyone who has a record of that type of impairment. The California Fair Employment and Housing Act considers a disability to be a physical or mental impairment that limits a major life activity. "Limits" means making the achievement of a major life activity difficult. "Major Life Activity" includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working, and major bodily functions.

The subject applicant/individual, Sue Leung, is seeking a Director's Determination granting a Reasonable Accommodation for a person with a disability, to legalize an existing six-foot tall hedge, walkway fence and swinging gate, and sliding driveway gate in the front yard on a lot within the Wilshire Park HPOZ. As part of this request, the applicant has submitted a letter from her medical caregiver dated August 29, 2023 describing a condition for which the applicant is seeking treatment. The letter (as redacted for patient privacy) states in part:

"...Ms. Leung has expressed to me that her *[conditions redacted]* have been exacerbated by the numerous break ins and crime that have occurred at her residence over the past 20 months. As her physician, I have treated, and continue to treat, Ms. Leung for her *[conditions redacted]*... Your assistance in helping with this situation would be greatly appreciated..."

Neither the individual nor the medical caregiver have made a showing that the subject applicant's condition rises to the level of a disability as defined by State law. The applicant's condition is discussed throughout the subject application, but there is no evidence in the record, including in the medical caregiver's letter, that the individual's condition results in any physical or mental impairment that limits or makes it difficult to achieve a major life activity that would qualify the applicant as an individual with a disability.

Therefore, Finding No. 1 cannot be made in the affirmative, and the request for Reasonable Accommodation is hereby denied.

2. **The requested accommodation is NOT necessary to make housing available to an Individual with a Disability protected under the Acts.**

The Federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act considers it an act of discrimination against the disabled to refuse to permit, at the expense of the disabled person, reasonable modifications of the existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises. The Acts further consider it discrimination against the disabled to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

The subject request to legalize hedges, fences, and gates that are six feet in height is for the applicant/individual who resides on the property. The applicant states that they have had 24 incidents of crime on their property in the last year and a half. After they installed the fence/gates on or around February of 2023, it "significantly decreased the number of incidents".

The medical practitioner states that she has been treating her patient for a condition which has been exacerbated by the incidents that have occurred on the applicant's property, stating:

"...Ms. Leung has expressed to me that her *[conditions redacted]* have been exacerbated by the numerous break ins and crime that have occurred at her residence over the past 20 months. As her physician, I have treated, and continue to treat, Ms. Leung for her *[conditions redacted]*... Your assistance in helping with this situation would be greatly appreciated..."

As stated in Finding No. 1, the subject applicant has not made a showing that she is a person with a disability. Furthermore, even if it were demonstrated that the applicant is an individual with a disability protected under the Acts, neither she nor her medical caregiver have shown that the six-foot hedge, fence, and gates in the front yard are necessary to provide a person with a disability equal opportunity to housing. Instead, the medical caregiver asks for "assistance in helping with this situation" without specifying the need to accommodate the over-in-height hedge, fence, and gates to alleviate the patient's condition. Given the uncertainty of what factors may have exacerbated or deterred criminal activity on the site, there is no guarantee that a gate, fence, or hedge will reduce crime or provide safer, more secure housing.

Therefore, Finding No. 2 cannot be made in the affirmative, and the request for Reasonable Accommodation is hereby denied.

3. **The requested accommodation would not impose an undue financial or administrative burden on the City.**

The accommodation does not require the City to expend any monies, other than application processing, nor does it require the City to create or administer any administrative scheme.

4. **The requested accommodation WOULD require a fundamental alteration in the nature of the City's land use and zoning regulations.**

The subject property is located within the Wilshire Community Plan with a land use designation of Low II Residential density and zoned R1-1-HPOZ. The property is located within the Wilshire Park Historic Preservation Overlay Zone, an Urban Agriculture Incentive Zone, and within 1.7 kilometers of the Puente Hills Blind

Thrust Fault Zone. The property is improved with a two-story, single-family dwelling with a detached garage that was recently remodeled with an addition of approximately 1,073 square feet. According to Google Street View imagery, there has been a hedge of varying heights along the front property line since at least 2014. On or around February 2023, the subject applicant also installed a swinging gate and fence along the walkway and driveway sliding gate (each six feet in height) in the front yard.

The subject property is subject to LAMC Section 12.21 C.1(g), which stipulates that the required front yard must be open and unobstructed from the ground to the sky. While LAMC Section 12.22 C.20(f)(2) allows exceptions for fences and landscape architectural features of not more than three and one-half feet in height, these features on the subject property exceed this allowance. The property is also subject to HPOZ review pursuant to LAMC Section 12.20.3 G for projects involving the addition, alteration, construction, demolition, reconstruction, rehabilitation, removal, or restoration of the exterior of any building, structure, landscaping, natural feature, or lot within the preservation zone.

The restrictions for over-in-height fences, walls, and landscaped architectural features in the front yard were designed to maintain open, unobstructed frontages, to complement the aesthetics of the streets and to allow clearance and unobstructed view when exiting the property. Over-in-height fences, walls and architectural landscape features, especially close to the sidewalk, may obstruct the significant open landscape setback appearance of a neighborhood and contribute to a loss of open space and residential character. For these reasons, discretionary review is required for over-in-height fences to lessen these land use effects and ensure that they maintain compatibility with the surrounding neighborhood.

