

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Ken MacNab, Senior Planner
VIA: Charlene Gallina, Planning and Building Director
DATE: December 15, 2009
SUBJECT: Appeal (A 2009-02) – Consideration of an appeal of a Planning Commission Decision (Appellant – Mitch Hawkins)

APPROVAL FOR FORWARDING:

James C. McCann (Signed by S. Sheldon)
 James C. McCann, City Manager

1
2 **ISSUE:** Appeal of Planning Commission Action – Determination to summarily deny or set a
3 hearing date for an appeal received from Mitch Hawkins regarding the Planning Commission's
4 approval of a Conditional Use Permit Amendment (U 2000-06(A)) to allow indoor live
5 entertainment at La Prima Pizza, 1923 Lake Street (APN 011-535-010).
6

7 **RECOMMENDATION:** Take action to set a date certain for the hearing on the appeal.
8

9 **DISCUSSION:** The Planning Commission approved a Conditional Use Permit Amendment
10 (U 2000-06(A)) to allow indoor live entertainment one night per week between the hours of
11 5:00 and 9:00 p.m. at La Prima Pizza at their November 16, 2009, meeting. Mr. Hawkins, a
12 neighbor to the business, has filed an appeal of the Planning Commission's action. The basis
13 for the appeal is stated in correspondence received from Mr. Hawkins, dated November 23,
14 2009 (Attachment 1). The matter before the City Council is to determine whether to summarily
15 deny the appeal or set the appeal for a public hearing.
16

17 Municipal Code Provision
18

19 Section 1.20.030.C Appeals to the Council of the Calistoga Municipal Code requires that the
20 City Council take one of the following two actions on the appeal:
21

- 22 1. The Council may deny the appeal summarily, or
23 2. The Council may decide to hear the appeal.
24

25 In a decision to hear the appeal, the City Council shall set a date certain for the hearing on
26 the appeal, which shall allow a reasonable time for investigation of the matter appealed.
27 The hearing shall be conducted in the same manner that the original action was heard by
28 the Planning Commission (i.e., noticed public hearing).
29

30 On December 10, 2009, the City received a request from the appellant to continue the
31 Council's decision on whether a hearing should be set to January 19, 2010 (Attachment 3).

32 Section 1.20.030B(1) of the Calistoga Municipal Code requires that appeals from decisions
33 of the Planning Commission be considered by the City Council within 30 days after the filing
34 of the notice of appeal (November 23, 2009), unless the appellant consents to a
35 continuance. Because the appellant has requested a continuance to a specific date that is
36 beyond the 30 day period, it is within the Council's discretion to grant the requested
37 continuance. Notwithstanding this request staff recommends that Council take action to set
38 a date certain for the hearing on the appeal.

39
40 **BACKGROUND:** On November 16, 2009, the Planning Commission approved a request by
41 Aldo and Betty Nunez (applicant) to amend Use Permit U 2000-06 to allow live
42 entertainment, one night per weekend (Friday OR Saturday). Live entertainment would
43 consist of musical performances by solo artists, duos, trios and other small acts. DJ music
44 and/or karaoke music would not be allowed.

45
46 Correspondence and oral testimony were received from a number of neighbors who
47 expressed concerns that the proposed business intensification would result in increased
48 noise, parking and traffic impacts, vandalism and trash. Following this testimony (two public
49 hearings were held by the Planning Commission on this application), conditions were
50 imposed to address the neighbors concerns (see attached Planning Commission
51 Resolution). Restrictions imposed under these conditions include: limiting live
52 entertainment to indoors only one (1) night per week (Friday OR Saturday); redirection of
53 the outdoor deck speakers (used for background music) to face towards the restaurant
54 building instead of the neighborhood; and provision of additional on-site parking during live
55 entertainment events. Some neighborhood residents were skeptical that the conditions
56 would resolve their concerns.

57
58 Given the level of neighborhood interest in this proposal and General Plan policies
59 addressing review of noise producing uses near noise sensitive receptors, it would seem
60 prudent for the City Council to hear this appeal.

