

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council

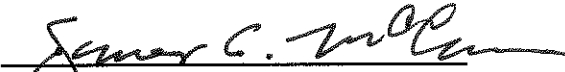
FROM: Ken MacNab, Senior Planner

VIA: Charlene Gallina, Planning and Building Director

DATE: January 19, 2010

SUBJECT: Appeal (A 2009-02) – Consideration of an appeal of a Planning Commission Decision (Appellant – Mitch Hawkins)

APPROVAL FOR FORWARDING:


 James C. McCann, City Manager

1
2 **ISSUE:** Appeal of the Planning Commission's decision to approve a Conditional Use Permit
3 Amendment (U 2000-06(A)) to allow indoor live entertainment at La Prima Pizza, 1923 Lake
4 Street (APN 011-535-010).

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6 **RECOMMENDATION:** Adopt Resolution denying the appeal and sustaining the Planning
7 Commission's action.

8
9 **DISCUSSION:** On November 16, 2009, the Planning Commission approved a request by
10 Aldo and Betty Nunez, the owners of La Prima Pizza, to amend Use Permit U 2000-06 to
11 allow indoor live entertainment, one night per weekend (Friday OR Saturday), between the
12 hours of 5 p.m. and 9 p.m. Authorized live entertainment consists of musical performances
13 by solo artists, duos, trios and other small acts. DJ music and/or karaoke music is not
14 allowed. A copy of the Planning Commission Staff Report, Minutes and Resolution are
15 attached to this report.

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17 On November 23, 2009, Mr. Mitch Hawkins, a neighbor to the business, filed an appeal of
18 the Planning Commission's decision. The basis for the appeal is stated in correspondence
19 received from Mr. Hawkins, dated November 23, 2009 (Attachment C). The City Council
20 considered Mr. Hawkins' request for an appeal at its regularly scheduled meeting on
21 December 15, 2009. After a brief discussion, the City Council took action to schedule a public
22 hearing to consider the appeal at its regularly scheduled meeting on January 19, 2010.
23

24 **BACKGROUND:** On July 23, 2009, La Prima Pizza submitted an application to amend Use
25 Permit U 2000-06 to allow amplified music and live entertainment indoors or outdoors any
26 time during business hours. A public hearing was held before the Planning Commission to
27 consider the applicant's request on August 12, 2009. At this meeting staff recommended
28 that live entertainment be allowed indoors only during specific days and hours.
29 Correspondence and oral testimony were received from a number of neighbors who
30 expressed concern about increased noise, parking and traffic impacts, vandalism and trash.
31 At the conclusion of its deliberations, the Planning Commission continued the item and also
32 appointed a sub-committee to review the operating parameters recommended by staff and
33 assist the applicant to work with neighbors to identify acceptable terms under which live
34 entertainment could be permitted at the restaurant.

35
36 On September 25, 2009, a test live entertainment event was conducted for the purpose of
37 providing City staff, the sub-committee, the business owner and neighborhood residents an
38 opportunity to observe conditions during a live event. Noise measurements were taken by
39 Planning Department staff (not a professional level assessment) during the event in an effort
40 to make a general assessment of noise levels/impacts to nearby residences. Measurement
41 results are illustrated on Attachment 8 of the attached Planning Commission Staff Report
42 (Attachment G).

43
44 On September 29, 2009, a follow-up neighborhood meeting was held to share observations
45 from the test live entertainment event and to provide the applicant and neighbors the
46 opportunity to discuss interests, concerns and issues associated with the proposal. During
47 the meeting, which was facilitated by Commissioners Creager and Kite, the applicant
48 proposed significant revisions to their proposal for live entertainment (see description
49 below). Neighbors in attendance at the meeting expressed continuing concern about
50 allowing live entertainment at La Prima Pizza and were skeptical that the proposed revisions
51 would resolve issues of noise, traffic/parking, litter and vandalism. A summary of the
52 meeting included as Attachment 9 of the attached Planning Commission Staff Report.