Similarly, as stated in the Wilshire Park HPOZ Preservation Plan, the purpose of the plan is to maintain, enhance, and preserve the historic integrity, sense of place and aesthetic appearance of the HPOZ and to preserve for future generations their historic architectural character and integrity. Whether or not a project meets the intent of the preservation plan is analyzed through HPOZ review.

The purpose of LAMC Section 12.22 A.27 is to establish a formal procedure for an Individual with a Disability seeking equal access to housing to request a reasonable accommodation as provided by the federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act, and to establish criteria to be used when considering these requests. Reasonable accommodation means providing an Individual with a Disability or developers of housing for an Individual with a Disability, flexibility in the application of land use and zoning regulations or policies (including the modification or waiver of certain requirements), when it is necessary to eliminate barriers to housing opportunities.

As stated previously, no showing has been made that the subject applicant is an individual with a disability. Even if it were demonstrated that the applicant is an

individual with a disability protected under the Acts, there is no evidence in the record that the fence, gate, and hedge relief is necessary due to disability.

Granting the requested Reasonable Accommodation would afford a special privilege to the applicant without addressing the needs of an individual with a disability, and thereby compromise the purpose of the zoning code provisions relating to reasonable accommodation, front yard projections, and historic preservation. There are more suitable avenues for which the applicant is eligible to seek discretionary relief for the illegal fences, hedges, and gates which consider land use compatibility rather than disability status that could maintain the nature and intent of the City's land use and zoning regulations.

Therefore, Finding No. 3 cannot be made in the affirmative, and the request for Reasonable Accommodation is hereby denied.

### **ADDITIONAL MANDATORY FINDINGS**

5. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 186,952, have been reviewed and it has been determined that this project is located in Flood Zone B, areas between limits of the One Hundred-Year Flood and Five Hundred-Year Flood; or certain areas subject to a One Hundred-Year Flood with average depths less than 1 foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the Base Flood.

### **APPEAL PERIOD - EFFECTIVE DATE**

This Director's Determination is appealable to the City Council within 15 calendar days of the date of mailing of the determination. Only the aggrieved applicant and abutting property owners who received notice of the Reasonable Accommodation determination have a right to appeal the decision.

This determination will become effective after the end of appeal period date on the first page of this document, unless an appeal is filed with the Department of City Planning. An appeal application must be submitted and paid for before 4:30 PM (PST) on the final day to appeal the determination. Should the final day fall on a weekend or legal City holiday, the time for filing an appeal shall be extended to 4:30 PM (PST) on the next succeeding working day. Appeals should be filed early to ensure the Development Services Center (DSC) staff has adequate time to review and accept the documents, and to allow appellants time to submit payment.

An appeal may be filed utilizing the following options:

**Online Application System (OAS):** The OAS (<https://planning.lacity.org/oas>) allows entitlement appeals to be submitted entirely electronically by allowing an appellant to fill

out and submit an appeal application online directly to City Planning's DSC, and submit fee payment by credit card or e-check.

**Drop off at DSC.** Appeals of this determination can be submitted in-person at the Metro or Van Nuys DSC locations, and payment can be made by credit card or check. City Planning has established drop-off areas at the DSCs with physical boxes where appellants can drop off appeal applications; alternatively, appeal applications can be filed with staff at DSC public counters. Appeal applications must be on the prescribed forms, and accompanied by the required fee and a copy of the determination letter. Appeal applications shall be received by the DSC public counter and paid for on or before the above date or the appeal will not be accepted.

Forms are available online at <http://planning.lacity.org/development-services/forms>. Public offices are located at:

<p>Metro DSC (213) 482-7077 201 North Figueroa Street Los Angeles, CA 90012 <a href="mailto:planning.figcounter@lacity.org">planning.figcounter@lacity.org</a></p>	<p>Van Nuys DSC (818) 374-5050 6262 Van Nuys Boulevard Van Nuys, CA 91401 <a href="mailto:planning.mbc2@lacity.org">planning.mbc2@lacity.org</a></p>	<p>West Los Angeles DSC (CURRENTLY CLOSED) (310) 231-2901 1828 Sawtelle Boulevard West Los Angeles, CA 90025 <a href="mailto:planning.westla@lacity.org">planning.westla@lacity.org</a></p>
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City Planning staff may follow up with the appellant via email and/or phone if there are any questions or missing materials in the appeal submission, to ensure that the appeal package is complete and meets the applicable LAMC provisions.

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.



QR Code to  
Online Appeal  
Filing



QR Code to Forms for In-  
Person Appeal Filing



QR Code to BuildLA  
Appointment Portal for  
Condition Clearance

Inquiries regarding the matter shall be directed to Undine Petrulis, Planning Staff for the Department of City Planning at (213) 978-1170.

VINCENT P. BERTONI, AICP  
Director of Planning



COURTNEY SHUM  
Associate Zoning Administrator

CS:UP:nm

cc: Councilmember Katy Young Yaroslavsky  
Fifth District  
Adjoining Property Owners