

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 09/10/2013
Agenda Item: 3**

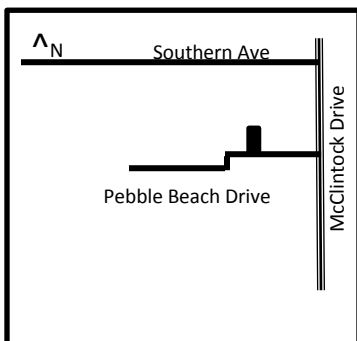
ACTION: Request Appeal the Hearing Officer’s decision to deny a Use Permit to increase the wall height in the front yard from 4’ to 6’ 8” (6’ as measured from highest grade within 20’) for the JOHNSON RESIDENCE (PL130241) located at 1718 East Pebble Beach. The appellant is Robert Johnson.

FISCAL IMPACT: N/A

RECOMMENDATION: None

BACKGROUND INFORMATION: The site is located west of McClintock Drive, on the north side of Pebble Beach Drive. The property surrounded by properties of same zoning classification R1-6, Single Family Residential. The property is located within the Tempe Gardens Unit 6 Subdivision. Mr. Johnson requested a Use Permit to build a wall within the front yard setback. On August 6, 2013, the Hearing Officer denied the request for the JOHNSON RESIDENCE (PL130241) for a Use Permit Standard to allow a 6 foot wall within a front yard setback. At the hearing, four residents spoke in opposition to the request and a neighboring property owner from out of state, sent a letter of opposition which was read into the record. On August 8, 2013, Robert Johnson filed an appeal of the approved Use Permit. Updated use permit application materials: staff summary report and attachments from the January 2nd hearing and minutes are provided with this report as background information. The appellant provided additional photos of walls on neighboring properties that are over 4’ in height in the front yard setback as part of the appeal. This request includes the following:

UPA130004 Appeal of a Use Permit to increase the wall height in the front yard from 4’ to 6’8” feet.



Appellant	Robert Johnson
Property Owner	Robert Johnson
Zoning District	R1-6 Single Family Residential
Lot Size	.18 acres
Building Size	1650 s.f. home

ATTACHMENTS: Supporting Attachments

STAFF CONTACT: Sherri Lesser, Senior Planner (480-350-8486)

Department: Lisa Collins, Deputy Director-Planning/Community Development Department
 Legal review by: N/A
 Prepared by: Sherri Lesser, Senior Planner
 Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

