



City of Calistoga  
Planning Commission  
**Agenda Item Summary**

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<b>DATE</b>	November 30, 2016
<b>ITEM</b>	Administrative Appeal AP 2016-1
<b>APPELLANTS</b>	James Flamson, Trustee (Property Owner) Darlene Brissard
<b>PROPERTY ADDRESS</b>	1503 Lake Street
<b>ASSESSOR'S PARCEL NO.</b>	011-153-010
<b>GENERAL PLAN DESIGNATION</b>	Medium Density Residential
<b>ZONING DISTRICT</b>	R-1, One-Family Residential
<b>STAFF CONTACT</b>	Erik V. Lundquist, Senior Planner
<b>POTENTIAL CONFLICTS</b>	None
<b>RECOMMENDATION</b>	Uphold the Planning and Building Director's decision
<b>SUGGESTED MOTION</b>	"I move that the Planning Commission adopt a resolution upholding the Planning and Building Director's decision to deny the re-establishment of a bed-and-breakfast operation and a third residential unit on the property at 1503 Lake Street."

# CITY OF CALISTOGA

## STAFF REPORT

**TO:** CALISTOGA PLANNING COMMISSION  
**FROM:** ERIK V. LUNDQUIST, SENIOR PLANNER  
**MEETING DATE:** NOVEMBER 30, 2016  
**SUBJECT:** ADMINISTRATIVE APPEAL AP 2016-1  
1503 LAKE STREET

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### 1 ITEM

2 Consideration of an appeal filed by James Flamson and Darlene Brissard regarding the  
3 Planning and Building Director's decision to deny the re-establishment of a bed and  
4 breakfast operation and a third residential unit on the property at 1503 Lake Street.

### 5 BACKGROUND AND SETTING

6 The 15,500 square-foot corner lot at 1503 Lake Street is currently developed with a  
7 single-family residence, a detached residential second unit, a utility shed, utility room  
8 and a double-car garage with attached carport. Except for the single-family residence,  
9 the structures are concentrated in the northwestern portion of the property with access  
10 from Fair Way. The single-family residence is generally centered on the property. A  
11 secondary access is also available from Lake Street.

12 The property is located within the Medium Density Residential General Plan land use  
13 designation and R-1, One-Family Residential Zoning District. The Medium Density land  
14 use designation allows single-family homes, duplexes and bed and breakfasts. The R-1  
15 District is consistent with the land use designation since it allows single-family homes,  
16 residential second units and bed and breakfasts.

17 In 1983, the City granted approval of a two-unit bed and breakfast, which converted the  
18 two pre-existing detached residential units to guest units. Cottage 1 has approximately  
19 404 square feet of floor area and Cottage 2 has approximately 347 square feet of floor  
20 area.

21 In 1988, the Planning Commission conditionally-approved Use Permit UP 88-11  
22 allowing an increase to the number of bed and breakfast units from two to three units.  
23 The third guest unit was located within the single-family residence. The bed and  
24 breakfast operated in conformance with the approved use permit until 2014.

25 In a letter dated October 23, 2014, the City received a request from the property owner  
26 to relinquish the bed and breakfast use permit due to personal circumstances. At that  
27 time, the City advised the owner's representative that the use permit would be null and  
28 void if not re-activated by April 23, 2015. Staff further indicated that the property would  
29 revert to the previously-existing uses (i.e., a primary unit and two residential cottages).  
30 However, upon further review of the existing R-1 zoning district regulations, staff  
31 informed the owner that only a single-family residence and a residential second unit

32 would be permissible per the R-1 District standards. As such, on December 10, 2014,  
33 the owner applied for a building permit to convert the third residential unit to a utility  
34 shed by removing the heat source (without a heat source the unit becomes  
35 unconditioned floor space and is not habitable per the building code). On December 17,  
36 2014, the City finalized Building Permit No. 6433 confirming that the third residential unit  
37 had been converted to a utility shed. Furthermore, the structure does not contain a  
38 legitimate kitchen (no stove).

39 On October 24, 2016, City staff met with Realtor Darlene Brissard regarding the  
40 property and the possibility of re-establishing the bed and breakfast use and third  
41 residential unit. In a City letter dated October 27, 2016, the Planning and Building  
42 Director formally notified Ms. Brissard that pursuant to the R-1 District regulations it is  
43 not possible to convert the utility shed back to a third residential unit since only a  
44 primary and secondary residential unit are allowed. The letter indicates that the pre-  
45 existing residential use within the structure is no longer a vested right since the  
46 residential use has ceased. Pursuant to CMC Section 17.44.030(A), "if a  
47 nonconforming use<sup>1</sup> is discontinued for a period of 180 days, all future use shall  
48 conform to the current provisions of this title [zoning code]." The structure has been  
49 recognized as a utility shed since 2014.

50 Ms. Brissard was further notified that the Planning and Building Director's  
51 administrative decision may be appealed to the City's Planning Commission. On  
52 October 31, 2016, the City received a written appeal from James Flamson and Darlene  
53 Brissard ("the Appellants").

#### 54 **STATEMENT OF APPEAL**

55 In the written statement of appeal, the Appellants request that the City re-establish the  
56 bed and breakfast operations and the third residential unit. The Appellants provide three  
57 points and/or grounds for the appeal. First, the appellants indicate that the use permit  
58 was relinquished for the purposes of the property owners obtaining a "reverse  
59 mortgage" and that the property owner had intention on re-establishing the use before  
60 the 180-day clock elapsed. Second, that it is unknown whether the property owners or  
61 their representative clearly understood the consequence of relinquishing the bed and  
62 breakfast use permit and, lastly, the financial hardship resulting from the loss of the  
63 entitlements.

