

MINUTES
CALISTOGA PLANNING COMMISSION
December 9, 2015

The meeting was called to order at 5:30 pm.

A. ROLL CALL

Commissioners present: Chair Jeff Manfredi, Vice Chair Carol Bush, Paul Coates, Tim Wilkes, Scott Cooper. Absent: None. Staff present: Planning & Building Director Lynn Goldberg, Senior Planner Erik Lundquist.

B. PLEDGE OF ALLEGIANCE

C. PUBLIC COMMENTS

None.

D. ADOPTION OF MEETING AGENDA

The meeting agenda of December 9, 2015 was accepted as presented.

E. COMMUNICATIONS/CORRESPONDENCE

Copies of an e-mail from Matt Reid regarding Item G.2. were distributed to the Commission.

F. CONSENT CALENDAR

1. Commission Minutes

The minutes for the November 18, 2015 meeting were unanimously adopted as presented.

2. Meeting Schedule Approval

The Planning Commission meeting schedule for 2016 was unanimously adopted.

G. PUBLIC HEARINGS

1. Calistoga Pet Clinic Parcel Map PM 2014-1, Use Permit UP 2014-15 & Variance VA 2014-3: Consideration of a parcel map to divide the property located at 2960 Foothill Boulevard into 2 parcels, and a use permit amendment and variance to allow the existing veterinary clinic to be located on a 1-acre parcel

Senior Planner Lundquist presented the staff report for the item. He advised the Commission that if it did not approve the variance or use permit amendment applications, the parcel map application could not be approved, and summarized the revisions that had been made to the parcel map since the Commission reviewed the application in 2014. Staff believes that access and drainage issues have been adequately addressed. Allowing the veterinary clinic to be located on a one-acre lot would be appropriate, since the building is located on the front of a

long lot. It has essentially operated on a one-acre site since 2007, so allowing the lot split would not change the physical arrangement.

Commissioner Wilkes suggested that the item be considered in two parts, with initial consideration of the variance and use permit amendment. The other Commissioners concurred.

Chair Manfredi opened the public hearing.

Adam Rivera, Hogan Land Services, reiterated that the clinic would still be located at the front of the site with approval of the parcel map, so nothing would change.

Jens Vidkjer, neighbor to the north of the subject property, has had concerns about the clinic's potential incompatibility with the neighborhood since the initial application was considered. There's been an ongoing compliance problem with the clinic's operations. The Wine Country Animal Lovers group indicated last summer that it wants to provide an animal shelter there. Intensification of the use would affect the neighborhood in a big way. The existing use permit's conditions should be maintained and enforced.

Keith Wepler, neighbor to the west, is very supportive of Dr. Franquelin's work and he and his wife are sheltering a cat for WCAL. But the issue is whether the property owner can split the lot. He's concerned that approving the variance would apply the rules unfairly. The original requirement was for the clinic to be located on a five-acre parcel. This was reduced to two acres with the caveat that it not cause any negative impacts for the neighbors. A variance to reduce the site to one acre and allow the parcel's use to be intensified with the addition of a residence would increase the impacts.

Katherine Philippakis, attorney with Farella Braun + Martel representing the Wepler and Vidkjer families, is concerned about the inability to make any of the required findings for the proposed variance. There are no special circumstances that apply to the property that cause a hardship. It's not being deprived of any rights because no one else in the neighborhood has a pet clinic on a one-acre lot, so it's not clear what the hardship is. The variance would allow additional special privileges, since the clinic is already located on a two-acre parcel. Furthermore, there is a history of incompatibility problems between the clinic and the neighborhood, and granting the variance in order to allow the construction of a residence would increase impacts on surrounding properties. Variances should only be approved when there is something inherent in the parcel, such as physical characteristics, which make it different from other properties and makes it less privileged.

