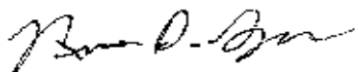


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council Members
FROM: Erik V. Lundquist, Senior Planner
DATE: April 21, 2015
SUBJECT: **Underground Utility Waiver and Sewer Connection Exception
Branstad Parcel Map PM 2014-4**

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

1 **ISSUE:** Consideration of a waiver from undergrounding existing overhead utilities
2 within the Branstad Parcel Map pursuant to CMC §16.02.080(B) and an
3 exception from the sewer connection requirements pursuant to CMC §13.08.140.
4 The property is located at 957 Petrified Forest Road.

5 **RECOMMENDATION:** Adopt a Resolution granting a waiver from
6 undergrounding utilities and approving an exception from the sewer connection
7 requirements.

8 **BACKGROUND:** The Planning Commission considered the Branstad Parcel
9 Map application on March 25, 2015. During this meeting the Planning
10 Commission heard presentations from staff and the applicant, and testimony
11 from the public. Following discussion and deliberation, the Planning Commission
12 approved the Parcel Map with conditions. Condition No. 12 of the Parcel Map
13 requires existing and proposed utilities within the subdivision to be placed
14 underground. In addition, Condition No. 14b requires that a sewer main line be
15 brought to the property. Although the applicants had previously requested a
16 waiver and exception from these requirements, the Planning Commission does
17 not have authority to waive the undergrounding requirements or grant an
18 exception from the sewer connection requirements. As such, the applicants have
19 submitted a request to the City Council to waive the undergrounding requirement
20 and grant an exception from the sewer connections requirement.

21 **DISCUSSION:**

22 **A. Underground Utility Waiver**

23 Overhead utility lines and utility poles currently exist along Petrified Forest Road.
24 The parcel to the east, 973 Petrified Forest Road (APN 011-370-027) is served
25 by an overhead power line from Petrified Forest Road, crossing Cyrus Creek
26 overhead, to a PG&E utility pole and pole-mounted transformer. PG&E plans on
27 replacing this transformer with a pad-mounted transformer, but maintaining the
28 overhead service to the 973 Petrified Forest Road house. The proposed new
29 homes on Parcel 1 & Parcel 2 will be serviced underground from this pole with
30 another pad-mounted transformer near the property line between Parcel 1 &
31 Parcel 2. The applicant has filed a request to waive the requirement to place the
32 existing overhead utilities along Petrified Forest Road underground.

33 Per CMC §16.16.090, all existing utilities, including electric, communication and
34 cable television within the subdivision¹ must be placed underground. No
35 additional poles may be installed outside of the subdivision in order to comply
36 with the undergrounding requirements unless allowed by the Public Works
37 Director. In this case, it means the applicants will be required to underground
38 utilities approximately 600 feet along their Petrified Forest, which would be
39 challenging due to the existing conditions. The existing electrical and
40 telecommunication lines are on both shared and separate lines and the shoulder
41 along Petrified Forest is narrow, dropping off toward Cyrus Creek.

42 CMC §16.02.080(B) allows the City Council to waive the undergrounding
43 requirement upon making certain findings:

44 *“B. The Council shall find that the granting of the modification*
45 *will not be detrimental to the public welfare or injurious to*
46 *other property in the territory in which the property is*
47 *situated, and that:*

- 48 1. *There are unique circumstances or conditions affecting the*
49 *property relative to size, shape or topography; or*
- 50 2. *The waiver or modification will improve the overall*
51 *subdivision design; or*
- 52 3. *The property is to be devoted to such use that it is*
53 *impossible or impracticable in the particular case for full*
54 *compliance; and*
- 55 4. *Approval of any waiver or modification does not result in lots*
56 *which are in conflict with the zoning ordinance.*

57 *In all cases in which such modifications are authorized, the Council*
58 *shall require such evidence as it deems necessary that the*
59 *conditions required in connection with such modifications are being*
60 *met.”*

¹ The subdivision boundary is considered to be the centerline of the street or streets adjacent to the subdivision.

61 It is impractical to proceed with undergrounding the existing utilities since all of
62 the surrounding properties would still have above-ground utilities and since
63 development in the area is not foreseeable. It is impractical to place a large
64 financial burden on the applicant for placing the utilities underground if
65 surrounding landowners, the City of Calistoga, and the applicant are not going to
66 achieve the aesthetic benefit that is desired.

67 It should be recognized that if the underground waiver is approved, the existing
68 utilities would not be underground but all new utilities would be underground. As
69 such, staff believes the City Council may grant the waiver since the required
70 findings have been met.

