



STAFF REPORT

SAN CLEMENTE ZONING ADMINISTRATOR

Meeting Date: June 23, 2022

PLANNER: Nancy Mith, Contract Planner

SUBJECT: **Minor Exception Permit (MEP) 22-046 – Tetherton Fence**, a request for a minor exception to legalize an existing nonconforming, over-height fence in the front yard and side yard setback areas

LOCATION: 701 Avenida Columbo

ZONING: Residential Low (RL) Zoning District within the Special Residential 1 (RL-1) Zoning Overlay

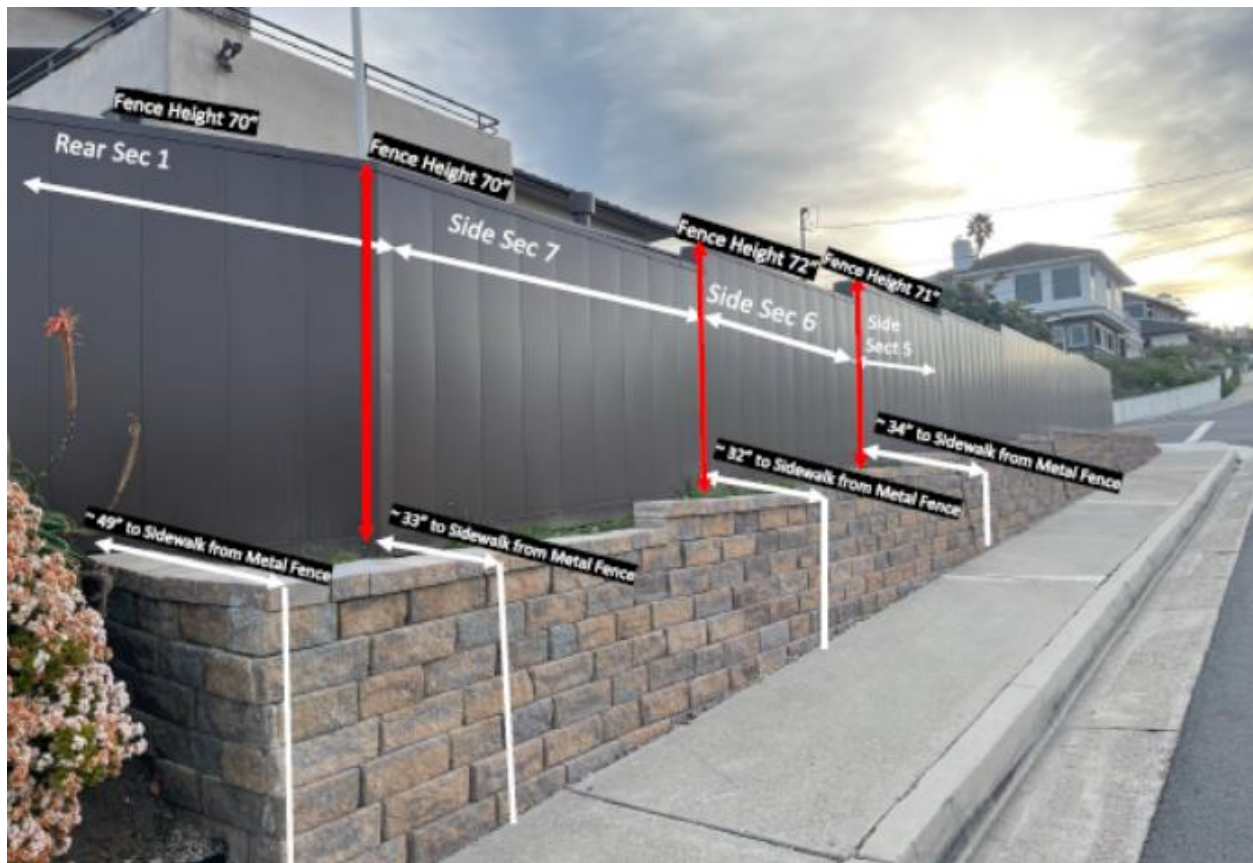
PROJECT SUMMARY:

- The site is a 6,664 square-foot lot with street frontages on Avenida Columbo and Avenida Salvador. The site is in the Residential Low (RL) zoning designation and has a Special Residential 2 (RL-1) Zoning Overlay. **Figure 1** below illustrates the area of the existing, nonconforming over-height fence. Further details on fence construction can be found in Attachment 2.