Dr. Steve Franquelin, owner of the vet clinic on the subject property, observed that the clinic was once located on a 4,000-square foot lot in the downtown, and the City supported the move to a rural area because it was a more appropriate location. There was not a five-acre parcel within the city limits at the time that

was feasible to construct the clinic on. Ideally you would have a square lot with the clinic located in the center that could provide a lot of buffering around it. The clinic had to be located at the front of the site due to septic and access considerations, and happens to be near residences. Allowing a division of the property doesn't change the clinic's impacts on these residences. He is trying to be a good neighbor and provide a beneficial service to the community. He had planned to construct a residence and granny unit on the property, along with the clinic, which would be allowed without the variance. Creating a one-acre lot for an additional residence would have the same effect.

In response to questions from **Commissioner Wilkes**, Dr. Franquelin confirmed that when the clinic was located on Lincoln Avenue, complaints were extremely rare and that pet owners parked in front of the building or on the street. **Commissioner Wilkes** observed that if Dr. Franquelin was to occupy a home on the property, he could easily deal with the clinic's issues.

Peter Heitz, 2082 Foothill, recalls when the clinic was required to be on five acres and was subsequently allowed to be located on two acres, he was supportive of it because the service was needed, and he didn't want to be a NIMBY. They were not to have any boarding, which they have continually done in violation of the terms of the use permit. It's troubling that they are asking for additional consideration. It sets a dangerous precedent. Since they are operating outside the terms of their use permit, it seems ludicrous to allow it to be intensified by reducing the size of the parcel. He thought the rear of the property was needed for the clinic's septic system and drainage. The applicants should not receive a benefit when they have not complied with the rules.

Ron McGoldrick, 2999 Foothill, wasn't originally concerned about the vet clinic being constructed. However, there was immediately a problem with dogs barking, which he can hear from his property, even when he is indoors. After he spoke with Dr. Franquelin, the problem was temporarily resolved, but then the dogs would return outside and he would have to call the police. Before the clinic opened, he never had an issue with any neighbor.

Kirsty Gerosa, with Farella Braun + Martel, noted that a recommended condition of approval for the parcel requires a septic feasibility study to locate the septic field and a reserve area for both parcels. Approving the variance would create a 1.1-acre parcel, whereas the Municipal Code requires two acres for a septic system. Constructing a residence on that parcel would also exceed the allowable General Plan density for the property. Approval of the variance would therefore guarantee that the building at the front would have to remain in commercial use.

Dr. Manny Ghumman, property owner of the subject site, observed that most pet clinics are located on much smaller parcels. For dog and cat care, you don't need a large parcel. Dr. Franquelin is very responsive to complaints.

Mike Hogan, Hogan Land Services, explained that their preliminary studies show that the soils can adequately accommodate a septic system for the new parcel,

and the conditions of approval would require approval from Napa County Environmental Management.

Peter Heitz noted that exceptions to Code requirements for the sewer extension, burial of the overhead power lines and the setback for the emergency vehicle turnaround are also requested by the applicants. These things should be considered in totality, rather than piecemealed together.

Adam Rivera noted that the conditions of approval would require that the purchaser of the back property be made aware of the clinic's existence.

Dr. Ghumman thinks that constructing a residence at the back of a lot would provide a good buffer between the clinic and surrounding residences by blocking noise.

Commissioner Wilkes noted that, conversely, allowing an additional residence would provide one that is closer to the clinic and its impacts.

Chair Manfredi closed the public hearing.

Commissioner Wilkes visited the property and neighboring properties, and met with neighbors. He reviewed all of the minutes for every hearing that has been held on the clinic, going back to 2003. He cannot agree with several of the required findings, for example, that the variance is necessary for preservation of a property right that is substantially the same as other properties. The Zoning Code specifically requires a two-acre minimum for a veterinary clinic. In terms of the fourth finding, the proposal is not the minimum variance that would alleviate the hardship. He does not believe there is a hardship. The need for the variance is self-imposed. In his experience, clinics are typically located in commercial zoning districts because there is a lot of traffic and there is no one sleeping there at night who would be bothered by barking dogs. Shelters are usually located in industrial areas to provide an even greater buffer and avoid potential conflicts with residents. In this case, the property is located in a rural residential area that is supposed to be exceptionally quiet.

In response to questions from **Commissioner Cooper**, Mr. Lundquist confirmed that expansion of the clinic would be subject to the Commission's approval, and that the City Attorney has not reviewed the statements in Ms. Philippakis' letter.

