

CITY OF CALISTOGA

STAFF REPORT

TO: CHAIRMAN MANFREDI AND PLANNING COMMISSIONERS

FROM: KEN MACNAB, PLANNING AND BUILDING MANAGER

MEETING DATE: NOVEMBER 30, 2011

SUBJECT: APPEAL OF A ZONING DETERMINATION BY THE PLANNING AND BUILDING MANAGER

REQUEST

A 2011-03: Consideration of an appeal received from Thomas Faherty regarding the Planning and Building Manager's determination that conversion of a building space formerly occupied by a pre-school into a third residential unit is not permissible under the City's current zoning regulations. The subject property is located at 1411 Fourth Street (APN 011-201-008) within the R-1 (Single-Family Residential) Zoning District.

BACKGROUND

The subject property is located at 1411 Fourth Street in a neighborhood characterized by one- and two-story single-family homes. The property is approximately 6,185 square feet in size and is zoned R-1, Single-Family Residential. Development on the property consists of a three-story residential building. Photos of the site are provided in Attachment 2.

Napa County Assessor records describe the building as a single-family residence and date its construction to sometime in the late 1950's. In the mid-1970's a note was made in the Assessor's records indicating that two residential units existed on the property – a main residence and a "guest" unit. There was no information on which floors the two residential units occupied. Today, the two residential units are located on the second and third floors of the building.

In 1978, the City Council approved a Conditional Use Permit to operate a day nursery school for 14 pre-school aged children between the hours of 7:30 a.m. and 6:00 p.m., Monday through Friday. The pre-school use was operated in the ground floor space of the existing building. A modification to the Conditional Use Permit (U 88-8) was approved by the City Council in 1988, allowing for an increase in the number students from 14 to 21.

In June, 2011, pre-school operations at the subject property ceased when the school was relocated to the newly constructed Highlands Christian Church on Petrified Forest Road.

In July, 2011, the owner (Thomas Faherty) inquired about converting the former pre-school space into a residential unit (Attachment 3). Mr. Faherty stated that the proposed conversion would return the space to the use that existed prior to the pre-school use. Department staff

36 advised that a third residential unit would not normally be allowed under the current zoning of
37 the property and requested information supporting historic use of the space as a third residential
38 unit.

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40 On August 30, 2011, the Planning and Building Department received a letter from Mr. Faherty
41 requesting concurrence that a third residential unit likely existed prior to the pre-school use and
42 that re-establishment of the third unit is the most logical and highest and best use of the space
43 (Attachment 4). In response, the Department again asked Mr. Faherty to produce evidence
44 that a third residential unit once existed on the property. Mr. Faherty was not able to provide
45 supporting documentation.

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47 On September 20, 2011, the Planning and Building Manager made a written determination that
48 conversion of the ground floor space into a third residential unit would exceed the maximum
49 number of units allowed under the current zoning of the property and therefore was not
50 permissible (Attachment 5).

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52 On September 30, 2011, the Planning and Building Department received a communication from
53 Mr. Faherty appealing the determination of the Planning and Building Manager and requesting
54 assistance in exploring options for regulatory relief (Attachment 6).

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56 **DISCUSSION**

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58 **Land Use Regulations**

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60 The subject property has a General Plan Land Use Designation of Medium Density Residential
61 (4 to 10 units per acre). The Medium Density Residential (MDR) land use designation allows
62 single-family home ownership for a broad range of households. Duplexes and mobile home
63 parks are also allowed, where appropriate. Sensitively-scaled multi-unit housing within the
64 allowed density range may also occur adjacent to areas designated High Density
65 Residential/Office. Lands designated as MDR are generally located between the Low Density
66 and High Density residential designations. In this instance, the MDR land use designation has
67 been applied to block that is located between two areas that are designated as High Density
68 Residential (10 to 20 units per acre) – see Attachment 7.

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70 Zoning on the property is “R-1” Single-Family Residential, which implements the Medium
71 Density Residential General Plan Land Use Designation. Permitted uses in R-1 zoning district
72 include: single-family residences; second dwelling units; home occupations; and other similar
73 uses as determined appropriate by the Planning Commission. Conditionally permitted uses in
74 the R-1 district include: bed and breakfast inns; child care nurseries; churches; public or private
75 schools; public buildings; mobile home parks; parking lots; private recreational facilities and
76 other similar uses as determined appropriate by the Planning Commission.

