

City of Calistoga

Staff Report

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TO: Honorable Mayor and City Council
FROM: Lynn Goldberg, Planning & Building Director
DATE: August 7, 2018
SUBJECT: Appeal of Planning Commission's Denial of NextHome Realty Use Permit (AP 2018-2)

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

1
2 **ISSUE:** This item is a continuation from the City Council meeting on Tuesday, July 17th,
3 2018.

4
5 Consideration of an appeal received from Sandy Tucker of the Planning Commission's
6 denial of Use Permit 2018-5

7 **RECOMMENDATION:** On Tuesday, July 17th, City Council continued this item and
8 provided the following direction to staff following a public hearing—

- 9
- 10 • The City Council desired input and comment from the city manager, Dylan Feik,
11 who played a role in requiring the applicant to obtain a use permit.
 - 12 • Council desired responses to legal issues and questions raised during the meeting.
 - 13 • Council directed staff to work with the applicant and draft conditions of approval
14 which address the concerns raised during Planning Commission and City Council
meetings which also meet the needs of the applicant.

15 Following a brief summary by the city manager, City Council may consider the
16 proposed revisions to the use permit conditions of approval and perform one of the
17 following:

- 18
- 19 1. Adopt a resolution denying the appeal and affirm the Planning Commission's
action
 - 20 2. Adopt a resolution approving the appeal with conditions reviewed by the City of
21 Calistoga and applicant

22 3. Direct staff to further negotiate terms and conditions for approval and return to City
23 Council.

24

25 City Council July 17, 2018 Appeal Hearing

26 At a public hearing on July 17, 2018, the City Council considered public testimony and
27 directed staff to work with the appellant on potential conditions of approval that would
28 address the business' appearance as a formula business.

29 The following condition has been agreed to by the appellant and is reflected in the draft
30 resolution upholding the appeal (Attachment 2).

31 3. *Signage requirements:*

32 a. *Exterior signage and signage prominently displayed in any street-*
33 *facing windows(s) shall not include the NextHome name, logos, or*
34 *standardized design elements. Exterior signage wording shall be limited to*
35 *"Real Estate" or "Real Estate Office," or substantially similar generic*
36 *language.*

37 b. *Applicant is permitted to use signage and/or décor in the office*
38 *interior that includes the NextHome name, logos, or other standardized*
39 *design elements, even if the signage may be visible to the public from the*
40 *street or sidewalk.*

41 c. *Final design shall be subject to the approval of the Planning and*
42 *Building Department.*

43 In its draft language for the condition originally provided to the appellant, staff included the
44 following additional requirement out of concern that the appellant would be compelled
45 through its franchise agreement with NextHome to include standardized design elements
46 on the business' exterior:

47 *The applicant shall submit a written acknowledgement from NextHome that this*
48 *prohibition is acceptable under the terms of the applicant's franchise agreement.*

49 However, the appellant is not willing to obtain such an acknowledgment from NextHome.
50 Her attorney cites the fact that the franchise agreement is between Ms. Tucker's company
51 and NextHome; those two parties are solely responsible for making sure they fulfill their
52 respective obligations under that contract.

53

54 **BACKGROUND:** Formula businesses were first regulated by the City in 1996¹. In
55 adopting Ordinance 519, the City Council at the time found it necessary to prohibit formula
56 restaurants and visitor accommodations to preserve the unique and historic character of

¹ A limited number of formula businesses established prior to 1996 continue to operate in Calistoga, including ACE Hardware, RE/MAX, 76 Union and ARCO gas stations, Westamerica Bank and Bank of the West.

57 Calistoga's downtown commercial district. However, the ordinance provided for the
58 approval of other types of formula businesses through a use permit which allows
59 proposals to be considered on a case-by-case basis.

60 Required Use Permit Findings

61 In order to approve a use permit, Calistoga Municipal Code Section 17.40.030(D) requires
62 the approving authority to make findings that the proposed use:

- 63 1. Is in accord with the General Plan and any applicable planned development.
- 64 2. Is in accord with all applicable provisions of this [Title 17 Zoning] title.
- 65 3. Will not substantially impair or interfere with the development, use or enjoyment of
66 other property in the vicinity.
- 67 4. Is consistent with and enhances Calistoga's history of independently owned
68 businesses, thus contributing to the uniqueness of the town, which is necessary to
69 maintain a viable visitor industry and promote its economy.
- 70 5. Is resident-serving, in the case of a formula business.