Vice Chair Bush believes it's not clear what hardship would be alleviated. In response to questions from **Vice Chair Bush**, Mr. Lundquist confirmed that a letter has been sent to Dr. Franquelin advising him of violations to the clinic's use permit conditions. An application that proposed an expansion of the clinic was filed with the City, but it was never deemed complete and was returned to the applicant.

Commissioner Coates observed that four findings are required by state law to be made in approving a variance. He does not believe there are special circumstances or unnecessary hardships in this case, and therefore the variance cannot be approved.

Chair Manfredi agrees that the circumstances do not satisfy two or three of the required findings.

A motion by **Chair Manfredi** approving a variance and use permit amendment to allow a veterinary clinic on a one-acre property located at 2960 Foothill Boulevard was seconded by **Commissioner Coates** and failed by a unanimous vote.

Mr. Lundquist informed the Commission that because the variance and use permit amendment were not approved, they could not act on the parcel map application, and that the Commission's action could be appealed to the City Council within 10 days.

2. **Municipal Code Amendments MCA 2015-3:** Consideration of a recommendation to the City Council regarding proposed amendments to the Calistoga Municipal Code to regulate the cultivation of marijuana/cannabis

Planning and Building Director Goldberg presented the staff report for the item. Recent state legislation requires a license for the cultivation of cannabis, except for qualified patients and caregivers, and provides that cities that do not have an ordinance regulating or prohibiting the cultivation of marijuana by March 1, 2016 will lose the authority to regulate or ban cultivation within their city limits and the state will become the sole licensing authority. The City Council has directed staff to initiate appropriate Municipal Code amendments to prohibit the cultivation of marijuana/cannabis, based on concerns about its unpleasant odor, hazards associated with indoor cultivation, the large cultivation area that could be allowed if a residence contained a number of qualified patients, and its increased availability to minors. The banning of cultivation by the City is specifically allowed by the California Health and Safety Code and has been upheld in the courts. Patients would still be able to receive deliveries of medical marijuana as well as purchase it at dispensaries outside the city, much as they would obtain any other prescription that could not be obtained locally. Staff recommends that the Commission recommend to the City Council approval of Municipal Code amendments to prohibit commercial cannabis activities and the cultivation of marijuana in all zoning districts.

In response to a question from **Vice Chair Bush**, Ms. Goldberg explained that problems with current marijuana cultivation are enforced on a compliant basis, similar to any other code enforcement matter, and that the Police Chief intends to continue this approach.

Commissioner Cooper believes that cultivation needs to be regulated. The City can't let it get out of hand if there is the slightest possibility of a nuisance.

Chair Manfredi opened and closed the public hearing after there were no public comments.

A motion by **Commissioner Coates** and seconded by **Vice Chair Bush** to recommend to the City Council approval of amendments to the Municipal Code

to prohibit commercial cannabis activities and the cultivation of marijuana in all zoning districts was approved unanimously.

H. MATTERS INITIATED BY COMMISSIONERS

Commissioner Wilkes reported on Sonoma State University's planning commissioners seminar that he attended on December 5. It was very interesting. **Commissioner Coates** thanked the Commission and staff for a great year in 2015. The Commission accomplished good things. **Vice Chair Bush** agreed that it was a good year and that we have a great City Council. She thanked Chair Manfredi and Commissioner Coates for their guidance during her time on the Commission.

I. DIRECTOR REPORT

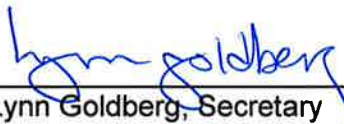
Ms. Goldberg advised that there are no items for the December 16th meeting and requested that the Commission cancel this meeting. It was the consensus of the Commission to do so.

J. ACKNOWLEDGEMENT OF OUTGOING COMMISSIONERS' SERVICE

Resolutions were presented to outgoing members Chair Manfredi and Vice Chair Bush acknowledging their service to the community and the Commission.

K. ADJOURNMENT

The meeting was adjourned at 6:41 p.m.



Lynn Goldberg, Secretary