



Staff Report

Agenda Item No. D-2

To: City of Imperial Planning Commission

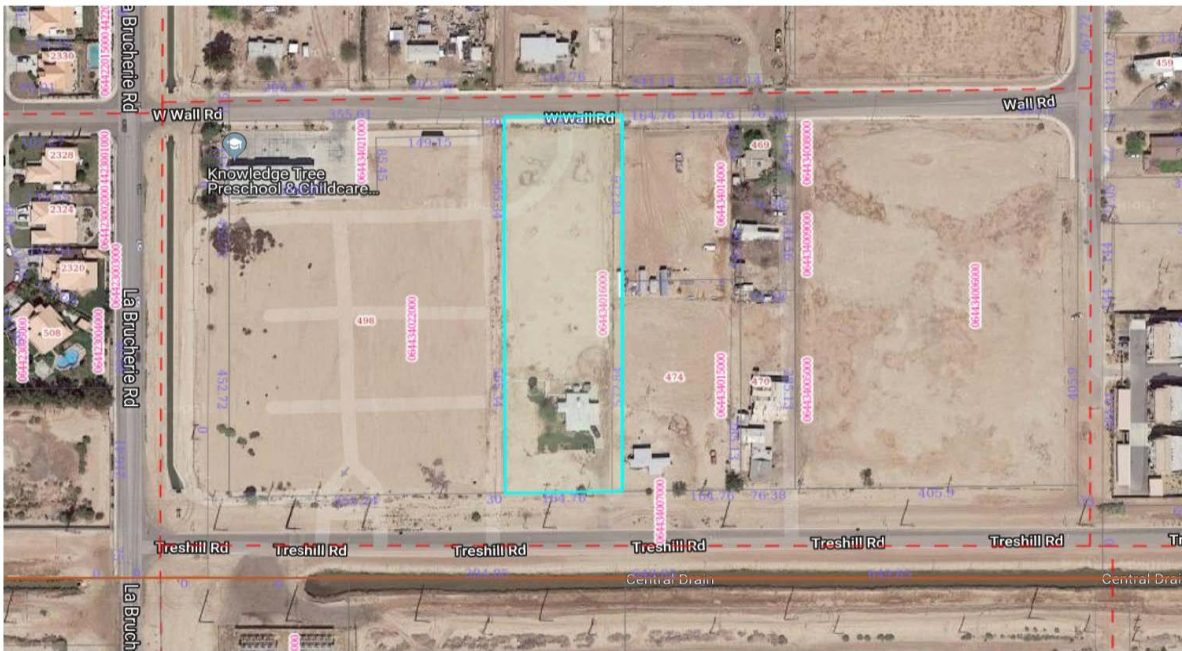
From: Lisa Tylanda, Planner

Date: January 2, 2020

Item: Variance-VAR (19-03)-to allow for a privacy fence instead of the ordained block wall fence around the perimeter of the Phase 2 of Morningside Apartments.

Applicant:	Martin D. Coyne-Morningside Apartments Phase 2
Project Location:	APN#: 064-434-016; Imperial, CA 92251
Zoning:	R-A (Residential Apartment)
Recommendation:	Planning Commission to review Variance request.

Variance 19_03- Morning-side Apartments Phase 2



1" = 188 ft	City of Imperial	01/03/2020		
<small>This map may represents a visual display of related geographic information. Data provided here on is not guarantee of actual field conditions. To be sure of complete accuracy, please contact the responsible staff for most up to date information.</small>				

Background

The applicant is requesting a Variance Permit to allow for deviation from the City of Imperials' "Property Development Standards" Section 24.03.120, "Performance Standards" Section 24.03.130 (B.)(1.), of the zoning code, which is the ordained requirement of a masonry wall six feet in height that is required on the rear and side property lines. The applicant is requesting a variance to allow for a privacy fence instead of the ordained block wall requirements. Installation of the block wall is not feasible for the project. The applicant did not provide a noise study for the proposed change of fence.

Section 24.19.400 et seq. of the Imperial Zoning Ordinance allows for variances from development standards "only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification."

Required Findings:

For the Planning Commission to approve a variance, all of these findings must be made:

- A. Special circumstances apply to the property. These can be it's size, shape, topography, location, or surrounding structures. You must explain how these circumstances deprive your property of the privileges enjoyed by other property in the neighborhood which is zoned the same, and;
- B. The variance will meet the intent of the zoning on the parcel, and will not be detrimental to public health, safety, and welfare, and not be detrimental to other property in the neighborhood; and,
- C. The variance will not be a grant of special privilege in the neighborhood, and will not allow you to build in a way that would not be allowed for someone else.
- D. The granting of the Variance or its modifications will not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated; and
- E. The granting of this Variance does not allow a use or activity which is not otherwise expressly authorized by the zoning regulation governing the parcel of property.
- F. That granting the Variance or its modification will not be incompatible with the City of Imperial General Plan.