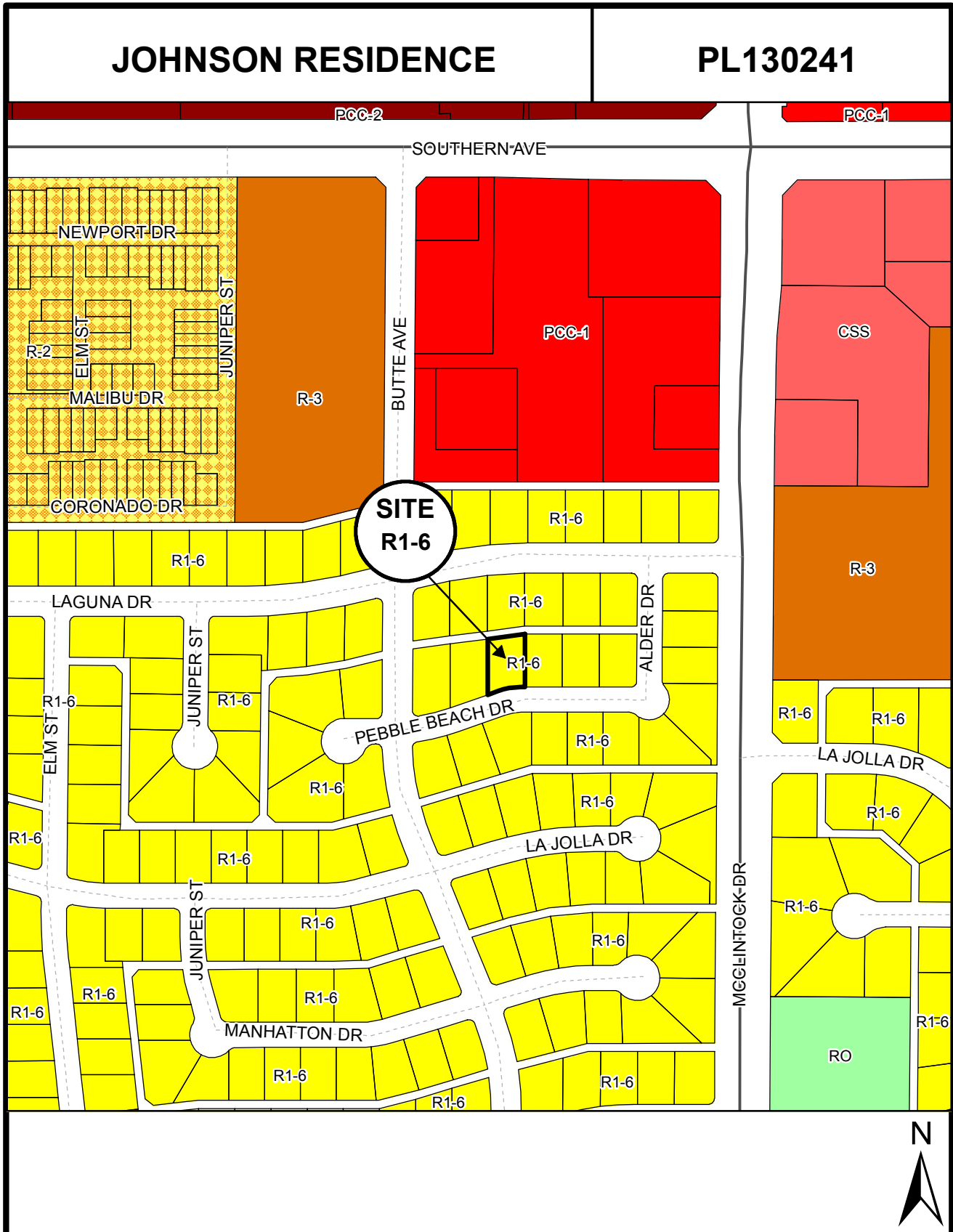




DEVELOPMENT PROJECT FILE
for
JOHNSON RESIDENCE

ATTACHMENTS:

1. Location Map
2. Aerial Photo
3. Letter of Explanation
- 4-5. Answer to Criteria questions
6. Site Plan- Fence diagram
- 7-9. Artist Rendering
- 10-11. Applicant Photos
- 12-14. HO Staff Report
- 15-17. 8/6/13 Minutes



Location Map



JOHNSON RESIDENCE (PL130241)

Robert Johnson
1718 E. Pebble Beach Drive
Tempe, Arizona 85282

August 22, 2013

City of Tempe
31 E. 5th Street
Tempe, AZ 85281

Letter of Explanation - Revised

The purpose of the proposed fence was and is to provide a property barrier and border, and for clarification regarding the initially proposed fence, at some point in the future we hoped to replace the gravel yard with a pool, a Koi pond, or a water feature. We were unsure about what we were going to do at the time, but a small pool that was behind a wall and out of sight to the neighborhood was our initial choice and proposal. A pool was not supposed to be a consideration as it is perfectly within state code to have a pool in the front yard. However, if the neighbors are objectionable to a pool, and it would affect the outcome of this appeal negatively, we would like to include at some point down the road a low profile water feature and grass instead of gravel. The fence would also serve to keep people away from and out of the pool or water feature.

The proposed fence would be at 5' in height +/- 3" to account for an incline of the property. Instead of the initially proposed block fence that was 6'8" in height, I am revising my proposal to satisfy the needs and concerns of the neighbors. The fence would be made of metal (wrought iron type), and block/stucco for the columns to provide support, similar in design to that of the neighbors. There will be no magnet to graffiti, no blocking of the visibility of the neighborhood, and no eyesore of a fortress. The supporting block columns would be finished with modern type mortar washed stucco, a smoother type and more attractive than the lattice finish. If the neighbors would prefer the older style brick type as in the photos, we can do that too. It would be painted to coordinate with the recently painted colors of the house. The fence would be offset from the sidewalk about 5' as initially proposed.

