

**CITY OF CALISTOGA
PLANNING AND BUILDING DEPARTMENT**

Conditional Use Permit No. U 2003-12

Curtis and Jillian Helmer, Applicant and Owner
(Assessor's Parcel No. 011-050-032)

**Amended and Approved by the Planning Commission
February 25, 2004**

Findings:

1. On December 16, 2002, an application was submitted by Curtis and Jillian Helmer requesting a Conditional Use Permit to establish a 10,877 square foot single-family residential development.
2. The City recognizes that the property may be developed with a single-family residence, and authorizes this Use Permit to establish the use. Should the use be expanded, an amendment to this permit may be required by the City according to existing provisions contained in the City's Zoning Ordinance.
3. As conditioned in this permit, the proposed project will be in substantial conformance with the goals and policies of the City's 2003 General Plan.
4. As conditioned in this permit, the project will not be detrimental to the health, safety, and welfare of persons residing in the surrounding neighborhood or in the City as a whole because residential units are allowed in this district with the granting of a Conditional Use Permit.
5. The site is physically suitable for the type and density of development because the project meets the dimensional standards contained in the Planned Development Guidelines.
6. Approval of the use permit application will not cause adverse impacts to maintaining an adequate supply of public water and an adequate capacity at the City's wastewater treatment facility.
7. Approval of this use permit application shall not cause the extension of service mains greater than five hundred (500) feet. As submitted, there will be no impact on existing services.

Conditions:

1. This permit authorizes the development of a residence on the site consistent with all City Ordinances, rules, regulations, and policies. The conditions listed below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

- 38 2. Approval of this permit is limited to conformance with the land use provisions
39 contained in the City's Zoning Ordinance. Use of the property shall be limited to
40 those uses identified in the Findings above and the Staff Report dated February
41 25, 2004. Any changes to the approved use are subject to the provisions of the
42 Zoning Ordinance, as it exists now or may be amended in the future.
43
- 44 3. Development of the proposed single-family residence shall conform to all required
45 conditions established herein plus all mitigation measures specified in the Negative
46 Declaration, as approved by the Planning Commission on February 25, 2004.
47 Failure to comply with these conditions may result in amendment by the Planning
48 Commission or possible revocation to protect the public health, safety and general
49 welfare of the community, as set forth in the City's Zoning Ordinance.
50
- 51 4. The Planning and Building Department may approve minor amendments to this
52 use permit provided that the permit is still in substantial conformance with the
53 original approval.
54
- 55 5. The applicant shall obtain a Building Permit prior to commencement of construction
56 of the approved project.
57
- 58 6. This Conditional Use Permit is only valid upon completion of the proposed 10,877
59 square foot residential development as approved in this permit. This work shall
60 commence within one (1) year from the date of approval. If a building permit is not
61 issued, and work commenced within one (1) year, the applicant acknowledges and
62 understands by accepting this permit that this permit will expire and will no longer
63 be valid.
64
- 65 7. Prior to occupancy of any structures on the parcel, the applicant shall obtain
66 approval of a Knox Box or similar approved alternative for access to the site in the
67 event of an emergency, as approved by the City of Calistoga Fire Chief.
68
- 69 8. The applicant shall provide "stand by" water in a configuration approved by the City
70 of Calistoga Fire Chief for fire suppression of structures on the lot. Additionally, the
71 design of the driveway shall comply with the Napa County Standards regarding
72 vehicle weight and turnouts for emergency access. This will be reviewed by the
73 City of Calistoga Fire Chief as part of the building permit process.
74
- 75 9. Any future exterior alterations, expansion or other new construction shall be
76 subject to Design Review approval. The property owner agrees to submit an
77 application for Building Permit for all construction of buildings or structures located
78 on the site, not otherwise exempt by the Uniform Building Code or any State or
79 local amendment adopted thereto. Prior to issuance of all building permits, the
80 property owner agrees to pay all fees associated with plan check and building

- 81 inspections, and associated development fees rightfully established by City
82 Ordinance or Resolution.
83
- 84 10. Approval of this Conditional Use Permit is based on the presentation of materials
85 kept on file by the Planning and Building Department. These materials shall be
86 applied to the building as approved and may only be changed with the approval of
87 a Design Review application approved by the Planning Commission, through the
88 process established in the City of Calistoga Zoning Ordinance.
89
- 90 11. Ground mounted equipment, such as backflow prevention devices and utility
91 panels, shall be adequately screened from public view and view from adjoining
92 developed parcels, as shown on construction drawings submitted prior to approval
93 of a building permit.
94
- 95 12. Given the location of this parcel at an important gateway to the community, the
96 property owner agrees to submit for Design Review consideration and approval all
97 future exterior alterations, additions and site modifications, such as exterior color
98 changes, awnings, signs, materials, and lighting, not to include repainting a
99 structure to match the existing color(s) and repair or maintenance where the work
100 solely involves the replacement of materials in kind or in a location that is not
101 visible from the public right-of-way.
102
- 103 13. Utilities to the site shall be placed underground to protect the scenic value of the
104 property at this important gateway to the community.
105
- 106 14. A permit for the installation of the engineered septic system and cold water well
107 shall be secured from the Napa County Department of Environmental Management
108 prior to issuance of a Building Permit. The drainage study approved by the City
109 must be submitted to the County along with the septic system plans.
110
- 111 15. The property owner shall be required to provide proof of clearance by the Napa
112 County Department of Environmental Management of a cold water well permit and
113 design of an on-site Wastewater Treatment Plan prior to submittal of a Building
114 Permit.
115
- 116 16. Any failure of on-site potable water or wastewater treatment should not be
117 considered by the property owner as a right to connect the property to the City's
118 water and/or sewer system. Any request for such connections in the future,
119 whether initiated voluntarily or by virtue of a failure of an existing on-site system,
120 will be considered by the City on its merits and any action taken will be consistent
121 with the provisions of the standards contained in the Calistoga Municipal Code
122
- 123 17. Exterior lighting shall be directed towards the ground to avoid light and glare upon
124 adjacent parcels, and containing the lowest illumination necessary for safety.

