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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Hillary Gitelman, Director, 253-4805
SUBJECT: Ronald & Kathe Citron Special Fence Permit Appeal

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Montgomery G. Frankel, Esq. on behalf of Ronald and Kathye Citron of an August 14, 2006 decision by the Director of Conservation, Development and Planning to deny a Special Fence Permit #P06-0215. The Special Fence Permit would have allowed a 6 foot 8 inch solid fence within the front yard setback of a residence located on the west side of Silverado Trail approximately 600 ft. north of Lommel Road within the Agricultural Preserve (AP) Zoning District at 4189 Silverado Trail (Assessor's Parcel No. 021-020-010).

ENVIRONMENTAL DETERMINATION: Categorical Exemption Class 3: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 3 ("New Construction or Conversion of Small Structures") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15303; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

EXECUTIVE SUMMARY

This appeal pertains to an August 14, 2006 Planning Director denial of a Special Fence Permit (P06-0215) in which the applicant sought approval of a 6 foot 8 inch solid wall located on the front property line of their 1.38 acre property on Silverado Trail. (See Attachment A.)

County Code allows walls and fences in front yards to a maximum height of 4 feet, however pursuant to Code Section 18.104.270(A)(2), the Planning Director is authorized to grant Special Fence Permits for fences in excess of the maximum fence height when "a need can be demonstrated, due to the unique nature of the parcel or surrounding environment, for the proposed fence design." Historically, the County Planning Department has interpreted this section narrowly, and has rejected arguments that small parcel sizes, sub-standard road setbacks, and/or high traffic volumes constitute "unique" circumstances. The appellant has offered several arguments in support of their current request for a Special Fence Permit (Attachment B). Planning staff has prepared responses to these arguments (see Background section below) and is seeking direction from the Board regarding their interpretation of "unique" circumstances.

Following a public hearing pursuant to Code Section 2.88, the Board of Supervisors is asked to adopt a motion of intent to take one of the following actions: 1) Uphold the Director's determination denying the appeal on the grounds that unique circumstances do not exist; 2) Grant the appeal approving the project, specifying the unique circumstances associated with this project that warrant issuance of the Special Fence Permit. County counsel will prepare findings consistent with the Board's intent, and schedule them for adoption at a future hearing.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Categorical Exemption Class 3: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 3 ("New Construction or Conversion of Small Structures") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15303; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

BACKGROUND AND DISCUSSION

The applicant/appellant is requesting approval of an existing 6 foot 8 inch solid wall located on the front property line adjoining the right of way of Silverado Trail. The wall serves the residence (primary use) located on a 1.38 acre parcel. The applicant/appellant offers several reasons, listed below in the grounds for appeal, why they feel authorization of the wall at its current height and location is justified. Planning Division staff also considered these reasons when evaluating the proposal. After careful consideration, the Director determined that a Special Fence Permit should not be granted because the circumstances on the parcel and its surroundings were not "unique" as required by County Code Section 18.104.270(A)(2). In making this determination, the Director considered past County decisions which collectively have set a "high bar" for the finding of "unique" circumstances required to grant a Special Fence Permit. From a big-picture perspective, the current appeal hearing presents an opportunity for the Board to consider past precedents as well as the current situation and to clarify the interpretation of the relevant code section that should be used by the Director in making future administrative decisions.

CURRENT STATUS AND ACTIONS REQUESTED BY THE BOARD OF SUPERVISORS: Following a public hearing pursuant to Code Section 2.88.090(A), the Board of Supervisors is asked to adopt a motion of intent to take one of the following actions: 1) Uphold the Director's determination denying the appeal on the grounds that unique circumstances do not exist; 2) Grant the appeal approving the project, specifying the unique circumstances associated with this project that warrant issuance of the Special Fence Permit. County counsel will prepare findings consistent with the Board's intent and schedule them for adoption at a future hearing.

