



City of Calistoga
Planning Commission
Agenda Item Summary

DATE	January 26, 2022
ITEM	Review Compliance with Conditions of Approval, Use Permit Amendment UP 2021-0, and Design Review DR 2021-2 – Originally Helmer Conditional Use Permit U 2003-12
APPLICANT	Syed (Rick) Ali
PROPERTY ADDRESS	345 Silverado Trail
ASSESSOR'S PARCEL NOS.	011-050-032
GENERAL PLAN DESIGNATION	Rural Residential
ZONING DISTRICT	PD 2002-2 Maxfield Planned Development District
STAFF CONTACT	Samantha Thomas, Associate Planner
POTENTIAL CONFLICTS	None
RECOMMENDATION	Consider approving the use permit amendment and design review with conditions (including prohibiting aviaries, open flame on entry gate and relocation of metal barn outside setbacks.)
SUGGESTED MOTION	"I move that the Planning Commission adopt a Resolution approving a use permit amendment and design review application subject to the Conditions of Approval listed in the Resolution for the property located at 345 Silverado Trail."

CALISTOGA PLANNING COMMISSION
STAFF REPORT

To: Calistoga Planning Commission
From: Jeff Mitchem, Planning & Building Director
Samantha Thomas, Associate Planner
Meeting Date: January 26, 2022
Subject: **Review Compliance with Conditions of Approval
Use Permit Amendment UP 2021-9 & Design Review DR 2021-2
Originally Helmer Conditional Use Permit U 2003-12**

1 **INTRODUCTION**

2 This continuation item is a concurrent Use Permit Amendment and Design Review
3 application (submitted September 24, 2021) to legalize several unpermitted
4 improvements to a 7.37-acre parcel (APN 011-050-032) at 345 Silverado Trail (see
5 Attachment 1 for *Resolution PC 2022-XX*). At the October 13, 2021 public hearing, the
6 Planning Commission considered compliance of the improvements with Title 17 Zoning
7 of the Calistoga Municipal Code (CMC.) Also discussed during the hearing were alleged
8 violations to other CMC titles for which the Planning Commission is not the administering
9 or enforcing body. After presentations and considering public comments, Staff requested
10 that the Planning Commission continue the item to October 27, 2021, to allow time to
11 coordinate with the Applicant and discuss with the City Attorney. Refer to Attachment 2
12 for Staff Report – October 13, 2021 Planning Commission Hearing, Applicant’s Updated
13 Action Items Letter, and Public Comments.

14 During coordination, the Applicant conveyed their intent to comply with CMC
15 requirements, thereby obviating the need for several use permit amendments and
16 clarifying the violation resolution process. The Applicant submitted all required
17 documentation demonstrating compliance with the CMC by December 22, 2021.

18 Based on new information submitted by the applicant, several of the items previously
19 presented to the Planning Commission were determined to be Staff actions under code
20 regulations (see below, Items Not Subject to Planning Commission Review Authority).
21 Furthermore, in discussions with the City Attorney it was also determined that some items
22 were strictly code enforcement matters and should be dealt with through the City’s
23 existing enforcement processes. Therefore, the improvements subject to Planning
24 Commission consideration for this entitlement are: 1) Aviaries; 2) Entry Gate; and
25 3) Metal Barn. A detailed description of these items is provided below in
26 Discussion.

27 **BACKGROUND**

28 **Applicable Regulations**

29 The proposal is subject to the following regulatory provisions under the Calistoga
30 Municipal Code (CMC), Title 17 Zoning: 1) Chapter 17.24, Article II, Maxfield Planned
31 Development District Planned District PD 2002-2; 2) Chapter 17.40, Use Permits; and 3)
32 Chapter 17.41 Design Review. To be approved, the proposal must be found to comply,
33 or be conditioned to comply, with these provisions. For a summary of how the
34 improvements meet or are conditioned to meet these provisions for the items under
35 review herein, please refer to **DISCUSSION**, below.

36 **Procedural History**

37 The proposal is also subject to restrictions placed by a previously issued entitlement:

38 **Helmer Conditional Use Permit U 2003-12.** On February 25, 2004, the Calistoga
39 Planning Commission approved a mitigated negative declaration, and design and
40 conditional use permit application to establish a residential development. Construction
41 of the residence was completed in 2008, followed by solar installation in 2012.
42 Additional unpermitted improvements have continued to occur on-site since the
43 original construction.

44 The Helmer Residence Use Permit (U 2003-12) contains Conditions of Approval that
45 pertain to the proposed improvements considered herein. They are attached hereto
46 as Attachment 3 and summarized below in Discussion, Items Subject to Planning
47 Commission Review Authority. Refer to Attachment 4 for Vicinity Map.