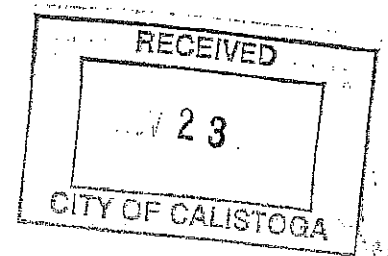
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62 **FISCAL IMPACT:** The cost of an appeal hearing, which includes staff time for investigation
63 and report preparation and time for review by the City Attorney's office, is estimated to be
64 \$1,500.00; this cost would be borne by the project proponent (Mr. Nunez). It should be
65 noted that the appellant (Mr. Hawkins) has paid the required fee of \$50.00 to process the
66 appeal.

67
68 **ATTACHMENTS:**

- 69
70 1. Appeal from Mitch Hawkins, dated November 23, 2009.
71 2. Planning Commission Resolution No. 2009-19 (with original Conditions of
72 Approval for Use Permit 2000-06 attached).
73 3. Appellant's Request for a Continuance, dated December 1, 2009

74
75 **REFERENCE:** Background Planning Commission reports, minutes, correspondence and
76 noise level measurements are available in the Planning and Building Department for review.

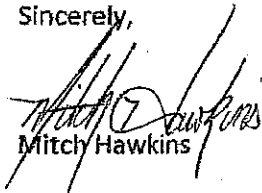
Mitch Hawkins
1910 Carli Drive
Calistoga, CA 94515
November, 23, 2009



City of Calistoga
Planning & Building Department
1232 Washington Street
Calistoga, CA 94515

As per the Calistoga Municipal Code this appeal for the Intensification of Use at La Prima Pizza is hereby submitted within the ten-day appeal period. The appeal is based on meeting procedure, minutes, statements made and enforcement of current city and state codes. Attached is the form I was given at the City Offices by Charlene Gallina when I requested the appeal form. It has been completely and accurately filled out.

Sincerely,



Mitch Hawkins

Attached: Completed Appeal Form

CITY OF CALISTOGA
PC RESOLUTION 2009-19

A RESOLUTION APPROVING AN AMENDMENT TO CONDITIONAL USE PERMIT U 2000-06 (U 2000-06(A)) ALLOWING AMPLIFIED MUSIC AND LIVE ENTERTAINMENT INDOORS WITHIN LA PRIMA PIZZA RESTAURANT LOCATED AT 1923 LAKE STREET (APN 011-535-010) WITHIN THE "CC-DD", COMMUNITY COMMERCIAL-DESIGN DISTRICT OVERLAY ZONING DISTRICT

1
2 WHEREAS, in 2000, the Planning Commission granted a Conditional Use Permit
3 (U 2000-06) to establish a full-service restaurant and bar at 1923 Lake Street; and
4

5 WHEREAS, on July 23, 2009, an application was submitted by restaurant owner
6 Betty Nunez requesting approval to amend Use Permit U 2000-06 to allow live
7 entertainment and amplified music to occur at the subject property; and
8

9 WHEREAS, the Planning Commission reviewed and considered this application
10 at its regular meeting on August 12, 2009, and continued it's review of the application to
11 provide additional time for evaluation of potential noise impacts and an opportunity for
12 the business owner and neighborhood residents to meet and discuss the proposal
13 further in a less formal meeting environment; and
14

15 WHEREAS, the Planning Commission continued its review and consideration of
16 this application at its regular meeting on November 16, 2009, and prior to taking action
17 on the application, the Commission received written and oral reports by the Staff, and
18 received public testimony; and
19

20 WHEREAS, this action has been reviewed for compliance with the California
21 Environmental Quality Act (CEQA) and has been determined Categoricaly Exempt from
22 the requirements of CEQA pursuant to Section 15301 of the CEQA Guidelines; and
23

24 WHEREAS, the Planning Commission pursuant to Chapter 17.40.070 of the
25 Calistoga Municipal Code has made the following findings for approval of the Conditional
26 Use Permit Amendment (U 2000-06(A)):
27