53
54 At its regularly scheduled meeting of November 16, 2009, the Planning Commission
55 continued its consideration of the requested Conditional Use Permit Amendment. In
56 response to concerns expressed by neighbors and by members of the Planning
57 Commission, the applicant presented a modified proposal that included significant revisions
58 to their original request, including: elimination of DJ and Karaoke music from the proposal;
59 limiting the number of nights indoor live entertainment events would occur to once per week;
60 and elimination of outdoor live entertainment events.

61
62 Correspondence and oral testimony both in support and in opposition to the revised
63 proposal were received at the meeting. At the conclusion of the public hearing, the Planning
64 Commission approved the requested Conditional Use Permit Amendment. In its action, the
65 Planning Commission imposed conditions of approval addressing the concerns of nearby
66 residents. These conditions included:

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 - Limiting live entertainment to indoors only one (1) night per week (Friday OR

69 Saturday);

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- 71 • Redirection of the outdoor deck speakers (used for background music) to
- 72 face towards the restaurant building instead of the neighborhood;
- 73
- 74 • Preparation and submittal of an event management plan; and
- 75
- 76 • Provision of additional on-site parking during live entertainment events.
- 77

78 **ANALYSIS:** In correspondence dated November 23, 2009, Mr. Hawkins states that his
79 appeal is “based on meeting procedure, minutes, statements made and enforcement of
80 current city and state codes.” Correspondence received from Caryl Maniscalco – an
81 attorney representing Mr. Hawkins in this matter – identifies a number of additional issues of
82 concern, but it is not clear to staff whether these issues are being presented as the basis for
83 the appeal (Attachment D). This section provides an analysis of each of the issues raised
84 in both letters. It should be noted that the responses below are staff’s attempt to respond to
85 fairly broad statements provided by the appellant. Staff’s responses focus on specific issues
86 that were raised and/or discussed during review of the requested Conditional Use Permit
87 Amendment.

88
89 Mitch Hawkins – November 23, 2009

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91 A. Meeting Procedure:

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93 1. Approval of the Conditional Use Permit Amendment. The Conditional Use
94 Permit amendment application was processed in accordance with the
95 procedures set forth in Chapter 17.40 (Use Permits) of the Calistoga
96 Municipal Code (CMC). In accordance with Section 17.40.060 of the CMC, a
97 duly noticed public hearing was held by the Planning Commission on August
98 12, 2009 and November 16, 2009. The meetings were conducted in
99 accordance with the Calistoga City Planning Commission Rules of
100 Procedure. As a noticed public hearing, interested persons were provided
101 the opportunity to present written or oral comments to the Planning
102 Commission for their consideration. After consideration of information
103 presented in the staff report and comments received from the public, the
104 Planning Commission took formal action to approve application by adopting
105 PC Resolution 2009-19 which contains the necessary findings for Conditional
106 Use Permit approval as well as specific conditions of project approval.

107
108 2. Planning Commission Sub-Committee. The subcommittee formed by the
109 Planning Commission at the August 12, 2009, public hearing consisted of
110 Vice Chair Creager and Commissioner Kite. The charge given to the sub-
111 committee was to review the operating parameters recommended by staff in
112 the August 12, 2009, staff report and assist the applicant in working with
113 nearby residents to identify acceptable terms under which live entertainment
114 could be permitted at the restaurant. Sub-committee review of the operating
115 parameters proposed by staff occurred via a series of independent
116 communications with Planning and Building Department staff. Sub-
117 committee member Creager participated in a noticed Live Entertainment test
118 event, and both sub-committee members served as facilitators during a

119 noticed neighborhood meeting. No sub-committee meetings were ever held
120 with staff or the applicant. Per the opinion of the City Attorney, the activities
121 described above are wholly consistent with the requirements of the Brown
122 Act.

