



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: RES 20-185, **Version:** 1

CONTINUED FROM OCTOBER 20, 2020 - Public hearing to consider action on an appeal by Rosana Rader and Michael Smith from the July 30, 2020 decision of the Zoning Administrator to approve a Design Approval for a fence ranging in height from four (4) to six (6) feet on the property lines (Llano Street and Second Street). The appellant also requests waiving the County appeal fee.

Project Title: PLN190255 - SMITH & RADER

Project Location: 99 Second Street, Spreckels (Assessor's Parcel Number 177-061-003-000), Greater Salinas Area Plan

Proposed CEQA action: Categorically exempt per section 15303 of the CEQA Guidelines

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- 1) Find that a fence is a minor structure and is categorically exempt per section 15303 of the CEQA Guidelines;
- 2) Deny the appeal by Rosana Rader and Michael Smith from the July 30, 2020 decision of the Zoning Administrator to approve an after the fact Design Approval, as modified by the Zoning Administrator, for minor additions to an existing single family dwelling and a fence ranging in height from four (4) to six (6) feet on the property lines (Llano Street and Second Street); and
- 3) Approve a waiver of the County Appeal Fee, in the amount of \$3,450.

The attached draft resolution includes findings and evidence for consideration (**Attachment A**).

PROJECT INFORMATION:

Property Owner: Smith, Michael A and Rader, Rosana

APN: 177-061-003-000

Parcel Size: 0.173 acre (7,536 sq. ft)

Zoning: HDR/5.1-HR-D” High Density Residential/5.1 acres per unit-Historic Resource-Design Control District

Plan Area: Greater Salinas Area Plan

Flagged and Staked: No

SUMMARY:

This item was originally scheduled for the Board of Supervisors on October 20, 2020. The Appellant, Rosana Rader and Michael Smith, requested in writing to continue the hearing to November 5, 2020, and was granted the continuance by the Board.

In November 2018, RMA staff approved a solid fence over-the-counter ranging in height from 4 to 6 feet along Llano Street and Second Street in Spreckels. Once construction of the fence had begun, a neighbor objected to the fence along the shared property line, expressing concern with the height blocking views for access (safety) and consistency with the Spreckels Design Guidelines. Subsequently, staff determined that the original approval did not meet the Guidelines and the permit was granted in error. After a series of meetings with the applicant, the Spreckels Neighborhood Design Review committee, and the aggrieved neighbor, the owner

attempted to redesign the fence to be more conforming. The Zoning Administrator found that the fence did not fully conform to the Spreckels Design Guidelines and approved the fence conditioned on modification to fully conform to the Spreckels Design Guidelines as follows:

- a. Front property line along Second Street: Max 4-foot tall open wood fence to be consistent with the Spreckels Design Guidelines.
- b. Front property line along Llano Street: Max 4-foot tall open wood fence to be consistent with the Spreckels Design Guidelines.
- c. Shared side-yard property line: Solid wood fence starting at a max 4-feet tall from the sidewalk back to the setback line (20 feet) or the nearest structure whichever is less, then max 6-foot tall solid wood fence through the rest of the property.

This decision by the Zoning Administrator has now been appealed to the Board by the property owners of the fence. The hearing on this matter is de novo, meaning that the Board has discretion to take the action that it sees as most appropriate.

If the Board of Supervisors wishes to deny the appeal and retain the Zoning Administrator decision, the existing fence would need to be modified on all three sides of the house to conform to the Spreckels Design Guidelines.

If the Board of Supervisors wishes to fully grant the appeal and allow the fence to remain in its existing condition, that would entail adopting a resolution of intent to allow:

- a. Front property line along Second Street: 3-foot tall solid wood fence with a gate.
- b. Front property line along Llano Street: 4-foot tall solid wood fence beginning at the corner of Second and Llano to the side property line.
- c. Side (shared) property line: 4-foot tall solid wood fence starting at the edge of sidewalk, but tapering up to 6-foot before the edge of structures or the 20-foot setback line.

The Board may also choose to allow some other combination of modifications to the existing fence based on the findings of the matter.

In cases where the waiver policy does not authorize the Director to waive fees, the applicant is required to pay the fee to set the matter for hearing. The Appellant paid the County appeal fee of \$3,450 and has requested that the Board grant a waiver. Staff supports granting a waiver in this case due to the erroneous granting of the initial permit for this fence, which created cost and inconvenience for the owners (Appellant).

