

# City of Calistoga

## Staff Report

**TO:** Honorable Mayor and City Council

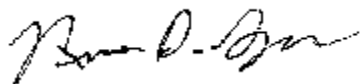
**FROM:** Ken MacNab, Planning and Building Manager

**DATE:** February 21, 2012

**SUBJECT:** Appeal (A 2011-03) – Consideration of an appeal of a Planning Commission Decision (Appellant – Thomas Faherty)

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APPROVAL FOR FORWARDING:




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Richard D. Spitler, City Manager

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1 **ISSUE:** Appeal of Planning Commission Action – Determination to summarily deny  
 2 or set a hearing date for an appeal received from Tom Faherty regarding the  
 3 Planning Commission's decision to uphold a determination by the Planning and  
 4 Building Manager that the addition of a third residential unit on property located at  
 5 1411 Fourth Street (APN 011-201-008) is not permissible under the R-1 (Single-  
 6 Family Residential) Zoning District regulations.

7  
 8 **RECOMMENDATION:** Take action to set a date certain for the hearing on the  
 9 appeal.

10  
 11 **DISCUSSION:** On November 30, 2011, the Planning Commission denied an appeal  
 12 received from Thomas Faherty regarding a determination by the Planning and  
 13 Building Manager that conversion of a building space formerly occupied by a pre-  
 14 school into a third residential unit is not permissible under the City's current zoning  
 15 regulations. Mr. Faherty, the owner of the property, has filed an appeal of the  
 16 Planning Commission's action on December 9, 2011 (Attachment 1). The matter  
 17 before the City Council is to determine whether to summarily deny the appeal or set  
 18 the appeal for a public hearing.

19  
 20 Municipal Code Provision

21  
 22 Section 1.20.030.C Appeals to the Council of the Calistoga Municipal Code requires  
 23 that the City Council take one of the following two actions on the appeal:

24

- 25 1. The Council may deny the appeal summarily, or
- 26 2. The Council may decide to hear the appeal.

27

28 In a decision to hear the appeal, the City Council shall set a date certain for the  
29 hearing on the appeal, which shall allow a reasonable time for investigation of the  
30 matter appealed. The hearing shall be conducted in the same manner that the  
31 original action was heard by the Planning Commission (i.e., noticed public hearing).

32

33 **BACKGROUND:**

34

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

40

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

47

48 In 1978, the City Council approved a Conditional Use Permit to operate a day  
49 nursery school for 14 pre-school aged children between the hours of 7:30 a.m. and  
50 6:00 p.m., Monday through Friday. The pre-school use was operated in the ground  
51 floor space of the existing building. A modification to the Conditional Use Permit (U  
52 88-8) was approved by the City Council in 1988, allowing for an increase in the  
53 number students from 14 to 21.

54

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

58

59 In July, 2011, the owner (Thomas Faherty) inquired about converting the former pre-  
60 school space into a residential unit. Mr. Faherty stated that the proposed conversion  
61 would return the space to the use that existed prior to the pre-school use.  
62 Department staff advised that a third residential unit would not normally be allowed  
63 under the current zoning of the property and requested information supporting  
64 historic use of the space as a third residential unit.

65

66 On August 30, 2011, the Planning and Building Department received a letter from  
67 Mr. Faherty requesting concurrence that a third residential unit likely existed prior to

68 the pre-school use and that re-establishment of the third unit is the most logical and  
69 highest and best use of the space. In response, the Department again asked Mr.  
70 Faherty to produce evidence that a third residential unit once existed on the  
71 property. Mr. Faherty was not able to provide supporting documentation.  
72

73 On September 20, 2011, the Planning and Building Manager made a written  
74 determination that conversion of the ground floor space into a third residential unit  
75 would exceed the maximum number of units allowed under the current zoning of the  
76 property and therefore was not permissible.  
77

78 On September 30, 2011, the Planning and Building Department received a  
79 communication from Mr. Faherty appealing the determination of the Planning and  
80 Building Manager and requesting assistance in exploring options for regulatory relief.  
81

82 In November, 2011, it came to the attention of staff that Mr. Faherty is allowing  
83 residential occupancy of the subject space during the appeals process.  
84

85 At the November 30, 2011 Planning Commission meeting, written and oral testimony  
86 was received from nearby property owners opposing the establishment of a third  
87 residential unit on this property (Attachment 3).  
88

89 **FISCAL IMPACT:** The cost of an appeal hearing, which includes staff time for  
90 investigation and report preparation will be borne by the project proponent (Mr.  
91 Faherty).  
92

93 **ATTACHMENTS:**  
94

- 95 1. Appeal Form submitted by Thomas Faherty dated December 9, 2011.
- 96 2. Site Photos
- 97 3. Correspondence received in response to the November 30, 2011, appeal  
98 hearing before the Planning Commission.  
99

For City Use

Date Received 12/19/11

By Amanda Smith

Appeal Fee Receipt No. \_\_\_\_\_

### City of Calistoga Appeal Application Form

- A copy of the City's Municipal Code excerpt regarding appeals and the appeals procedure summary is attached.
- The fee to file an appeal is \$200.00 and must accompany this form.
- Appeals must be filed with the City Clerk within ten (10) calendar days of the action.
- Appeals must address issues raised or decisions made.
- In order for your appeal to be determined to be complete this form must be filled out entirely.

