

Title:	Willow Glen Care Center Fence Major Variance
Project:	Major Variance VMJ-24-0002
Location:	528 N Street
APN:	001-232-005
Applicant:	David Gilbert
Property Owner:	Lost Coast Properties LLC (Jeff Payne)
Purpose/Use:	Allow recently-installed, six-foot-tall, solid fencing between the building and the adjacent streets to remain where solid fencing over three feet in height is not allowed by the Zoning Code.
Complete Application:	August 20, 2024
Deadline for Action:	November 18, 2024
General Plan:	NC – Neighborhood Commercial
Zoning:	OR – Office Residential
CEQA:	Exempt under §15303(e), Class 3, New Construction or Conversion of Small Structures; and §15305, Class 5, Minor Alterations in Land Use Limitations
Staff Contact:	Penelope Kirsch, Assistant Planner
Recommendation:	Hold a public hearing; and Adopt a resolution finding the project is exempt from CEQA, and conditionally approving the Variance.
Motion:	“I move the Planning Commission adopt a resolution finding the project exempt from CEQA and conditionally approving the Willow Glen Care Center Fence Major Variance at 528 N Street.”

Figure I: Location Map

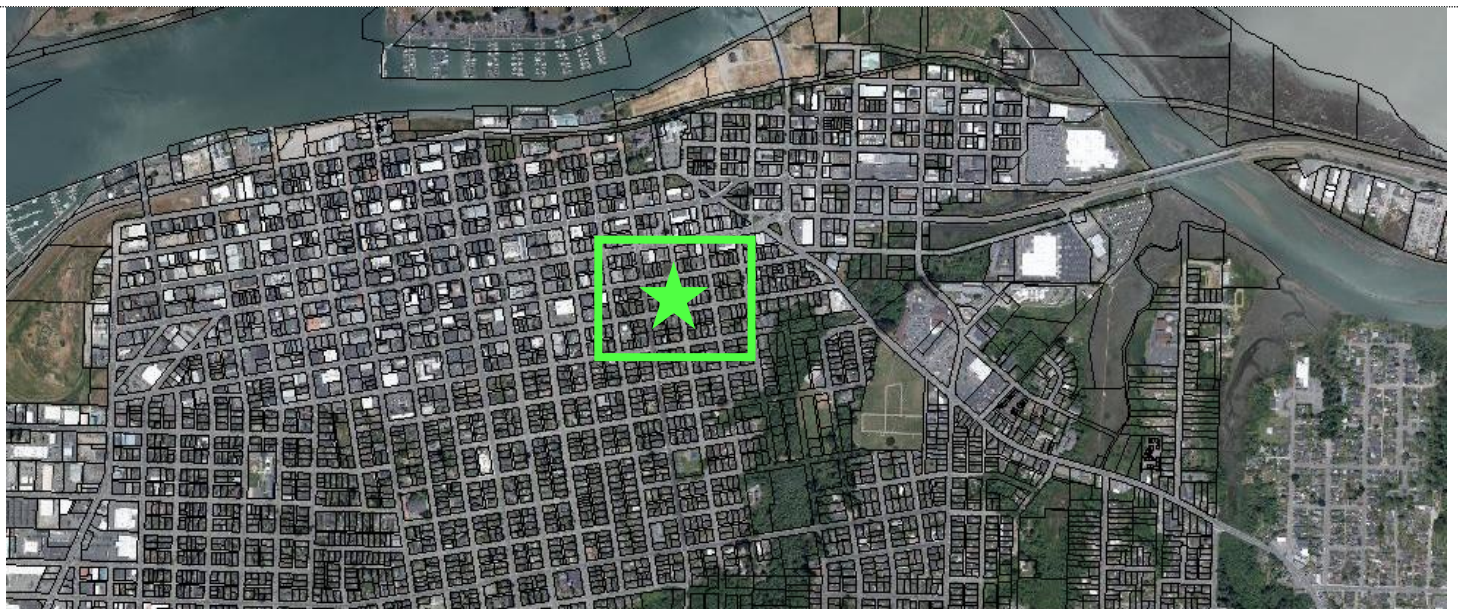


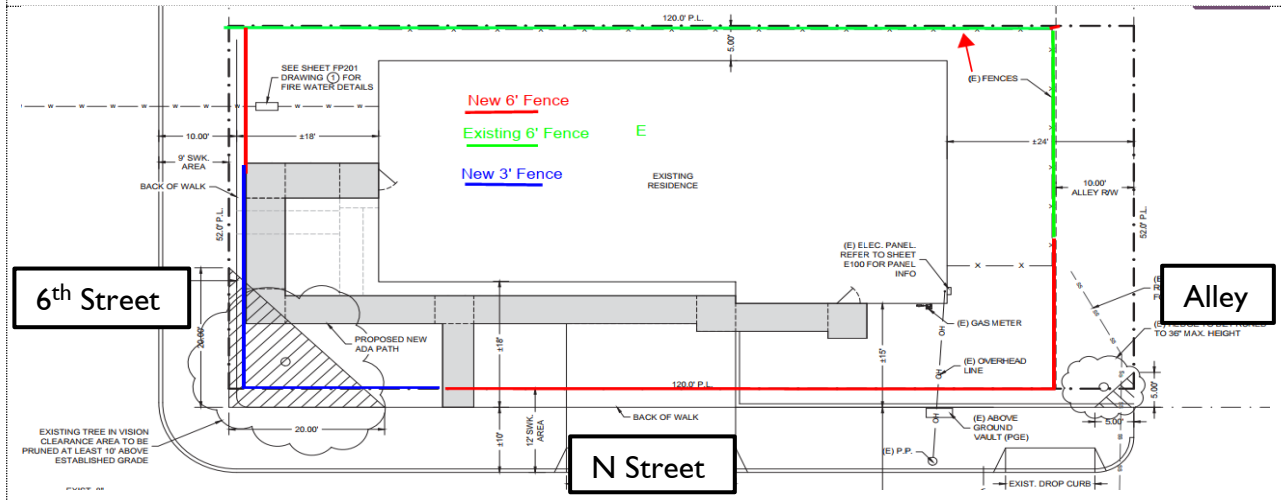
Figure 2: Site Map



PROJECT SUMMARY

The Applicant, David Gilbert, is requesting approval of a Major Variance at 528 N Street to retain newly-constructed six-foot (ft)-tall solid fencing along the property’s 6th and N Street frontages where solid fencing taller than three ft is prohibited between the building and the street by the Zoning Code.