123
124 3. Environmental Review. Discretionary actions, including approval of a
125 Conditional Use Permit amendment, are subject to the requirements of the
126 California Environmental Quality Act (CEQA). Under the provisions of
127 Section 15301, Existing Facilities, of the State Guidelines for Implementation
128 of CEQA, the addition of live entertainment and amplified music to an existing
129 restaurant and bar establishment was determined by staff to be exempt from
130 CEQA. The basis for this determination includes the following:

- 131
132 • The project involves a negligible expansion of use in an existing
133 facility.
134
135 • Live entertainment (acoustical music acts) will occur indoors within an
136 existing restaurant and bar, one night per week, between the hours of
137 5:00 p.m. and 9:00 p.m.
138
139 • Live entertainment will be conducted as an ancillary use to the
140 restaurant and bar for the enjoyment of restaurant and bar customers.
141
142 • No structural expansion of the existing facility is required, and the
143 project will not result in a significant source of noise near a noise
144 sensitive receptor.
145

146 In accordance with Chapter 19.10 of the CMC, the Planning Commission
147 considered the recommended environmental action prior to taking action on
148 the requested Conditional Use Permit amendment. The Planning
149 Commission concurred that that project is Categorically Exempt from CEQA
150 and passed a motion directing staff to file a Notice of Exemption. A Notice of
151 Exemption, along with the required California Department of Fish and Game
152 Environmental Filing Fee, was filed with the Napa County Clerk's office on
153 November 23, 2009. The Notice of Exemption was also filed with the State
154 Office of Planning and Research.
155

156 B. Minutes. Pursuant to the Calistoga City Planning Commission Rules of Procedure,
157 the Secretary of the Planning Commission recorded minutes of all official
158 proceedings and actions by the Planning Commission related to the subject
159 Conditional Use Permit amendment application. Recorded minutes from the August
160 12, 2009, public hearing were presented for review and approval by the Planning
161 Commission at the regularly scheduled meeting of October 14, 2009. Recorded
162 minutes from the November 16, 2009, public hearing was presented for review and
163 approval by the Planning Commission at the regularly scheduled meeting of January
164 13, 2010.
165

- 166 C. Statements Made. Not enough information has been provided for staff to assess and
167 analyze this issue.
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- 169 D. Enforcement of Current City and State Codes.
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- 171 1. City Codes:
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- 173 a. Noise Regulations: Consistency with goals and policies contained in the
174 Noise Element of the General Plan and the City's Noise Ordinance
175 (Municipal Code Section 8.20) was considered by staff in its evaluation of
176 the proposed Conditional Use Permit Amendment. Staff's analysis
177 concluded that, with certain conditions of approval, live entertainment
178 could be conducted in manner that is consistent with current noise
179 policies and regulations. Details of staff's analysis is presented on pages
180 3 through 7 of the November 16, 2009, Planning Commission staff report
181 (Attachment G).
182
- 183 During the public hearing, a number of citizens raised concerns that there
184 had been past violations by La Prima Pizza of the City's Noise Ordinance.
185 The City's Noise Ordinance (Municipal Code Section 8.20.020)
186 establishes that it shall be unlawful for any person or business to cause to
187 be used or operated any mechanical device or instrument for the
188 intensification or amplification of the human voice or any sound or noise,
189 in any public or private place, in such a manner that the peace and good
190 order of the neighborhood are disturbed, unless approved through an
191 established permit. There have been eight reported noise incidents since
192 the current owners took over operation of the restaurant in 2002 (see
193 Attachment 10 in attached Planning Commission Staff Report). The
194 reports show that owner has cooperated in some instances and has been
195 less cooperative in others. The reported incidents of noise violations
196 have not been of a severity or frequency to warrant initiation of
197 Conditional Use Permit revocation proceedings.
198
- 199 b. Land Use Regulations: Consistency with applicable land use regulations
200 was considered by staff in its evaluation of the proposed Conditional Use
201 Permit Amendment. Staff's analysis concluded that indoor live
202 entertainment is a use that is permissible on the site, subject to approval
203 of a Conditional Use Permit amendment by the Planning Commission.
204 Details of staff's analysis is presented on pages 7 through 8 of the
205 November 16, 2009, Planning Commission staff report (Attachment G).
206
- 207 c. Parking Regulations: Consistency with applicable parking regulations
208 was considered by staff in its evaluation of the proposed Conditional Use
209 Permit Amendment (see pages 8 and 9 of the November 16, 2009
210 Planning Commission staff report). The number of parking spaces on the
211 site exceeds the number stated in the findings for approval of the
212 operating Conditional Use Permit (U 2000-06), but is less than what

213 would be required by current standards. The sub-standard number of
214 parking spaces is considered a legally non-conforming condition.

