



City of Calistoga
Planning Commission
Agenda Item Summary

DATE	November 14, 2018
ITEM	Buster's BBQ Height Variance Variance VA 2018-4
APPLICANTS / OWNERS	Charles Davis / Robert Beck
STAFF CONTACT	Zach Tusinger, Senior Planner
POTENTIAL CONFLICTS	None
RECOMMENDATION	<p>Staff recommends the Planning Commission deny the requested height variance due to the lack of satisfaction of the required findings.</p> <p>Should the Commission support approval of the variance application, staff requests direction on the required findings for preparation of a resolution, and recommends that the public hearing be continued to the December 12, 2018 meeting.</p>
SUGGESTED MOTION	"I move that the Planning Commission deny Variance Application VA 2018-4 as the required findings cannot be met."

CITY OF CALISTOGA

STAFF REPORT

To: Calistoga Planning Commission
From: Zach Tusinger, Senior Planner
Meeting Date: November 14, 2018
Subject: Height Variance for Accessory Structure - VA 2018-4

1 ITEM

2 Consideration of a height variance from 15 feet to 16 feet 3 inches to allow a taller
3 accessory arbor structure at 1207 Foothill Boulevard.

4 SITE DESCRIPTION

5 The subject property includes two, 0.3-acre lots for a combined 0.6 acres. The
6 accessory structure that is the subject of the variance has been built entirely on the
7 southernmost parcel that is closer to the Lincoln Avenue/Foothill Boulevard intersection
8 (APN 011-310-007). The area is characterized by a mix of commercial and visitor
9 accommodation uses, including two automotive service stations on the northeast side of
10 Foothill Boulevard, Craftsman Inn immediately adjacent to the northwest, and vacant
11 parcels immediately adjacent to the southeast.

12 The Buster's Barbeque business (applicant) features a variety of structures in different
13 configurations. The primary structures include the main restaurant building (located
14 closest to Foothill Boulevard), with a separate kitchen structure located immediately
15 behind it, connected by a covered overhang. Behind the kitchen building is a third
16 structure that serves primarily administrative functions. Other accessory structures on
17 the site include an outdoor kitchen, restroom building, and several sheds. The two lots
18 slope up gently from Foothill Boulevard, with the slope increasing at the rear of the
19 properties.

20 BACKGROUND

21 On May 10, 2017, the Planning Commission approved Use Permit 2016-5 to allow live
22 entertainment by musicians located in the outdoor "wine garden" area of the business.
23 None of the use permit's conditions of approval required a covered or enclosed
24 structure for noise-reduction purposes, nor was such a structure proposed as part of the
25 requested use.

26 The applicant was also issued a building permit in December 2017 for an unenclosed,
27 approximately 14 foot-tall arbor structure to cover this gently-sloping area at the rear of
28 the property (the supports were to be no taller than 12 feet). The arbor was to be
29 covered with an open-work metal roof.

30 Subsequent inspections over the course of the summer of 2018 revealed the arbor
31 under construction to be approximately 26 feet in height. As a result of the safety

32 concerns resulting from the differences in height, the City commenced a code
33 enforcement action and the applicant subsequently modified the structure to its current
34 height of 16 feet 3 inches.

35 It should be noted that due to the sloping grade, the height of the rear or “up-slope”
36 portion of the structure (as depicted on Plan Sheet SD1 Detail 22) conforms to the
37 Zoning Code’s 15-foot height limitation. However, beginning at approximately the mid-
38 point on the structure, it exceeds 15 feet so that its lower or “front half” is non-compliant
39 (as shown on Plan Sheet SD1 Detail 24).

40 On September 28, 2018, the City of Calistoga and the applicant entered into a
41 settlement agreement relating to the code enforcement action, one of the terms of which
42 was that the applicant would seek a height variance for the arbor, which had been
43 reduced to a height of 16 feet 3 inches, from the Planning Commission.

44 **VARIANCE REQUEST**

45 The height limitation for accessory structures in the Downtown Commercial (DC) Zoning
46 District is found in Calistoga Municipal Code (CMC) Section 17.21.050, which provides
47 that the “maximum height of an accessory building is 15 feet above grade.” CMC
48 Section 17.04.100 further defines building height as “the vertical distance from the
49 average elevation of the natural grade of the ground covered by the structure along
50 each building elevation/face.” For structures with a sloping roof, the CMC further defines
51 the higher measurement point as the mean height between the eaves and ridge (or
52 peak).

53 The applicant has filed a variance application that requests the approval of an
54 accessory structure height that is one foot three inches higher than that currently
55 allowed by the Zoning Code.

56 The applicant maintains there is sufficient factual basis to support all the mandatory
57 findings; however, staff disagrees as described below.

58 Calistoga Municipal Code Section 17.42.010 provides that the Planning Commission
59 may authorize variances from the requirements of Title 17 when it can be shown that,
60 owing to special and unusual circumstances related to a specific piece of property, the
61 literal interpretation of Title 17 would cause an undue or unnecessary hardship.
62 However, no variance may be granted to allow the use of property for purposes not
63 authorized within the zoning district in which the proposed use would be located.

64 In granting a variance, the Planning Commission may attach conditions which it finds
65 necessary to protect the best interests of the surrounding property or neighborhood and
66 to otherwise achieve the purposes of Title 17 and must determine that all of the
67 circumstances in Section 17.42.020 are met.

68 **REQUIRED FINDINGS**

69 No variance may be granted unless it can be shown that all of the following
70 circumstances exist, pursuant to CMC Section 17.42.020.