DISCUSSION:

Background:

Michael Smith and Rosana Rader own a single-family home on a corner lot in Spreckels. In November 2018, they submitted a Design Approval (DA) application for a fence and home remodel including minor exterior changes to the residence (DA180340). Staff approved this application over the counter as submitted, including a solid wood fence up on three sides of the property ranging from 3 to 6 feet.

The applicants started on the remodel first, then began construction of fence around May 2019. When construction of the fence began, the abutting neighbor (Mr. Takashima) contacted staff to state his opposition. Staff investigated and found that, while fences are normally allowed to be up to 6 feet tall and can be constructed at the property line, here, the situation differs because the property is in a Historic District and has an HR zoning overlay.

Staff determined that the Design Approval for a 6-foot fence along Second and Llano Street was mistakenly issued, as the height and design of the fence was inconsistent with the Spreckels Design Guidelines. While the property is in an Historic District, the structure is not historic and does not contribute to the historic nature of the HR district.

Once this was brought to the attention of the County, the owners were notified of the error, and the original Design Approval (DA) was rescinded on May 31, 2019, pending revised plans for a new fence height and design. Staff worked with the applicants (Smith/Rader) to redesign the fence to better conform to Spreckels Design Guidelines. However, the error was not discovered until construction of the fence began in early 2019. It is unfortunate the applicants were originally given an erroneous approval of a six-foot-high fence.

The applicants submitted revised plans on July 2, 2019. At the suggestion of staff, the applicants lowered the fence along Llano and Second Street. However, applicants did not agree to either change to a more open fence design (vs solid fence) or lower the fence along the shared property line to conform with the 4 foot height requirement in the 20 foot setback area. They referenced other solid fences found throughout the community, and photos of fences throughout Spreckels show a mixture of different heights and designs throughout the town. After further review of the redesigned fence staff determined that as built, the fence does not fully conform to the Spreckels Design Guidelines.

Staff initiated PLN190255 as an Administrative Design Approval (Chief of Planning) for the new fence to allow the public to get notification of pending approval. The application for the design of the revised fence was referred to the Spreckels Neighborhood Design Review Committee (SNDR) on August 21, 2019. The SNDR stated they did not receive the application review package. However, the fence had already been installed so they were able to visit the site to review the conditions. SNDR Committee members confirmed seeing the fence and opened the meeting to the public for comments. The applicants claimed they did not receive notification of the SNDR meeting and were not present. Staff confirmed that the plans were timely sent to the SNDR, and that no return-mail was received. Staff did not have a P.O. Box number for the applicants; however, a notice was sent to their agent.

Members of the SNDR stated the existing fence was not acceptable and should be removed immediately because it was not an open pattern and was too tall. All members agreed to continue the matter to receive a revised consistent fence plan and have the owners attend the meeting. Staff stated that the revised plans showed the fencing that was already installed. The applicants were not going to make any further changes. SNDR stated that they felt the fence did not meet the Spreckels Design Guidelines and directed that the project should go to Historic Resources Review Board (HRRB).

Additionally, Mr. Takashima claimed the fence posed line of sight hazards caused by the fence from an alleyway on the other side of his property. He stated cars could not see the street because of the height of the 6-foot side fence. RMA-Code Compliance was asked to visit the site to determine if Mr. Takashima's claims were accurate. On September 10, 2019, it was determined by staff that the fence did not create a new safety hazard impact for cars or pedestrians exiting the alleyway.

Regardless of the fence's height along the shared property line and open fence design, staff ultimately issued a tentative administrative Design Approval (PLN190255). Staff noticed neighbors within 100 feet of the property of the pending approval so that they could object if they so choose. On September 30, 2019, Mr. Takashima

timely appealed the proposed Design Approval.

Upon receipt of the appeal, the project was referred to the HRRB for a recommendation. On December 12, 2019, HRRB offered the following comments:

- Design Guidelines were created in 1999; they were intended as a community effort to maintain the historicity of the town of Spreckels. All new additions apply to these guidelines.
- The house has been deemed a non-contributing structure; confirmed by historian.
- Parcel has two front setbacks. The height of the fence on the two fronts are consistent; however, the solid fencing on both fronts are not consistent.