Figure 3: Applicant’s Site Plan (See Attachment 2 to see larger site plan)



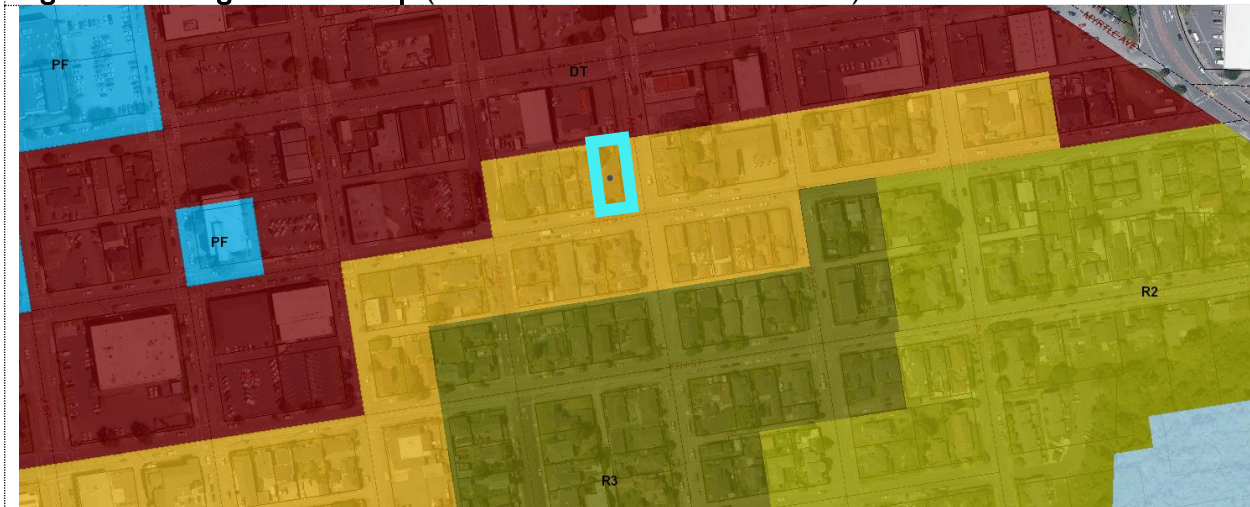
Background

The approximately 6,098-square foot (sf) property is located on the northwest corner of 6th and N Streets in the Office Residential Zoning District (OR District), and includes an existing newly remodeled 2,440-sf, single-story, non-medical care housing facility (a principally permitted use in the OR District; Figure 2). The property previously housed a vacant and boarded duplex. In January, 2024, the City issued a Building Permit (B23-355) to convert the vacant duplex into the Willow Glen Care Center (the Facility), a five-bedroom, short-term crisis residential treatment

facility designed to provide a safe and comfortable environment for adult victims of domestic abuse and individuals experiencing mental health crises. No new perimeter fencing was shown on the approved site plans; therefore, the City did not anticipate the fence installation and resulting code compliance issue. An existing six-ft-tall fence runs along the alley and rear of the property, and the new fence was installed to match this, except at the corner of 6th and N Streets where the new fence drops down to three ft in height to meet Vision Clearance Area (VCA) requirements (Figure 3). The new fence was installed to ensure privacy for clients using the front and exterior side yard areas during their recovery. According to the Applicant, maintaining client confidentiality and creating a therapeutic outdoor environment are essential, which is why the installation was necessary.

