

**MINUTES
SARATOGA PLANNING COMMISSION**

DATE: Wednesday, May 27, 2009
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA
TYPE: Regular Meeting

Chair Zhao called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Commissioners Bernald, Cappello, Hlava, Reis, Robertson, Rodgers and Zhao
Absent: None
Staff: Director John Livingstone, Contract Planner Heather Bradley, Assistant Planner Michael Fossati, Planning Intern Rina Shah and City Attorney Jonathan Wittwer

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – Regular Meeting of May 13, 2009.

Motion: Upon motion of Commissioner Cappello, seconded by Commissioner Bernald, the Planning Commission minutes of the regular meeting of May 13, 2009, were adopted with a correction to pages 10 and 13. (7-0)

ORAL COMMUNICATION

There were no Oral Communication Items.

REPORT OF POSTING AGENDA

Director John Livingstone announced that, pursuant to Government Code 54954.2, the agenda for this meeting was properly posted on May 21, 2009.

REPORT OF APPEAL RIGHTS

Chair Zhao announced that appeals are possible for any decision made on this Agenda by filing an Appeal Application with the City Clerk within fifteen (15) calendar days of the date of the decision, pursuant to Municipal Code 15-90.050(b).

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING - ITEM NO. 1

APPLICATION PDR08-0024 (517-19-021) Tillet, 20316 Calle Montalvo: The applicant requests Design Review approval to demolish the existing 2,897 square foot residence and 779 square foot detached garage and construct a new 4,906 square foot two-story residence (including garage). The maximum height of the proposed building will not exceed the 26-foot height limit. The maximum impervious coverage will not exceed the allowable 45 percent of the net site area. The lot size is approximately 25,220 square feet, located in the R-20,000 zoning district. Design Review approval is require pursuant to Saratoga Municipal Code Section 15-45.060. (Heather Bradley)

Ms. Heather Bradley, Contract Planner, presented the staff report as follows:

- Advised that the applicant is seeking Design Review approval to expand the footprint of an existing residence and add a new second story.
- Explained that the exterior would be completely updated and much of the exterior walls would be demolished. Therefore, Planning staff does consider this to be a new residence and did publicly notice the application as a new residence.
- Stated that the project includes expanding the existing 2,900 square foot single-family residence by adding about 740 square feet to the first floor and constructing a new approximately 500 square foot second story. The project also includes the demolition of a 780 square foot detached garage. Existing fencing and landscaping is proposed to remain and no trees are proposed for removal.
- Informed that staff can make all Design Review findings and recommends that the Planning Commission approve this application.
- Distributed a color board for the project.

Commissioner Bernald thanked Planner Heather Bradley for her wonderful report.

Commissioner Hlava pointed out that there are currently two wood burning fireplaces. Two back-to-back fireplaces are proposed that appear to share a flue. Does this count as one?

Planner Heather Bradley advised that Code allows one indoor and one outdoor wood-burning fireplace.

Chair Zhao opened the public hearing for Agenda Item No. 1.

Mr. Gary Kohlsaas, Project Architect:

- Said that he was happy to see everyone on site yesterday.
- Reported that the impact would be minimal to the trees, site and neighbors.
- Explained that this proposal has undergone several years of planning with several different designs. The project meets his client's budget, saves the foundation and some exterior walls.
- Advised that they are taking the detached garage from being the focal point of the approach and moving it closer to the house. They are moving the garage doors so they

don't face the street and tying the garage into the house. This will create much less impact in terms of bulk as seen from the street.

- Said that the second story addition is located over the garage and behind. It is four feet below the main house in a split-level. This reduces the impact of the second story.
- Stated that the style and character of this home is an updated Italian Mediterranean architecture. It will incorporate rich wall colors with brown tile roof. It consists of elements included in the finer houses of this neighborhood and is in character with the neighborhood's style, size and design.
- Said that the project speaks for itself.
- Stated he was available for questions.