If you need anything further, please let me know. I am sincere in my determination to satisfy the needs of the community, and for the design of the fence to be consistent with other types of fences in our neighborhood. Please see the additionally submitted photos of neighbor's fences and the proposed type fence in mind. Thank you for your consideration.

Sincerely,

Robert Johnson

Letter of Explanation – Supplemental Questions – Revised 8/22/13

USE PERMIT

A. Not cause any significant vehicular or pedestrian traffic in adjacent areas.

The application of this Use Permit is to construct a *fence* in the front yard. It does not block anything and is offset from the sidewalk by at least 5'.

B. Not cause any nuisance (odor, dust, gas, noise, vibration, smoke, heat or glare, etc.) exceeding that of ambient conditions.

As of 8/22/13, there is no immediate agenda to put anything in the front yard. There will be no odor, dust, gas, noise, vibration, smoke, heat or glare resulting from the fence. Some or all of the gravel might be at one point be replaced with grass/courtyard/water feature/pool. It was originally proposed to put in a pool. The Hearing Officer made it clear to all neighbors who were opposed to the block wall that the pool should not be a consideration for the hearing. Furthermore, neither pools nor fences emit odors, dust, gas, noise, vibration, smoke, heat or glare.

C. Not contribute to the deterioration of the neighborhood or be in conflict with the goals, objectives and policies of the City.

The fence would be made of metal and brick similar in design to the diagram shown below so to blend in with the neighborhood, but instead more modern stucco/block and iron will be used instead of brick and iron. If the neighbors prefer, we can utilize the same brick as in the photo. It will only be 5' +/- 3 inches in height, which is 1'5" less than the initially proposed block wall. This was a major concern expressed at the initial hearing and would be resolved.



D. Be compatible with existing surrounding structures.

The design of the wall was taken from the neighborhood's existing structures. See sample of other homes on the same street and in the same neighborhood. The proposed wall is within a foot of the height of all the other fences in the neighborhood, and is made of the same material, iron, with block or brick columns for structural support only.

E. Not result in any disruptive behavior which may create a nuisance to the surrounding area or general public.

The revised wall design resolves the issues brought forth by the neighbors at the last hearing:

"A solid block wall would attract graffiti." – There is no longer a solid block wall.

"A solid block wall that is 6'8" tall would be an eyesore, a fortress." – The height has been dramatically reduced to 5', +/- a few inches for the incline of the property.

"A solid block wall inhibits the view through the community." – There is no longer a solid block wall.

"A solid 6'8" block wall would be used for possible future tenants to have parties." – There is no longer a solid block wall and the height has been dramatically reduced. This is a family dwelling and there is no intention of leasing the property to college students or anyone else.