215
216 To address neighborhood concerns about spillover parking impacts, the
217 Planning Commission imposed a condition of approval requiring the
218 property owner to make an unimproved area of the property available for
219 overflow parking during indoor live entertainment events. The Planning
220 Commission directed that an improvement plan for the parking area be
221 submitted to the Planning and Building Department for review and
222 approval prior to commencement of indoor live entertainment events.
223 The Planning Commission also stated that minimal surfacing
224 improvements in the parking area would be acceptable. Section
225 17.36.090 of the Municipal Code provides the Planning Commission with
226 the authority to modify surfacing requirements for parking areas.

227
228 d. Current Use Permit Conditions (U 2000-06): During the public hearing a
229 number of citizens expressed concern that the business was currently
230 operating in violation of Condition No. 12 of the operating Conditional Use
231 Permit (Attachment 3 in the November 16, 2009, Planning Commission
232 staff report). This condition reads:

233
234 "Outdoor amplified music shall not be audible from the public right-of-
235 way. Live music shall be prohibited without first obtaining a special
236 event permit subject to Condition No. 13 below."

237
238 Outdoor amplified music is currently permitted under the operating
239 Conditional Use Permit (U 2000-06). A number of citizens complained
240 that they have heard outdoor amplified music being played from their
241 residences which are over 100 feet away from the business. During the
242 review process for the requested Conditional Use Permit Amendment,
243 multiple calls were received by the Police Department from people
244 complaining about the noise levels of La Prima's outdoor amplified music.
245 In each instance an officer was dispatched but upon arrival found no
246 disturbance.

247
248 In its consideration of whether there have been significant violations of
249 this provision of Condition No. 12, the Planning Commission questioned
250 whether staff's interpretation that absolutely no noise should be audible
251 beyond the property line was too literal and that it may be more
252 reasonable to base a determination of whether a violation has occurred
253 on actual noise levels instead. The Planning Commission requested that
254 staff contact the State Department of Alcoholic Beverage Control to
255 inquire about how they interpret a similar provision that exists in La
256 Prima's alcoholic beverage license (see Item D under responses to
257 Maniscalco letter below).

258
259 With regard to live entertainment events, the police reports discussed in
260 "D1a" above show that there have been past violations of this condition.

261 However, as noted earlier, the severity or frequency of these violations
262 has not been significant enough to warrant initiation of Conditional Use
263 Permit revocation proceedings.

264
265 To address concerns regarding the applicant's ability to adhere to
266 required conditions of approval, the Planning Commission imposed a
267 condition of approval requiring that the Conditional Use Permit be brought
268 back to the Planning Commission for reconsideration upon receipt of two
269 verified substantive complaints of violations of the conditions of approval
270 (see Condition No. 13 in Attachment E).

271
272 2. State Codes. Not enough information has been provided for staff to assess
273 and analyze this issue.

274
275 Caryl Maniscalco – December 1, 2009

276
277 A. Noise: See Items "D1a" and "D1d" under responses to Hawkins letter above.

278
279 B. Litter: Neighborhood residents testified during the public hearing that La Prima
280 customers are dropping litter along adjacent roadways. In response, the Planning
281 Commission imposed a condition of approval requiring the owner or owner's
282 employees to pick up litter on and in the vicinity of the site on a weekly basis (see
283 Condition No. 12 in Attachment E).

284
285 C. Prior Violations of the Use Permit: See item "D1d" under responses to Hawkins
286 letter above.