Commissioner Rodgers:

- Thanked Mr. Gary Kohlsaas for his letter outlining the green techniques and putting them in context with the findings.
- Commended the home that has been designed to take advantage of the sun via its orientation. She added that most architects don't think about doing that.
- Stated that she is an advocate of being able to close off parts of a home when not in use in order to save on energy.
- Said that it seems to her that the family room/great room design has eliminated formal rooms that many households seldom use from dining room to formal living room. She asked if this was done to conserve energy.

Mr. Gary Kohlsaas replied yes. He added that the design is the result of many conversations with his clients including how they live and entertain and rooms they use and don't use. Today, formal living rooms never get used.

Commissioner Hlava:

- Reported that she is seeing the color board for the first time tonight.
- Advised that it appears like the roof tiles are very red and the paint colors look very intense. The yellow would be bright.
- Said that she was concerned about that and asked Mr. Gary Kohlsaas if he could talk a bit about the proposed colors.

Mr. Gary Kohlsaas:

- Explained that they would be using colored stucco. This is not paint.
- Added that they always double the color or else it comes out too light or with a pastel appearance.
- Reported that he has done several projects, both in Saratoga and surrounding communities, where concern was raised at first. When in place, these materials are commended.
- Assured that they have no intention of having a bright and "screamy" color scheme. The idea and goal is to have muted colors that blend in.
- Advised that the roof has several different blends available. He reported that they are not going to the Spanish end of the genre (terra cotta) but with more of an earth tone that includes brown and sand colors.

Commissioner Hlava asked Mr. Gary Kohlsaat if he is promising that the colors are more in the brown tones.

Mr. Gary Kohlsaat said yes.

Commissioner Hlava reiterated that she does not want to see a pink stucco thing with a red roof.

Mr. Gary Kohlsaat said he promised that would not happen and his client would attest to that. He added that he could provide actual material samples but it is cumbersome to do so.

Commissioner Bernald asked Mr. Gary Kohlsaat if he would agree to install gas to the fireplaces so that they could be converted in the future if the owners decided later that they no longer want to burn wood.

Mr. Gary Kohlsaat replied yes, they always do that.

Chair Zhao closed the public hearing for Agenda Item No. 1.

Commissioner Cappello:

- Said that this is a beautiful design and will be a very nice addition to that street.
- Added that it takes the contours of the existing natural grade and even though it is a two-story, it does not give the appearance of one.
- Said that the findings are easily met including those for bulk, views and privacy.

Commissioner Hlava:

- Said ditto.
- Stated that the Montalvo area is beautiful and this home's design will offset the garage in a way that improves the whole street.
- Said she could make the findings and looks forward to seeing this home when it is done.

Commissioner Rodgers:

- Stated that she likes this architect's incorporation of green considerations into the design of this home, especially the fact that the second story has a door that can shut it off when not in use.
- Advised that she is happy with the way that this house has been reoriented to the side so when one comes down the street what will be visible in the future is going to be a green garden.
- Said that this home fits in well in this neighborhood.
- Agreed with Commissioner Cappello's comments for support.

Commissioner Robertson:

- Agreed with the previous comments.
- Said that the architect has done a nice job of blending this home in with the natural terrain.
- Added that it fits in nicely with the other homes in this neighborhood.
- Pointed out that the adjacent house has a similar partial second story.

- Advised that he particularly likes the sensitive articulation of the three-car garage using different materials that equals a reduced sense of bulk.
- Concluded that this is a very nice job.

Commissioner Bernald:

- Agreed and said she too could make the findings.
- Said that the architect has done a good job.
- Told the owners to enjoy their new home.

Commissioner Reis:

- Said he also can make the findings.
- Added that he sees a huge improvement with the relocation of the garage.
- Said that the way this new second floor nestles into the house is tremendous.
- Concluded that this is going to be a great transition.

Chair Zhao

- Stated that although this is a two-story, the second floor is only approximately 500 square feet.
- Added that the whole house has a FAR of 4,900 square feet so the second floor is a very small portion of that.
- Stated that this home has a nice design.
- Said she can make the findings as well.