- 28 1. The proposed development, together with any provisions for its design
29 and improvement, is consistent with the General Plan, any applicable
30 specific plan and other applicable provisions of the Zoning Code including
31 the finding that the use as proposed is consistent with the historic, rural,
32 small-town atmosphere of Calistoga;
33

34 FINDING: The project site is zoned for commercial land uses. The existing
35 restaurant has been operating as a restaurant establishment since 1982.
36 Calistoga is determined in Municipal Code Section 17.02.040 to be primarily,
37 essentially and predominantly a residential community wherein business and
38 commerce are an enhancement and supportive to the quality of life and City's
39 residential character. Efforts to expand activities at an existing restaurant that
40 could adversely affect the adjoining residential quality of life could potentially be

41 inconsistent with the General Plan. Conditions of approval have been
42 incorporated into the project approval that will ensure potential impacts are kept
43 to a minimum and that the project will not significantly detract from the rural,
44 small-town atmosphere of the area.

45
46 2. The site is physically suitable for the type and density of development;

47
48 FINDING: The restaurant and bar is an enclosed space with adequate facilities
49 and space for live entertainment or amplified music. Windows and doors will be
50 kept closed when live entertainment or amplified music occurs to minimize noise
51 levels outside of the restaurant. A sufficient amount of undeveloped land exists
52 on the site to accommodate the provision of additional parking spaces for
53 customers.

54
55 3. The proposed development has been reviewed in compliance with the
56 California Environmental Quality Act (CEQA) and the project will not
57 result in detrimental or adverse impacts upon the public resources,
58 wildlife or public health, safety and welfare;

59
60 FINDING: This project is exempt from CEQA under Section 15301 of the CEQA
61 Guidelines (Existing Facilities).

62
63 4. Approval of the use permit application will not cause adverse impacts to
64 maintaining an adequate supply of public water and an adequate capacity
65 at the wastewater treatment facility;

66
67 FINDING: The City's water system and wastewater treatment facility is adequate
68 to serve this project.

69
70 5. Approval of the use permit application shall not cause the extension of
71 service mains greater than 500 feet;

72
73 FINDING: Approval of this use permit application shall not cause the extension
74 of service mains greater than 500 feet;

75
76 6. An allocation for water and/or wastewater service pursuant to Chapter
77 13.16 CMC (Resource Management System) shall be made prior to
78 project approval. Said allocation shall be valid for one year and shall not
79 be subject to renewal.

80
81 FINDING: The current allocation for water and wastewater is sufficient to
82 accommodate the addition of live entertainment one night per week to the
83 existing use. No additional allocation for water and/or wastewater is required.

84
85 7. The proposed development presents a scale and design which are in
86 harmony with the historical and small-town character of Calistoga;

87

88 FINDING: No new structures or alterations to existing structures are being
89 proposed as part of the project. Improvement of the undeveloped area to be
90 made accessible for customer parking will require administrative review and
91 approval prior to construction. Through this process staff will ensure that the
92 design does not impact or detract from existing neighborhood qualities.

93
94 8. The proposed development is consistent with and will enhance
95 Calistoga's history of independent, unique, and single location
96 businesses, thus contributing to the uniqueness of the town, which is
97 necessary to maintain a viable visitor industry in Calistoga and to
98 preserve its economy; and
99

100 FINDING: Approval of the request for live entertainment will help to sustain an
101 established and locally-owned business in the community. It also will increase
102 opportunities for residents and visitors to enjoy music performed by local and
103 area musicians.

104
105 9. The proposed development complements and enhances the architectural
106 integrity and eclectic combination of architectural styles of Calistoga.

107
108 FINDING: This proposal does not alter the architectural character of the existing
109 structure or other structures in Calistoga. Therefore, this finding is not
110 applicable.