- 125 18. All drainage improvements and modifications shall be completed in conformance
126 with the drainage plan dated December 3, 2003 prepared by Riechers Spence
127 Associates. Any deviation from this approved plan shall be subject to preparation
128 of a modified drainage plan which must be reviewed and approved by the City of
129 Calistoga Public Works Department prior to commencement of site work.
130
- 131 19. The driveway connecting the subject property to Silverado Trail shall be
132 coordinated with future development on the adjacent vacant parcel to the east. By
133 accepting this permit, the property owner agrees to a shared driveway that will also
134 allow access to future development of the Mount Washington parcel, and will
135 provide an easement for such access to minimize safety considerations resulting
136 from multiple driveways on Silverado Trail, an important gateway to the community
137 and an arterial that is restricted from view by Mount Washington. Any entry
138 driveway gate approved by the City in this permit shall be set back from the
139 property line a minimum of 23 feet to provide shared access to the Mount
140 Washington parcel and to provide safe queuing on the property for emergency
141 vehicles and other vehicles to park while the gate is opening inward toward the
142 property. The design of this gate shall be approved by the City prior to issuance of
143 the Building Permit.
144
- 145 20. All landscaping shall comply with the plan prepared by Quadriga Landscape
146 Architecture and Planning, Inc. received by the City on January 31, 2003.
147 Landscape materials shall be in place prior to occupancy of any structure on the
148 site to ensure that the intent of this permit is met. Furthermore, all requirements
149 and restrictions contained in Chapter 19.01 of the Calistoga Municipal Code (CMC)
150 shall be complied with.
151
- 152 21. All trees within the construction zone shall be inspected prior to occupancy of the
153 building, and any trees damaged during construction shall be mitigated through the
154 planting of two new trees for every one tree lost. The location of all new trees shall
155 be identified through mutual agreement between the City and property owner.
156
- 157 22. Site work including, but not limited to, proposed berms shall not impact existing
158 protected trees, and views for adjacent property owners.
159
- 160 23. No mechanical trenching, including but not limited to trenching done for the septic
161 system, shall occur within the drip lines of trees defined as protected trees.
162
- 163 24. Approval of this permit does not authorize the single-family residence and related
164 structures to exceed 30 feet above natural grade. The finished floor level shall not
165 exceed elevation 105.5 and shall be confirmed by an elevation certificate approved
166 by the City prior to authorization by the Building Inspector to commence framing of
167 the structure.
168

169 25. The approved address for the property shall be shown on a mailbox provided on
170 the site in a location approved by the City and, as necessary by the U.S. Postal
171 Service.

172
173 26. The property owner shall receive approval of a Construction Management Plan
174 prior to issuance of a Grading Permit or Building Permit which identifies how the
175 site will be protected during grading activities from dust, identifies the location of
176 haul trucks exporting any material from the site, the hours of construction, and a
177 plan for addressing archaeological resources, if encountered, during grading to
178 include the following:

179
180 *The potential remains that grading and trenching operations could*
181 *uncover buried archaeological materials and/or human remains.*
182 *Should any of the materials described in the report prepared by*
183 *Holman and Associates dated September 4, 2003 or any*
184 *concentrations of bone of any type be uncovered, work will be halted*
185 *within 30 feet of the discovery until a qualified archaeologist has*
186 *inspected the discovery and has had the opportunity to assess its*
187 *significance before a plan for the mitigation of impacts to it can be*
188 *submitted to the City of Calistoga for approval. All archaeological*
189 *activities will be conducted in accordance with prevailing professional*
190 *standards as outlined in CEQA and will be implemented before*
191 *recommencement of work within the area of the resource discovery.*
192 **(Amended by Planning Commission at the hearing 2/25/04)**

193
194 27. Prior to commencing with grading activities on the site, the applicant shall be
195 required to contact the Planning and Building Director to confirm the location of
196 cuts to ensure that the disturbed area is consistent with the project approvals.

197
198 ~~28. Prior to issuance of a building permit, the applicant shall submit a study, prepared~~
199 ~~by a licensed Civil Engineer, analyzing the existing road conditions on Silverado~~
200 ~~Trail and the potential impacts resulting from the revised driveway connection to~~
201 ~~the approved residential use of the property. The purpose of this study is to~~
202 ~~consider the safety considerations resulting from turning movements to and from~~
203 ~~the subject site and their relationship to the driveway at Silver Rose Winery and~~
204 ~~Inn, also considering planned development on area properties (including the~~
205 ~~approved restaurant at Silver Rose, service driveway at Palisades Resort and Spa,~~
206 ~~and driveway for adjoining single family residence and water tank). This study~~
207 ~~shall also include the visibility of the driveway approach, lane width and striping in~~
208 ~~the project area to determine if changes are required prior to issuance of a building~~
209 ~~permit for development on the site. (Omitted by Planning Commission at~~
210 ~~hearing 2/25/04)~~

**CITY OF CALISTOGA
PLANNING COMMISSION MINUTES**

1 **5:30 PM**
2 **COMMUNITY CENTER**
3 **CALISTOGA, CALIFORNIA**
4

DATE: February 25, 2004

5 **A. ROLL CALL**
6

7 **Commissioners Present:** Chairperson Manfredi, Vice-Chairperson Casey, and
8 Commissioner Creager. Commissioner Dill arrived during
9 the Consent Calendar item of the agenda.