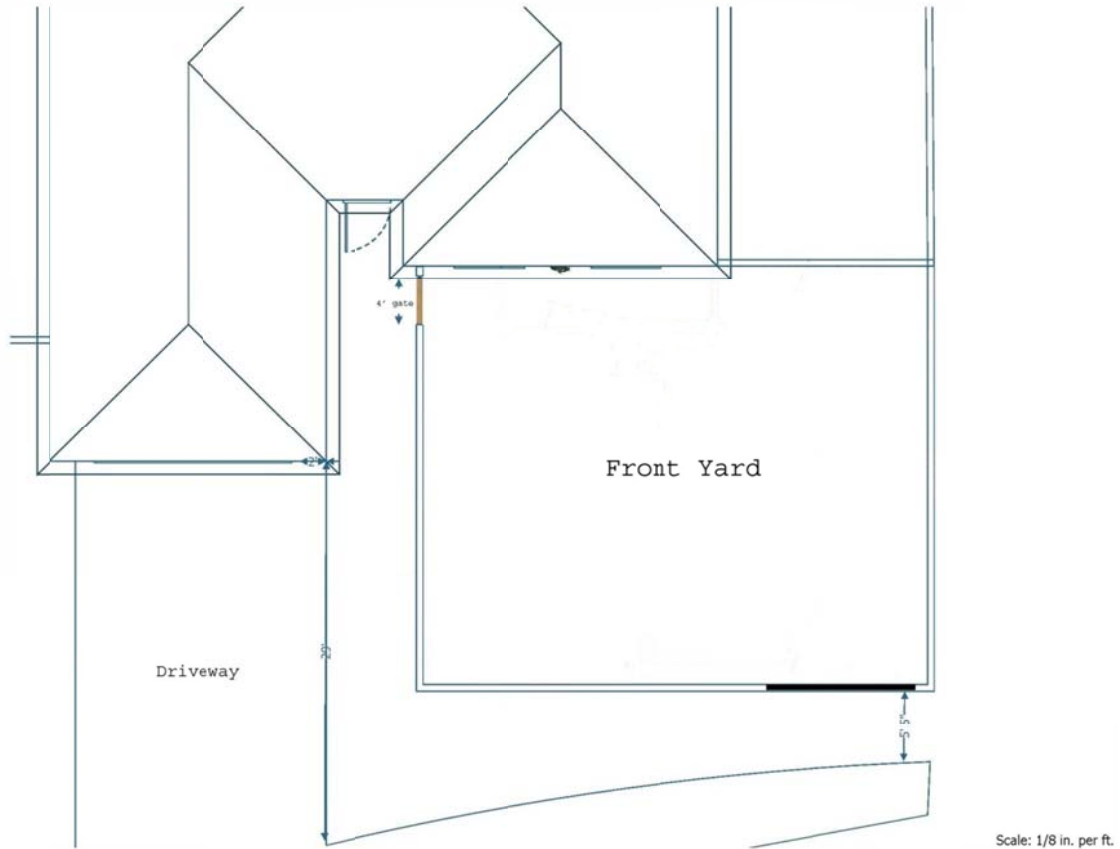
ARTIST RENDERING OF PLANNED FENCE at 4816 S. BIRCH STREET



Diagram – Revised 8/22/13

**Proposed Wrought Iron Fence
Around Front Yard Setback**

Not changes in location of fence, only from block to wrought iron



ARTIST RENDERINGS OF PROPOSED FENCE AT 4816 S. BIRCH STREET



ARTIST RENDERINGS OF PROPOSED FENCE AT 4816 S. BIRCH STREET





Photos of Proposed Property and Other Neighborhood Fences



Proposed Property for Fence

The photo to the left is of the property at 4816 S. Birch Street, where a fence is proposed.



Next Door Neighbor

This property is the next door neighbor on the same street west of the proposed fence property. It has a fence made of both iron and brick and is 4' in height.

This property's fence is right next to the sidewalk.

Photos of Proposed Property and Other Neighborhood Fences



Neighbor – Same Street

The photo to the left is of the property on the same street catty-corner to the proposed fence property.

This property has a 4' tall metal fence which is about 6' from the sidewalk area.



Neighbor

This property is in the same neighborhood but not on the same street and is of the same style and type that is proposed by Robert Johnson. Instead of Brick, Mr. Johnson proposes block/stucco for a more smooth and refined and modern look, and it is proposed to be 1' taller, at approx. 5' in height, instead of 4'. This property is about 2' from the sidewalk.

**CITY OF TEMPE
HEARING OFFICER**

Meeting Date: 08/06/2013
Agenda Item: 8

ACTION: Request approval for a Use Permit to allow an increase in the height of a wall from 4' to 6' 8" located in the front yard setback for the JOHNSON RESIDENCE located at 1718 East Pebble Beach Drive. The applicant is Robert Johnson.

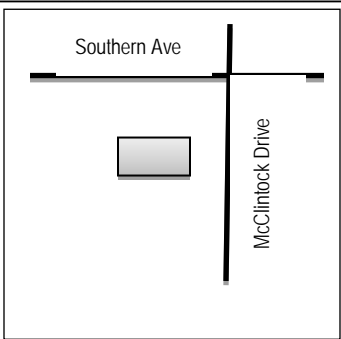
FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approval subject to conditions

BACKGROUND INFORMATION: JOHNSON RESIDENCE (PL130241) is located on the north side of Pebble Beach Street, south of Southern Avenue and west of McClintock Drive. The resident is proposing a 6'-8" masonry wall with openings to be located in the front yard setback. The purpose of the wall is to provide the required barrier for a swimming pool to be constructed in the front yard.

