

**CITY OF CALISTOGA
PLANNING COMMISSION
REGULAR MEETING MINUTES**

**Wednesday, September 28, 2011
5:30 PM
Calistoga Community Center
1307 Washington St., Calistoga, CA**

**Chairman Jeff Manfredi
Vice Chairman Paul Coates
Commissioner Nicholas Kite
Commissioner Matthew Moye
Commissioner Carol Bush**

“California Courts have consistently upheld that development is a privilege, not a right.”

Among the most cited cases for this proposition are *Associated Home Builders, Inc. v. City of Walnut Creek*, 4 Cal.3d633 (1971) (no right to subdivide), and *Trent Meredith, Inc. v. City of Oxnard*, 114 Cal. App. 3d 317 (1981) (development is a privilege).

A. ROLL CALL

Present: Chairman Jeff Manfredi, Commissioners Nicholas Kite, Carol Bush and Matthew Moye. **Absent:** Vice-Chairman Paul Coates. **Staff Present:** Ken MacNab, Planning and Building Manager, Erik Lundquist, Senior Planner and Amanda Davis, Planning Commission Secretary.

B. PLEDGE OF ALLEGINACE

C. PUBLIC COMMENTS

None.

D. ADOPTION OF MEETING AGENDA

There was a motion by **Commissioner Moye**, seconded by **Commissioner Kite** to approve the agenda as provided. The Motion was carried unanimously.

E. COMMUNICATIONS/CORRESPONDENCE

None.

F. CONSENT CALENDAR

None.

G. TOUR OF INSPECTION

None.

H. PUBLIC HEARINGS

1. **VA 2011-01:** Consideration of Variances requesting a zero foot side yard setback and a lot coverage of up to 36 percent to allow a carport on the property located at 1505 Cedar Street (APN 011-194-005) within the "R1", Single Family Residential Zoning District. This proposed action is exempt from the California Environmental Quality Act (CEQA) under Section 15332 of the CEQA Guidelines.

Senior Planner Lundquist presented the item. He gave a brief description of the history of the property. He stated that in September 2010, the property owners, Eugene Ostromogilsky and Irina Borshchevskaya, applied for and were issued a building permit to convert the existing legal non-conforming single-car garage into a bathroom/storage area. As a result of converting the garage staff recognized the historic parking place located towards the rear of the property. The applicants did need to do some improvements to access the existing parking at the rear of the property.

He stated that during a routine site inspection in August, 2011, staff noticed construction activity was occurring within the side yard setback. Upon investigation it appeared that they had taken the garage door from the former garage and relocated it to the side yard and were beginning to enclose it to what appeared to be a carport. Mr. Ostromogilsky and Mrs. Borshchevskaya did not have a building permit for this construction activity, therefore a red tag was posted on their property. Staff discussed the process for approval with the applicants. Since the improperly constructed carport was located in the setback staff instructed them that a variance application was required.

He stated that upon looking at the required findings for the variance application staff found that there was no particular hardship associated with this parcel other than the exception that it is somewhat shorter than the others developed within this historic district. As a result staff would like to recommend denial of this variance.

The Commissioners asked for clarification on the history of the garage in place and whether parking existed on the side yard. **Senior Planner Lundquist** provided clarification stating that the existing garage was a single legal non-conforming garage, and did not meet the specifications for a garage, but it did allow a single car to park.

Irina Borshchevskaya, 1505 Cedar Street, expressed her concerns relating to the denial of the proposed variance. Ms. Borshchevskaya clarified that they did not plan to build a carport, but rather planned to change the existing gate to an automatic gate. She explained her request for a zero foot side yard set back, explaining that it is difficult to turn around their vehicles and expressed her concern for the safety of their cats. They would like to have a gate in place to prevent their cats from getting

out and possibly being killed.

Eugene Ostromogilsky, owner 1505 Cedar Street, spoke to the item. Mr. Ostromogilsky apologized for not getting a building permit prior to constructing the gate and stated he was unaware that it was needed. He stated that he will follow the City's requirements for permits. He expressed the importance of the gate on his property. He also discussed the carport and their need and desire to have one in place.

Senior Planner Lundquist stated that the applicants could develop a carport or an enclosed garage within the location of the uncovered parking space at the rear of the property. He stated that it seems that the purpose of this project is to create some sort of kennel or structure that further restricts the ability to provide parking on this property and that is where concerns are raised for staff.

Commission discussion ensued. The Commission provided the applicants feedback on possible solutions, such as the possibility of putting a swinging gate in place. The Commission stated that a covered gate is not permissible according to the City Code. The Commissioners also noted that the applicants cannot block the parking space in the rear of the property and parking is not allowed on the side yard. The side yard can be used to access the parking place in the back.