71 Applicable General Plan Policies

72 Several policies in the Calistoga General Plan address formula businesses.

73 Land Use Element Policy P1.1.-1 generally prohibits formula businesses unless they
74 primarily meet local residents' and business owners' needs:

75 *P1.1-1 Formula businesses within the city limits shall generally be*
76 *prohibited. Exceptions may be made for formula businesses*
77 *primarily meeting local residents' and business owners' needs.*

78 Community Identity Element Policy P.1.2-9 prohibits formula visitor accommodations and
79 restaurants, but allows other types of formula businesses if they reflect Calistoga's unique
80 small town qualities and do not include common design elements found in other
81 communities:

82 *P.1.2-9 Formula visitor accommodations and restaurants shall be*
83 *prohibited in Calistoga. Other formula businesses and chain stores*
84 *may be allowed but shall reflect Calistoga's unique small-town*
85 *qualities and shall not include common design elements found in*
86 *other communities.*

87 Previous Formula Business Applications

88 Since 1996, the City has received two other use permit applications for a formula
89 business, including UP 2017-11, which is currently being reviewed as part of the proposed
90 Shell service station and Loop convenience store at Foothill Boulevard/Petrified Forest
91 Road.

92 A use permit was approved in 2003 for a Curves Fitness Center at 1133 Washington
93 Street (now occupied by the Calistoga Visitor Center). The Planning Commission
94 conditions of approval limited signage to a single seven square foot-hanging sign with a

95 design that downplayed the business' corporate name, based on a staff recommendation
96 that the style of the proposed signage was in keeping with the style of existing under-
97 canopy signs commonly located on Lincoln Ave, with colors compatible with natural color
98 tones encouraged by the Municipal Code at the time. No additional signage, including
99 window signage, was allowed without further design review and approval.

100 Among the findings made by the Planning Commission – which used the 1990 General
101 Plan as guidance - in approving this formula business were the following:

102 *The proposed development is consistent with and will enhance Calistoga's*
103 *history of independent and unique businesses in that this fitness center is*
104 *for women only and there is not a fitness center in Calistoga like this one.*

105 *The proposed use is consistent with the historic, rural, small-town*
106 *atmosphere of Calistoga, and is physically suitable for the type and density*
107 *of development proposed.*

108 *The proposed use will be resident serving as defined in Section 17.04.597*
109 *of the City of Calistoga Zoning Ordinance.*

110 Planning Commission Action on UP 2018-5

111 On June 27, 2018, the Planning Commission denied a use permit application for a formula
112 real estate business, "NextHome in the Valley," at 1437 Lincoln Avenue. Proposed
113 exterior alterations include the installation of signage featuring the NextHome name and
114 logo. The attached Planning Commission staff report provides details of the application.

115 One of the two commissioners who voted to deny the application expressed the belief
116 that the formula business ordinance is meant to allow only the kinds of businesses that
117 cannot occur unless there is a larger or national affiliation, such as banks and gas
118 stations. In his opinion, this was not the case for the proposed real estate office.

119 The other commissioner opined that the proposed business would not fit well with
120 Calistoga's small town feel and doesn't primarily meet local needs. Both commissioners
121 would like to see revisions to the formula business regulations to clarify under what
122 circumstances these businesses may be approved.

123 An excerpt from the Planning Commission meeting minutes is attached.

124 Applicant Appeal

125 The applicant filed an appeal of the Planning Commission's decision on the grounds that
126 the General Plan and Zoning Ordinance expressly allow a formula business with a use
127 permit and any other basis allowed by law.

128 **DISCUSSION:** The following options are available to the City Council:

129 **Option 1:** Deny the appeal and sustain the Planning Commission's action. This option is
130 reflected in the resolution included as Attachment 1, which includes the following
131 proposed findings as the basis for the denial:

132 1. **Finding:** The proposed use is not in accord with the General Plan and any
133 applicable planned development.

