

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
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Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Prepared on: July 7, 2006
Department Name: Planning & Development
Department No.: 053
Agenda Date: July 25, 2006
Placement: Departmental
Estimate Time: 1 hour
Continued Item: YES
If Yes, date from: February 9, 2006
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TO: Board of Supervisors

FROM: Dianne Meester, Assistant Director
Planning & Development

STAFF CONTACT: Steve Chase, Deputy Director
568-2520

SUBJECT: Appeal of the Montecito Planning Commission's denial of Peter Sperling's Minor Conditional Use Permit to locate a 10 foot high fence around the property perimeter.

Recommendation:

That the Board of Supervisors deny the appeal by Peter Sperling and uphold the Montecito Planning Commission's November 16, 2005 denial of the Sperling Fence project, 05CUP-00000-00046, located at 675 Picacho Lane, known as APNs 001-130-022 and 019, in the Montecito Community Plan area, First Supervisorial District.

The Board of Supervisors' action should include the following:

1. Adopt the required findings for denial of the project [05CUP-00000-00046] as specified in the Montecito Planning Commission's Action letter dated November 22, 2005 included as Attachment A of this Board Agenda Letter.
2. Deny the appeal [05APL-00000-00035] and uphold the decision of the Montecito Planning Commission to deny 05CUP-00000-00026.

Alignment with Board Strategic Plan: The recommendation is primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

Background

APNs 011-130-022 & -019 were originally created with the 1980 approval of TPM 12,993, which divided the then existing 19.28 acre Las Tejas Estate into four legal parcels. At the time that TPM 12,993 was approved, the required finding was made that all of the development on the Las Tejas Estate was legal. For APN 011-130-022, this includes the existing horse stables and attached shed, corral, water tank, and pump house. For APN 011-130-019, this includes the existing the main house, second single family dwelling, detached garage, and accessory structure. The appellant is attempting to reassemble the former estate and to that end, has, to date, purchased a total of five adjacent properties. Fencing the parcels involved in the instant project would allow for complete enclosure of the 19.28 acre former estate comprising APNs 011-130-019, 020, 021 and 022. APN 011-130-019 fronts onto Picacho Lane and surrounds APNs 011-130-020 and 021. APN 011-130-022 is an interior lot surrounded by private properties.

The existing 10 foot high black vinyl fencing, located within setbacks, originally came to the County's attention as a zoning violation. Any fence exceeding six feet in height located within the setback area requires a Minor Conditional Use Permit (CUP), and a follow-up Land Use Permit (LUP). Neither of the required permits had been obtained for this fence. Accordingly, the applicants applied for a Minor Conditional Use Permit to legitimize the fence. In Montecito, Minor CUPs are under the jurisdiction of the Montecito Planning Commission. The Montecito Planning Commission first considered the Sperling Fence project on October 19, 2005.

The applicant's request consisted of a 10 foot high fence to be located around the entire perimeters, but not along the common property line, of the two separate parcels (APNs 011-130-022 & -019). The applicant's request included permitting of the existing 10 foot high sections of the fence located within the setbacks, raising existing six foot high sections of fencing to 10 feet and installing new 10 foot high sections as necessary to achieve the project program. The fence would be located within the 10' interior lot setbacks on APN 011-130-022, and within the front (50' from CL/20' from ROW), side (10'), and rear yard setbacks on APN 011-130-019. Of note is the fact that all but a five foot section of the existing fence is currently screened by landscaping from public views along Picacho.

In the Staff Report dated October 19, 2005, County staff recommended approval of this project, and concluded that all of the required findings could be made to allow the 10 foot high fence within the setbacks as proposed. Staff's support was based on the facts that 1) the fence is made of black vinyl coated chain link which is visually recessive, 2) the existing fence is screened almost entirely by existing vegetation, including trees and vines, 3) the visible portions of the fence were to be planted with vines for complete screening and 4) the request was reasonable and has precedent in the Montecito Community Plan area where there are numerous estates that are surrounded by ten foot walls and/or vegetated fencing. However, the Montecito Planning Commission received unfavorable

comments about the location, height, and appearance of the fence from the adjacent neighbors and the Chair of the Montecito Board of Architectural Review.