Nancy Smith, 1521 Cedar St., spoke to the item. She discussed the 5 foot setback and feels that it is necessary to maintain and follow this requirement. She feels that it would set a precedent as something that is allowed on Cedar St. should they approve this variance.

Commissioner Kite asked for clarification from staff regarding side yard setback variance and lot coverage variance. He questioned whether the carport could be constructed at a different location on the property and whether it would be feasible to have a garage door built at a different location. **Senior Planner Lundquist** responded that there are other locations where a carport could be constructed, such as at the rear of the property and that it would be permissible to have a garage door built at that location.

Commissioner Moyer asked that staff provide the applicants with advice and options on the next steps to take in order to assist with the safety of their pets. **Senior Planner Lundquist** said that staff will look for alternatives and solutions in the rear of the yard. He stated that staff will be meeting with the applicants to discuss the structure that was built improperly. Staff will also discuss alternatives to help contain the applicant's cats on the property.

There was a motion by **Commissioner Bush**, Seconded by **Commissioner Kite** to adopt Resolution PC 2011-15 denying Variances (VA 2011-01) requesting a zero foot side yard setback and a lot coverage of up to 36 percent to allow a carport on

the property located at 1505 Cedar Street (APN 011-194-005) within the "R1", Single Family Residential Zoning District.

The Motion was carried as follows:

AYES: Chairman Manfredi, Commissioners Moye, Bush and Kite.

NOES: None

ABSTAIN: None.

ABSENT: Vice-Chair Coates.

Senior Planner Lundquist stated for the record that there is a ten-day calendar appeal period.

2. **U 2011-10 & DR 2011-08:** Consideration of Conditional Use Permit and Design Review applications proposing the development of a new 2,668 square foot 2-story infill structure on the property located at 1329 Lincoln Avenue (APN 011-221-023) within the "DC-DD", Downtown Commercial-Design District Overlay Zoning District. The front portion of the property is currently leased by the City for passive public use (pocket park). This proposed action is exempt from the California Environmental Quality Act (CEQA) under Section 15332 of the CEQA Guidelines.

Senior Planner Lundquist presented the item. He stated that this item was first introduced to the Planning Commission on August 24, 2011, wherein that meeting the Planning Commission conducted a tour of inspection of the property and began their review of Olof and Elizabeth Carmel's design review application. Subsequent to the discussion the Planning Commission provided feedback to the applicants, suggesting some minor design modifications. The Commission stated that they want to ensure the building is consistent amongst all of its architectural treatments.

Staff received the applicant's resubmittal on September 6, 2011. Upon staff's review they found that the applicant's made the design modifications suggested by the Planning Commission. Senior Planner Lundquist discussed the applicants' resubmittal letter and the various items listed for modification, including the types of windows to be installed, the HVAC unit placement and screening, and the protection of public interest (i.e. disturbance on Lincoln Avenue). He also discussed various conditions of approval which include the requirement of fire sprinklers, the connection to fire suppression lines, and the various requirements for removal of trees.

Senior Planner Lundquist stated that the applicants are strongly opposed to the suggested performance bond. Per staff's discussions with the applicants, it is agreed that a penalty is more suitable should the construction timeline not be met for this project. The penalty will be \$100.00 per day. The two trigger timelines include utility coverage on Lincoln Avenue being completed prior to the overlay project that is scheduled to take place next fall, and the assurance that the

barricades for pedestrian protection are removed after the exterior is completed. If the applicants do not meet these timelines then the penalty of \$100.00 per day will take effect. If for some reason there is unexpected weather that is out of their control, then there will be some flexibility within the conditions to extend the timeline.

Elizabeth Carmel, 1912 Mora Avenue, Calistoga, stated that they are anxious to complete the project and hope to do a very quick turnaround. They would like to have the gallery opened to the public by next fall. Ms. Carmel discussed the proposed design of the building and ways to differentiate it from a historic building, as suggested by the Planning Commission. She discussed the type of windows they are proposing to install, the suggested performance bond, and the adjoining property owner's concerns and how they plan to address these concerns.

Commissioner Kite discussed the performance bond's importance and why he feels it is necessary.

Jim Avery, 1117 Lincoln Avenue, owner of Sugardaddy's, stated his concerns regarding the proposed building. He discussed his concerns regarding the back door and its availability to him and his tenants. He feels that the letter written by the Carmel's addressing this issue does not answer his questions and that is why he has not yet signed it. Mr. Avery also discussed his concerns with the space between the two buildings and he would like the City to consider a buffer zone if possible.