134 Supporting Evidence: The proposed formula business use would be inconsistent
135 with General Plan Land Use Element Policy P1.1.-1, which prohibits formula
136 businesses unless they primarily meet local residents' and business owners'
137 needs. There are three active real estate businesses currently operating in
138 Calistoga itself, with many others in the vicinity, and the applicant has not
139 demonstrated that there is an unmet need for the services of the proposed
140 business in a community with a small population.

- 141 2. Finding: The proposed use is not consistent with and does not enhance Calistoga's
142 history of independently-owned businesses, and would not contribute to the
143 uniqueness of the town, which is necessary to maintain a viable visitor industry in
144 Calistoga and preserve its economy;

145 Supporting Evidence: As the proposed use is a franchise of a nationwide real
146 estate chain, the proposed use would not contribute to or reflect Calistoga's
147 uniqueness or enhance the legacy of independently-owned businesses within
148 Calistoga. It would therefore not contribute to the viability of Calistoga's visitor
149 industry and its tourist-based economy.

150 Option 2: Uphold the appeal and approve Use Permit UP 2018-5 with the proposed
151 revised sign requirements condition of approval. Pursuant to Calistoga Municipal Code
152 Section 1.20.030, the Council may overturn the decision of the Planning Commission,
153 provided that it determines that the findings for issuance of a use permit pursuant to
154 Section 17.40.030.D can be made. This option is reflected in the resolution for approval
155 included as Attachment 2, which is generally based on findings that the proposed use
156 meets the criteria for a resident-serving business and would not utilize common design
157 elements found in other communities.

158 Option 3: Refer the matter back to staff whereby conditions would be negotiated with the
159 applicant for future reconsideration.

ATTACHMENTS:

1. Draft resolution denying appeal
2. Draft resolution upholding appeal
3. Appeal of Planning Commission decision from Sandy Tucker dated June 28, 2018
4. Planning Commission Staff Report dated June 27, 2018 (with attachments)
5. Planning Commission Minutes Excerpt from June 27, 2018 meeting
6. Correspondence Received

RESOLUTION NO. 2018-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA DENYING APPEAL AP 2018-2 AND AFFIRMING THE PLANNING COMMISSION'S DENIAL OF USE PERMIT UP 2018-5 FOR NEXTHOME REALTY AT 1437 LINCOLN AVENUE

1 **WHEREAS**, Sandy Tucker (the appellant) filed a use permit application on June
2 8, 2018 to establish a real estate office at 1437 Lincoln Avenue in the Downtown
3 Commercial (DC) Zoning District; and

4 **WHEREAS**, the proposed business would be a franchise of NextHome, a
5 nationwide company, and thereby constitute a "formula business" for which approval of a
6 use permit application is required pursuant to Calistoga Municipal Code 17.21.030(A)(14);
7 and

8 **WHEREAS**, the Planning Commission denied the use permit application at a
9 public hearing at its meeting of June 27, 2018, and prior to taking action on the application,
10 received and considered written and oral reports by the staff, materials and testimony by
11 the applicant, and other public testimony; and

12 **WHEREAS**, on June 28, 2018, the appellant filed an appeal in writing of the
13 Planning Commission's action to the City Council; and

14 **WHEREAS**, upon receipt of the appeal application, the City Clerk set the appeal
15 for a public hearing on the agenda of the next available Council meeting and gave public
16 notice of the appeal hearing in the manner required by Calistoga Municipal Code Section
17 1.20.020(D); and

18 **WHEREAS**, in order to approve the subject use permit, Calistoga Municipal Code
19 Section 17.40.030(D) requires the approving authority to make findings that the proposed
20 use:

- 21 1. Is in accord with the General Plan and any applicable planned development.
- 22 2. Is in accord with all applicable provisions of this title.
- 23 3. Will not substantially impair or interfere with the development, use or enjoyment of
24 other property in the vicinity.
- 25 4. Is consistent with and enhances Calistoga's history of independently owned
26 businesses, thus contributing to the uniqueness of the town, which is necessary to
27 maintain a viable visitor industry and promote its economy.
- 28 5. Is resident-serving, in the case of a formula business.