The request includes the following:

ZUP13084	Use Permit to allow the increase of the wall from 4' to 6'8" (6' as measured from highest adjacent grade) located in the front yard setback

	Property Owner	Robert Johnson
	Applicant	Robert Johnson
	Zoning District	R1-6, Single Family Residence

ATTACHMENTS: Supporting Attachments

STAFF CONTACT: Sherri Lesser, Senior Planner (480) 350-8486

Department Director: Lisa Collins, Interim Community Development Director

Legal review by: N/A

Prepared by: Sherri Lesser, Senior Planner

Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

COMMENTS

The Johnson Residence is requesting a Use Permit to allow the maximum height for a wall in the front yard setback to be increased from 4 ft. to 6 ft '8 inches. The new masonry wall with openings will surround a future pool to be constructed in the front yard. The color scheme for the wall will match the color scheme for the house. The Zoning and Development code has no provision regarding the placement or setback for the pool. The swimming pool is allowed in the front yard setback if all building code requirements are met. The building code requires a minimum 5' barrier surrounding any swimming pool. The property owner stated in the letter of explanation their purpose for locating the pool in the front yard is to maintain the mature trees in back yard of the residence. Staff supports walls or fences located in within the front yard. . The front yard is usually a passive inactive area; a courtyard (with or without pool) in the front yard brings people closer to the street; fostering a greater sense of community and may serve as a crime deterrent by increasing awareness of activity on the street.

PUBLIC INPUT

There was no neighborhood meeting required for this process. To date, staff has received no public input on this request.

USE PERMIT

The Zoning and Development Code requires a Use Permit to increase the maximum allowable height of a wall in the front yard setback from 4' to 6'. (Overall wall height may be taller than 6' depending on measurement from the highest adjacent grade within 20')

Section 6-308 E Approval criteria for Use Permit:

1. Any significant increase in vehicular or pedestrian traffic.
There should be no significant increase in vehicular traffic due to the increase wall height in the front yard..
2. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
No nuisance from this use shall impact the surrounding area with regard to odor, dust, gas, noise, vibration, smoke, heat or glare beyond the norm. This use permit, if granted, will have a null effect on the surrounding ambient conditions.
3. Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
There should be no impact to the surrounding area in deterioration or decreased property values.
4. Compatibility with existing surrounding structures and uses.
The proposed wall is intended to enhance an aesthetic look of the property and provide the required barrier for the pool and should be compatible with surrounding structures.
5. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.
The presence of people at the street will aide in controlling disruptive behavior in the surrounding area.

The proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and the use will be in full conformity to any conditions, requirement or standards prescribed therefore by this code.

Conclusion

Based on the information provided by the applicant, and the above analysis, staff recommends approval of the requested Use Permit with the finding that therequest meets the required criteria and will conform to the conditions.

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

**CONDITION(S)
OF APPROVAL:**

1. The Use Permit is valid for the plans as submitted within this application.
2. The wall to match the color scheme for the residence.

HISTORY & FACTS: None pertinent to the case.

**ZONING AND
DEVELOPMENT
CODE REFERENCE:** Section 6-308 Use Permit
Section 4-706 Screens, Walls and Access Control Landscapes
A. General Fence and Wall Height Standards

Request approval for a Use Permit to allow an increase of the height of a block wall located within the front yard setback for the **JOHNSON RESIDENCE (PL130241)** located at 1718 East Pebble Beach Drive. The applicant is Robert Johnson.

Robert Johnson was present to represent this case.

