

CITY OF MERCED
Planning Commission

Resolution #4121

WHEREAS, the Merced City Planning Commission at its regular meeting of August 9, 2023, held a public hearing and considered **Certificate for Alteration #23-01, and Minor Use Permit #23-09** initiated by Melinda Stewart Wilbur, on behalf of Bear Creek Inn, LLC, Property owner. This application involves a request to install a 7-foot wrought iron security fence around the perimeter of the historic property (Bear Creek Inn) at 575 W. North Bear Creek Drive, generally located on the northeast corner of M Street and North Bear Creek Drive, with a General Plan designation of Low Density (LD) Residential, within a Zoning classification of Residential Planned Development (RP-D) #13. The subject site is more particularly described as Parcel “B” on that Recorded Map entitled “Parcel Map for Estate of C. Ray Robinson,” recorded in Book 29, Page 48, in Merced County Records; also known as Assessor’s Parcel Number (APN) 007-310-002; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through G (Exhibit B) of Staff Report #23-619; and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for a Certificate for Alteration in Merced Municipal Code Section 17.54.100 (F) and Minor Use Permit in Merced Municipal Code Section 20.68.020 (E), and other Considerations as outlined in Exhibit B; and,

NOW THEREFORE, after reviewing the City’s Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #23-23, and approve Certificate of Alteration #23-01, and Minor Use Permit #23-09, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner _____, seconded by Commissioner _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

ATTACHMENT A

PLANNING COMMISSION RESOLUTION # 4121

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August 9, 2023

Adopted this 9th day of August 2023

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Exhibits:

Exhibit A – Conditions of Approval

Exhibit B – Findings/Considerations

Conditions of Approval
Planning Commission Resolution #4121
Certificate for Alteration #23-01 and Minor Use Permit #23-09

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) - Attachment C of Staff Report #23-619.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
4. All previously approved conditions within Planning Commission Resolution #2098-Amended for General Plan Amendment #96-05, Revision #6 for Residential Planned Development #13, and Conditional Use Permit #730 (#923) shall apply.
5. The applicant shall comply with the standards for fences and hedges within Residential zoning districts found in Merced Municipal Code Section 20.30 – Walls and Fences, including Table 20.30-1 – Fence Height in Residential Zoning Districts, unless otherwise modified through the conditions in this approval.
6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant

of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City's attorney's fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

7. This approval allows the applicant to install a 7-foot-tall wrought-iron fence within the exterior yard to be installed in front of the existing 3-foot-tall wooden fence (Finding D of Staff Report #23-619).
8. The proposed fence shall not encroach into the City right-of-way without obtaining any necessary permits from the Merced City Engineering Department.
9. The gate to the proposed fence shall not be blocked and shall include a Knox box to allow access for emergency personnel when necessary.
10. The proposed fence shall provide as much area around existing hydrants as needed for access by emergency personnel. The applicant shall consult with the Fire Department to determine the space needed.
11. The existing 3-foot fence shall not be removed or damaged in any way by the installation of the proposed fence.
12. This approval is for the installation of the wrought-iron fence only and does not permit any other alterations to the historic property.

Findings and Considerations
Planning Commission Resolution #4121
Certificate for Alteration #23-01 and Minor Use Permit #23-09

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The project site has a General Plan designation of Low Density Residential (LD). The current use of the property as a bed and breakfast was approved by a conditional use permit approved in June of 1989 (Attachment E). With the conditions contained in this approval, the proposed alteration of installing a 7-foot fence is consistent with the current designation of the property.

Mandatory Findings for Certificates for Alteration

- B) Merced Municipal Code (MMC) Section 17.54.100 (F) requires that the following findings be made by the Planning Commission in order to approve a Certificate of Alteration:

1. *The action proposed is consistent with the purposes of this chapter.*

With the conditions contained within this approval, the proposed fence shall be consistent with the purposes of this chapter.