10
11 **Commissioners Absent:** Commissioner Citaku-Perrett
12

13 **Staff Present:** Planning and Building Director Tooker, Associate Planner
14 Prentiss, and Administrative Secretary Guill
15

16 **B. PUBLIC COMMENTS**
17

18 Public Comments is time reserved on each regular meeting agenda to provide an
19 opportunity for the public to directly address the Planning Commission on items of interest
20 to the public, which do not appear on the agenda. Comments should be limited to three
21 minutes. The Commission will not be able to take action on items raised during Public
22 Comments.
23

24 No comments were provided under this agenda item.
25

26 **C. ADOPTION OF MEETING AGENDA**
27

28 **Director Tooker** advised item D-2, Minutes of the Planning Commission Regular meeting
29 of February 11, 2004, were not provided and the item should be removed from the agenda.
30

31 **Motion by Commissioner Creager, seconded by Vice Chair Casey,** to approve the
32 Agenda. **Motion approved: 3-0-0-2.**
33

34 **D. CONSENT CALENDAR**
35

36 The following items listed on the Consent Calendar are considered routine and action
37 taken by the Planning Commission is by a single motion. Any member of the Planning
38 Commission, staff or the public may request that an item listed on the Consent Calendar
39 be moved and action taken separately. In the event that an item is removed from the
40 consent calendar, it shall be consider after the last scheduled item under New Business.
41

- 42 1. Minutes of the Planning Commission Regular Meeting of January 28, 2004.
43 Recommended Action: Approve the Minutes
44

45 **Vice Chairperson Casey** requested the Planning Commission Regular Meeting Minutes
46 of January 28, 2004 be pulled from the Consent Calendar for discussion.
47

48 **Chairman Manfredi** advised the discussion on the Minutes of the Planning Commission
49 Regular Meeting of January 28, 2004 shall be considered after the last scheduled item
50 under New Business.
51

- 52 2. Minutes of the Planning Commission Regular meeting of February 11, 2004.
53 Recommended Action: Approve the Minutes
54

55 No discussion. This item was removed from the agenda.
56

57 **E. TOUR OF INSPECTION**
58

59 There were no items listed for the Tour in this agenda.
60

61 **F. COMMUNICATIONS/CORRESPONDENCE**
62

- 63 1. Centre Court, receipt of letter dated 02/14/04, including applicable emails and
64 summary memo from staff.
65

66 **Director Tooker** advised this item was included on the agenda for information purposes
67 only, with no action required.
68

69 It was further reported while speaking with property owners and advising of the scheduled
70 Special Planning Commission Meeting "Workshop", to be held Wednesday, March 17,
71 2004 at 4:00 p.m.. The majority opinion of the current Centre Court property owners was
72 they would prefer to deal with possible issues individually, on a case by case basis, and
73 stay with the current zoning designation.
74

75 **Commissioner Creager** stated he was surprised at the response, asking if it was clear the
76 Commission was offering them an open forum for dialogue and communication, because
77 the standard bi-weekly Planning Commission meeting forum did not lend itself well to open
78 exchange of information on one subject.
79

80 **G. PUBLIC HEARINGS**
81

- 82 1. U 2003-12. Application for a Conditional Use Permit submitted by Curtis Helmer,
83 property owner, for a vacant 7.37 acre parcel (Assessor's Parcel Number 011-050-
84 032) located approximately 1,500 feet southeast of the intersection of Silverado
85 Trail and Rosedale Road. The property is presently designated Planned
86 Development District - PD 2002-2. The applicant proposes to construct a two-story

87 residence with a three-car garage with a combined footprint size of 5,031 square
88 feet on the southernmost portion of the parcel. Included in the proposal are 2
89 detached carriage houses totaling 4,124 square feet, a pool and a 1,722 square
90 foot pool house, and a tennis court, for a total developed area of 10,877 square feet
91 on the site. A Negative Declaration is proposed subject to compliance with the
92 California Environmental Quality Act (CEQA).

93 Recommended Action: Adopt a Negative Declaration, approve the project design,
94 and approve the Conditional Use Permit.

95
96 **Chairman Manfredi** opened the Public Hearing requesting a staff report from Associate
97 Planner Prentiss.

98
99 **Associate Planner Prentiss** provided report stating the Commissioners would probably
100 find the project familiar as the proposal had been presented to the Commission five
101 previous times. Continuing she reported there was only one minor change to the proposed
102 single family residence design. Noting the location of the garage and carriage houses
103 were now placed further from the adjacent mobile home park. The request on the table
104 was for final approval of the Conditional Use Permit.

105
106 **Associate Planner Prentiss** reported the single family residence was in compliance with
107 the General Plan, although the project was presented prior to the adoption of the 2003
108 General Plan. While the General Plan speaks to subdivision gates, it does not dictate
109 rules or conditions on single family residential gating. The general consensus of the
110 Commission was that this structure was somewhat large, however it was commensurate
111 with the size of the seven and one-half acre parcel. It was also noted that Mount
112 Washington camouflaged the structure from view from Silverado Trail.