29 **NOW, THEREFORE, BE IT RESOLVED** by the City of Calistoga City Council, that
30 the City Council, having duly considered the grounds for the appeal, materials submitted
31 by the appellant to the City Council, written and oral reports from staff, public
32 correspondence and public testimony, makes the following findings regarding the subject
33 use permit application:

34 1. The proposed use is not in accord with the General Plan and any applicable
35 planned development.

36 Supporting Evidence: The proposed formula business use would be inconsistent
37 with General Plan Land Use Element Policy P1.1.-1, which prohibits formula
38 businesses unless they primarily meet local residents' and business owners'
39 needs. The applicant has not demonstrated that this element is satisfied.

40 Furthermore, Community Identity Element Policy P.1.2.-9 allows formula
41 businesses only if they reflect Calistoga's unique small town qualities and do not
42 include any common design elements found in other communities. The proposed
43 use would be inconsistent with the goals and objectives of the General Plan
44 regarding preservation and enhancement of Calistoga's uniqueness and urban
45 design quality, as set forth in Objective CI-1.2.

46 2. The proposed use is not consistent with and does not enhance Calistoga's history
47 of independently-owned businesses, and would not contribute to the uniqueness
48 of the town, which is necessary to maintain a viable visitor industry in Calistoga
49 and preserve its economy;

50 Supporting Evidence: As the proposed use is a franchise of a nationwide real
51 estate chain, the proposed use would not reflect Calistoga's uniqueness or
52 enhance the legacy of independently-owned businesses within Calistoga. The
53 proposed business would not contribute to the uniqueness of the town by virtue of
54 the use of common design elements found in other communities. It would therefore
55 not contribute to the viability of Calistoga's visitor industry and its tourist-based
56 economy.

57 **BE IT FURTHER RESOLVED** by the City of Calistoga City Council that based on
58 the above findings, the City Council hereby denies Appeal 2018-2 and sustains the
59 Planning Commission's denial of use permit application UP 2018-5.

60 **BE IT FURTHER RESOLVED** by the City of Calistoga City Council that it hereby
61 determines that this action is not subject to the California Environmental Quality Act
62 pursuant to Public Resources Code Section 21080(b)(5).

63 **ADOPTED AND APPROVED** by the City Council of the City of Calistoga at a
64 regular meeting held this **7th day of August, 2018**, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

CHRIS CANNING, Mayor

ATTEST:

KATHY FLAMSON, City Clerk

RESOLUTION NO. 2018-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA UPHOLDING APPEAL AP 2018-2 AND APPROVING USE PERMIT UP 2018-5 FOR NEXTHOME REALTY AT 1437 LINCOLN AVENUE

1 **WHEREAS**, the applicant wishes to establish a real estate office at 1437 Lincoln Avenue
2 in the Downtown Commercial (DC) Zoning District; and

3 **WHEREAS**, although offices are a permitted use in the DC Zoning District and the
4 proposed business would be independently owned and operated, it would be a franchise of a
5 nationwide company and thereby constitute a “formula business” pursuant to Calistoga
6 Municipal Code (CMC) Title 17, Zoning and the applicant therefore filed a use permit application
7 with the City of Calistoga pursuant to CMC 17.21.030(A)(14); and

8 **WHEREAS**, the Planning Commission denied the use permit application at a public
9 hearing at its meeting of June 27, 2018, and prior to taking action on the application, received
10 and considered written and oral reports by the staff, materials and testimony by the applicant,
11 and other public testimony; and

12 **WHEREAS**, on June 28, 2018, the appellant filed an appeal in writing of the Planning
13 Commission’s action to the City Council; and

14 **WHEREAS**, upon receipt of the appeal application, the City Clerk set the appeal for a
15 public hearing on the agenda of the next available Council meeting and gave public notice of the
16 appeal hearing in the manner required by Calistoga Municipal Code Section 1.20.020(D); and

17 **WHEREAS**, following a public hearing on July 17, 2018, the City Council directed staff to
18 work with the appellant on potential conditions of approval for the use permit, and the appellant
19 has agreed to accept a requirement that any exterior signage and signage prominently
20 displayed in any street-facing windows(s) shall not include the NextHome name, logos, or
21 standardized design elements.