71 **B. Sewer Connection Exception**

72 The applicant has filed a petition requesting approval of an exception from the
73 requirement to connect to the public sanitary sewer system due to its distance
74 from the property, which is over 1,300 feet from the intersection of Petrified
75 Forest Road over/under Cyrus Creek and across the project frontage.

76 Pursuant to CMC §16.16.130(B)(2), the following criteria shall be considered by
77 the City Council in the evaluation of petitions for exceptions to the connection
78 requirements:

- 79 a. *The proximity of existing public sewer mains to the subject property;*
- 80 b. *The ability to provide a public sewer main to the site;*
- 81 c. *The likelihood of adjoining property(ies) to develop and the need for the*
82 *extension of public sewer facilities to accommodate such development;*
- 83 d. *The potential environmental effects resulting from the installation of public*
84 *facilities given the physical conditions and improvements present at the*
85 *property including, but not limited to: slope, soil conditions, tree cover,*
86 *existing features and structures, etc., which might present constraints to*
87 *the extension of public sewer facilities;*
- 88 e. *The physical conditions and improvements present at the property*
89 *including, but not limited to: slope, soil conditions, tree cover, existing*
90 *features and structures, etc., which might present significant ongoing*
91 *costs for maintenance of the public facilities;*
- 92 f. *The ability to provide public service to the frontage of the adjoining*
93 *property(ies);*
- 94 g. *The adequacy of the proposed private system to satisfy the requirements*
95 *of the Napa County Environmental Health Department.*

96 In 2010, in association with work completed on the draft Pestoni Reimbursement
97 Agreement for work related to a sewer pump station, the development potential
98 of lands surrounding the Petrified Forest Road and Foothill Boulevard
99 intersection was studied. At that time it was not foreseen that the subject property
100 would ever connect to the City's sewer system and/or benefit from the subject

101 sewer pump station. Staff believes that this is still true today due to the distance
102 to the mainline and the resulting environmental effects on Cyrus Creek that
103 would result from a sewer mainline extension. Furthermore, the subject property
104 adjoining the City Limits and the likelihood of adjoining properties to connect to
105 the sewer mainline are nil.

106 Adobe Associates, Inc. reviewed the site's soil conditions with the Napa County
107 Department of Health on August 14, 2007 for the use of onsite wastewater
108 systems for each of the proposed lots. The review supports at least 3-bedroom
109 systems on each of the proposed parcels. In conformance with CMC, Title 16,
110 §16.16.130 (Subdivision Design and Improvement Standards), each parcel is at
111 least 2 acres in size. Preliminary private sewage disposal system layouts and a
112 site investigation report and design criteria is shown on Sheet W1 attached to
113 this report.

114 Staff believes that the required criteria have been met for the City Council to
115 grant the requested exception as conditioned in the attached Resolution.

116 **GENERAL PLAN CONSISTENCY:** Several of the General Plan Character Areas
117 contained within the General Plan Land Use Element provide direction to
118 underground utilities, such as in the Downtown Historic District, Gliderport and
119 Lower Washington Character Areas. However, the subject site has a land use
120 designation of Rural Residential, which does not contain any specific language
121 regarding undergrounding utilities or connections to the municipal sewer system.
122 As such, waiving the undergrounding and granting an exception from the sewer
123 connection requirements would not conflict with the General Plan.

124 **ENVIRONMENTAL ANALYSIS:** The Planning Commission adopted a Mitigated
125 Negative Declaration, in accordance with the California Environmental Quality Act
126 (CEQA) for the project. Waiving the undergrounding requirements and granting
127 an exception from the sewer connection requirements is not considered a
128 substantial change, so no further action is required by the City Council.

129 **CONSISTENCY WITH CITY COUNCIL GOALS AND OBJECTIVES:** One of the
130 City Councils objectives is to advance development. Waiving the utility
131 undergrounding requirement and granting an exception from the sewer
132 connection requirement will advance this project and allow development to
133 proceed without negatively affecting the City's resources.

134 **FISCAL IMPACT:** Staff time and direct expenses associated with the processing
135 of this project has been offset by the applicant through application processing
136 fees. Long-term economic benefits to the City of Calistoga associated with this
137 project are anticipated in terms of increased property tax and development
138 impact fees.