The HRRB voted 3 to 2 that the project be revised so the proposed fence facing Second Street and Llano Street be at a maximum of 4 feet tall and have an open pattern design consistent with Spreckels Design Guidelines Policy S-2.1. The side yard fence within the front yard setback facing Llano Avenue would remain a solid fence but be tapered down to 4 feet high from the sidewalk back to the setback line (20 feet) or the nearest structure (whichever is less) in order for the fence design to not detract from adjacent uses or the historic character of the District and to maintain the visual continuity of the existing streetscape. Dissenters on the HRRB moved for approval conditional on the front fence (Second Street) being modified to an open work pattern and reduction of the side fence between the properties to four feet back to the edge of the houses. However, after further discussions about the property being on a corner lot within the meaning of Monterey County Code section 21.62.040, the HRRB concluded that Llano Street was also a front setback and should have the open pattern design as well.

Staff was tentatively set to bring this matter before the Zoning Administrator in March 2020. However, the COVID-19 pandemic caused a substantial time delay.

Ultimately on July 30, 2020, the Zoning Administrator approved PLN190255 conditioned upon modification of the existing fence's design to fully conform to the Spreckels Design Guidelines. This decision is the one now before the Board of Supervisors for its consideration.

Design Analysis:

Due to its historic nature, the town of Spreckels has guidelines for fence designs where even the newest homes which were constructed in 2008 are subject to those regulations. Policy S-2.1 of the Design Guidelines of the town of Spreckels, states, "New fences in front yards should not exceed four feet in height and should generally be constructed of wood slats in an open work pattern". It was determined the structure is not historic and does not contribute to the historic nature of the HR district. Although the property is not considered a contributing parcel in the Historic town of Spreckels, it is still zoned Historic Resources (HR) and Design Control (D) Zoning Districts and therefore, is subject to the Spreckels Design Guidelines. Fencing, like other features of the development, should be consistent with the neighborhood character and fencing design standards provided under the above-mentioned guidelines.

In addition, the property is zoned HDR/5.1-HR-D, High Density Residential, 5.1 units per acre, Historic Resources, Design Control District. Setbacks for structures in this zoning district include: Front-20 feet, Side-5 feet, and Rear-10 feet, with a 35-foot height limit. Although, the house faces Second Street, it is located on a corner lot at Llano and Second Street. According to section 21.62.040.M of the Monterey County Code, "In case of a lot abutting upon two or more streets, the main structure and accessory structures shall not be erected so as to encroach upon the front setback required on any of the streets." After further review, staff determined that there are two front setbacks in this case and the 4-foot height limit applies to both Llano Street and Second

Street.

There are a variety of fences within the Spreckels community. Photos of fences throughout Spreckels show a mixture of different heights and designs throughout the town. There are 3-foot high white fences with open slats surrounding the newer housing development as part of the design to tie in with the historic district. However, there are also several 6-foot high solid fences around town (including some masonry walls). Some are very old fences, however, there are newer fences that have recently been constructed but staff could not find permits for those. Fencing in front yards is generally at three to four feet high along property lines extending back to the point the fence aligns with the houses, then goes up to six feet.

Appeal:

Rader/Smith timely appealed the Zoning Administrator's decision. Rosana Rader stated the following reasons for the basis for the appeal: there was lack of a fair or impartial hearing; the findings or decision or conditions are not supported by the evidence; and the decision was contrary to law. The Appellants' contentions and staff responses are as follows:

Contention 1 - *Appellants contend that the County has already approved their existing fence twice; and based on precedence set by other existing fences in Spreckels, they should not have to make any changes to their existing fence. The appellants are appealing Condition #3(SPPD003) Revised Fence Requirement.*

Response: It is unfortunate the applicants were originally given an erroneous approval of a six-foot-high fence on two sides of the property. Applicants worked with staff on a revised fence design (second approval) and agreed to reduce the two street facing fences to 3 and 4 feet in height, respectively. However, the fence on the shared property line remained too high; staff had requested the fence be reduced to 4 feet before reaching the 20 foot setback of the limits of the two houses as it detracted from the visual continuity of the neighborhood. Although the appellants did not want to change their fence to an open design, staff's concern was reduction in height more than an open slatted fence.

There are a variety of fences within the Spreckels community, including: 3-foot high white fences with open slats surrounding the newer housing development, while several 6-foot high solid fences, including some masonry walls, have been built around town. Generally, fencing in front yards is three to four feet high along property lines extending back to the point the fence aligns with the houses, then goes up to six feet.

Ultimately, after receiving concerned emails and phone calls, staff initiated PLN190255 as an Administrative Design Approval to allow neighbors to potentially object and request a public hearing. Pursuant to Monterey County Code section 21.44.050, requests for public hearing of a Design Approval are heard by the Zoning Administrator under the de novo standard of review.