113
114 **Associate Planner Prentiss** provided an overview of the Conditional Use Permit No. U
115 2003-12, Attachment 4 within the staff report, directing attention to Findings and Conditions
116 amendments, page 4 of 5, and reading aloud for the record the addition of the following
117 conditions:

118
119 *19. The driveway connecting the subject property to Silverado Trail shall be*
120 *coordinated with future development on the adjacent vacant parcel to the*
121 *east. By accepting this permit, the property owner agrees to a shared*
122 *driveway that will also allow access to future development of the Mount*
123 *Washington parcel, and will provide an easement for such access to*
124 *minimize safety considerations resulting from multiple driveways on*
125 *Silverado Trail, an important gateway to the community and an arterial*
126 *that is restricted from view by Mount Washington. Any entry driveway gate*
127 *approved by the City in this permit shall be set back from the property line*
128 *a minimum of 23 feet to provide shared access to the Mount Washington*
129 *parcel and to provide safe queuing on the property for emergency vehicles*
130 *and other vehicles to park while the gate is opening inward toward the*

131 *property. The design of this gate shall be approved by the City prior to*
132 *issuance of the Building Permit.*

133
134 28. *Prior to issuance of a building permit, the applicant shall submit a study,*
135 *prepared by a licensed Civil Engineer, analyzing the existing road*
136 *conditions on Silverado Trail and the potential impacts resulting from the*
137 *revised driveway connection to the approved residential use of the*
138 *property. The purpose of this study is to consider the safety*
139 *considerations resulting from turning movements to and from the subject*
140 *site and their relationship to the driveway at Silver Rose Winery and Inn,*
141 *also considering planned development on area properties (including the*
142 *approved restaurant at Silver Rose, service driveway at Palisades Resort*
143 *and Spa, and driveway for adjoining single-family residence and water*
144 *tank). This study shall also include the visibility of the driveway approach,*
145 *lane width and striping in the project area to determine if changes are*
146 *required prior to issuance of a building permit for development on the site.*

147
148 Staff recommendation was to approve the Conditional Use Permit # U 2003-12, to include
149 the above amendments.

150
151 **Chairman Manfredi** opened the Public portion of the Hearing to the public.

152
153 **Mr. Henry Wix**, of Wix Architects and representing Curtis and Jillian Helmer approached
154 the Commission presenting architectural drawings and describing the project as a
155 “California Contemporary” structure, including columns consistent with other properties
156 within Calistoga. He pointed out the front gate entrance, noting it was replicated in style at
157 the secondary entry to the carriage houses. Mr. Wix continued reporting the owners had
158 expressed a desire to make a change to the existing drawing, placing a deck at the pool
159 house.

160
161 **Director Tooker** advised per condition #9, the deck or any future exterior alteration could
162 be approved by staff through design review.

163
164 **Commissioner Dill** stated she preferred that any major material changes would require
165 the Planning Commission look at it.

166
167 **Commissioner Creager** asked if the new deck would face south.

168
169 **Mr. Wix** reported the deck would wrap completely around the structure, with no height
170 change. Further stating with the mobile home park approximately 100 to 140 feet away he
171 did not foresee a visual impact.

172
173 **Director Tooker** interjected the deck shouldn’t be an issue at this time, especially with a
174 general consensus of no potential problem.

175

176 **Chairman Manfredi** asked if there were any other anticipated changes.

177

178 **Mr. Wix** replied “no”.

179

180 **Commissioner Dill** inquired what the intended use of the carriage house would be.

181

182 **Mr. Wix** reported the intention was to use it for storage, cars, a tractor, or the things you
183 wouldn’t want sitting around the yard. No accommodations were intended.

184

185 **Mr. Wix** requested the Commissions attention be brought to Findings and Conditions,
186 page 5 of 5, line item 26:

187

188 *26. The property owner shall receive approval of a Construction Management*
189 *Plan prior to issuance of a Grading Permit or Building Permit which*
190 *identifies how the site will be protected during grading activities from dust,*
191 *identifies the location of haul trucks exporting any material from the site,*
192 *the hours of construction, and a plan for addressing archaeological*
193 *resources, if encountered, during grading to include the following:*

194

195 *The previously unknown archaeological resources are discovered during*
196 *any land alterations, the construction crew will cease work immediately in*
197 *the discovery area (i.e., within 20 meters). A qualified archaeologist*
198 *approved by the City of Calistoga and the County of Napa shall be*
199 *consulted to evaluate the resource in accordance with State and Federal*
200 *guidelines. If prehistoric Native American remains are discovered, the*
201 *State Native American Heritage Commission and affected Native*
202 *American groups shall be notified according to State regulations.*
203 *Mitigation measures consistent with CEQA Section 21083.2 will be*
204 *devised and a mitigation plan submitted for approval of the City of*
205 *Calistoga Department of Planning and Building and the Napa County*
206 *Conservation, Planning, and Development Department. All archaeological*
207 *activities will be conducted in accordance with prevailing professional*
208 *standards as outlined in CEQA and will be implemented before*
209 *recommencement of work within the area of the resource discover.*

210

211 Continuing he reported an archaeological study was addressed in the negative declaration
212 process. The property owners had hired an archaeologist during the due diligence period
213 and their recommendation included within their report “no further archaeological study
214 would be necessary”. Therefore, Mr. Wix requested consideration for the wording of
215 condition item #26 to be stricken from the conditions.

216

217 Addressing Findings and Conditions, page 4 of 5, line item19, **Mr. Wix** stated they had no
218 problem with this condition and would be glad to work with the neighbors. However, Mr. &
219 Mrs. Helmer believed a share of costs for legal documentation should be coordinated,
220 considering the easement for access was a requirement.

221 **Director Tooker** advised the condition states only “there shall be a shared access” and
222 expressed for the record, that although the easement was a condition of the Helmer’s
223 project, the easement would be a three party agreement between the Tolbert’s, Helmer’s
224 and the City of Calistoga.

225
226 **Director Tooker** further reported the reference to the 23’ gate setback - Condition item 19,
227 was based on the Fire Department requirements for turn around of emergency vehicles.