The applicant has provided justification for the required findings. Please see below:

Findings provided by Martin D. Coyne:

The special circumstances surrounding my request is simple. We currently own the property to the west which is our Morningside Apartment Homes which had 6 foot high privacy fence along the eastern boundary of our property which abutted a single family home. Earlier this year we purchased the single family home property to expand our next door apartment homes with the intent to build an additional 64 apartments.

We have already pulled permits and are under construction. It was always been our intent and assumed it was ok with the city to just relocate our existing new privacy fence from the our existing property line to our new property line of our new project as our new apartments are identical as our apartments we completed 18 months ago. We are adjoining them with no fencing between them.

By using our existing city approved fence, it will eliminate the hardship of having to come up with an extra \$100,000 that was never part of our budget as we assumed what was approved by the city in our phase 1 would be the same for phase 2.

This variance request will not create any negative or detrimental effect to the community, it's neighbors, public health, safety or welfare.

In fact the adjacent property and business owner N.S. Construction supports our variance requests that the privacy fence be installed between our properties instead of brick. His letter and signature of support is included in your packet.

This request will have no effect on any other residents or property owners as I and N.S. Constuction own all the parcels on the block and have no neighbors or property owners across the street as it is an IID drain ditch.

Please recommend and approve the variance request to move and install our privacy fence in lieu of a brick wall for the continuation of this project. It would be expensive financial burden to build a block wall. The difference between a 6 foot privacy chain link and brick wall is \$20.00 per lineal foot compared to almost\$100.00 per foot in which we have 700 feet to install and already have the privacy fence to reuse.

Thank you for your consideration

Sincerely
Marty Coyne
Morningside Apartment Homes

Environmental:

The project has an existing Negative Declaration from the Zone Change that was recently done to parcel of the proposed project site during 2018.

Attachments:

- Site Plan
- Resolution
- Conditions of Approval

Recommendation:

Staff recommends that the Planning Commission conduct a public hearing as required by Section 24.19.425 of the Imperial Zoning Ordinance.

Site Plan:

RESOLUTION PC2020-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IMPERIAL APPROVING A VARIANCE PERMIT (19_03) FOR MARTIN D. COYNE ALLOWING THE DEVIATION OF THE FOLLOWING ORDAINED DEVELOPMENT AND PERFORMANCE STANDARDS: DEVIATION FROM THE REQUIRED BLOCK WALL AND APPROVAL OF PRIVACY FENCE AROUND THE SIDE AND REAR YARD PERIMETER OF THE APARTMENT COMPLEX FOR MORNINGSIDE PHASE 2, LOCATED ON ASSESSOR PARCEL NUMBER: 064-434-016; IMPERIAL, CA 92251.

WHEREAS, Marting D. Coyne submitted a request for a Variance for the deviation of the ordained development standards regarding fencing requirements; and

WHEREAS, a duly notified public hearing was held by the Planning Commission during an adjourned meeting on January 8, 2020 and;

WHEREAS, upon hearing and considering all testimony and arguments, analyzing the information submitted by staff and considering any written comment received, the Planning Commission considered all facts relating to the request for a Variance.

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Imperial as follows:

- A) That the foregoing recitations are true and correct; and
- B) The project has been reviewed in accordance with the requirements set forth by the City of Imperial for implementation of the California Environmental Quality Act; and
- C) Installation and alteration of the property and deviation from the fencing requirements are ministerial and therefore exempt from the California Environmental Quality Act.
- D) There are no sensitive resources located within the area of the project or adjacent to the area of the project so as to be significantly impacted by the project; and
- E) That based on the evidence presented at the public hearing, the Planning Commission hereby **APPROVES** Variance-**VAR 19-03** for Martin D. Coyne, allowing for the following development and performance standards deviation of the “Fencing Requirements” due to the following findings:
 - A. That there are exceptional or extraordinary circumstances applying to the property (size, shape, topography, location or surroundings) or the intended use of the property, and because of this, the strict application of the zoning ordinance deprives the property of privileges enjoyed by other properties in the vicinity under identical zoning classification; and
 - B. That owing to such exceptional or extraordinary circumstances the literal enforcement of specified provisions of this Code would result in practical difficulty or unnecessary hardship not created by or attributable to the applicant or the owner of the property;

- C. That granting the variance or its modifications will not be materially detrimental to the public health, safety of welfare or injurious to the property of improvement in such vicinity and zone in which the property is located; and
- D. The granting of this variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated; and
- E. The granting of this variance does not allow a use or activity which is not otherwise expressly authorized by the zoning regulation governing the parcel of property.
- F. That granting the variance or its modification will not be incompatible with the City of Imperial General Plan.