Appellant Information (Please Print)		
Appellant Name <u>Thomas Faherty</u>		
Appellant Address <u>1560 RAILROAD AVE</u>	City <u>St. Helena</u>	State/Zip Code <u>CA 94574</u>
Appellant Phone <u>707 263 1466</u>	Fax <u>963 5027</u>	Email <u>terryannton@gmail.com</u>
Representative Address _____	City _____	State/Zip Code _____
Representative Phone _____	Fax _____	Email _____

I/We the undersigned do hereby appeal the decision of the:

- Planning Commission
  Board of Appeals  
 Department Director or Department Staff
  Other \_\_\_\_\_

Regarding: 1411 4th Street  
(Title of project or application)

Located at: 1411 4th Street  
(Address)

Made on: NOV. 30th, 2011  
(Date decision was made)

I/We hereby declare that I/We are eligible to file an appeal because:  
(Refer to Chapter 1.20 of the Calistoga Municipal Code, Appeals - attached)

APPEAL OF PLANNING COMMISSION DECISION

The facts of the case and basis for the appeal are: (Additional sheets may be attached)  
We have had the use of 3 existing units in our building, we wish to continue to use all 3.

I/We request that the City Council take the following specific action(s): (Additional sheets may be attached)  
MAKE A FINDING THAT IT IS REASONABLE TO ALLOW THE CONTINUED USE OF THREE UNITS.

Signed: [Signature]  
(Signature)

12/9/2011  
(Date)

# SITE PHOTOS – 1411 FOURTH STREET



Project site viewed from Fourth Street.



Parking area.



Not enough driveway / garage depth for tandem parking – requires use of sidewalk area.



On-street parking on Fourth Street is restricted to one side of the street.

**Ken MacNab**

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**From:** Planning & Building  
**Sent:** Wednesday, December 07, 2011 1:10 PM  
**To:** Erik Lundquist; Ken MacNab  
**Subject:** FW: 1411 4th Street

FYI

Just saw this in the planning email.... Regarding tom faherty's property.

Amanda

Planning & Building Department  
City of Calistoga  
1232 Washington St.  
Calistoga, CA 94515  
P: (707) 942-2827  
F: (707) 942-2831

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**From:** Larry Kuzdenyi [mailto:LarryKuz@comcast.net]  
**Sent:** Wednesday, November 30, 2011 4:58 PM  
**To:** Plans Department  
**Subject:** 1411 4th Street

As a resident of 4<sup>th</sup> Street, I think it is in the best interest of our neighborhood to not allow a third residential unit at 1411 4<sup>th</sup> Street.

Sincerely,

Franni Kuzdenyi

12/9/2011



Dr. and Mrs. Jon Philip Wack

November 27, 2011

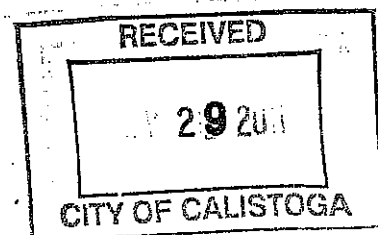
To the Calistoga Planning Commissioners,  
my husband Jon and I own the house at 1602  
Washington Street at the corner of 4th and Washington.  
We are unable to attend the meeting on Wednesday,  
November 30th at 5:30 p.m. 2011.

We have read, discussed and agree with the  
letter written by Donald and Moine Moses who →

resides at 1419 4th Street, Calistoga 94515.

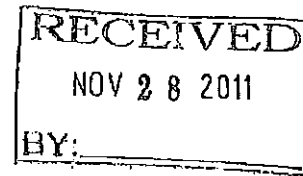
Because my husband works as a physician in  
San Francisco, and is often on call - we are  
unable to attend the Wednesday evening on  
November 30, 2011.

We agree and support the letter written  
by Donald & Moine Moses. Anne & Jon Wack



1419 Fourth Street  
Calistoga, CA 94515

November 25, 2011



To: City of Calistoga Planning Commissioners

Re: A 2011-03; appeal by Thomas Faherty regarding denial of conversion of a building space at 1411 Fourth Street from a pre-school into a third residential unit.