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78 The maximum number of residential units that could be permitted on the subject property under
79 current land use regulations is calculated as follows:

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|----|---|---------------------|
| 81 | 1. Site Size | : 6,185 square feet |
| 82 | 2. Minimum lot area per unit required by R-1 zone | : 6,000 square feet |
| 83 | 3. Allowed residential units: 6,185 sf (site size) / 6,000 (zoning minimum) | = 1.03 |

84 In addition to the one allowable residential unit calculated above, the Municipal Code allows for
 85 establishment of a second dwelling unit in the R-1 zoning district subject to certain restrictions.
 86 A second dwelling unit does not count towards density limitations. With a second dwelling unit,
 87 a total of two units may be permitted on the subject property.
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89 Currently, the property is developed with two residential units – a main residence located on the
 90 second floor, and a second unit located on the third floor. Staff considers the second unit to be
 91 legally non-conforming because it existed prior to the adoption current development standards
 92 for second units and does not comply with requirements for on-site residency by the owner or
 93 off-street parking. The addition of a third residential unit would exceed the maximum
 94 permissible number of units allowed under current land use regulations.
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96 Regulatory Options for Allowing Increased Density
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98 Pursuant to the owner’s request, a number of regulatory options that would allow the owner to
 99 establish a third residential unit on the property were discussed and explored. These options
 100 are summarized in the table below.
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102 TABLE 1 – REGULATORY OPTIONS
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Option	Description	Comment
1	Historic / "Grandfathered" Use	A third unit could be permitted on the property with acceptable evidence documenting that three units had historically existed on the property.
2	Local Affordable Housing Provisions	The R-1 Zoning District includes provisions for development of affordable housing units. For housing that is affordable, the minimum lot size requirement may be reduced from 6,000 square feet to 5,000 square feet. Under this provision, the maximum number of units that could be developed is 1.24.
3	State Density Bonus Law	Provisions of the State Density Bonus law only apply to projects with five or more units.
4	Zoning Variance	Variances cannot be used to increase density above the maximum that would be allowed under the current General Plan Land Use Designation (1.42 units).
5	General Plan Amendment to "High Density Residential" and change Zoning to "R-3".	The R-3 Zoning District would allow three units on the subject property. However, a General Plan Amendment redesignating the property to High Density Residential would be required in order to rezone the property to R-3. Further, if a General Plan amendment were to be requested, staff would advise that the amendment be broadened to take a more comprehensive look at the entire block. This option may also require approval of a variance for off-street parking standards, as the location and number of off-street parking spaces that currently exist on the subject site do not appear to meet the requirements of Chapter 17.36 (Off-Street Parking) of the Municipal Code. While this is an option that is available to the applicant, it is not an option that staff would recommend.

104 **RECOMMENDATION**

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106 Staff recommends that the Planning Commission deny the appeal and uphold the Planning and
107 Building Manager's determination that, absent evidence of historic use, the addition of a third
108 residential unit to the subject property would exceed the maximum permissible number of units
109 allowed under current land use regulations.

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111 **ATTACHMENTS**

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113 1. Vicinity Map
114 2. Site Photos
115 3. Correspondence from Tom Faherty dated July 18, 2011
116 4. Correspondence from Tom Faherty dated August 30, 2011
117 5. Correspondence from Ken MacNab dated September 20, 2011
118 6. Correspondence from Tom Faherty dated September 30, 2011
119 7. General Plan and Zoning Map Exhibits
120 8. R-1 Zoning District Regulations

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123 **NOTE:** The applicant or any interested person is reminded that the Calistoga Municipal Code
124 provides for a ten (10) calendar day appeal period. If there is a disagreement with the Planning
125 Commission, an appeal to the City Council may be filed. The appropriate forms and applicable
126 fee must be submitted prior to 5:00 p.m. on or before the tenth calendar day following the
127 Commission's final determination.

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