111
112 **NOW, THEREFORE, BE IT RESOLVED** by the City of Calistoga Planning
113 Commission that based on the above Findings, the Planning Commission approves an
114 amendment to Conditional Use Permit U 2000-06, subject to the following seventeen
115 (17) conditions of approval:

- 116
117 1. This permit authorizes an Amendment to Conditional Use Permit U 2000-06 to
118 allow amplified music and/or live entertainment indoors within La Prima Pizza
119 Restaurant located at 1923 Lake Street. Live entertainment shall be permitted
120 indoors one night per week on Friday or Saturday night only between the hours
121 of 5:00 and 9:00 p.m. No live entertainment is permitted outdoors.
122
123 2. All applicable conditions of Conditional Use Permit U 2000-06 remain in effect,
124 except as may be modified by the conditions below.
125
126 3. Indoor live entertainment shall be restricted to acoustical music acts only (with
127 minimal amplification).
128
129 4. Music accompanied by a DJ and karaoke music shall be prohibited.
130
131 5. Windows shall be kept shut during live entertainment performances and doors
132 shall not be left open.
133
134 6. Indoor live entertainment shall be conducted in a manner that is ancillary and
135 complementary to the primary permitted use as a restaurant and bar.

Resolution No. PC 2009-19
Conditional Use Permit (U 2000-06(A))
LA PRIMA LIVE ENTERTAINMENT, 1923 Lake Street (APN 011-535-010)
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7. Indoor live entertainment performances and outdoor amplified music shall not exceed a decibel level of 50 as measured from the public right-of-way.
 8. Prior to commencement of indoor live entertainment events, the vacant area west of the restaurant building shall be made accessible and available for customer and employee overflow parking. Improvement plans, identifying access points, signage, landscaping and dust control measures, shall be submitted to the Planning and Building Department for review and approval prior to construction of improvements.
 9. Indoor live entertainment performances shall be conducted consistent with the approved "live entertainment management plan" required by Condition No. 10.
 10. Prior to commencement of indoor live entertainment events, a live entertainment management plan shall be submitted for review and approval by the Planning and Building Director. The live entertainment management plan shall identify: (1) permanent and temporary physical improvements or alterations to be made in effort to minimize off-site noise impacts, including relocation / re-direction of the outdoor speakers at the deck; (2) operational procedures that will be employed during live entertainment events; and (3) a notification plan for communications between the business owner and city staff regarding live entertainment dates.
 11. No outdoor amplified music shall be allowed until the live entertainment management plan required by Condition No. 10 has been approved by the Planning and Building Director.
 12. The owner or owner's employees shall pick up litter on and in the vicinity of the site on a weekly basis.
 13. This Conditional Use Permit shall be administratively reviewed on a quarterly basis during the first year (and on a semi-annual basis thereafter) or upon receipt of two verified substantive complaints to determine whether any violations of the Conditions of Approval for this Use Permit have occurred. Should it be determined that violation of the Conditions of this Use Permit have occurred, staff shall bring the Use Permit back to the Planning Commission for reconsideration.
 14. Posted occupancy limits in the restaurant/bar areas shall not be exceeded.
 15. Installation of entertainment-related fixtures in the restaurant or bar area (such as a dance floor, DJ booth, special lighting or sound system) shall not be permitted prior to review and approval by the Planning and Building Department.
 16. The Planning Commission may revoke this use permit in the future if the Commission finds that the use to which the permit is put is detrimental to the health, safety, comfort and welfare of the public, or constitutes a nuisance.

Resolution No. PC 2009-19
Conditional Use Permit (U 2000-06(A))
LA PRIMA LIVE ENTERTAINMENT, 1923 Lake Street (APN 011-535-010)
Page 5 of 5

183 17. This permit shall be null and void if not used by November 16, 2010, or if the use is
184 abandoned for a period of 180 days.

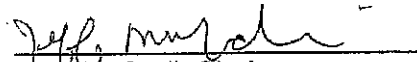
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186 **PASSED, APPROVED, AN ADOPTED** on November 16, 2009, by the following
187 votes of the Calistoga Planning Commission:

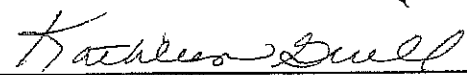
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189 AYES: MANFREDI, CREAGER, BUSH, AND KITE

190
191 NOES: NONE

192
193 ABSENT: COATES

194
195 ABSTAIN: NONE

196
197 
198 Jeff Manfredi, Chairman

199
200
201
202
203 ATTEST: 
204 Kathleen Guill
205 Secretary to the Planning Commission