PASSED, ADOPTED AND APPROVED by the Planning Commission of the City of Imperial, this January 8, 2020.

Planning Commission Chairman

ATTEST:

Planning Secretary

**RESOLUTION PC 2020-02
CONDITIONS OF APPROVAL**

For

Variance Permit #VAR 19-03

Martin D. Coyne

APN#: 064-434-016

Imperial, CA 92251

1. A building permit from the City of Imperials' Community Development Department must be obtained after variance approval along with any required development and/or construction plans required and payment of processing fees as well.
2. Applicant shall not hold the City of Imperial or any of its employees responsible for any incidents regarding this Variance Permit.
3. The provisions of this Variance Permit are to run with the land/project and shall bind the current and future owner(s) successor(s) in interest, assignee(s) and/or transferor(s) of said project.
4. The proprietor/owner shall be responsible for the removal of all graffiti from the property within 72 hours of its appearance on the property.
5. The proprietor/owner shall be responsible for maintaining the locations where the building is located and adjacent to- areas free of litter at all times.
6. Applicant shall comply with all local, State and Federal laws, regulations, rules, ordinances, and standards as they pertain to this project, whether specified herein or not. Where conflicts occur, the most stringent shall apply.
7. The conditional approval of the Variance Permit shall not constitute the waiver of any requirement of the City's Ordinances or regulations, except where a condition set forth herein specifically provides for a waiver.
8. The Applicant shall pay all impact and capacity fees as required by the city.
9. Applicant must obtain an approved Building Permit from the Community Development Department within 6 month of approval of the Variance Permit. If the applicant does not obtain and approved Building Permit from the Community Development Department, the Variance Permit becomes null and void based on the final date of approval of the Variance Permit.
10. If the Community Development Department finds and determines that the Permittee or successor-in-interest has not complied or cannot comply with the terms and conditions of the Variance, or the Planning/Building Department determines that the permitted activities constitute a nuisance, the City shall provide Permittee with notice and opportunity to comply with the enforcement or abatement order. If after receipt of the

order (1) Permittee fails to comply, and/or (2) Permittee cannot comply with the conditions set forth in the Variance, then the matter shall be referred to the Planning Commission for permit modification, suspension, or termination, or to the appropriate enforcement authority.

11. As between the City and the Permittee, any violation of this permit may be a "nuisance per se". The City may enforce the terms and conditions of this permit in accordance with its Codified Ordinances and/or State law. The provisions of this paragraph shall not apply to any claim of nuisance per se brought by a third party.
12. Permittee shall not be permitted to maintain a "nuisance", which is anything which: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and/or (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and/or (3) occurs during or as a result of the approved project.
13. Applicant must comply and obtain any permits required from Local, State, and/or Federal agencies.

From: Martin D. Coyne martycoyne@hotmail.com
Subject: Re: Variance Application-Fence
project_Morningside Apartment phase 2
Date: Dec 4, 2019 at 4:41:26 PM
To: Lisa Nichole Tylenda
ltylenda@cityofimperial.org
Cc: omora@cityofimperial.org

Good afternoon Lisa

Below are my responses and answers that you have requested to accommodate my variance application for my Morningside Apartment Homes 2 project.

1. The special circumstances surrounding my request is simple. We currently own the property to the west which is our Morningside Apartment Homes which had 6 foot high privacy fence along the eastern boundary of our property which abutted a single family home. Earlier this year we purchased the single family home property to expand our next door apartment homes with the intent to build an additional 64 apartments.

We have already pulled permits and are under construction. It was always been our intent and assumed it was ok with the city to just relocate our existing new privacy fence from the our existing property line to our new property line of our new project as our new apartments are identical as our apartments we completed 18 months ago. We are adjoining

them with no fencing between them.

By using our existing city approved fence, it will eliminate the hardship of having to come up with an extra \$100,000 that was never part of our budget as we assumed what was approved by the city in our phase 1 would be the same for phase 2.

This variance request will not create any negative or detrimental effect to the community, it's neighbors, public health, safety or welfare.