22 **NOW, THEREFORE, BE IT RESOLVED** by the City of Calistoga City Council, that the
23 City Council, having duly considered the grounds for the appeal, materials submitted by the
24 appellant to the City Council, written and oral reports from staff, public correspondence and
25 public testimony, makes the following findings regarding the subject use permit application:

- 26 1. The proposed use is in accord with the General Plan and any applicable planned
27 development.

28 Supporting Evidence: The proposed use would be consistent with the applicable General
29 Plan land use designation and character area overlay because it falls within the range of
30 allowable land uses and would provide real estate services to residents and businesses.
31 A condition of approval that prohibits any exterior signage and signage prominently
32 displayed in any street-facing windows(s) from including the NextHome name, logos, or
33 standardized design elements would avoid conflicts with the Community Identity Element
34 by regarding the use of common design elements found in other communities.

- 35 2. The proposed use is in accord with all applicable provisions of this title [Title 17, Zoning].
36 Supporting Evidence: The proposed use is allowed through the approval of a use permit.
- 37 3. The proposed use will not substantially impair or interfere with the development, use or
38 enjoyment of other property in the vicinity.
39 Supporting Evidence: The proposed use would occupy a portion of a vacant building and
40 operate during normal business hours. The proposed office use would have no adverse
41 effects on nearby noise-sensitive uses.
- 42 4. The proposed use is consistent with and enhances Calistoga's history of independently-
43 owned businesses, thus contributing to the uniqueness of the town, which is necessary to
44 maintain a viable visitor industry in Calistoga and to preserve its economy;
45 Supporting Evidence: The proposed use would be an independently-owned and operated
46 businesses that would contribute to the local economy by facilitating the sale and
47 purchase of properties, homes and businesses.
- 48 5. The proposed use is resident-serving, in the case of a formula business.
49 Supporting Evidence: The proposed business would provide real estate services to local
50 residents.

51 **BE IT FURTHER RESOLVED** by the City of Calistoga City Council that based on the
52 above findings, the City Council hereby upholds Appeal 2018-2 and approves Use Permit UP
53 2018-5, subject to the conditions of approval attached hereto as Exhibit A.

54 **BE IT FURTHER RESOLVED** by the City of Calistoga City Council that it hereby
55 determines that this action is not subject to the California Environmental Quality Act (CEQA)
56 pursuant to CEQA Guidelines section 15301 and 15061(b)(3).

57 **ADOPTED AND APPROVED** by the City Council of the City of Calistoga at a regular meeting
58 held this 7th day of August, 2018, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

CHRIS CANNING, Mayor

ATTEST:

KATHY FLAMSON, City Clerk

Exhibit A

Conditions of Approval – NextHome Realty Use Permit UP 2018-5

- 59 1. This approval allows the establishment of a real estate office at 1437 Lincoln Avenue and
60 its operation as a NextHome franchise.
- 61 2. This approval shall lapse and become void one year following the date on which it becomes
62 effective, unless prior to the expiration of one year, a building permit has been issued and the
63 developer, in good faith, has diligently commenced construction and performed substantial
64 work and incurred substantial liabilities in reliance thereon.
- 65 The Planning and Building Director may extend this time limit by up to 12 months pursuant to
66 Calistoga Municipal Code Sections 17.40.040(B) and 17.41.060(C).
- 67 3. Signage requirements:
- 68 a. Exterior signage and signage prominently displayed in any street-facing windows(s)
69 shall not include the NextHome name, logos, or standardized design elements. Exterior
70 signage wording shall be limited to “Real Estate” or “Real Estate Office,” or substantially
71 similar generic language.
- 72 b. Applicant is permitted to use signage and/or décor in the office interior that includes the
73 NextHome name, logos, or other standardized design elements, even if the signage
74 may be visible to the public from the street or sidewalk.
- 75 c. Final sign design shall be subject to the approval of the Planning and Building
76 Department.
- 77 4. No flyers or video displays shall be posted in the business’ windows.
- 78 5. This approval does not abridge or supercede the regulatory powers or permit requirements
79 of any federal, state or local agency, or department that may retain regulatory or advisory
80 function as specified by statute or ordinance. Permits shall be obtained as may be required
81 from each authority.
- 82 6. A business license shall be obtained prior to the initiation of business operations.