The property is located adjacent to and across the street from other OR-zoned parcels lining 6th Street, with the Downtown Zoning District located across an alley immediately to the north, and the Residential High Zoning District located one block south along the 7th Street corridor (Figure 4). The parcel is surrounded by a variety of uses: to the north, across the alley, is a vehicle service station (Lube Rack), while a gas station (Shell) is situated to the northeast. To the south, across 6th Street, are a mix of single-family and multi-family residences, and offices.

Figure 4: Zoning Districts Map (528 N Street shown in blue box)



In 2019, the Inland Zoning Code (i.e. Eureka Municipal Code [EMC]) was comprehensively updated with significant changes to many development standards, including fencing. Per EMC §155.320.040 (Maximum Height), solid fences up to eight-ft-tall are allowed “at any location on a lot” in a mixed-use zoning district (which includes the OR District), except “solid fences taller than 3’ (36”) are not allowed between a building and the street...” The purpose of the regulation is to support an active and engaging pedestrian environment in the City’s commercial mixed-use districts; solid, tall fencing lining the sidewalk and blocking views of adjacent private property contributes to a less inviting and visually-interesting atmosphere for pedestrians.

Other properties in the vicinity have solid fences fronting the street, but the fences were installed prior to the City’s 2019 code update, and therefore are considered legal nonconforming. Per EMC §155.424.030(D)(2)(a), legal nonconforming fences are permitted to remain, and under division E of the aforementioned section, a nonconforming fence may be repaired or modified as

long as the repairs and modifications do not increase or exacerbate the nonconforming aspect of the fence (like the height).

According to EMC Table 320-1 (Allowed Fence Height), the new fence does not require a Building Permit since it does not exceed seven ft, the height threshold for obtaining Building Permits and preparing engineered plans. Therefore, if the fence met the fence standards in the Zoning Code, no City authorization would be required for its installation. However, because solid fences in a mixed-use zoning district are not allowed to be taller than three ft between a building and the street, the Applicant must obtain approval of a Variance to retain the existing six-ft-tall solid wood fence in this location.

APPLICABLE REGULATIONS

EMC §155.412.130 (Variances) allows for deviation from physical development standards when the strict application of development standards creates a unique hardship due to unusual circumstances associated with the property. Per EMC §155.412.140(B), “Examples of physical development standards include height, setbacks, open space, floor area ratio, and off-street parking requirements.” Two types of Variances are allowed: Major Variances (deviations by 20% or more) and Minor Variances (deviations by 20% or less), which are calculated as a percentage of the distance or area required by the standard. The Director is the review authority for Minor Variance applications, and the Planning Commission for Major Variance applications.

Figure 5: Sidewalk View Facing Northwest (August 20, 2024)



As described above, the Applicant has installed a six-ft tall solid fence, which exceeds the three-ft maximum height standard by three feet (Figures 5, 6, and 7). Because this represents a 100% deviation, a Major Variance is required.

Figure 6: Street View from N Street Facing West (August 20, 2024)



Figure 7: Street View from 6th Street Facing East (August 20, 2024)



ANALYSIS

To approve a Variance, the Planning Commission must make all of the following findings:

1. There are unique circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, that do not generally apply to other properties in the vicinity or in the same zoning district as the subject property.
 2. The strict application of the zoning code regulation would deprive the subject property of privileges enjoyed by other property in the vicinity or in the same zoning district as the subject property.
 3. The Variance will not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity or in the same zoning district as the subject property.
 4. The Variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity or in the same zoning district as the subject property.
- I. There are unique circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, that do not generally apply to other properties in the vicinity or in the same zoning district as the subject property.**

The Willow Glen Care Center (Facility) is dedicated to offering a secure, private and comfortable living environment for adults who have experienced domestic abuse or are managing mental health challenges. This living environment includes five outdoor seating areas between the building and the adjacent streets for clients to enjoy therapeutic outdoor time. Given the unique characteristics of the Facility, including its location along a busy Minor Arterial (6th Street), the center encounters specific challenges with protecting the privacy and confidentiality of clients which are not typical of other properties in the same zoning district. To address these challenges and ensure the highest standards of client confidentiality and safety while clients are using the outdoor areas, a six-ft-tall solid fence has been installed along

the property lines adjoining both 6th and N Streets. This measure is crucial for meeting the center's unique needs and effectively safeguarding its residents.