48 **Items Not Subject to Planning Commission Review Authority**

49 After thorough analysis of the previous subject site entitlement and CMC administrative
50 and enforcement rules, the items listed below are CMC violations (pursuant to Notice of
51 Violation issued to Applicant on July 29, 2021, and Addendum on August 3, 2021) not
52 subject to Planning Commission review authority and have been removed from
53 consideration for the subject entitlements considered herein. Please note that for each of
54 these items, Staff specifies the regulating CMC Code Citation, identifies the responsible
55 enforcement body, and outlines the appropriate procedural process for resolving the
56 violations. *Note: Abatement will be enforced pursuant to the required actions specified in*
57 *Notice of Violations (issued to Applicant on July 29, 2021, August 3, 2021 and January*
58 *19, 2022) and is conditioned herein (see Attachment 1).* Refer to Attachment 5 for Photo
59 Exhibit.

60 1) **Noise** violations related to any on-site activity, most germanely that related to aviary
61 use.

62 Regulation. Noise is regulated by CMC Title 6, Animal Control and Chapter 8.20
63 Nuisances.

64 Enforcement Body. Calistoga Police Department and Planning & Building
65 Department.

66 Resolution Process. The Applicant has agreed to remove the nuisance birds to
67 another property under common ownership outside City limits. The removal of the
68 birds will be enforced through compliance with CMC Chapter 1.12, Nuisance
69 Abatement. Calistoga Police Department and the Building Official shall enforce
70 nuisance abatement 30 days post-adoption of Resolution herein. To be enforced by
71 Planning & Building Director pursuant to required actions specified in Notice of
72 Violations issued to Applicant on July 29, 2021, and August 3, 2021 (and reissued on
73 January 19, 2022).

74 2) **Erosion Control Plan** triggered by tree removal and associated grading abutting the
75 City's access road to Mt. Washington.

76 Regulation. Erosion control is regulated by CMC Chapter 19.08 Conservation
77 Regulations and tree removal is regulated by CMC Chapter 19.01 Trees.

78 Enforcement Body. Calistoga Public Works Department.

79 Resolution Process. Calistoga Public Works Department. Staff to review Erosion
80 Control Plan and implementation of mitigation requirements assuring hillside
81 stabilization, and enforce mitigation of unpermitted tree removal, such as replacement
82 of removed trees. Applicant shall submit an Erosion Control Plan to the City's Public
83 Works Department for review and implement mitigation requirements for hillside
84 stabilization as well as unpermitted tree removal within 30 days post-adoption of
85 Resolution herein.

86 3) **Concrete Slabs** within wetland boundaries previously red-tagged by City Planning &
87 Building Department Staff.

88 Regulation. Wetland preservation is regulated by CMC Chapter 19.08 Conservation
89 Regulations.

90 Enforcement Body. Calistoga Planning & Building Department, U.S. Army Corps of
91 Engineers, and Regional Water Quality Control Board.

92 Resolution Process. Applicant provided a Wetland Delineation Report and has agreed
93 to remove the slabs; therefore, the Applicant will be responsible for working with the
94 U.S. Army Corps of Engineers and Regional Water Quality Control Board to determine
95 the appropriate course of action to remove the concrete slabs from the property and

96 implement all mitigation measures found to be required, restoring the disturbed
97 footprint to its previous condition.

- 98 4) **Storage Shed** (112 square feet) on an approved concrete pad near the entrance of
99 the property (not included on the approved plans under U 2003-12). Based on
100 information submitted by the applicant and a review of the structure, staff has
101 determined the entitlement mandate is building code compliance.

102 Regulation. CMC 17.24.160 Design Review requires review of structures or buildings
103 120 square feet or larger in size.

104 Enforcement Body. Calistoga Planning & Building Department.

105 Resolution Process. Calistoga Planning & Building Department Staff to inspect and
106 require necessary mechanical, electrical, and/or plumbing permits. Applicant shall
107 obtain all required permit(s) within 30 days post-adoption of the Resolution herein.

- 108 5) **Access Road Lighting** consisting of 6W dimmable LEDs per lamp (not included on
109 the approved plans under U 2003-12).

110 Regulation. CMC 17.24.020 A. 2.b. Design Review provides Planning & Building
111 Director review approval for minor exterior alterations including lighting.

112 Enforcement Body. Calistoga Planning & Building Department.

113 Resolution Process. Calistoga Planning & Building Department Staff to inspect and
114 require necessary electrical permit and ensure compliance with International Dark Sky
115 Standards as required by the City's General Plan. Applicant shall obtain all required
116 permit(s) and schedule an inspection with the Building Official within 30 days post-
117 adoption of the Resolution herein.

- 118 6) **Helicopter "Sculpture"** is a non-operational helicopter located in the center of the
119 site and screened from public view.