Figure 1 – Site Plan



- On January 5, 2022, the Code Compliance Division documented an unpermitted fence being built on the corner of Avenida Columbo and Avenida Salvador. Code Case CE2022-0008 notes that the fence is over-height in the front and side yard setbacks. Attachment 2 provides the applicant's narrative and response to the code violation.
- On February 12, 2022, applicant and property owner, Kristen Tetherton, submitted a Minor Exception Permit application requesting to legalize the unpermitted over-height fence in the front yard and side yard setbacks to resolve the code violation.
- The Zoning Ordinance limits fences and walls to 3 feet 6 inches in height within the front yard setback and side yard setback area of a reverse corner lot. However, under Zoning Ordinance Section 17.24.090, an applicant may request a Minor Exception Permit (MEP) to allow the height of a fence to be increased to a maximum of 6 feet.
- Staff believes the required findings can be made to approve the project, as set forth in the Findings of the attached Resolution, because:
 - The subject property is in the Residential Low (RL) zoning designation. The General Plan's vision for residential zones is to encourage and ensure that residential developments maintain existing and achieves new high-quality, distinctive neighborhoods. Specifically, General Plan Land Use Policy LU-1.03 requires maintenance of elements of residential streets that unify and enhance the character of neighborhoods. The over-height fence is constructed of a dark gray metal material that is compatible in design with the neighboring properties.
 - General Plan Urban Design Policy UD-5.10 requires that the scale and massing of development be compatible with its surroundings. The subject and neighboring properties are developed on parcels with sloped front yards. To maintain slope stability and to provide privacy for properties on top of a slope, several properties in the community can be seen to also have walls and fences over 42-inches in height within the 20-foot setback areas. Therefore, the 70-inch side yard over-height fence and 50-inch front yard over-height fence is compatible with the scale and massing of neighborhood developments.
 - Engineering Staff visited the subject property to assess the fence's potential to cause impacts on vehicle line-of-sight. It was concluded that the over-height fence does not encroach into drivers' line-of-sight, nor would it obstruct views of traffic to/from any driveways. Condition of Approval 7.20 and 7.21 require that any landscaping in the front 10-feet from the curb face be maintained so that it does not interfere with vehicle line of sight at the street intersection or neighboring driveways. The over-height fence will not be a detriment to the health, safety and welfare of the general public.
 - The existing fence is comprised of a dark gray metal material with standing seam metal panels. As shown in **Figure 2**, the fence is located behind the low retaining wall, 33-inches from the sidewalk and at the bottom of a slope. Due to the slope, the over-height fence does not create a complete barrier from the residence and only provides the appropriate means of privacy while maintaining an open street scene from the public right-of-way on Avenida Salvador.

Figure 2: Fence Design

- There is currently no landscaping in front of the fence; however, the applicant has provided a list of plants that will be used in future landscaping. Urban Design Element Policy UD-5.21 requires property owners to properly maintain vegetation on developed sites, remove and abate weeds, and replace unhealthy or dead landscape plants. To maintain consistency with the General Plan and to comply with Condition of Approval 7.20 and 7.21, the applicant proposes all low-growing shrubs that will be maintained to ensure that there will be no impacts on traffic and line-of-sight in the future (see Attachment 3 for proposed plant list).
- The Development Management Team (DMT) reviewed the project and recommends approval with the conditions provided in Exhibit A of **Attachment 1**.
- Minor Exception Permit applications do not require review by the Design Review Subcommittee (DRSC).
- The project is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Class 1: Existing Facilities) because the project involves the construction of an accessory fence on a developed residential property, within a developed residential neighborhood.

RECOMMENDATION

Staff recommends that the Zoning Administrator:

1. Determine the project is Categorical Exempt from the requirements of the CEQA pursuant to CEQA Guidelines Section 15301 (Class 1: Existing Facilities); and
2. Adopt Resolution ZA 22-011 approving Minor Exception Permit (MEP) 22-046, Tetherton Fence, subject to attached Conditions of Approval.