The Montecito Planning Commission determined that the 10 foot high fence would be visually imposing and incompatible with the surrounding area, as it would run conterminous with the property line for a majority of its length precluding adequate screening of the fence along the common property lines with adjoining neighbors, and adjacent public and private roads. The Montecito Planning Commission cited what they considered the norm in Montecito for these structures which comprises hedge plantings on both sides of a fence for complete screening and concluded that the following finding could not be made: *"That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will be compatible with the surrounding area."*

At the October 19, 2005 hearing, the Montecito Planning Commission also discussed the fact that the applicant has two other options for pursuing a fence on the property which would not require a CUP, as follows:

- 1) Reduce the height of the fence to six feet within the setback areas, thereby avoiding the need for a Conditional Use Permit and Land Use Permit.
- 2) Relocate the 10 foot high fence outside of the setback areas, thereby avoiding the need for a Conditional Use Permit and providing opportunity to plant consistent with the perceived Montecito norm. Only a ministerial level Land Use Permit would be required.

As a Conditional Use Permit can only be approved if all of the findings can be made, the Montecito Planning Commission continued the project to November 16, 2005 and directed staff to return with findings for denial of the project. The following finding was made at the November 16, 2005 Montecito Planning Commission hearing, which led to the project's denial:

That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will be compatible with the surrounding area.

The project would be detrimental to the general welfare of the neighborhood, due to the fact that it would be visually imposing and incompatible with the surrounding area. Enclosing the entire property of approximately 10.66 acres with a 10 foot high chain link fence would be incompatible along the common property lines with adjoining neighbors, and along the adjacent public and private roads. Typically, fencing in Montecito is set back a sufficient distance from the property line to allow for large and well maintained shrubs, such as pittosporum, to flank both sides of the fence and screen it from view. The end result is one of a full hedge, with the fence completely obscured. The current proposal would site the 10 foot high fence directly along the property line for a majority of its length, which would not provide sufficient room to screen the 10 foot high fence in manner that would be compatible with the full hedge screening typical of Montecito. Therefore, the project is not consistent with this finding.

Appellant Issues

Peter Sperling appealed the Montecito Planning Commission's denial of his project. His letter states that the denial was unjustified in light of the evidence presented in staff's original staff report and presentation for the October 19, 2005 hearing, which indicated that all of the required findings could be made to approve the project. In his appeal letter, Peter Sperling also indicates that he was willing to accept an additional condition that would have required him to return to the Montecito Board of Architectural Review and work with that body to devise acceptable landscaping to screen the fence. He states that approval of the project with this condition would have been a preferred outcome, rather than denial of the project. According to the applicant, the fence, as designed, is appropriate due to the fact that thick foliage is located on the neighboring properties adequately screening the fence from view. In addition, the property was historically surrounded by a fence covered in vines, and therefore, the current proposal is more historically accurate than the Montecito Planning Commission's call for a thick hedge to be installed.

As discussed above, the Montecito Planning Commission has jurisdiction over Minor Conditional Use Permits in the Montecito Planning area. The Commission used its discretionary authority to disagree with staff's recommendation of approval and made a clear finding supported by facts in their denial of the project. The appellant's administrative relief is now found in your Board's *de novo* consideration of the project.

Mandates and Service Levels:

Section 35-489.3.1 of Article IV of Chapter 35 of the County Code provides that the decisions of the Montecito Planning Commission may be appealed to the Board of Supervisors by the applicant or any interested person adversely affected by such decision.

Pursuant to Sections 65090 - 65096 of the California Government Code, a notice shall be published in at least one newspaper of general circulation within the County, at least 10 calendar days prior to the hearing.

Pursuant to Sections 65090 - 65096 of the California Government Code, notice shall be mailed to the owners of the property within 300 feet of the exterior boundaries of the affected property at least 10 calendar days prior to the hearing.

Fiscal and Facilities Impacts:

As this is an applicant appeal to the Board, an appeal application flat fee of \$2,000 was required per the Planning & Development fee schedule in effect at the time of appeal application (Resolution No. 04-060, adopted by the Board of Supervisors on March 15, 2004). Costs beyond the fixed fee are borne by Planning and Development. These funds are budgeted in the Permitting and Compliance program in the Development Review South Division on page D-290 of the adopted 06/07 fiscal year budget.

Special Instructions:

Clerk of the Board shall complete noticing in the Santa Barbara News-Press and shall complete the mailed noticing for the project at least 10 calendar days prior to the February 21, 2006 hearing (mailing labels attached).

Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, Hearing Support Section, Attention: Cintia Mendoza.

Concurrence: None

Prepared by: Lisa Hosale, Planner

Attachments:

- A. Montecito Planning Commission Action letter, November 22, 2005
- B. Montecito BAR notes
- C. Applicant's Appeal Letter
- D. Original Staff Report for 05CUP-00000-00046