120 Regulation. CMC 17.41.020 C. 2. Design Review Applicability and Review Authority
121 provides Planning & Building Director review approval for minor exterior alterations
122 such as the subject "sculpture".

123 Enforcement Body. Calistoga Planning & Building Department.

124 Path to Resolve. Calistoga Planning & Building Department Staff to inspect and
125 confirm compliance with applicable CMC regulations. Applicant shall schedule an
126 inspection with the Building Official within 30 days post-adoption of the Resolution
127 herein.

128 **ANALYSIS**

129 General Plan

130 The project site is designated in the City's General Plan Land Use Element (as
131 updated in 2015) as Rural Residential with a Planned Development Overlay (Silverado
132 Trail Planned Development Overlay (PD-1)). This designation is applied to large land
133 holdings with unique features, parcels that are located in sensitive environmental and
134 transitional areas, and in areas where innovative design standards are to be applied
135 to achieve a superior design. Development on these large parcels along Silverado
136 Trail shall be designed to be visually suitable for its entry corridor location on the edge
137 of town and should contribute to the economic and/or community vitality of Calistoga.
138 They are also subject to design review.

139 The existing residential development was determined to be in substantial
140 conformance with the goals and policies of the City's 2003 General Plan as
141 conditioned under U 2003-12. The Planning Commission had determined that
142 although the project was quite large, the proposed structure (i.e., a one-story single-
143 family residence) was proportionate to the large size of the project site and, more
144 importantly, Mt. Washington effectively screened the project from public view.

145 Pursuant to the findings specified in the Resolution and conditioned therein, the Planning
146 Commission determines the improvements are determined to be compatible in land use
147 intensity, architectural style and detailing, and reflect the eclectic mix of architectural
148 styles in Calistoga and do not conflict with the character of the surroundings.

149 CMC Title 17, Zoning

150 The project site is zoned Planned Development PD 2002-2 and is regulated by CMC
151 Chapter 17.24, Article II, Maxfield Planned Development District Planned District PD
152 2002-2.

153 **17.24.120 Purpose.** This planned development district regulates development of
154 a two-acre parcel of land located at 333 Silverado Trail (APN 011-050-031), and
155 the subject site, a 7.37-acre parcel of land located at 345 Silverado Trail (APN 011-
156 050-032). The "PD 2002-2 Maxfield Planned Development District" is important to
157 the community, as it contains two large parcels located at a key entrance to town
158 in an area of outstanding natural beauty and surrounded by open space and Mt.
159 Washington as a unique backdrop. Therefore, development of this planned
160 development district shall be visually sensitive to the rural scale of the parcel and
161 its surroundings. Unless otherwise provided below, all proposed uses in this
162 planned development district shall require a use permit.

163 Pursuant to the findings specified in the Resolution and conditioned therein, the
164 Planning Commission determines the improvements meet the purpose of this

165 standard and applicable development standards of this Chapter as they are
166 visually integrated into, and harmonious with, the natural character and rural nature
167 of its surroundings.

168 **DISCUSSION**

169 Staff recommends the following actions with respect to the improvements under review
170 herein to bring the property back into compliance with PD 2002-2 and Use Permit U 2003-
171 12.

172 **Items Subject to Planning Commission Review Authority**

173 After thorough analysis of the CMC administrative and enforcement rules, CMC Title 17
174 regulations, and previous entitlements on the subject site, the items listed below are
175 unpermitted improvements subject to Planning Commission review authority pursuant to
176 the citations noted. Refer to Attachment 6 for Site Plan (illustrating and noting all
177 abatement).

178 1) **Aviaries.** Containing 12 peacocks (approximate) and other non-native bird species in
179 two structures totaling 7,500 square feet (approximate) with a maximum height of 20
180 feet and located outside of required setbacks (see Attachment 7).

181 a. **CMC Title 17 Citation.** Pursuant to CMC 17.24.120 Article II PD 2002-2 D., an
182 aviary is not an allowed use because it is not specified as such in the Municipal
183 Code Section applicable to the Maxfield PD District and uses not specified are
184 prohibited per Section 17.24.130.D. None of the uses listed in Section 17.24.130
185 A. or B., which govern the Maxfield Planned Development District, apply to an
186 aviary. **Thus, per Section 17.24.130.D., the use “aviary” is prohibited.**

187 b. **Entitlement (U 2003-12).** Through the course of this subject review amending U
188 2003-12, as conditioned in the Resolution herein, removal of the aviaries, the
189 improvements are consistent with Helmer Use Permit U 2003-12. Specifically,
190 compliance is assured for Conditions of Approval 1 (CMC consistency), 2 (Title 17
191 consistency), 9 (Design Review requirement), 10 (Planning Commission review),
192 and 12 (Design Review requirement). Applicant shall obtain a demo permit (if
193 applicable) and remove the aviaries and support bird cages within 30 days post-
194 adoption of Resolution herein.