STATED BASIS FOR THE APPEAL AND STAFF RESPONSE: The following outlines the Basis of the Appeal as contained in the appellant's submittal. For convenience, staff has numbered each issue and provided a summary, but recommends the Board review the appeal for additional details.

Appeal Ground 1: The new fence is exactly the same height, and in exactly the same location as the historical

fence, a unique fact justifying the granting of this appeal.

Response: County staff agree that the new fence is in the same location and has the same height as the fence it replaced. However, the previous fence was a wire fence with wood supporting structure that appeared compliant with County regulations. Open style fences are allowed in front yards to a height of 8 feet, but solid fencing has a four foot height limit. The reason open style fences are allowed at a greater height than solid fences is primarily for aesthetics. County staff routinely receive requests to replace 6 ft. to 8 ft. high open style fencing in front yards with 6 ft. to 8 ft. high solid fencing, and to date, staff has discouraged such requests from proceeding. Replacing open style fencing with solid fencing is not a unique circumstance for this property.

Appeal Ground 2: This property is unique, and this appeal should be granted because the County issued the Citrons a Certificate of Legal Non-Conformity to build their home in the Road Setback, and ordered then to erect a barrier across their northern driveway.

Response: There are literally hundreds of properties ranging in size from 5,000 sq. ft. to 2 acres in size fronting on public roads that have substantial portions within the road setbacks and the County routinely grants Certificates of Legal Non-Conformity to pre-existing legally-established uses and/or structures within setbacks. While it is accurate that the Public Works Department required the closure of the northern driveway to the site as part of construction of the replacement dwelling, the County did not: 1) require the existing fence to be replaced or a new wall to be constructed in the front yard; 2) require the wall to exceed height standards; 3) require the applicant to rebuild their new house in the same location as the old house. On busy roads like Silverado Trail, the County routinely requires the removal of multiple driveways serving a single, small property when a new residences is proposed. The requirement is to remove the driveway, and a barrier need only be installed if the drive aisles are to remain. The County did not order the applicant to replace their fence or to construct a solid wall, nor was any order given to exceed the height limitation. Rather, fencing was offered as an one option to ensure that the driveway was abandoned.

Appeal Ground 3: The unique location of the Citron property near the dangerous Silverado Trail curve justifies granting the appeal:

Response: County Staff respect the applicant's right to feel safe on their property. However, opinions offered by the appellant are not from a qualified traffic engineer, and County staff cannot comment on the traffic safety of private structures for liability reasons. This section of Silverado Trail has an accident history that is in not known to be unusual from any other section of Silverao Trail. A professional traffic safety engineer has not been retained by either the applicant nor the County to offer opinions on the safety of the road, nor the extent of safety a 6 foot 8 inch wall offers when compared to a 4 foot wall.

Appeal Ground 4: The very high noise levels along this stretch of Silverado Trail justify granting the appeal.

Response: Vehicles on this section of Silverado Trail travel at similar speeds and with similar volumes to other sections of Silverado Trail. Noise generate by vehicles is loud, however, is comparative to all other sections of Silverado Trail and other major County roads. Also, if sound attenuation is a justification for granting a Special Fence Permit, then the County should be prepared to grant similar sound walls to other properties along all other major County roads.

Unfortunately, one of the consequences of living in a rural setting next to a high volume road is high levels of road noise. That road noise can generally be mitigated in only three ways or a combination thereof: 1) surround the property with noise barriers; 2) set noise sensitive uses, like residences, as far as possible from the noise source; or 3) construct noise sensitive uses, like residences, with sound attenuating materials. Typically, the County has encouraged the latter two methods and has discouraged sound walls because they are thought to detract aesthetically from the County's rural character and are more in keeping with suburban communities.