228
229 **Assistant Planner Prentiss** reminded she would like the Commission to also address the
230 issue of a gate to a community, verses gate for a property gateway.

231
232 **Commissioner Creager** agreed with Mr. Wix that negotiations should transpire for
233 consideration of costs incurred due to sharing access with the neighbors.

234
235 **Vice Chair Casey** stated that in her opinion a gated property would not be synonymous
236 with a gated community. The general Commission consensus was the gate was ok.

237
238 **Director Tooker** brought the discussion back to Findings and Conditions, page 5 of 5, line
239 item 28, dictating the applicant shall submit a road study of Silverado Trail, advising this
240 condition was added at the request of the Public Works Department engineers, due to the
241 narrowness on the highway and the inability of the property owners to make a left turn
242 across the roadway onto the property. There were safety concerns needing to be
243 addressed including visibility of the driveway approach and the lane width.

244
245 **Mr. Wix** stated he and his clients were frustrated with the request for one more study. He
246 stated this is a residential area and the residents will simply follow traffic laws and not
247 make illegal turns.

248
249 **Chairman Manfredi** stated doing a road traffic study may be prudent. Although it would
250 be another expense, making it safer is always wise.

251
252 **Vice Chairperson Casey** stated in her opinion the request was a little draconian.

253
254 **Assistant Planner Prentiss** stressed that condition #28 was driven by the Public Works
255 City Engineer, and in his opinion this study was needed because the ingress/egress will
256 change the roadway environment.

257
258 **Vice-Chairperson Casey** asked what the intent of the condition was. If it is safety the she
259 asked what is the resulting change to prevent liability.

260
261 **Commissioner Creager** advised existing striping prohibits left turns, and any change
262 would result to increase safety.

263

264 **Director Tooker** advised although he doubted a turn out for a left turn would be required,
265 additional signage "No left turn" could be considered, but he was not a City Engineer.

266
267 **Commissioner Dill** stated the opinion that it was not fair to ask the Helmer's to delay their
268 project for a study and/or bear the cost.

269
270 **Vice Chairperson Casey** agreed with Commissioner Dill.

271
272 **Commissioner Creager** stated he didn't see the need for the study.

273
274 Consensus was for Associate Planner Prentiss to amend the Findings and Conditions,
275 page 5 of 5, deleting line item 28.

276
277 The Public Hearing was closed by **Chairman Manfredi** at 6:30 p.m..

278
279 **Chairman Manfredi** thanked Mr. Wix and Mr. and Mrs. Helmer, advising it had been a
280 pleasure working with them.

281
282 **Motion by Vice Chairperson Casey, seconded by Commissioner Creager**, to adopt
283 Resolution 2004-5, A Resolution Adopting a Mitigated Negative Declaration and Approving
284 The Design and a Conditional Use Permit (U 2003-12) for a Residential Development
285 within Planned District PD 2002-2, Located 1,500 Feet Southeast Of The Intersection Of
286 Silverado Trail And Rosedale Road (APN: 011-050-032), amending condition #26,
287 researching the existing study to mitigate the archaeological study issue, and striking
288 condition #28. **Motion approved: 4-0-0-1.**

MINUTES
CALISTOGA PLANNING COMMISSION
October 13, 2021 at 5:30 p.m. via Zoom

1 **Chair Cooper** called the meeting to order at 5:30 p.m. He read a special message
2 concerning the conduct of the virtual meeting in accordance with provisions related
3 to COVID-19.

4 **A. ROLL CALL**

5 Commissioners present: Chair Scott Cooper, Vice Chair Tim Wilkes, Commissioners
6 Alissa McNair, and Doug Allan. Commissioners absent: Jack Berquist. Staff present:
7 Planning Director Zach Tusinger, Associate Planner Samantha Thomas and Planning
8 Secretary Claudia Aceves. Additional Staff present included Police Chief Mitch Celaya
9 and Building Official Brad Cannon.

10 **B. PLEDGE OF ALLEGIANCE**

11 **C. PUBLIC COMMENTS**

12 None.

13 **D. ADOPTION OF MEETING AGENDA**

14 The meeting agenda was adopted as presented.

15 **E. COMMUNICATIONS/CORRESPONDENCE**

16 Planner Thomas reported that staff sent commissioners the last of the
17 correspondence at 3 p.m. for both items and there has not been additional
18 correspondence.

19 **F. CONSENT CALENDAR**

20 1. **Approval of Draft Minutes from the September 8, 2021 meeting.**

21 The consent calendar was adopted unanimously.

22 **G. PUBLIC HEARINGS**

23 1. **Review of Compliance with Conditions of Approval, Use Permit Amendment UP**
24 **2021-9, and Design Review DR 2021-2 for 345 Silverado Trail (APN 011-050-032) –**
25 **Originally Helmer Conditional Use Permit U 2003-12:**

26 Consideration of a use permit amendment and design review to address the property's
27 code violations, ensuring compliance with conditions of approval. The project consists
28 of relocating an existing unpermitted metal barn behind the 20-foot side yard setback,
29 reviewing the design of an existing entrance gate, reviewing existing unpermitted duck
30 and aviary enclosures for non-native bird species in connection with an issued noise
31 nuisance notice of violation, review the abandonment of existing unpermitted garage
32 pads within a potentially sensitive area of the property and relocating the footprint
33 behind the existing main garage, helicopter sculpture, and consider an Erosion Control
34 Plan for trees removed for defensible space be required as a Condition of Approval

35 prior to obtaining building permits. The proposed action is exempt from the California
36 Environmental Quality Act (CEQA) under §15303 of the CEQA Guidelines.

37 **Recommended Action:** Hold public hearing and consider approving portions of the
38 application with conditions and denying other portions.