195 2) **Entry Gate.** Located 147 feet from the property line, a 9 feet tall stone wall with
196 swinging wood gate doors. Decorative metal fence toppers on either side (i.e., flaming
197 phoenix balls) that ignite and display open flames contained within spark arrestor
198 screen mesh (see Attachment 8).

- 199 a. CMC Title 17 Citation. Pursuant to CMC 17.24.120 Article II PD 2002-2 C., an entry
200 gate is an allowed accessory use triggering Design Review (pursuant to 17.41
201 Design Review). As constructed, it is consistent with applicable development
202 standards specified in CMC Section 17.24.140 and 17.24.150. However, with
203 respect to the phoenix fireballs, CMC Section 17.24.120 states that development
204 of the Maxfield PD District “*shall be visually sensitive to the rural scale of the parcel
205 and its surroundings.*” The flaming aspect of the phoenix ball structures are not
206 considered to be “*visually sensitive to the rural scale of the parcel and its
207 surrounding.*” **Thus, per Section 17.24.120, the flaming component (i.e. gas
208 supply and igniter system) of the phoenix ball structures are prohibited.**
- 209 b. Entitlement (U 2003-12). Through the course of this subject review amending U
210 2003-12, as conditioned in the Resolution herein, to remove the flaming
211 component (i.e. gas supply and igniter system) of the phoenix ball structures, the
212 improvement is consistent with Helmer Use Permit U 2003-12. Specifically,
213 compliance is assured for Conditions of Approval 1 (CMC consistency), 2 (Title 17
214 consistency), 9 (Design Review requirement), 10 (Planning Commission review),
215 12 (Design Review requirement), and 19 (setback and Design Review). Applicant
216 shall remove the flaming component (i.e. gas supply and igniter system) of the
217 phoenix ball structures and obtain all required building permit(s) for the entry gate
218 within 30 days post-adoption of the Resolution herein.
- 219 3) **Metal Barn**. An unpermitted metal building located on the west side of the existing
220 pond along the property’s western boundary line adjacent to Solage and within the
221 side yard setback (see Attachment 9).
- 222 a. CMC Title 17 Citation. Pursuant to CMC 17.24.120 Article II PD 2002-2 C., a barn
223 building is an allowed accessory use triggering Design Review (pursuant to 17.41
224 Design Review). As constructed, the barn is located on the property line within the
225 property’s 10-foot side yard setback. As conditioned in the Resolution herein, to
226 move the barn outside of the setback (refer to Attachment 6, Sheet A3.1), it is
227 consistent with applicable development standards specified in CMC 17.24.140 and
228 17.24.150.
- 229 b. Entitlement (U 2003-12). Through the course of this subject review amending U
230 2002-12, as conditioned in the Resolution herein, the improvements are consistent
231 with Helmer Use Permit U 2003-12. Specifically, compliance is assured for
232 Conditions of Approval 1 (CMC consistency), 2 (Title 17 consistency), 9 (Design
233 Review requirement), 10 (Planning Commission review), and 12 (Design Review
234 requirement). Applicant shall obtain all required building permit(s) for the metal

235 barn and relocate it outside of the side yard setback within 30 days post-adoption
236 of the Resolution herein.

237 **OPTIONS**

238 The following options are available to the Planning Commission:

- 239 1) Adopt *Resolution PC 2022-XX* amending Use Permit U 2003-12 subject to the
240 Conditions of Approval listed in the Resolution.
- 241 2) Continue the hearing in order to obtain further information or for the applicant to
242 make any requested revisions to the project.
- 243 3) Deny the applicant's request and direct Staff to prepare a Resolution of Denial.

244 **RECOMMENDATION**

245 Staff recommends that the Planning Commission:

- 246 1) open the public hearing and take evidence;
- 247 2) consider the evidence received during the public hearing;
- 248 3) adopt *Resolution PC 2022-XX* to approve Use Permit Amendment UP 2021-9 and
249 Design Review DR 2021-2 to allow the previously unpermitted improvements
250 specified herein, subject to the conditions of approval; and
- 251 4) take such additional, related action as may be appropriate.

ATTACHMENTS

- 252 1. Resolution PC 2022-XX
- 253 2. Staff Report – October 13, 2021 Planning Commission Hearing; Applicant's Updated
254 Action Items Letter; Public Comments October 2021
- 255 3. U 2003-12 Findings and Conditions; 02-25-04 and 10-13-2021 PC Meeting Minutes
- 256 4. Vicinity Map
- 257 5. Photo Exhibit
- 258 6. Site Plan (illustrating and noting all abatement)
- 259 7. Aviaries Plan Sheet and Photos
- 260 8. Entry Gate Plan Sheet and Photos
- 261 9. Metal Building Plan Sheet and Photos