We want to consider three aspects of "the highest and best use" of the property: the financial return for the owner from his investment in the property; the long term effect for all the residents of Fourth Street; the immediate effect on the current residents of 1411 Fourth Street. In our letter, we will share with you what we know of the history of the use permit at 1411 and the reasons, from the above stated aspects, why we oppose granting the current appeal.

For 31 years we, as neighbors, have observed the effects of the use permit process at 1411 Fourth Street. It has led us to believe that on a residential street, "residential" should be given priority when considering commercial activity to be allowed by a use permit. Also, it has led us to believe it would be best to require that such a permit be reviewed for renewal under 3 circumstances: (1) if the operator of the commercial activity changes; (2) if ownership of the property changes; (3) in any case, every 10 years. We realize this is not the way the use permit process works at this time. However, if it did, in the past 31 years the use permit at 1411 Fourth Street would have been reviewed for renewal a minimum of 3 times (10 year cycles) and more often than that due to changes in operators of the preschool and changes in ownership of the property. We think at some time before now the permit to operate a pre-school would have been revoked. Time has moved on and a pre-school on Fourth Street is no longer an appropriate use.

The house at 1411 Fourth Street was constructed by a building contractor, Jim Agapoff, for use as his family home, with the main living unit on the second floor and a studio apartment on the third floor. The ground floor was vacant and, as we understand it, was used to store his equipment. When we moved to Fourth Street, in 1980, Dave and Lois Hutchings owned the home. They lived in the second floor living area. The Hutchings reserved the use of the studio apartment on the third floor for their own family. Before we arrived, Lois obtained a use permit and opened her pre-school on the ground floor. Later on, Shirley Belz became her partner in the school. The Hutchings finally sold the building to Shirley and moved out to Riverlea. Shirley never lived in the house but the 2 women continued to operate the pre-school and the 2 living units became rentals. After some time, Lois left the Fourth Street pre-school, obtained another use permit and began operating a pre-school in her Riverlea home. When Shirley moved from Calistoga, she sold 1411 Fourth to Thomas Faherty. Mr. Faherty leased the pre-school to the Highlands Christian Fellowship, with Teena Ingram operating it, and continued using the 2 living units as rentals. Somewhere along the way, as we recall, two different requests were made, and granted, to increase the number of children allowed at the pre-school. By then it had evolved from an owner-occupied home with a small business run by the property owner to an investment property owned by an absentee landlord, providing him with 3 income streams.

The Highlands Christian Fellowship has now moved their pre-school to their new church. Mr. Faherty, apparently realizing that the time has passed for 1411 to be used as a pre-school, but wanting to maintain his income stream, offered the Perez family, already living in the second floor quarters, the opportunity to also rent the street level area as living quarters. He did not seem to realize he needed to



obtain approval from the City of Calistoga before making the conversion. We assume he acted in good faith when making his offer to the Perez family. However, when balancing the income stream for Mr. Faherty against the quality of life on Fourth Street, we hope you will find in favor of us other property owners and not his commercial activity. Overcrowding not only causes inconvenience, it also results in lower property values for those complying with the zoning on Fourth Street.

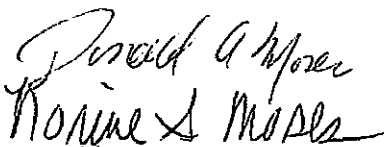
When we first moved to Fourth Street we could have rolled a bowling ball down the street at night and never hit a parked vehicle. Now, every night folks search for parking space. 1411 has 2 parking spaces, total, for 2 living units. Now, Mr. Faherty would like to allow 3 living units to share those 2 spaces, on a street that allows parking on only one side. In our opinion, this fact alone, when considering the long term effect on Fourth Street, is enough to deny the appeal to allow a third living unit. Again, overcrowding not only causes inconvenience, it also results in lower property values for others.

Finally, we need to consider the Perez family. Certainly they acted in good faith when they accepted the offer to rent the ground floor area as an additional living unit. They have spent time and money adapting to the new arrangement. While we do not in any way favor permanently granting a permit to use the ground floor as living quarters, we would favor allowing it to be used that way temporarily, only as long as it is occupied by the current Perez family tenants, who we believe to be Ricardo and Karla Perez and their children, Michelle and Ricardo, Jr. If that is not possible, we hope the City of Calistoga can somehow mitigate the trouble caused for them and other Perez family members who have inadvertently been caught in this unfortunate situation. Two wrongs still do not make a right.

We hope the history, as we know it, of the evolution of commercial use at 1411 Fourth and the reasons why we oppose the current appeal of Mr. Faherty will help you in making your decision.

Thanks to each member of the Planning Commission for your consideration of this appeal and for all your other efforts on behalf of Calistoga.

Sincerely,



Donald A. Moses  
Norine S. Moses  
1419 Fourth Street  
Calistoga, CA 94515  
942 -4897