Attachments:

1. Resolution ZA 22-011
Exhibit A - Conditions of Approval
2. Applicant's Narrative
3. Proposed Plant List

RESOLUTION NO. ZA 22-011

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING MINOR EXCEPTION PERMIT (MEP) 22-046, TETHERTON FENCE, TO LEGALIZE AN EXISTING 70-INCH OVER-HEIGHT FENCE IN THE SIDE YARD SETBACK AND A 50-INCH OVER-HEIGHT FENCE IN THE FRONT YARD SETBACK OF A SINGLE-FAMILY RESIDENCE AT 701 AVENIDA COLUMBO

WHEREAS, on February 12, 2022, an application was submitted by Kristen Tetheron, 701 Avenida Columbo, San Clemente, CA 92672, for Minor Exception Permit MEP 22-046, a request to construct legalize and existing 70-inch over-height fence in the side yard setback and 50-inch over-height fence in the front yard setback area of a single-family residence in the Residential Low (RL) Zoning District within the Special Residential 1 (RL-1) Zoning Overlay. The site is addressed at 701 Avenida Columbo (APN 057-231-08). The site's legal description is TR 4941 LOT 38; and

WHEREAS, the Planning Division completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and recommends the Zoning Administrator determine the project is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities). This is recommended because the project involves the construction of an accessory fence on a developed residential property, within a developed residential neighborhood; and

WHEREAS, on March 10, 17, 24, and 31 2022, the City's Development Management Team (DMT) reviewed the proposed project and determined it complies with the General Plan, Zoning Ordinance, and other applicable City ordinances and codes; and

WHEREAS, in accordance with City and State requirements, notice of the public hearing was published in the *San Clemente Times* newspaper on June 9, 2022, posted at the project site, and mailed to all property owners within 300 feet of the subject parcel; and

WHEREAS, on June 23, 2022, the Zoning Administrator of the City of San Clemente held a duly noticed public hearing on the subject application, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties.

NOW, THEREFORE, The Zoning Administrator of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The Zoning Administrator hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Zoning Administrator as fully set forth in this resolution.

Section 2. CEQA Findings.

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Zoning Administrator, and the facts outlined below, the Zoning Administrator hereby finds and determines that the proposed project is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities).

The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. This exemption covers, but is not limited to, interior or exterior alterations, additions to existing structures that will not result in an increase of more than 50 percent of the floor area of the structure before the addition, or 2,500 square feet, whichever is less. Here, the proposed project involves the construction of an accessory fence on a developed residential property, within a developed residential neighborhood, and will not increase the floor area of the structure by more than 50 percent of the existing floor area, or more than 2,500 square feet. The project does not increase or otherwise change the existing use of the site. Thus, the project qualifies for the Class 1 exemption.

Furthermore, none of the exceptions to the use of the Class 1 categorical exemption identified in State CEQA Guidelines section 15300.2 apply. The project will not result in a cumulative impact from successive projects of the same type in the same place, over time. There are no unusual circumstances surrounding the project that result in a reasonably possibility of a significant effect on the environment. The project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources. The project does not include any hazardous waste sites, and the project will not cause a substantial adverse change in the significance of a historical resource. Thus, the Class 1 exemption applies, and no further environmental review is required.

Section 3. Minor Exception Permit Findings

With respect to Minor Exception Permit (MEP) 22-046, the Zoning Administrator finds as follows:

- A. The requested minor exception will not interfere with the purpose of the zone or the standards of the zone in which the property is located, in that:
 1. The project maintains the residential use of the property as intended by the Residential Low Zoning District within the Special Residential 2 (RL-1) Zoning Overlay

2. The Zoning Ordinance limits fences and walls to 3 feet 6 inches in height within the front yard setback and side yard setback area of a reverse corner lot. However, under Zoning Ordinance Section 17.24.090, an applicant may request a Minor Exception Permit (MEP) to allow the height of a fence to be increased to a maximum of 6 feet.
- B. The neighboring properties will not be adversely affected as a result of the approval or conditional approval of the Minor Exception Permit, in that;
1. The fence is contained entirely within the project site and does not encroach onto neighboring properties or the public right-of-way.
 2. Engineering Staff visited the subject property to assess the fence's potential to cause impacts on vehicle line-of-sight. It was concluded that the over-height fence does not encroach into drivers' line-of-sight, nor would it obstruct views of traffic to/from any driveways. Condition of Approval 7.20 and 7.21 require that any landscaping in the front 10-feet from the curb face be maintained so that it does not interfere with vehicle line of sight at the street intersection or neighboring driveways. The over-height fence will not be a detriment to the health, safety and welfare of the general public.
 3. General Plan Urban Design Policy UD-5.10 requires that the scale and massing of development be compatible with its surroundings. The subject and neighboring properties are developed on parcels with sloped front yards. To maintain slope stability and to provide privacy for properties on top of a slope, several properties in the community can be seen to also have walls and fences over 42-inches in height within the 20-foot setback areas. Therefore, the 70-inch side yard over-height fence and 50-inch front yard over-height fence is compatible with the scale and massing of neighborhood developments.
- C. The approval or conditional approval of the Minor Exception Permit will not be detrimental to the health, safety or welfare of the general public, in that;
1. Engineering Staff visited the subject property to assess the fence's potential to cause impacts on vehicle line-of-sight. It was concluded that the over-height fence does not encroach into drivers' line-of-sight, nor would it obstruct views of traffic to/from any driveways. Condition of Approval 7.20 and 7.21 require that any landscaping in the front 10-feet from the curb face be maintained so that it does not interfere with vehicle line of sight at the street intersection or neighboring driveways. The over-height fence will not be a detriment to the health, safety and welfare of the general public.
- D. The height of the fence, wall or hedge will not be unsightly or incompatible with the character of or uses in the neighborhood, in that;