Sherri Lesser introduced the case. This is a Use Permit to allow a wall in the front yard setback for the Johnson Residence. This property is located south of Southern Avenue, west of McClintock Drive in the R1-6 Single Family Residential District. The applicant is seeking the wall to allow for construction of a pool in the front yard. There are no provisions in the Zoning and Development Code to prohibit swimming pools in the front yard. A swimming pool can be placed anywhere on your property as long as it is in compliance with the Building Code. The Building Code does require a 5 ½ foot minimum barrier for the pool with a self-latching gate. The site plan shows the wall being placed 5 ½ behind the sidewalk. The property line does not follow the sidewalk due to the curve of the property. Staff is recommending approval of the wall. Staff is not commenting on the swimming pool. The Use Permit is for the construction of the wall and the height of the wall. Staff has supported walls in the front yard setback in the past. Staff has had discussions with the neighbor next door. She is in opposition of the Use Permit. If the wall is approved, the neighbor does not want to see anything above it (pool equipment, slide, rock formations). The neighbor would like it to look like a courtyard from the street. Landscaping above the wall and in front of the wall would be acceptable. Mr. Johnson indicated he was planning to do some landscaping in front of the wall. The neighbor would also like to see the wall set back to 8 or 9 feet behind the sidewalk. Staff would like to impose the conditions requested by the neighbor, if the Use Permit is approved. There are citizens present to speak on this request.

Ms. MacDonald noted a letter of opposition from Ms. And Mr. Washington into the record.

Mr. Johnson appreciated the comments by Ms. Lesser. He stated he was interested in hearing the opinions of his neighbors. He wants to be on good terms with his neighbors. He is interested in the property values in the neighborhood as well. He purchased the home as an investment property. He and his family are now living in the house. It would be helpful to have the area in the front of his home for his family to enjoy. They have had some issues with a rental property located across the street. He wants to make sure the wall is a good design and attractive. He would like to preserve and protect the neighborhood.

Ms. MacDonald asked Mr. Johnson about the height of the wall.

Mr. Johnson stated he initially planned to have the height of the wall at 6 feet. His contractors informed him the wall would have to be a certain height in order to have the decorative openings. The wall is designed to be 6 feet at the highest elevation. The property is on a small incline; at one point an extra layer of block would be necessary.

Elaine Dehghanpisheh has resided in the neighborhood since 1984. She along with several of her neighbors opposes the Use Permit for the block wall and the atmosphere it would create. She submitted a letter to the Hearing Officer with signatures of her neighbors in opposition of the construction of the front yard pool and the 6 foot concrete block wall.

Ms. Dehghanpisheh lives on the adjoining property on the east side of Mr. Johnson. This type of use would be a contradictory type structure in the neighborhood. There are no other tall concrete walls or pools in the front yards. This would change the character of the neighborhood from being open and neighborly. She feels strongly that it would impact the market value for the houses in the neighborhood. The wall would extend to the west side of her property and it would impact the curb appeal of her house. The wall would also block her view of the neighborhood. If a pool is constructed in the front yard the noise would also impact her living area.

Reid Reinholtz lives to the east of the Johnson Residence, a few houses down. He feels the wall would hinder

the view and the character of the open community feel of the neighborhood. Several of the neighbors have made home improvements to maintain the look of the neighborhood. The large block wall would be an eyesore and an unnecessary partition. He feels there is probably room in the backyard to accommodate a pool. In keeping with the tradition of the community in the area there are no pools or giant imposing walls in the front yards. He feels the granting of this Use Permit would impact the property values in the neighborhood in a negative way. The neighbors appreciate the home improvements the Johnsons have done to their home. The neighborhood has had situations in the last several years with tagging incidents in alleyways and on main street walls. The wall will attract taggers as a blank canvas which would immediately reduce the perception of value in the neighborhood.

Joan Bricker lives diagonal across the street from the Johnson Residence. She has lived in the neighborhood for 33 years. She spoke in opposition of the Use Permit for the block wall. She does not want to look at the wall when she is home. She does not believe it fits into the neighborhood. She feels the pool should be constructed in the back yard. The street is a private street without much traffic. There are probably about 10 houses on the street with pools in the back yards. None of the other neighbors have a pool in the front yard.

Ms. MacDonald asked Ms. Bricker to take the pool out of the equation. She stated the issue is the block wall, not the pool. She asked if Ms. Bricker's comments still stand regarding the wall.

Ms. Bricker asked if Mr. Johnson would still be constructing the wall without the pool.