Contention 2 - *Appellants contend that based on the non-historic designation of their house, they should be allowed to keep their fence as is.*

Response: Due to its historic nature, the town of Spreckels has certain fence design guidelines, to which even the newest homes which were constructed in 2008 are subject. Policy S-2.1 of the Design Guidelines of the town of Spreckels, states, "New fences in front yards should not exceed four feet in height and should generally be constructed of wood slats in an open work pattern". It was determined the structure is not historic and does not contribute to the historic nature of the HR district. Although the property is not considered a contributing parcel in the historic town of Spreckels, it is zoned Historic Resources (HR) and Design Control (D) Zoning Districts and therefore, is subject to the Spreckels Design Guidelines. The fencing shall be consistent with the

neighborhood character and fencing design standards provided under the above-mentioned guidelines.

Although the house faces Second Street, it is located on a corner lot at Llano and Second Street. According to section 21.62.040.M of the Monterey County Code, “In case of a lot abutting upon two or more streets, the main structure and accessory structures shall not be erected so as to encroach upon the front setback required on any of the streets.” After further review, staff determined that there are two front setbacks in this case and the 4-foot height limit would apply to both Llano Street and Second Street.

The Zoning Administrator’s decision was based upon his conclusion that the project is inconsistent with Policy S-2.1 of the Design Guidelines of the town of Spreckels.

Options:

The hearing on this matter is de novo, so the Board may choose to act how they see fit on this item. There was an original motion by the dissenting votes of the HRRB, to recommend approval with a condition to amend the design of the front fence (Second Street) with an open work pattern, leave the four foot high solid fence along Llano Avenue, and reduce the side fence between the properties to four feet back to the edge of the houses. The Board could approve this design recommended by the HRRB, deny the appeal altogether and retain the Zoning Administrator Decision, allow the applicants to retain the existing fence design, or some other design.

As previously stated, if the Board of Supervisors wishes to deny the appeal and retain the Zoning Administrator decision, the existing fence would need to be modified on all three sides of the house to conform to the Spreckels Design Guidelines.

If the Board of Supervisors wishes to fully grant the appeal and allow the fence to remain in its existing condition, that would entail:

- d. Front property line along Second Street: 3-foot tall solid wood fence with a gate.
- e. Front property line along Llano Street: 4-foot tall solid wood fence beginning at the corner of Second and Llano to the side property line.
- f. Side (shared) property line: 4-foot tall solid wood fence starting at the edge of sidewalk, but tapering up to 6-foot before the edge of structures or the 20-foot setback line.

The Board may also choose to allow some other combination of modifications to the existing fence based on the findings of the matter.

ENVIRONMENTAL REVIEW:

CEQA Guidelines section 15303 exempts “[a]ccessory (appurtenant) structures including...fences” from environmental review.

Should the Board of Supervisors want to accept this appeal and allow the existing fencing to remain in some form other than what was approved by the Zoning Administrator, staff recommends that the Board adopt a Resolution of Intent to approve the appeal, deny Design Approval PLN190255, and instruct staff to return with appropriate findings.

OTHER AGENCY INVOLVEMENT:

The project has been reviewed by the Land Use and Community Development Division of the Resource Management Agency. County Counsel has reviewed this report for form and legality.

FINANCING:

Funding for staff time associated with this project is included in the FY20-21 Adopted Budget for RMA-Planning. If the Board chooses to grant a waiver of the appeal fee (\$3,450), the cost for time spent by staff on this appeal would be absorbed as part of the FY20-21 Adopted Budget for RMA-Planning.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our RMA customers. Processing this appeal in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Elizabeth Gonzales, Supervising Planner, x5102

Reviewed by: Brandon Swanson, RMA Services Manager

Approved by: John M. Dugan, RMA Deputy Director of Land Use and Community
Development and Acting Chief of Planning

The following attachments are on file with the Clerk of the Board:

Attachment A - Draft Resolution including:

- Conditions of Approval
- Site & Elevation Plans
- Color Samples for Project

Attachment B - Vicinity Map

Attachment C - SNDR (LUAC) Minutes

Attachment D - HRRB Resolution

Attachment E - Correspondences

Attachment F - Smith and Rader Appeal

cc: Front Counter Copy; Elizabeth Gonzales, Supervising Planner, Brandon Swanson, RMA Planning Services Manager; Michael Smith and Rosana Rader, Owners; Eddie Takashima, neighboring owner; Jim Riley, SNDR chair; The Open Monterey Project (Molly Erickson); Land Watch (Executive Director); Project File PLN190255