39 Associate Planner Thomas presents the staff report noting the key issues to address,
40 including unpermitted construction and uses and neighbor complaints about new
41 uses, particularly an unpermitted aviary housing peacocks and other birds. She
42 provides background on the property at 345 Silverado Trail noting that in 2004
43 Planning Commission approved a mitigated negative declaration (MND), design
44 review and use permit. She adds that the residence was completed in 2008 and solar
45 in 2012 with minor improvements since. Thomas lists and describes in detail several
46 violations that occurred on property, most notably the aviaries, as well as tree removal
47 and grading, entry gate, helicopter sculpture, garage pads, metal building, storage
48 building and propane tank, lighting and transient commercial occupancies violations
49 that may not be in conformance with conditions under use permit U 2003-12.

50 Police Chief **Mitch Celaya** comments on the complaints received by the police
51 department by residents of the neighboring mobile home park. He notes that upon
52 arrival on scene, responding officers did not hear the nuisances described in the
53 complaints. He adds that they sent the property owner a notice of violation advising
54 them how to mitigate the issue. Chief Celaya notes that there are two sections of the
55 code related to nuisances that are potentially in violation. He says that officers were
56 instructed to issue a citation next time there is a complaint if the officers observe and
57 document the actual noise.

58 Building Official **Brad Cannon** comments that it is a simple process to bring the
59 unpermitted work to compliance, adding that the structures in question need a building
60 permit and would need a design professional to provide plans. He notes that he'd need
61 clarification on the storage building use.

62 **Planner Thomas** lists the items that staff recommends for approval and what is
63 recommended for denial.

64 **Vice Chair Wilkes** asks for clarification in terms of the wetland analysis whether the
65 2003 use permit clearly documented the land now covered in concrete as wetlands
66 and Planner Thomas confirms, noting it would be difficult to determine if wetland is
67 existing now.

68 **Vice Chair Wilkes** asks about the total square footage of the unpermitted construction
69 additions including new slabs, and metal barn and storage shed and Planner Thomas
70 responds that the information was not received.

71 **Vice Chair Wilkes** asks if the erosion control plan underway will be reviewed prior to
72 building permit issuance and Planner Thomas confirms. Regarding the barn, he asks

73 about the setback and supplemental height restrictions and Director Tusinger says
74 those recent code amendments to accessory structure standards apply to single
75 family residential zones. Planner Thomas adds that this development has its own
76 height limit of 28 feet.

77 **Chair Cooper** asks about the timeframe if commissioners were to approve the
78 recommendations and Planner Thomas says it could be dependent on each item.
79 Building Official Cannon adds that building permits are active for one year.

80 **Commissioner McNair** clarifies that Chair Cooper may have been talking about a
81 time limit, since most of the items already have something due and Planner Thomas
82 suggests the applicant would have to submit items for staff review within 30 days of
83 approval.

84 **Commissioner McNair** asks if there was a survey as part of previous projects that
85 would have shown the trees where brush was removed. Planner Thomas says there
86 was a landscape plan as part of the MND and mentions their observations from a site
87 visit, noting that trees were visibly cut.

88 **Commissioner Allan** asks for clarification on the comment about “minor
89 improvements” that were made, and Planner Thomas confirms they were
90 improvements made prior to the property being purchased in July 2020.

91 **Chair Cooper** asks if staff recommends complete removal of the aviaries or if there is
92 room to reduce in size. Planner Thomas responds that staff recommends complete
93 removal because it does not fit within an allowed use permit.

94 **Commissioner Allan** asks for clarification on what in the code the city does allow,
95 and Planner Thomas says residents can have up to five chickens and no roosters with
96 no verbiage on other bird types.

97 Architect, **Benjamin Hertz**, says the existing site is 7.3 acres and currently the existing
98 structures make up 4.2 percent of space usage, noting that if the unpermitted additions
99 are approved, it would add up to about 5 percent building coverage of the allowed 25
100 percent on the site. He mentions a biologist will be able to determine the outline of the
101 wetlands. He says he has the original survey showing that certain areas on Mt.
102 Washington were already bare. Mr. Hertz mentions that an erosion control plan is
103 technically not required because it is an area less than one acre and less than 30
104 percent slope, in this case 25 percent. He comments that he has photo proof of the
105 helicopter being a “sculpture.” He says the metal barn is used as tool storage and was
106 built by a company that meets construction standards. He also addresses the propane
107 tank and lighting, noting they’ve ordered the shade cover pieces to the lights.
108 Regarding the birds, he says there are ways to mitigate sound.

109 **Vice Chair Wilkes** asks for clarification on whether Mr. Hertz is the architect on the
110 new buildings and Mr. Hertz says he will become the architect and clarifies that the
111 slab is not engineered.

112 **Vice Chair Wilkes** asks how no one thought to get a building permit. Mr. Hertz says
113 he wasn't involved in the project at that time, adding that metal building companies
114 don't care about the building permits.

115 **Chair Cooper** expresses concern about the open flame on the entry gate and asks
116 Building Official Cannon how safe they are. Cannon responds that they don't really
117 exist in Calistoga and the fire chief does not typically approve them.

118 **Commissioner McNair** also expresses concern for the gate. She asks when the
119 lighting was installed and if there are cut sheets and Mr. Hertz says he has cut sheets
120 that he can provide and thinks they were installed in April 2021.

121 **Chair Cooper** asks if Calistoga is the only jurisdiction having authority over the
122 violations and Cannon responds that it is just Calistoga from the building standpoint.