287
288 D. Amended Use Permit is in Violation of Liquor License: Condition No. 2 in La Prima's
289 alcoholic beverage license (see Attachment 4 of November 16, 2009, Planning
290 Commission staff report) requires that:

291 "Entertainment provided shall not be audible beyond the area under the
292 control of the licensee."

293
294
295 Staff is assuming that Ms. Manascalco's assertion is based on an opinion that indoor
296 live entertainment cannot be conducted in a manner that will make it inaudible from
297 areas beyond the control of business owner. Staff also assumes that the appellant is
298 making a literal interpretation of the term "shall not be audible beyond the area under
299 the control of the licensee."

300
301 Pursuant to the Planning Commission's direction at the November 16, 2009, public
302 hearing (see discussion under "D1d" under responses to Hawkins letter above), staff
303 contacted the Santa Rosa office of the State Department of Alcoholic Beverage
304 Control (ABC) and spoke to Mr. Dan Elin, Licensee Representative II regarding how
305 ABC interprets/enforces Condition No. 2 above. Mr. Elin stated that a determination
306 on whether the subject condition was being violated would be made in the field
307 based on a subjective assessment of circumstances by responding enforcement
308 staff.

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Given this, staff does not believe that approval of the requested Conditional Use Permit Amendment, in and of itself, constitutes a violation of La Prima's alcoholic beverage license.

E. CalTrans Review of Overflow Parking Area: It has been suggested that the condition of approval requiring creation of an overflow parking area should not have been adopted without CalTrans review (see Condition No. 8 in Attachment E). Section 17.40.040 of the Municipal Code gives Planning and Building Department staff discretion in determining when copies of a Conditional Use Permit application should be referred to other public agencies for review and comment. In this particular instance, staff determined that a referral of the Conditional Use Permit Amendment application to CalTrans was unnecessary given the following:

- The proposed use is to occur within an existing restaurant and bar.
- No expansion of floor area or increase in seating capacity would occur as a result of the proposal.
- Live entertainment is to be conducted as an ancillary (secondary) use to the existing restaurant and bar, not a primary use.
- The overflow parking area would be used for limited durations.
- The overflow parking area would not be directly accessed from State Highway 29.
- The location and anticipated access point of the overflow parking area are not anticipated to interfere with or disrupt current traffic operations or impair visibility along Highway 29.
- Improvement of the overflow parking area will not require construction within the State right-of-way.

STAFF RECOMMENDATION: Staff recommends that the City Council adopt City Council Resolution 2010-_____ denying the appeal and sustaining the Planning Commission's decision to approve the Conditional Use Permit amendment. The basis for this recommendation is:

- The application was processed in conformance with applicable City and State procedures.
- The issues raised in the appeal have already been considered by the Planning Commission during its review of the application. No new information has been presented in this appeal that warrants reconsideration of the Planning Commission's action.
- The applicant (Mr. Nunez) has significantly scaled back his proposal in response to neighborhood concerns.
- Conditions of approval have been imposed that specifically address the concerns of the neighborhood. The conditions of approval include provisions for periodic review and enforcement.

356

357 **FISCAL IMPACT:** Action on the appeal will not result in a fiscal impact to the City. It should
358 be noted that the Appellant, Mr. Hawkins, provided a \$50.00 filing fee to initiate this appeal.
359 Any additional analysis on this appeal request (per Council direction) will be at the expense
360 of the project applicant, Mr. Nunez.

361

362 **ATTACHMENTS:**

363

- 364 A. Vicinity Map
365 B. Draft City Council Resolution 2010-_____
366 C. Appeal from Mitch Hawkins, dated November 23, 2009.
367 D. Correspondence from Caryl Maniscalco dated December 1, 2009.
368 E. Planning Commission Resolution No. 2009-19.
369 F. Minute Excerpt from November 16, 2009, Planning Commission Meeting.
370 G. Planning Commission Staff Report dated November 16, 2009 (with attachments).

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