1. General Plan Urban Design Policy UD-5.10 requires that the scale and massing of development be compatible with its surroundings. The subject and neighboring properties are developed on parcels with sloped front yards. To maintain slope stability and to provide privacy for properties on top of a slope, several properties in the community can be seen to also have walls and fences over 42-inches in height within the 20-foot setback areas. Therefore, the 70-inch side yard over-height fence and 50-inch front yard over-height fence is compatible with the scale and massing of neighborhood developments.
 2. The General Plan's vision for residential zones is to encourage and ensure that residential developments maintain existing and achieves new high-quality, distinctive neighborhoods. Specifically, General Plan Land Use Policy LU-1.03 requires maintenance of elements of residential streets that unify and enhance the character of neighborhoods. The over-height fence is constructed of a dark gray metal material that is compatible in design with the neighboring properties.
- E. The height of the fence, wall, or hedge will not have negative visual impacts upon the street scene or obstruct views of traffic to and from driveways, in that;
1. Engineering Staff concluded that the over-height fence does not encroach into drivers' line-of-sight, nor would it obstruct views of traffic to/from any driveways. Condition of Approval 7.21 and 7.21 requires that any landscaping in the front 10-feet from the curb face be maintained so that it does not interfere with vehicle line of sight at the street intersection or neighboring driveways. The over-height fence will not be a detriment to the health, safety and welfare of the general public.
 2. Urban Design Element Policy UD-5.21 requires property owners to properly maintain vegetation on developed sites, remove and abate weeds, and replace unhealthy or dead landscape plants. To maintain consistency with the General Plan and to comply with Condition of Approval 7.20 and 7.21, the applicant proposes all low-growing shrubs that will be maintained to ensure that there will be no impacts on traffic and line-of-sight in the future.
 3. The existing fence is comprised of a dark gray metal material with standing seam metal panels. As shown in Figure 2, the fence is located behind the low retaining wall, 33-inches from the sidewalk and at the bottom of a slope. Due to the slope, the over-height fence does not create a complete barrier from the residence and only provides the appropriate means of privacy while maintaining an open street scene from the public right-of-way on Avenida Salvador.

Section 4. Zoning Administrator Approval

Based on the foregoing recitals and findings, and the written and oral comments, facts, and evidence presented, the City of San Clemente Zoning Administrator approves Minor Exception Permit (MEP) 22-046, Tetheron Fence, subject to the Conditions of Approval set forth in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Zoning Administrator on June 23, 2022.

Cecilia Gallardo-Daly, Zoning Administrator

CONDITIONS OF APPROVAL
MINOR EXCEPTION PERMIT MEP (MEP) 22-046
TETHERTON FENCE

1.0 GENERAL CONDITIONS OF APPROVAL

- | | | |
|-----|---|-----------|
| 1.1 | Within 30 days of receipt of the signed conditions of approval, the applicant shall submit to the City Planner a signed acknowledgement concurring with all conditions of approval on a form to be provided by the City, unless an extension is granted by the City Planner. | Planning |
| 1.2 | The applicant shall defend, indemnify, and hold harmless the City of San Clemente and its officers, employees, and agents from and against any claim, action, proceeding, fines, damages, expenses, and attorneys' fees, against the City, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City concerning this project, including but not limited to any approval or condition of approval of the City Council, Planning Commission, or City Planner. Applicant shall pay all costs, The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees, and agents in the defense of the matter. If the applicant fails to so defend the matter, the City shall have the right, at its own option, to do so and, if it does, the applicant shall promptly pay the City's full cost of the defense. | Planning |
| 1.3 | Use and development of this property shall be in substantial conformance with the approved plans, material boards and other applicable information submitted with this application, and with these conditions of approval. Any modifications to the project shall be reviewed by the City Planner in accordance with Zoning Ordinance Section 17.12.180. | Planning |
| 1.4 | The applicant shall comply with all applicable current and future provisions of the San Clemente Municipal Code, adopted ordinances, and state laws. | All |
| 1.5 | Use of the subject property shall conform to all occupancy requirements, including posting of signs related to the maximum occupancy limitations. | Code Comp |