**CITY OF CALISTOGA
PLANNING AND BUILDING DEPARTMENT**

Conditional Use Permit No. U 2000-6

Tom Gagetta, Business Owner, for Laszlo and Emilia Gyermek, Property Owner
Tomazzo's Steak and Chop House
1923 Lake Street (Assessor's Parcel No. 11-535-010)

Approved by the Planning Commission
November 15, 2000

Findings:

1. On October 15, 1980 the City approved a Conditional Use Permit to convert a single family dwelling to a restaurant at 1923 Lake Street. The restaurant closed January 1, 1999.
2. An application was submitted by Tom Gagetta, owner of Tomazzo's restaurant, on August 30, 2000, requesting a permit to re-establish a full service restaurant at subject property.
3. The project site contains a 2,697 square foot building, an outdoor dining deck comprised of 2,634 square feet and a 21 space parking lot to accommodate a full-service restaurant.
4. The City recognizes that the property can be used for a full service restaurant and authorizes this use to re-established in the building to the same size and extent that is described in Finding No. 3. Should the use be expanded, an amendment to the permit is required according to existing provisions contained in the City's Zoning Ordinance.
5. As conditioned, the proposed project will be in substantial conformance with the goals and policies of the City's adopted General Plan including the following:
 - a) enhance major entrances to Calistoga in order to provide definitive gateways to the City (Land Use Element);
 - b) preserve and enhance the aesthetic character of Calistoga (Open Space Element);
 - c) protect significant buildings or structures from exterior alterations that would diminish their historic or architectural significance (Conservation Element); and
 - d) achieve and/or maintain noise exposure compatibility between neighboring land uses (Noise Element).
6. The proposed project will preserve the integrity of a gateway entrance to Calistoga and retain the residential character of the structure. As conditioned, all exterior changes will be required to complement the character of the existing structure.
7. The application is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA guidelines.

8. As conditioned in this permit, the project will not be detrimental to the health, safety, and welfare of persons residing or working in the surrounding neighborhood or in the City as a whole.
9. The site is physically suitable for the type and density of development because the project meets the dimensional standards applicable to the Commercial-Design District (C-DD).
10. 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 wastewater treatment facility. The use permit application does not require an allocation for water and/or wastewater service, however, the project is required to maintain compliance with the City's Resources Management System. Presently, water and sewer use at the property cannot exceed the established baseline of 454 units per year.
11. Approval of the use permit application shall not cause the extension of service mains greater than five hundred (500) feet. As submitted, there will be no change to existing services.

Conditions:

1. This permit authorizes the operation of a full service restaurant 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 constructed to permit violation of other laws and policies not so list.
2. Approval is limited to the conformance with the land use provisions contained in the City's Zoning Ordinance. Use of the property shall be limited to those uses identified in the Findings above (Finding No. 3) and the attached staff report dated November 15, 2000. Any changes to the use are subject to the provisions of the Zoning Ordinance, as it exists now or may be amended in the future.
3. This permit shall expire unless the building permits required for the restaurant are issued by November 25, 2001, unless a request for extension is received and approved by the City prior to the expiration date.
4. Operation of the use shall conform to all required conditions established herein, as approved by the Planning Commission on November 15, 2000. Failure to comply with these conditions may result in amendment by the Planning Commission or revocation to protect the public health, safety and general welfare of the community, as set forth in the City's Zoning Ordinance.
5. Minor amendment to this permit may be approved by the Planning and Building Director, provided that the permit is still in substantial conformance with the original approval.
6. Water and sewer use at the property shall not exceed the established baseline of 454 units in compliance with the City's Resources Management System unless additional resources become available and are received for expansion of use or this permit is amended.