123 Attorney, **Paul Dohring**, comments that his purpose as the lawyer is to ensure that
124 his client has due process to get approval. He comments that he focused on the
125 wording of the resolutions and conditions and offering proposed language. Mr.
126 Dohring says he thinks it is premature to weigh in on the wetlands issue, adding that
127 they agree with most of the recommendations by staff. He argues that the current
128 ordinance is inconsistent with the general plan in terms of light agricultural uses, an
129 option which was eliminated from this parcel. He also argues that aviaries are allowed
130 in rural residential zones. He adds that he is willing to work with staff on language of
131 the conditions.

132 Applicant, **Rick Ali**, comments that he didn't realize he needed a building permit on
133 the garage slab. He addresses the entry gate noting that the fire chief suggested a
134 Knox box and other safety measures he could follow. Mr. Ali comments that the noise
135 complaints are that of foxes and not his peacocks, adding that the enclosure was
136 necessary as his birds had gotten attacked at night.

137 **Chair Cooper** says that while he understands Mr. Ali's concerns over the birds, there
138 is also a 95-signature complaint that needs to be addressed.

139 **Mr. Ali** suggests they review the complaints based on the city code's nuisance hours
140 between 10 p.m. and 7 a.m. because he believes the birds do not create noise at
141 night. He asks whether any more complaints have been received since August.

142 **Chief Celaya** responds that the last call for a noise complaint was on August 19th,
143 noting that there is a section in the code that covers noise complaints during daytime
144 hours, but the criteria and standards are higher.

145 **Commissioner Allan** comments that although there haven't been any formal
146 complaints since August, he has received complaints from community members.

147 **Vice Chair Wilkes** asks Mr. Ali if when he purchased the property he read the escrow
148 documents that would have mentioned the 2003 use permit and Mr. Ali admits that he
149 did not know about the use permit. Vice Chair Wilkes adds that by purchasing the
150 property, Mr. Ali agreed to the terms that came with the property and it was his
151 responsibility to be aware of it, adding that there is a list of things clearly in violation
152 and no responsibility has been taken, and Mr. Ali apologizes and takes responsibility.

153 **Vice Chair Wilkes** asks Mr. Dohring if commissioners were to accept staff's
154 recommendations, he would oppose that without changes and Mr. Dohring responds
155 that it is up to his client, adding that they are in a cooperative spirit to resolve the
156 issues.

157 **Vice Chair Wilkes** comments on ad hominem in Mr. Dohring's letter about the
158 neighbor's complaints and calls it unnecessary. He asks about the comment on
159 "alleged building violations," which Vice Chair Wilkes says were obvious and Mr.
160 Dohring does not contest.

161 **Vice Chair Wilkes** referencing the letter brings up Mr. Dohring's comment on the
162 Planned Development overlay being obsolete and if the intention is to revisit the
163 Planned Development Agreement and Mr. Dohring says no.

164 **Vice Chair Wilkes** comments on the letter's mention of professionals that would need
165 to be hired to resolve certain violations, noting that they would have needed to be
166 hired prior to construction rather than after and Mr. Dohring agrees.

167 **Vice Chair Wilkes** asks that precise documentation be included when Mr. Dohring
168 claims false accusations. He asks Mr. Dohring about the mention of Mr. Ali's religion
169 and the purpose and Mr. Dohring responds that it was conveyed by his client as a
170 matter of fact to suggest that the birds were not for commercial practice but are
171 important to him.

172 **Vice Chair Wilkes** asks if the Commission chose to take the staff's recommendations,
173 would Mr. Ali be in opposition and Mr. Dohring says his client would prefer to have
174 more process in terms of the garage relocation and aviaries.

175 **Planner Thomas** clarifies that since sending the first notice of violation in July, staff
176 had asked for documentation regarding all unpermitted activity and not enough
177 information was received to permit anything prior to taking the item to the Planning
178 Commission.

179 During public comment, **Suzanne Baker** comments that she does not want to be a
180 bad neighbor by calling the police but points out that their homes are close and wants

181 to be taken seriously on the noise concerns including peacocks, parties, and
182 motorized vehicles in the driveway.

183 **Chair Cooper** asks Ms. Baker if the peacocks are loudest and she confirms, adding
184 that there are a lot of them.

185 **Lori Hood** comments that they object to the owners request for use permit
186 amendments, specifically the aviaries on property, as they are not peaceful, and asks
187 commissioners to deny the request. She adds that they have devalued their properties
188 and obscured views of Mt. Washington.

189 **Chair Cooper** comments that many other noises considered annoying comes from
190 being neighbors.

191 **Mr. Ali** comments that a tree that was gone had fallen and was not cut.

192 **Vice Chair Wilkes** says he'd prefer to continue the item because there are too many
193 unanswered questions, adding that he is uncomfortable taking action after receiving
194 Mr. Dohring's letter based on legalities.

195 **Director Tusinger** comments that it is the commission's decision whether they want
196 to proceed or consult with the city attorney and reiterates that staff needed to bring
197 the item to the commission's attention although pieces are missing.

198 **Vice Chair Wilkes** says that to him the noise is an unresolved matter because there
199 is a property owner denying the noise issue and 95 neighbors saying otherwise.

200 **Mr. Ali** says he does not deny their complaints but believes the noise is during the
201 day and challenges the complaints because police could not document the noise in
202 question. He suggests it is not an issue if the noise does not occur between the hours
203 of 10 p.m. and 7 a.m.

204 **Chair Cooper** notes that it is also likely that a majority of the neighboring mobile home
205 residents are home during the day.

206 **Commissioner McNair** asks Mr. Ali when the peacocks were put on the property, and
207 he responds December of 2020. She asks if the aviary is denied, would the peacocks
208 remain on site without the netting, or would he relocate them and he says they would
209 likely die without the netting adding that he has other birds that don't make noise.