7.0 OPERATIONAL CONDITIONS OF APPROVAL

- 7.20 Landscaping along the fence shall be maintained in a healthy, growing condition. Landscaping shall be trimmed and maintained to prevent overgrown vegetation. Planning
**
- 7.21 Unless approved otherwise by the City Engineer or Community Development Director, landscaping in the front 10-feet from the curb face shall be maintained so that it does not interfere with vehicle line of sight at the street intersection or neighboring driveways. (SCMC Chapter 15.36) Public Works
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February 12, 2022

City of San Clemente
Planning Department
910 Calle Negocio Suite 100
San Clemente, CA 92672

REF: CASE #CE2022-0008

Dear Sir or Madam,

I received the above referenced notice on January 11, 2022. I contracted Paul Pye on January 13, 2022, then met with Kirt Coury on Tuesday January 18, 2022, who explained I would need to apply for a Minor Exemption permit, which is attached to this letter.

My husband and I purchased our home at 701 Avenida Columbo in 1996. We have been in our home going on 26 years this July. In 2005 we remodeled our home by adding a second story. We expanded up, not out.

Our home is located on the corner of Avenida Columbo and Avenida Salvador. Our second story does not impede the views of any of our neighbors. Our immediate neighbor at 703 Columbo has lived in their home longer than us. They encouraged us to remodel as our remodel would not impact their views. I cannot remember if our neighbor at 307 Salvador lived in their home at the time of the remodel or not. Either way the remodel does not impact any of their views with the 2nd story we added or the new fence we installed along Salvador. Our neighbors' home at 307 Salvador sits lower than us and their view of the ocean is looking out over Salvador, not towards our home. Their view of the canyon is from their backyard which we have no exposure to. We get along with our immediate neighbors on both the Salvador side of our house and Columbo side of our house and we do not impact their views or property with our fence, so we have no idea who complained about the setbacks of our fence.

My husband Brad Tetherton built the stack wall located on the Avenida Salvador side of house from October 2018 to March 2020. In March of 2020 he started to replace our fence that runs along the back of our house, the side of house on Avenida Salvador, and the front of our house on Avenida Columbo. The fence material is metal, using

standing seam metal panels. It is two sided with top and bottom caps, so the fence is 6" wide once complete. It has taken him almost two years to replace the back fence and side fence along Avenida Salvador. He then started building the fence in the front of our home which will be curved. We only have the posts and framing up at this time in the front of our house as we received notice that a neighbor put a complaint into the city regarding the setbacks of our fence in relation to the height of our fence.

The side fence along Avenida Salvador height ranges from ~67 5/8 H at the corner of Salvador and Columbo to ~70" to the end of our property line on Salvador with a maximum height of 72". As you can see from the photos, we stepped the fence to make it look visually pleasing as Salvador slopes down from the front of our house to the back of our house. This fence does not block anyone's ocean or canyon views. It only blocks people from seeing into my yard and home. This fence was put up for the following reasons:

1. Privacy – Avenida Salvador is a highly trafficked street for both pedestrians and vehicles and we prefer our privacy, and we do not care to have people we do not know see into our yard and home.
2. Security – In Photo 5 I show the land between the back fence of my home and my neighbor at 307 Salvador side fence. The area between the two fences is owned by my neighbor at 307 Salvador. We have had homeless people use this area as access to the canyon behind both my immediate neighbor's home at 307 Salvador and at 703 Columbo. My house does not butt up against the canyon however both my immediate neighbors homes. Our home has been broken into and our cars have been broken into three times. A taller fence will deter thieves.
3. Safety – I have two dogs, with one being a large breed. Our large dog is German Shepherd and Standard Poodle Mix. He is extremely agile, and quick and he can jump high. We considered this in determining our fence heights for both the side and front of our house.
4. Expanded Yardage – Our lot is 6664 sq ft with most of it taken up by my home. We decided to move our fence towards the street in order to gain more yardage. Prior to building the stack wall, and moving our fence, the side yard on Columbo was a slope bank with plants. We wanted to increase the usable space of our yard. This allowed more room for our dogs, more space for entertaining and more space to put in raised planters so that we can plant a vegetable garden this spring. Our side yard on Salvador gets the most sun as our back yard is in shadow the majority of the day. We put the raised planters on our side yard on the Salvador side.