Olof Carmel, 1912 Mora Avenue, discussed the 6 inch gap between the two properties and explained that their engineer wanted 6 inches between the buildings to allow for earthquake deflection. He addressed Mr. Avery's concerns. He also addressed the concerns raised regarding completion of the project. He stated that he and his wife Elizabeth are residents of Calistoga and they plan on being here 30-40 years and owning this building on Lincoln Avenue the whole time.

Commissioner Kite asked Mr. Carmel whether he would be opposed to allowing Mr. Avery access before the construction begins to inspect what will become physically inaccessible and to do any preventive maintenance that he believes is necessary. Mr. Olof stated that he is not opposed to this and that he has already spoken with Mr. Avery about this.

Commission discussion ensued. The commissioners discussed Mr. Avery's concerns, the distance between the buildings, the rear fire exit door, zero setback lots, and the type of windows being installed. The Commission addressed the performance bond that is being suggested by staff. The consensus of the Commission is to apply a penalty of \$250 per day rather than to require the performance bond should the construction not be completed by the timeline in place, acknowledging that if something unforeseen occurs the timeline can be

extended.

Commissioner Moye suggested that this be brought back to the Planning Commission should an extension be granted due to unforeseen circumstances, such as the weather.

Senior Planner Lundquist stated that he will amend the resolution to reflect the Commission's suggestions, which include removing Condition 9 because a Growth Management is not necessary, amending Condition 11 to state that solid wood doors shall be installed subject to the review and approval of the Planning & Building Department and aluminum clad windows may be authorized subject to the review and approval by the Planning and Building Department, and modify Condition 13 to include the \$250 penalty unless otherwise waived by staff.

There was motion by Chair Manfredi, seconded by Commissioner Moye to direct staff to file a Notice of Exemption for the Project pursuant to Section 15332 of the CEQA Guidelines.

The Motion was carried as follows:

AYES: Chairman Manfredi, Vice-Chairman Coates, Commissioners Moye and Kite.
NOES: None
ABSTAIN: None.
ABSENT: Commissioner Coates.

There was a motion by Commissioner Kite, seconded by Chair Manfredi to adopt Resolution PC 2011-16 approving a Conditional Use Permit and Design Review for the development of a new 2,668 square foot 2-story infill structure on the property located at 1329 Lincoln Avenue (APN 011-221-023) within the "DC-DD", Downtown Commercial-Design District Overlay Zoning District, based upon the findings and subject to conditions of approval as amended by discussion this evening contained in the Resolution.

The Motion was carried as follows:

AYES: Chairman Manfredi, Vice-Chairman Coates, Commissioners Moye and Kite.
NOES: None
ABSTAIN: None.
ABSENT: Commissioner Coates.

Senior Planner Lundquist stated for the record that there is a ten-day calendar appeal period.

I. NEW BUSINESS

None.

J. MATTERS INITIATED BY COMMISSIONERS

Commissioner Bush stated that on Sunday, October 9th, 2011, Calistoga Affordable Housing will be distributing carbon monoxide alarms for all Calistoga home owners at the local Ace Hardware. The cost will be \$20.00 for the general community, \$5.00 for the handicap and very low income seniors and \$10.00 for low income seniors.

K. COMMENTS/PROJECT STATUS

Planning & Building Manager MacNab gave the Planning Commission an update on Andrea Anderson's use permit stating that staff is forwarding the letter received from Andrea's attorney to the City Attorney for review. He stated that staff will update the Planning Commission on the outcome of their review.

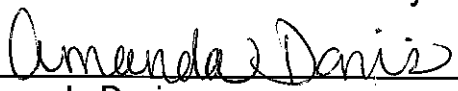
He discussed the concerns that are being raised regarding the water tank at Moyer Winery. There is some concern as to the process by which the water tank was approved by staff. A neighborhood meeting is being scheduled to discuss this issue. The neighbors would like the Commissioners to attend. He mentioned that they could nominate a couple Commissioners to attend on behalf of the Commission.

He stated that the winery regulations item is going back to the City Council for some clarification on the City Council's direction. He anticipates that this will be the last meeting to discuss this so that they can proceed forward with an ordinance. He stated that the next Planning Commission meeting scheduled for October 12, 2011, has been canceled.

Chair Manfredi recommended that Commissioner Kite and Commissioner Coates represent the Planning Commission at the neighborhood meeting regarding the water tank at Vincent Arroyo Winery.

L. ADJOURNMENT

There was motion by **Bush** seconded by **Manfredi** to adjourn to the next regular meeting of the Planning Commission, Wednesday, October 12, 2011, at 5:30 PM. The Motion carried unanimously. The meeting adjourned at 7:11 PM.



Amanda Davis,
Planning Commission Secretary