ATTACHMENTS:

1. Draft Resolution
2. Applicant's Letter requesting Waiver

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3. Planning Commission Resolution PC 2015-11, Tentative Parcel Map
4. Tentative Parcel Map

RESOLUTION NO. 2015-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, GRANTING AN UNDERGROUNDING UTILITY WAIVER AND AN EXCEPTION FROM THE SEWER CONNECTION REQUIREMENTS FOR THE BRANSTAD PARCEL MAP PM 2014-4

1 **WHEREAS**, on March 25, 2015, the Planning Commission adopted
2 Resolution PC 2015-11 for the Branstad Parcel Map PM 2014-4 allowing the
3 division of the property located at 957 Petrified Forest Road, into two parcels;
4 and

5 **WHEREAS**, per CMC §16.16.090 and Condition No. 12 of Resolution PC
6 2015-11, the property owner is required to underground the existing and
7 proposed utilities within the subdivision; and

8 **WHEREAS**, per CMC §16.16.130 and Condition No. 14b of Resolution PC
9 2015-11, the property owner is required to connect to the City's sanitary sewer
10 system; and

11 **WHEREAS**, per §16.02.080 of the Calistoga Municipal Code the property
12 owners have requested that the requirement of placing all existing utilities
13 underground be waived and per §16.16.130(B) an exception from the sanitary
14 sewer connection requirements be granted; and

15 **WHEREAS**, the City Council reviewed and considered the requested
16 undergrounding utility waiver and sewer connection requirement at its meeting on
17 April 21, 2015, and prior to taking action on the application, the Council received
18 written and oral reports by staff, and received public testimony; and

19 **WHEREAS**, the City Council, pursuant to CMC §16.02.080(B) has made the
20 following findings:

21 1. Finding: The granting of the modification will not be detrimental to the
22 public welfare or injurious to the other property in the territory in which the
23 property is situated.

24 Supporting Evidence: Allowing the existing overhead utilities to remain
25 would not result in foreseeable impacts to the public welfare or harmful
26 impacts to the neighboring properties.

27 2. Finding: The property is to be devoted to such use that it is impossible or
28 impracticable in the particular case for full compliance.

29 Supporting Evidence: It is impractical for the property owners to
30 underground utilities along their frontage when undergrounding of the
31 utilities along other sections of Petrified Forest Road is highly unlikely.

32 3. Finding: Approval of any waiver or modification does not result in lots
33 which are in conflict with the zoning ordinance.

34 Supporting Evidence: The purpose and intent of the zoning ordinance is:
35 1) to provide a plan of development for the City, and to guide, control and
36 regulate the future growth of the City in accordance with the City's General
37 Plan, and 2) to protect the established character of the City. Granting a
38 waiver from the underground public utilities requirement will not be in
39 conflict with the stated purpose of the Zoning Ordinance and would not
40 alter the character or order of development already existing in the
41 neighborhood.

42 **WHEREAS**, the City Council, pursuant to CMC §16.02.080(B)(2), has
43 evaluated the criteria for granting an exception to the sewer connection
44 requirements and finds that the likelihood of adjoining properties to connect to
45 the sewer mainline is nil and that the property size and soil conditions would
46 support the use of septic systems for each of the proposed lots.

47 **NOW, THEREFORE, BE IT RESOLVED** that based upon the above
48 findings, the City Council waives the requirement to underground the existing
49 utilities and grants an exception from the sanitary sewer connection requirements
50 within the Branstad Parcel Map PM 2014-4, subject to the following conditions of
51 approval:

- 52 1. Prior to occupancy, all new utilities shall be underground subject to the
53 review and approval of the Planning and Building Department.
- 54 2. Prior to occupancy, a notice shall be recorded which shall run with the
55 deed on the property advising subsequent property owners of the lack of
56 public sewer facilities and of the potential for failure of the private septic
57 system(s). The deed notice shall further advise successor property owners
58 that the City of Calistoga has no obligation to provide public sewer
59 facilities to the property in question even in the event of the failure of the
60 private septic system(s).
- 61 3. Prior to occupancy, the property owner shall execute and record a hold
62 harmless agreement with the deed of the property. Said agreement shall
63 relieve the City of Calistoga of any and all liability that might arise from the
64 use, and or failure of the private septic system(s). Said hold harmless
65 agreement shall be in a form acceptable to the City Attorney.

66 **PASSED, APPROVED AND ADOPTED** by the City Council of the City of
67 Calistoga at a regular meeting held this 21st day of April 2015, by the following
68 vote:
69

70 **AYES:**
71 **NOES:**
72 **ABSENT:**
73 **ABSTAIN:**

74
75 _____
76 **CHRIS CANNING, Mayor**

76 **ATTEST:**

77 _____
78 **KATHY FLAMSON, City Clerk**