In addition, staff observations are that the un-permitted wall offers little in the way of sound attenuation to the home and the majority of the property. Even at six feet eight inches the wall is not high enough and does not wrap far enough down the internal side property lines to effectively block vehicle noise. As noted by the appellant, noise levels on the road-side of the wall are extremely high, and are somewhat less immediately within the wall. However, noise levels rise again on the interior of the property, and the finish floor elevation of the house renders the wall ineffective at reducing traffic noise volumes when standing on the front porch. To achieve a noticeable reduction in traffic noise volumes, it is staff's opinion that the wall would need to be raised in height to 8 feet or higher. If sound attenuation for the second story of the home was desired, a 12 foot wall would likely be necessary. Lastly, the wall would need to wrap down side property lines since cars can be heard approaching/departing quite clearly from the north and south of the property. (These observations are just that; County staff did not contract for a sound study to be conducted, nor was one suggested by the applicant.)

Appeal Ground 5: There is no adverse visibility consequences with the new fence.

Response: The Director's decision regarding the applicant's request for a Special Fence Permit was based on the absence of "unique" circumstances, and not on an analysis of visibility with or without the fence.

Appeal Ground 6: The "Natural Grade" elevation is actually higher than the base of the fence.

Response: The appellant asserts that since County Code does not specifically define the term "natural grade," the point from which fence height is measured, that the subject wall should be considered less the 6 feet 8 inches in height because Silverado Trail is higher than the dirt the subject wall is built upon. The County has never applied such methodology when determining fence height. The County is not responsible for defining every word or phrase in the code. In cases where undefined terms are questioned, jurisdictions are obligated to rely on past administrative practices. In this case, there is essentially no room for interpretation because fence height has always been measured from the ground level that historically existed at the point where the fence would be constructed. The term "natural grade" is in the code largely in response to a common question where someone seeks to build a berm and then constructing a 4 ft. high fence on top of the berm to gain additional fence height. This berming is then considered as part of the fence height.

In the current instance, a Special Fence Permit was required because a solid wall exceeding 4 feet in height was built along the front property line. Even if the appellant's method of measuring were correct, the wall would still exceed four feet in height and the County would have to find that "unique" circumstances exist to grant a Special Fence Permit.

Appeal Ground 7: This appeal should be granted and the fence should be completed for aesthetic reasons consistent with the General Plan. The fence would be the only one of its kind in the area, since the majority of neighboring properties are open vineyards. There are numerous examples of other, similar fences throughout the County.

Response: There are numerous fences and walls within front yard setbacks that exceed 4 feet in height throughout the County, not to mention properties with evergreen hedges or other barriers that technically meet the definition of a fence. Many of these fences were constructed prior to the adoption fence regulations. Many others were not legally installed. Most of these fences are on smaller properties and quite often homes on those properties are located close to public rights-of-way. Given availability of resources, the County approaches these existing walls in essentially two ways. First, if complaints are received, our Code Enforcement teams will investigate and pursue abatement if a violation exists. Second, rectification of code violations is sought during the construction of new improvements. This case falls into the second category, where County staff red-tagged the wall in the midst of the applicant's major property renovation. (Staff does not feel that the applicant knowingly tried to circumvent code, only that they were unaware of the permit requirement and the height limit.)

When complete, the wall will have a decorative finish that will be aesthetically appealing. That is not being questioned. The question at hand seems to come down to a matter of 2 feet 8 inches - the difference between the current wall height, and the height allowed by right. Regarding General Plan consistency, there is not specific policy addressing fencing in front yards. However, the extent to which fencing is allowed in front yards speaks greatly to the long-term visual character of the County. If the Board of Supervisors is inclined to grant the appeal and approve the wall, it is requested that the Board also give direction on the specific circumstances considered "unique" so that they may serve as a benchmark by which to measure future requests.

SUPPORTING DOCUMENTS

- A . Attachment A - Letter of Appeal
- B . Attachment B - Rendering of Wall and House
- C . Attachment C - Photographs of the Site and Other Similar Fences
- D . Attachment D - Photographs of Wall's Foundation
- E . Attachment E - Supplemental Photographs Submitted October 3, 2006
- F . Attachment F - County Letter Denying Special Fence Permit

CEO Recommendation: Approve

Reviewed By: Andrew Carey