The curved front fence was under construction but since has stopped because of the Correction notice we received. The curved fence in the front of our house is at 50" high. Currently only the posts are in and the framing. In Photo 1 you can see where we

stepped down from 67" 5/8" High Side Fence to a 50" High fence. We are able to curve the fence because of the materials used, so we wanted to follow the curve of the corner for visual impact. We then curved it behind the Mesquite tree in our front yard. We would like to keep this fence height at 50" as we feel that is the minimum height to keep our dogs safely enclosed.

Our existing courtyard in the front of the house is our main yard we use for entertaining outside of our home. We wanted to expand our yard in the front as this area was not being utilized. This would allow us to expand our courtyard so there was more room for my family and guests when we are entertaining outside.

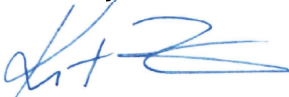
Once our fences are complete, we plan on planting succulents in the area between our stacked wall and side fence and front fence and sidewalk.

We would like to get a minor exemption permit for both our side and front fences. If we need to take down the side fence and move it, we have the potential of damaging the panels. I do not understand after two years of building this fence why someone would complain at this point. I would like the city to consider that our fence is not hurting any neighbor, their views or decreasing their property values when considering whether not to allow for a minor exemption permit.

On another note, I was out on Avenida Salvador on January 31st to take photos and measurements needed for this permit and a neighbor that lives further up on Salvador stopped by to tell me how beautiful our fence is. It was a surprise to receive this correction notice because as my husband was building the stacked wall and side fence, we have had numerous people stop by and tell us how much they like what we are doing so it was surprising that one of our neighbors complained about this. I would have hoped that if it were a neighbor, we know that they would have come to let us know their feelings so that we could have resolved this sooner. All we are trying to do is make our home more secure and expand our yard. We do not want to be causing any problems with our neighbors or the city.

Thank you for your time and please do not hesitate to contact me if you have any questions or would like to meet in person to discuss our options.

Sincerely,



Kristen Tetheron

PHOTO #3



- Side Sec 4 is ~35" from fence to sidewalk.
- Side Sec 3 is ~36" from fence to sidewalk.
- Side Sec 2 is ~37" from fence to sidewalk.
- Side Sec 1 at end before outside curve is ~27" to sidewalk curb