71 1. Required Finding: *Conditions apply to the property that do not apply generally to*
72 *other properties in the same zone or vicinity, which conditions are a result of lot size*
73 *or shape, topography, or other circumstances over which the applicant has no*
74 *control.*

75 Supporting Evidence: The property has a moderate degree of slope similar to the
76 other parcels on the south side of Foothill Boulevard. As the property is zoned DC:
77 Downtown Commercial, this is different than the majority of similarly-zoned
78 properties. There are 27 acres in the City zoned DC. The sloping properties south of
79 Foothill Boulevard make up four (or 14%) of those acres.

80 While the relative uniqueness of the property's slope can be established within the
81 zoning district, it is not a condition that is exclusive to the subject property. Properties
82 on either side (indeed all the properties in the immediate vicinity on the south side of
83 Foothill Boulevard) have a similar degree of slope.

84 As the property's conditions do generally apply to other properties in the vicinity, **this**
85 **finding is not met.**

86 2. Required Finding: *The variance is necessary for the preservation of a property right*
87 *of the applicant substantially the same as is possessed by owners of other property*
88 *in the same zone or vicinity.*

89 Supporting Evidence: The requested height increase reflects the height of the
90 structure as it is constructed today. However, any accessory structure constructed
91 on any of the other similarly-zoned and situated properties in the vicinity would face
92 the same challenges in terms of height limitations and moderate ground slope that
93 the applicant faces on the subject property. The right to build on the property is
94 subject to development standards that apply equally to all properties within the DC
95 District in the immediate vicinity, and in fact all zoning districts within the City.

96 The applicant, in the letter from the Law Offices of Paul J. Dohring attached as
97 Attachment 5, cites the existence of other accessory structures on the subject
98 property that may be taller than what is allowed in the Zoning Code. Staff disagrees.
99 The Zoning Code is written in a way that is favorable to property owners in
100 establishing maximum allowable heights. While the *apparent* height of some of the
101 other accessory structures on the subject property may indeed be taller than 15 feet,
102 the Zoning Code has a specific way to measure the height of structures with roofs
103 that aren't flat, as described above. In the case of the walk-in cooler next to the
104 arbor structure, the *apparent* height is 18 feet. However, the height of the structure
105 is only 14 feet as defined by the Zoning Code. Similarly, the arched rooftop of the
106 arbor structure has an overall height of more than 17 feet, but due to the way height
107 is defined in the Code, the height is only considered to be 16 feet 3 inches.

108 The applicant's attorney also cites structures on nearby properties that are taller
109 than 15 feet. Staff has surveyed surrounding properties and found: a) structures that
110 are in excess of 15 feet, but are the primary structures on the properties and thus

111 allowed to exceed 15 feet, or b) structures that are accessory but measure no more
112 than 15 feet in height per the Zoning Code.

113 Therefore staff does not believe that the variance is necessary for the preservation
114 of property rights in this situation, and therefore **this finding is not met.**

115 3. Required Finding: *The authorization of the variance will not be materially detrimental*
116 *to the purposes of this Title, be injurious to property in the zone or vicinity in which*
117 *the property is located, or otherwise conflict with the objectives of City development*
118 *plans or policies.*

119 Supporting Evidence: While the requested height variance of 15 inches is relatively
120 minor, the granting of such a variance would be contrary to the purposes of the
121 Zoning Code, one of which is to “control and regulate the future growth of the City in
122 accordance with the City’s General Plan.” The Land Use Element of the General
123 Plan identifies the subject property as being within one of the designated entry
124 corridors. The Entry Corridor Overlay is designed to protect the “country town”
125 appearance of Calistoga by ensuring development is of a smaller scale.
126 Development in entry corridors is to “reflect small-scale, low-rise design
127 characteristics with an understated visual appearance.” Allowing for increased
128 heights in the Entry Corridor Overlay beyond what the Zoning Code permits would
129 conflict with this City development policy objective.

130 As the variance would conflict with the objectives of the Entry Corridor Overlay, **this**
131 **finding is not met.**

132 4. Required Finding: *The variance requested is the minimum variance which will*
133 *alleviate the hardship.*

134 Supporting Evidence: There are alternative ways in which the arbor structure could
135 be designed that would result in a lower overall height. The hardship in this case is
136 the result of decisions made by the applicant.

137 When the arbor structure was lowered from its initially-constructed unpermitted
138 height (in excess of 20 feet), the arbor could have been lowered an additional one
139 foot three inches and come in to compliance with the Zoning Code limitation.
140 Additionally, it is apparent from before-and-after photos that the floor level of the
141 arbor was raised above the existing previously-level grade by one to two feet. Had
142 the surface not been raised, the existing overhead clearance could have been
143 created while adhering to the height limitations in the Zoning Code.

144 As there were, and continue to be, other viable alternatives available to the
145 applicant, **this finding is not met.**

146 **PUBLIC COMMENTS**

147 As of November 9, no public comments had been received regarding this variance
148 application.

149 **ENVIRONMENTAL REVIEW**

150 Staff has determined that the proposed project would be Categorical Exempt from the
151 requirements of the California Environmental Quality Act (CEQA) pursuant to Section
152 15305 of the CEQA Guidelines (Minor Alterations in Land Use Limitations).

153 **RECOMMENDATION**

154 Staff recommends the Planning Commission deny the requested height variance due to
155 the lack of satisfaction of the required findings.

156 Should the Commission support approval of the variance application, staff requests
157 direction on the required findings for preparation of a resolution, and recommends that
158 the public hearing be continued to the December 12, 2018 meeting.

ATTACHMENTS

1. Vicinity map
2. Height exhibits
3. Plan Set
4. Annotated before-and-after condition photos
5. Written statement from applicant's counsel