In fact the adjacent property and business owner N.S. Construction supports our variance requests that the privacy fence be installed between our properties instead of brick. His letter and signature of support is included in your packet.

This request will have no effect on any other residents or property owners as I and N.S. Constuction own all the parcels on the block and have no neighbors or property owners

across the street as it is an IID drain ditch.

Please recommend and approve the variance request to move and install our privacy fence in lieu of a brick wall for the continuation of this project. It would be expensive financial burden to build a block wall. The difference between a 6 foot privacy chain link and brick wall is \$20.00 per lineal foot compared to almost \$100.00 per foot in which we have 700 feet to install and already have the privacy fence to reuse.

Thank you for your consideration

Sincerely

Marty Coyne

Morningside Apartment Homes

Sent from my iPad

On Nov 20, 2019, at 1:28 PM, Lisa Nichole Tylenda
<ltylenda@cityofimperial.org> wrote:

MORNINGSIDE APARTMENT HOMES, LLC
2351 S. 4th Street
El Centro, Ca. 922243

August 19, 2019

Othon Mora
Community Development Director
And Planning Commission Members
400 S. Imperial Ave., Suite A
Imperial, Ca. 92251

Re: Morningside Apartment Homes LLC

Dear Mr. Mora and Planning Commission Members,

Morningside Apartment Homes, LLC (MSA) is in the process of constructing Phase II adding an additional 64 1 and 2-bedroom apartment homes.

The purpose of this variance application is that your staff advised us that a variance is required due to the fact that our new next door neighbor to the east Mr. Nick Sanchez of NS Construction property is considered commercial and my property as multifamily which was brought to my attention per the existing city code that calls for a 6-foot solid masonry block wall.

As you can see with the map attached in your packet that all of the properties including MSA's was all zoned commercial at one time in the past. In 2018 I applied to the City of Imperial before your commission and city council for a zone change and general plan amendment which was approved unanimously for both parcels on each side of the NS Construction building.

So upon the completion of MSA Phase One we installed a very nice looking 6-foot privacy chain link fence on our east property line with the variance administered, approved and issued by the Planning Director Mr. Jorge Galvan at the time.

It was always assumed that we could just relocate the same privacy fence over 1 lot and reuse the same new fence on our new property line next door to the east adjoining the NS Construction's property.

We only factored our budget to relocate our existing privacy fence over to our Phase II project assuming the same would apply as our Phase One project would also apply for Phase II.

Our next door neighbor NS Construction Mr. Nick Sanchez not only supports and agrees on using our existing privacy fence on our adjoining property line as well as requested that we split our costs 50/50 using the same type of fence on his east property side in which I also own that adjoining parcel as well. As we are applying for your approval to use the same privacy fence on the eastside property line of NS Construction as we are on west property line of NS Construction bordering our properties.

I Martin Coyne and Mr. Nick Sanchez are requesting for Planning Commissions approval tonight to

approve the variance application as submitted allowing the privacy chain link be installed between 470, 474, and 480 Treshill Road. This variance approval creates no impact to any other properties, landowners or citizens other than MSA and NS Construction.

Thank you for your time to review our variance application and hope you will approve this variance as both property owners agree that we want to use privacy chain link fencing. Between our properties costing \$20.00 per lineal foot compared to \$100.00 per lineal foot where we have over 900 feet of property line that needs fencing. A block wall could cost us over \$100,000.00 additionally.

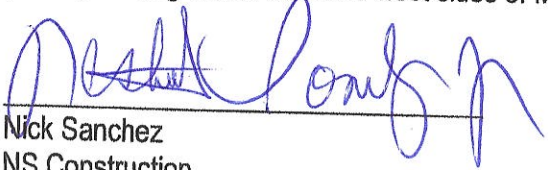
Please vote to approve our variance application.

Sincerely,



Martin D. Coyne
Sole Member

I, Mr. Nick Sanchez owner of NS Construction located at 474 Treshill hereby request that the planning commission support and approve this application request for a variance allowing using a 6' chain-link privacy fencing on the east and west sides of Mr. Coyne's property lines and my property lines.



Nick Sanchez
NS Construction.

9/17/19
Date

Marty Coyne Projects

EXISTING COGNAC DRIVEWAY TO BE RELOCATED

PROPOSED NEW COGNAC LINK PRIVACY FENCE TO BE INSTALLED BY M&A + NS CONSTRUCTION COST \$9,000

Coyne
400 Treskill Road

M&A Construction
474 Treskill Road

Coyne
470 Treskill Road

MSA PHASE I

MSA PHASE II

NS CONSTRUCTION

MSA

Future Development