7. The primary use of the property is for a full service restaurant including an ancillary bar for restaurant patrons. The sale of alcoholic beverages shall not be subordinate to the primary classification of a restaurant. Substantially all food from the regular menu shall be available during the hours that alcoholic beverages are served, except for the last hour of each business day.
8. The business operator shall maintain all site improvements according to City standards and in a clean and orderly manner on a daily basis.
9. The business operator shall comply with all applicable local, State, and Federal laws.
10. Signage regarding towing shall be posted in the parking lot according to the provisions of the State Vehicle Code. No additional signage, other than that required in this permit or approved by the City through the Design Review Board review process, shall be allowed without first obtaining a permit.
11. Lighting for safety purposes shall be installed at the rear of the building and in parking lot. The light shall be turned off at the end of each business day.
12. Outdoor amplified music shall not be audible from the public right-of-way. Live music shall be prohibited without first obtaining a special event permit subject to Condition No. 13 below.
13. Special events outside of the restaurant operation shall require approval of a Conditional Administrative Use Permits.
14. The use shall not exhibit the characteristics of a drive-in or formula establishment as defined in the City's Zoning Ordinance.
15. Food sold for consumption off the premises shall be incidental to the primary use.
16. Adequate facilities shall be provided on the site for the closed storage of trash and garbage and for recyclables other than cardboard boxes generated by the use on or before January 15, 2001 (a dumpster shall be allowed without an enclosure until this date). The on-site storage shall be designed so that the area can be cleaned and the refuse removed without creating a public nuisance and without being placed on the sidewalks or other public ways. If the method of cooking used will generate hot ashes, a storage facility and disposal method shall first be approved by the Fire Department.
17. At least one restroom shall be available for use by both sexes within, or conveniently adjacent to, the specific business premises and on the same property on which the use is located. This restroom shall comply with all provisions of the State Uniform Building and Plumbing Codes as to the required size, location and accessibility standards, and shall be available for use by both the employees and patrons of the business.
18. Maximum seating capacity shall not exceed the standards in the State Uniform Building and

U 2000-6 – Tomazzo's
Findings and Conditions
November 15, 2000
Page 4 of 4

Fire Codes. The seating capacity shall be posted on the premises.

CITY OF CALISTOGA
DEC 1 8 2009
CITY MANAGER

Law Office of Caryl Maniscalco
157 Espana Way
Windsor, CA 95492

phone (707) 838-9084

Fax (707) 838-9216

December 1, 2009

City of Calistoga
James C. McCann, City Manager
1232 Washington Street
Calistoga, CA 94515

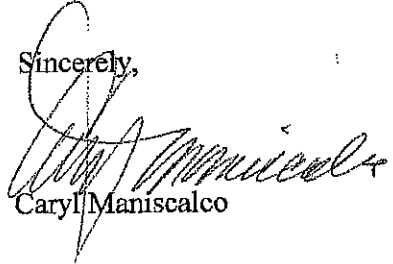
Dear Mr. McCann:

COPY

I represent Mitch Hawkins in the appeal of the Planning Commissions approval of the request of La Prima Pizza to expand their use permit to include live music as part of their business. As I'm sure you know, there has been a lot of contention concerning this issue. Many people have come to commission meetings to speak out against the expanding of the use permit. While some of the Nunez' tenants and family members and a couple of the musicians involved have spoken in favor of the expanded permit, saying that they would love to go have a drink and listen to music, a large majority of the people who spoke at the meetings were strongly opposed to it, for several very solid reasons, ranging from noise to litter, to the many prior violations of the use permit by La Prima, and the fact that this expanded use permit is in violation of the liquor license and several other laws and ordinances. There are also issues with parking which can't simply be addresses by encouraging this business to allow cars to park in their vacant field without review by CalTrans and other interested agencies. I won't go into further detail here, but we believe that a full hearing on this appeal is necessary to address the concerns of the community.

Neither Mr. Hawkins nor I will be available on December 15, 2009 and therefore request that the Council continue this matter to a date when we can attend. We had spoken to Sue Sneddon and she mentioned that January 19, 2010, would be a good time for this matter to be on the agenda. Mr. Hawkins and I have both cleared our calendars for that date and request that the matter be sent on the agenda for that meeting

Thank you for your attention to this matter.

Sincerely,

Caryl Maniscalco

cc: Sue Sneddon, City Clerk