210 **Director Tusinger** comments that per staff's interpretation, the aviaries and peacocks
211 are not an allowed use, noting that if commissioners decided it was a similar use
212 determination and could be permitted with a use permit, one required finding is that
213 the proposed use does not affect neighboring properties, which would be very difficult
214 based on the neighbor complaints.

215 **Commissioner McNair** comments that although initially hesitant to approve items
216 without all the information, her understanding is they can move forward because they

217 are providing city staff the tools they need to review the documentation and make
218 those findings.

219 **Chair Cooper** says his concern with continuing the item is that staff has waited a long
220 time for the applicant to address some of these issues and to continue might take the
221 pressure off the applicant to move forward with document submittals. He asks if it is
222 possible to make a motion and continue to another date.

223 **Commissioner McNair** says she is looking to enable city staff to proceed on the
224 various items that require feedback and provides a timeline for documentation
225 submittals. She clarifies that she asks about the aviary because the issue is not only
226 the structure itself but the noise of the birds, highlighting the gap in the local ordinance.

227 **Mr. Ali** mentions that he is aware of neighboring properties that keep roosters. He
228 asks commissioners if they'd be willing to visit his property and see the birds.

229 **Commissioner Allan** comments that he would be in favor of attempting to make
230 progress at this meeting to provide feedback to staff. He adds that the challenge is
231 that there are so many violations to provide feedback on but is worthwhile.

232 **Chair Cooper** says he would be in favor of making a motion at this meeting.

233 **Vice Chair Wilkes** asks for clarification that staff recommends approving or denying
234 specific items and if approved as presented, would not come back to the commission,
235 which is his concern, as certain items were described to return for review and there
236 are too many unknowns. He adds that if a motion can be amended for staff to return
237 the item after specific findings, he'd be fine with it but if they will not see this item again
238 his original position stands.

239 **Director Tusinger** says he is hesitant to amend, adding that if commissioners want
240 to continue, they need to be clear on the date certain and provide staff direction on
241 specific items they require additional information on.

242 **Commissioners** discuss how to proceed in terms of whether they will make a motion
243 and how based on the information that has been provided at this meeting, preferring
244 to go line by line.

245 **Chief Celaya** comments that he understands the challenges in looking at the
246 information provided but moving forward staff needs direction and movement in
247 certain areas.

248 **Mr. Hertz** comments that it was his understanding they would receive some resolution
249 and conditions to move forward with what documentation is applicable to provide, such
250 as the erosion control plan.

251 **Commissioner Allan** says that is not complete because the information was not
252 provided, so to him it is not approved.

253 **Director Tusinger** suggests a blanket continuance with direction to staff or going line
254 by line if there is consensus on any of the items.

255 **Commissioners** discuss how to approach moving forward and resolve that Planner
256 Thomas read through each item individually for commissioners to come to a
257 consensus.

258 **Planner Thomas** begins the process of reading each item and discussion ensues
259 between commissioners on the first few items.

260 **Director Tusinger** with concerns of keeping a clear record, recommends continuing
261 the entire item two weeks to allow staff to get all the requested materials needed for
262 commissioners to make a final decision.

263 A motion is made by **Vice Chair Wilkes** that the Planning Commission continue for
264 two weeks the item DR2021-2 and UP2021-9.

265 **Director Tusinger** asks for confirmation that the applicant can participate in the next
266 hearing and if they can provide the additional information and work with staff in less
267 than two weeks and Mr. Hertz confirms.

268 The motion is seconded by **Commissioner Allan** and **Vice Chair Wilkes** adds if
269 during the two weeks staff can harden up on the conditions to help build consensus
270 down the line.

271 **2. Prohibition on New Gas Station Land Uses – Zoning Ordinance Amendment**
272 **ZOA 2021-1:**

273 Consideration of a recommendation to the City Council of a proposal from the
274 Calistoga Green Committee of a zoning ordinance amendment to the Calistoga
275 Municipal Code (CMC) Title 17, Zoning to codify a prohibition of new gas station land
276 uses in all zoning districts and to provide uniform regulations and development
277 standards for modifications, maintenance, operation, and discontinuation of
278 fueling/gas station uses and facilities in the City. The proposed action is exempt from
279 the California Environmental Quality Act (CEQA) under §§15378, 15061(b)(3), 15301,
280 15303, 15304, and 15308 of the CEQA Guidelines.

281 **Recommended Action:** Hold public hearing and consider recommending Municipal
282 Code Amendments to the City Council.

283 Associate Planner Thomas provides the staff report. After significant technical
284 difficulties with Zoom became apparent, **Chair Cooper** opens and leaves open the
285 public hearing. A motion by **Commissioner Allan** to continue the item is seconded by
286 **Commissioner McNair**.

287 **H. MATTERS INITIATED BY COMMISSIONERS**

288 None

289 **I. DIRECTOR'S REPORT**

290 **Director Tusinger** reports that he is very pleased with Associate Planner Thomas's
291 exemplary performance thus far. He says that Interim City Manager Brad Kilger, who
292 has a planning background, will be assisting planning staff with the coming meetings.
293 He adds that there will also be outside help coming on board during the time the city
294 works to fills his position. He mentions that commissioners are welcome to watch the
295 next City Council meeting where staff will present an update on different Planning and
296 Building projects. He thanks the Commission for the privilege of having been able to
297 work with them over the last several years.

298 **Commissioners** thank Director Tusinger for his hard work for the city.

299 **J. ADJOURNMENT**

300 On a motion from **Chair Cooper** that is adopted unanimously (4-0), the meeting was
301 adjourned at 8:35 p.m.

Claudia Aceves, Secretary