2. *The action proposed will not be detrimental to a structure or feature of significance as a historic resource.*

With the conditions contained within this approval, the proposed fence will not be detrimental to the existing structure or feature of significance as a historic resource. The proposed fence shall be installed in front of the existing 3-foot fence with the purpose of protecting it and the property (Condition #11).

3. *The applicant has demonstrated that the action is necessary to correct an unsafe or dangerous condition on the property.*

The proposed fence shall be installed for the purpose of protecting the property and its habitants. The applicant has demonstrated that there is frequent trespassing and vandalizing on the site as well as unlawful entry into the carriage house. The proposed fence would help to secure the premises and protect residents.

4. *The applicant has demonstrated that denial of the application will result in immediate, undue, or substantial hardship.*

The property has experienced a high volume of trespassing that has resulted in property damage, repaired at the applicant's expense. If the fence is not installed, trespassing and damage would continue which results in a substantial financial hardship to repair the property from the damages incurred from people trespassing and vandalizing the property.

Mandatory Findings for Minor Use Permits

C) Merced Municipal Code (MMC) Sections 20.68.020 (E) and 20.30.020 (C) require that the following findings be made by the Planning Commission in order to approve a Minor Use Permit for a fence.

1. *The proposed use is consistent with the purpose and standards of the zoning district, the general plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

As described in Finding A, the proposed land use is consistent with the General Plan designation of Low-Density Residential (LD). With the approval of the conditions, the fence would be consistent with the current General Plan designation.

2. *The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.*

As indicated on the location map at Attachment B of Planning Commission Staff Report 23-619, the site is surrounded by residential uses on all sides. With the conditions contained within this approval, the proposed fence will be compatible with the existing and future land uses in the vicinity of the subject property.

3. *The proposed use will not be detrimental to the public health, safety, and welfare of the city.*

The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. Implementation of the conditions of approval and adherence to all applicable Building Codes, Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health, safety, and welfare of the City.

4. *The proposed use is properly located within the City and adequately served by existing or planned services and infrastructure.*

The project site is located within a developed area that is adequately served by infrastructure.

5. *The fence materials are of high quality with an aesthetically-pleasing appearance that fit in well with the neighborhood.*

The proposed wrought-iron fencing is considered a high-quality material and would be aesthetically pleasing and compatible with the surrounding neighborhood.

6. *The added fence height or alternative material is necessary to address privacy, noise, interface, or security concerns and/or issue with animals.*

The increased fence height to 7 feet is needed to help provide security to the site. The location is a very busy location and has a lot of traffic in the area making security difficult without a fence that is at least 7 feet high.

Proposed Operations

- D) The applicant is proposing the installation of a 7-foot-tall wrought iron fence located around the perimeter of the property with three access gates. The wrought-iron fence would be installed in front of the existing 3-foot-tall wooden fence. The gates will include a Knox box to allow access for emergency personnel and shall not block or encroach on City right-of-way (Conditions #8 and #9). Per the MMC Table 20.30-1, a Minor Use Permit would permit a fence within the exterior yard at a maximum of 6 feet in height; however, staff has determined that based on the position of the property, a 7-foot-tall fence would not impact surrounding residential properties.

Parking

- E) No use has been proposed that would require additional on-site parking.

Neighborhood Impact/Interface

- F) As discussed in Finding C above, the site is surrounded by residential uses. With the conditions contained within this approval, staff does not anticipate any impacts to the surrounding properties

A public hearing notice was circulated in the Merced County Times and mailed to property owners within 300 feet of the subject site three weeks prior to this public hearing. As of the date that this report was prepared, staff has not received any comments from the community about this project.

Environmental Clearance

- G) Planning staff has conducted an environmental review (Environmental Review #23-23) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and recommends a Categorical Exemption (no further environmental review is required) is being recommended based on Section 15331 (Attachment G of Planning Commission Staff Report #23-619).