64 *See the Appellants' written statement dated October 31, 2016.*

#### 65 **STAFF ANALYSIS**

66 Staff's analysis below addresses and responds to the appellants' grounds for the appeal  
67 while providing the Planning Commission guidance on its consideration of this appeal.

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<sup>1</sup> "Nonconforming use" shall mean a use lawfully existing on the effective date of the ordinance codified in this title that does not conform with the regulations of this title [zoning code]. CMC 17.04.550

68 In a letter dated October 23, 2014, the property owner requested that the City relinquish  
69 their bed and breakfast use permit. The City acknowledged the property owners'  
70 request and notified the property owner's representative that if the bed and breakfast  
71 use was not re-established within 180 days or by April 23, 2015, the entitlements would  
72 be null and void.

73 The 180-day clock is not arbitrary. Pursuant to CMC Section 17.40.080, when a  
74 conditionally-permitted "use ceases to operate for 180 days, the use permit shall  
75 become null and void." The City did not receive a request to re-establish the use prior  
76 to April 23, 2015. As such, per CMC Section 17.04.080, the Planning and Building  
77 Director determined that the use permit allowing the bed and breakfast use was null and  
78 void. In order to re-establish the bed and breakfast use, the property owner may  
79 reapply as discussed in the alternatives section below.

80 Regarding the third residential unit, per CMC Section 17.44.020(B), if a nonconforming  
81 use is discontinued for a period of 180 days, all future use shall conform to the current  
82 provisions of this title. The third residential unit was discontinued as a residential use in  
83 1983 when it was converted to the commercial bed and breakfast use. Albeit the pre-  
84 existing use of the cottages were residential prior to the establishment of the bed and  
85 breakfast use, when the bed and breakfast use was relinquished, the resulting uses on  
86 the property needed to comply with the existing R-1 District regulations. Since only a  
87 primary single-family residential unit and a residential second unit are allowed per  
88 property, the Planning and Building Department could not support re-establishing a third  
89 residential unit and required that one of the cottages be converted to an allowed use.  
90 The property owner, with the benefit of Building Permit No. 6433, converted one of the  
91 cottages to a utility shed by removing the heat source. The resulting action achieved  
92 compliance with the R-1 District standards.

93 The intent and purpose of the use permit expiration and discontinuation of a  
94 nonconforming use regulations is to ensure ongoing consistency with Zoning Code  
95 regulations, and to work towards compliance with the Code. To allow the re-  
96 establishment of the bed and breakfast unit and third residential use would be  
97 precedent-setting. The zoning code sets clear and concise directives to staff and to the  
98 Planning Commission that it not allow uses to re-establish after the uses cease or are  
99 discontinued for more than 180 days unless the future uses comply with the Zoning  
100 Code.

101 The appellants claim that the Planning Commission should re-establish both the bed  
102 and breakfast and third residential unit due to the financial impacts as a result of the  
103 loss in property value. Contrary to the appellants' request, the Planning Commission  
104 may not consider financial aspects resulting from the Planning and Building Director's  
105 determination. Land use determinations must be based upon and found consistent with  
106 the General Plan and Zoning Code. In this case, the Planning Commission does not  
107 have the ability to re-establish the uses because they have ceased for more than 180  
108 days and the re-establishment would be inconsistent with the General Plan land use

109 policies and R-1 District standards. Granting this appeal would circumvent the code  
110 requirements.

111 Furthermore, CMC Section 17.35.040 states that there shall not be a mix of rental units  
112 and bed and breakfast units on a single parcel. Granting the appellants' request to  
113 establish both the bed and breakfast use and third residential unit would be inconsistent  
114 with this regulation.

#### 115 **ALTERNATIVES**

116 Bed and breakfast: The current property owners may wish to request a new use permit  
117 for a bed and breakfast operation. The new use permit would be reviewed on its own  
118 merits and would be subject to the approval of the Planning Commission. The new bed  
119 and breakfast use would be required to comply with the current regulations including  
120 building code compliance and any applicable development impact fees.

121 Parcel map: It appears the property has the potential to be divided into two separate  
122 lots, which would ultimately increase the development potential. Because the potential  
123 lots are developed, it may be necessary to request a variance to allow setback  
124 deviations. The parcel map, and any variance request, would also be subject to the  
125 Planning Commission's review and approval.

#### 126 **PUBLIC COMMENTS**

127 As of November 23, 2016, no public comments had been received regarding this  
128 application.

#### 129 **FINDINGS**

130 To reduce repetition, the necessary findings to uphold the Planning and Building  
131 Director's decision to deny the re-establishment of a bed and breakfast operation and a  
132 third residential unit are included in the attached draft resolution.

#### 133 **ENVIRONMENTAL REVIEW**

134 Pursuant to Section 15270 (Projects Which Are Disapproved) of the CEQA Guidelines,  
135 projects which are rejected are not subject to CEQA.

#### 136 **RECOMMENDATION**

137 Uphold the Planning and Building Director's decision

#### **ATTACHMENTS**

1. Location Map
2. Draft Resolution
3. Appellants' Appeal Letter dated October 31, 2016
4. R-1 One-Family Residential Zoning District
5. Director determination dated October 27, 2016 without enclosures
6. Building Permit No. 6433 (converting cottage to utility shed)
7. Fauld's letter dated October 23, 2014 relinquishing use permit

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8. Excerpt of Planning Commission Minutes dated December 14, 1988
9. Site Plan dated November 7, 1988
10. City letter dated October 5, 1983 (approving 2-unit bed and breakfast)