2. The strict application of the Zoning Code regulation would deprive the subject property of privileges enjoyed by other property in the vicinity or in the same zoning district as the subject property.

Although the properties along the 6th Street corridor in the project's vicinity have a mixed-use zoning, the area was historically residential and continues to be dominated by residences east of M Street. Many neighboring residences have solid front fences that, although exceeding current height standards, are permitted to remain as they were installed prior to the City's 2019 code update. Additionally, despite the City's efforts to install traffic calming bulbouts and a bike lane along 6th Street, the corridor continues to be impacted by speeding vehicles and through-traffic that treat the street more like a highway than an office-residential destination. Other properties in the OR District do not have to contend with this same level of traffic stress, and therefore can achieve the same level of privacy and quiet with a lower fence. Approving the Variance would allow the Facility to achieve the same level of privacy and safety as other residential properties in the vicinity that have legal-nonconforming fences, and other residential properties in the OR District located on quieter roadways. Therefore, the finding can be made that the strict application of the fence standard would deprive the subject property of privileges enjoyed by other properties in the vicinity and in the same zoning district.

3. The Variance will not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity or in the same zoning district as the subject property.

Per the Applicant, a taller fence is crucial for ensuring the protection of clients' privacy and safety at the Facility. As discussed above under finding I, the individuals staying at the Facility have experienced domestic abuse and require a secure and private environment to recover while receiving care. The installation of a taller, solid fence is designed specifically to protect the clients' privacy, and enhance the clients' safety. Granting this Variance will not negatively impact public health, safety, or welfare, nor will it harm the properties or improvements within the surrounding area or zoning district. As mentioned above in the Project Summary section of the report, the purpose of the fence standard is to support an active and engaging pedestrian environment in the City's commercial mixed-use districts. Although the six-ft-tall solid fencing blocks most views into the property, visually-engaging views remain through the two ungated fence openings with arbors along N Street, and as a result of the three-ft-tall fencing in the VCA at the corner of 6th and N Streets. Visual interest is also created by new landscaping installed between the new fence and the adjacent sidewalk. Additionally, Public Works has confirmed, in response to the project referral, that the new fencing complies with EMC §71.55 (Height Obstructions) and VCAs at street corners, ensuring that it will not impact traffic safety.

4. The Variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity or in the same zoning district as the subject property.

Most properties in the vicinity have solid fences exceeding the three-ft tall height standard; therefore, the Facility's new solid fence does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity. The Facility is located on 6th Street, a designated minor arterial which has higher speeds and traffic volumes

compared to the surrounding area, despite the fact that the 6th Street corridor east of M Street is predominately residential. Granting the Variance to allow the fence to remain would provide the Applicant with the same level of privacy and safety enjoyed by other residential properties in the OR District that are not situated along a minor arterial.

CONCLUSION

Based on the analysis above, the findings can be made for the proposed Variance to deviate from the allowed fence height standards. Because the findings rely on the particular use of the property as a non-medical care facility (finding 1), and on avoidance of six-ft-tall fencing within the VCA at the corner of 6th and N Streets (finding 3), conditions of approval have been added requiring the fence to come into compliance with current zoning standards if and when the use of the property changes, and prohibiting any fencing taller than three feet within the corner VCA.

ENVIRONMENTAL ASSESSMENT

The City of Eureka, as Lead Agency, has determined the proposed project is exempt from CEQA pursuant to CEQA Guidelines §15303(e), Class 3 (New Construction or Conversion of Small Structures), which exempts the construction and location of limited numbers of new small structures, including small accessory (appurtenant) structures such as fences. The project is also exempt pursuant to §15305, Class 5 (Minor Alterations in Land Use Limitations), which consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including minor setback Variances not resulting in the creation of any new parcel. The property is flat and the proposed Variance is to allow for a six-ft-tall fence between the building and the street, not for any change in land use or density. Therefore, the project is exempt under the Class 3 and 5 exemptions.

PUBLIC HEARING NOTICE

Public notification consisted of notification by mail of property owners within a 300-ft radius of the site on or before November 1, 2024. In addition, the notice was posted on the City's website and bulletin boards. A public hearing notice sign was also posted on the site on or before November 1, 2024.

DOCUMENTS ATTACHED

Attachment 1: Planning Commission Resolution
Attachment 2: Applicant Submitted Material
Attachment 3: Correspondence