Ms. MacDonald was unsure. She stated applicants have requested walls in the past who were not putting swimming pools in their front yard. Ms. MacDonald wanted to clarify that the discussion was not specifically concerning the swimming pool. The issue is the wall and specifically the height of the wall.

Ms. Bricker stated she was concerned about the height of the wall. She believes it would be an eyesore. The wall would also decrease the property values in the neighborhood. The rental house occupied by the college students that was a problem in the past is currently for sale.

Chris Duncan is a resident in the neighborhood. He presented a letter of opposition from a neighbor that was not able to attend the meeting today. His biggest issue with the fence is that there is nothing else like it in the neighborhood. The visibility down the street will be destroyed since the street curves. The style of the proposed wall feels blocked off and similar to a penitentiary. He feels the visibility from the street will be blocked when Mr. Johnson backs out of his driveway. Mr. Johnson stated he has several other rental properties. This property may become a rental someday. If college students rent the house this would create a noisy area for people to hang out.

Ms. MacDonald noted she had letters and a signature on a petition in opposition of the Use Permit from the following:

Kevin Axon

Mary Rodriguez

Reid and Tamara Reinholz

Regina Washington Dragon as a representative for Earlie Washington

Mr. Johnson stated he understands the neighbors' concerns. He wants to stay on good terms with all of the neighbors. When he had the wall designed the most important thing was the aesthetics for the neighborhood. He is interested in maintaining the property values in the neighborhood as well. There is no intent to construct anything above the wall. He has four young children and was not planning to include a slide or diving board with the pool. He just wanted a place for the kids to swim. He is very concerned how the wall looks to the neighborhood. Mr. Johnson stated he would do everything in his power to ensure that the wall is aesthetically designed. He would put some shrubs out in front of the wall.

Ms. MacDonald asked Mr. Johnson why he has not explored the option to build the pool in his back yard.

Mr. Johnson stated he has four mature trees in the back yard. Two are giant eucalyptus trees and one is an olive tree. He is an environmentalist and feels the trees are good for the environment. The mature trees are maintained responsibly. Placing the pool in the back yard would require major excavation of the back yard property. The property up front is not being used for anything. The large trees in the back provide a lot of oxygen. This is good for the environment being in a high traffic area right off the US 60. The wall around the pool would act as a barrier to any noise in the front yard. The property was a rental property about three or four years ago. They made this the residence for their family since it was the largest property they owned. They have been very strict about the people they have rented to although there is no intention to rent the property out.

Ms. MacDonald stated this is an interesting case and very similar to another case that was presented a few months ago. She is familiar with the aesthetics and how a fence like this can look in a neighborhood. Some of the Use Permit criteria outlined in the Zoning Code does not really apply to stationary structures.

Ms. MacDonald reviewed the Use Permit criteria:

1. Will this create a significant increase in vehicular or pedestrian traffic? She stated clearly this use would not create an increase in traffic but this criterion does not apply.
2. Will this create a nuisance arising from the emission of odor, dust, gas noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions? The use itself would not create a nuisance but there is potential with a pool in the front yard to create a nuisance with splashing, yelling, and outdoor activity.
3. Will this contribute to the deterioration of the neighborhood or downgrade the property values? It is hard to gauge what is going to happen to someone's home economically. A structure like this is not in keeping with the other investments that have been made in the neighborhood. The other investments have been in the nature of painting and enclosing livable space and putting money into the home, not walling off the property. She does not believe the wall would contribute to the deterioration of the neighborhood, but it certainly would not improve the neighborhood by any measure.
4. Is this compatible with existing surrounding structures and uses? She does not believe this to be compatible at all in this neighborhood. There are a few walls on the street, but they are all within the three to four foot range. Many of the walls have wrought iron ornamentation. The walls delineate the space but you can still see the homes. The other walls are not a fortress like pertinence being created in the front yard.
5. Will there be adequate control of disruptive behavior both inside and outside the premises? This criterion could be questionable. This could be home to a really loud pool party. This may also invite tagging or graffiti especially since this area has experienced that in the past.

DECISION:

Ms. MacDonald denied PL130241/ZUP13084 for a Use Permit to allow an increase of the height of a block wall located within the front yard setback.