PHOTO #4

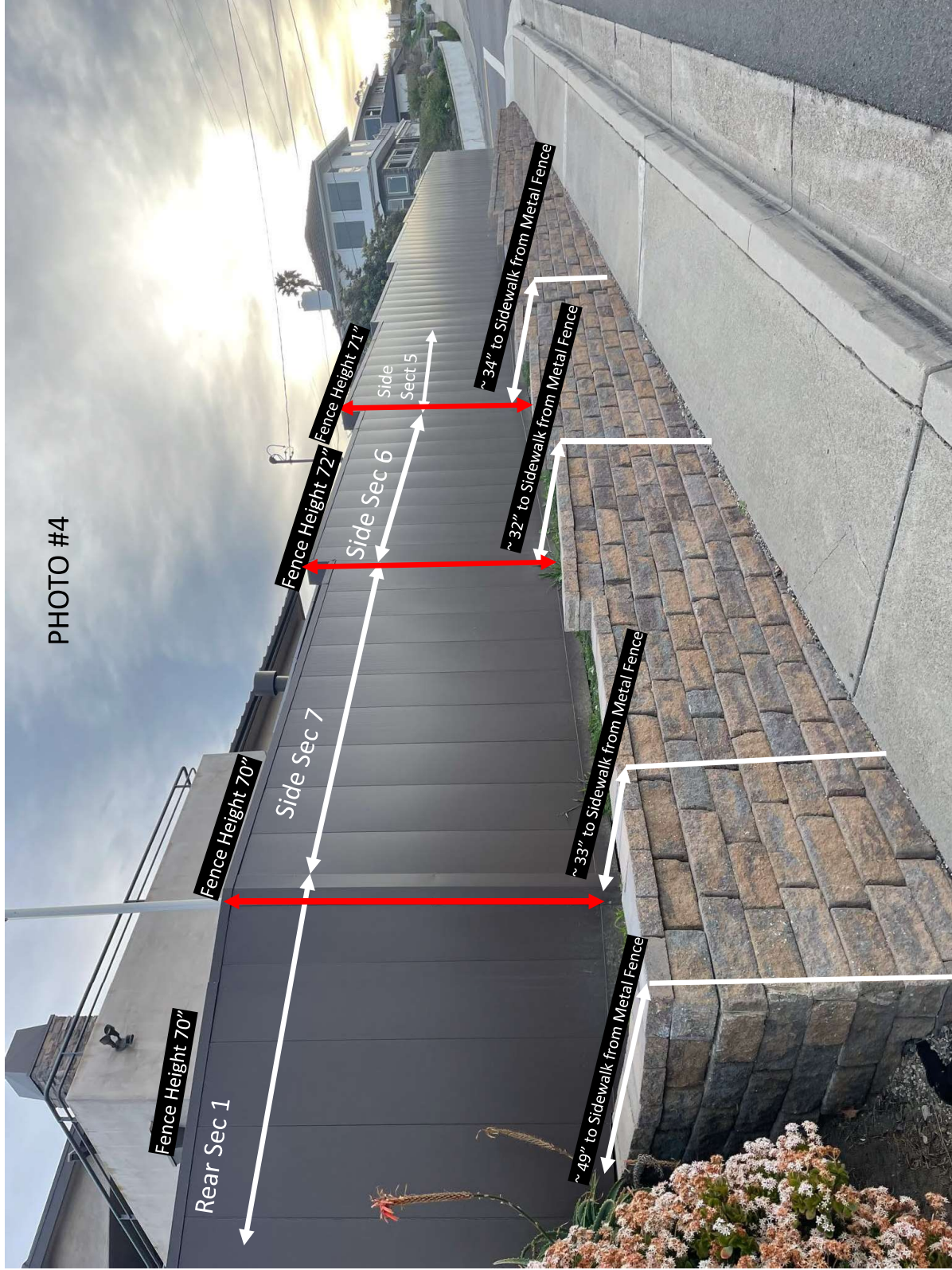


PHOTO #5



The area between the two fences has been used by the homeless to move into the canyon behind my neighbor's homes on both Salvador and Columbo.

This photo shows our metal fence and our neighbor's side fence on 307 Salvador. Our back metal fence is on our property line and replaced a previous fence in the same location. The area between the wrought iron (neighbor's fence) and our fence is our neighbor's property, not ours.

May 30, 2022

City of San Clemente
Attn: Dancy Mith, Planning Department
910 Calle Negocio Suite 100
San Clemente, CA 92672

REF: MEP22-046

Dear Ms. Mith,

Per our conversation on Friday May 27th, 2022 here are the plant types we are looking to plant between our fence and sidewalk. We are looking at planting a variety of succulents/drought tolerant plants with none of them being very tall. I am looking to have plants that are no more than 3' high. If any plant exceeds that height, they will be trimmed back. We are not interested in planting any trees, tall bushes or vines to grow on the fence or obstruct the view on the fence. None of the plants we would install would not obstruct the view of cars at the intersection of Avenida Columbo and Avenida Salvador.

1. Aeonium Arboreum



2. Euphorbia Tirucalli 'Rosea' – Fire Stick



3. Portulacaria Afra



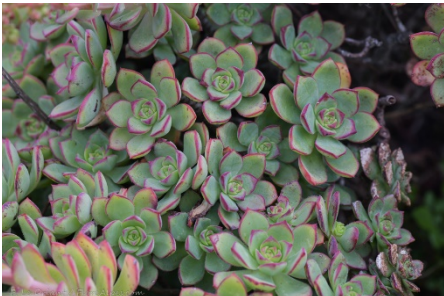
4. Creeping Rosemary



5. White Stonecrop



6. Haworth's Aeonium



7. Crassula Ovata 'Crosby's Compact' (Dwarf Jade Plant)



8. White Trailing Lantana



Thank you for your time and please do not hesitate to contact me if you have any questions or would like to meet in person to discuss our options.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kristen Tetherton'. The signature is stylized and cursive.

Kristen Tetherton