Planner Heather Bradley offered a correction to the resolution. Community Development Condition 3 should be removed as it pertained to a previous project and is not applicable to this one.

Motion: Upon motion of Commissioner Rodgers, seconded by Commissioner Hlava, the Planning Commission granted Design Review approval (Application PDR08-0024) to allow the demolition of an existing home and construction of a new two-story single-family dwelling with a total floor area of approximately 4,906 square feet on property located at 20316 Calle Montalvo, by the following roll call vote:

AYES: Bernald, Cappello, Hlava, Reis, Rodgers, Robertson and Zhao
NOES: None
ABSENT: None
ABSTAIN: None

Commissioner Hlava extended the Commission's thanks to Heather Bradley, who has served as a contract planner, for her many years of service to the City of Saratoga.

PUBLIC HEARING - ITEM NO. 2

APPLICATION CUP09-0007 (517-09-060) Jim Nell & Susan Little, 14554 Big Basin Way:

The applicant is requesting Conditional Use Permit and Design Review approval to establish a microbrewery and taproom in an existing 1,700 square foot vacant tenant space. The space was formerly occupied by Knitting Arts. The gross lot size is approximately 5,400 square feet and the site is zoned CH-1 (Commercial-Historic I). Conditional Use and Design Review approvals are required pursuant to City Code Section 15-19.020(3) and 15-46.020 (3). (Michael Fossati)

Mr. Michael Fossati, Assistant Planner, presented the staff report as follows:

- Advised that the applicant is seeking approval of a Conditional Use Permit to allow the establishment of a new microbrewery/restaurant/taproom.
- Reported that this project is Categorically Exempt under CEQA.
- Described the project location as being within the Village in a tenant space of approximately 1,700 square feet. This microbrewery will share the building with a design firm, salon and an apartment upstairs. The microbrewery will operate as a restaurant, serving beer and food. They will also provide microbrew classes and occasional live music.
- Said that the beer served on site would be prepared off site at their brewery with the exception of the beer made during classes. Those classes would occur once or twice a month.
- Added that the food would be prepared both on and off site. Food and beverage would be served both inside and outside in their patios.
- Stated that all requirements of the Health Department and ABC (Alcohol Beverage Control) would need to be met prior to granting of final occupancy.
- Said that the hours of operation are from late morning until 10 p.m., except for Fridays and Saturdays to 11 p.m.
- Described the proposed signs as one wood freestanding sign and one iron identification sign. Staff finds the signs to be consistent with the Village's Design Guidelines and with City Code.
- Reported that this project was noticed within 500 feet of the project site. Staff received the majority of comments in favor of the project. Yet there were concerns raised from existing tenants in the building regarding smoke from the proposed barbecue, the potential for loud music and potential for odor during beer brewing.
- Stated that as a result, the applicant has proposed to only use pre-cooked meats on the barbecue to alleviate the smoke; to keep the music indoors and un-amplified to keep the sound down; and scheduled the micro brewing classes so as not to be of concern to the current tenants.
- Said that staff has received word from the Fire Department that the outdoor grill would not be approved as proposed. Condition 16 states that the applicant must meet Saratoga Fire's conditions of approval.
- Suggested a modification to Condition 12 that reads, "Barbecuing of food will only be allowed in the front portion of the project site and subject to all conditions of the Saratoga Fire Department. All food that is to be barbecued outside must be pre-cooked."
- Advised that staff can make all the findings and recommends approval.

Commissioner Cappello asked staff if the Fire Department gave any indication as to what changes would be necessary to allow the barbecue activity to take place up front.

Planner Michael Fossati:

- Advised that Fire has stated that in commercial districts, one cannot have open-flame propane gas barbecues within 10 feet of a structure.
- Said that the applicant feels they may be able to find an area that works and the Fire Department was open to working with them.
- Added that the second issue that the Fire Department had was the storage of propane gas tanks. They cannot be stored on site.

Commissioner Rodgers said that she has questions about the exterior umbrellas and furniture for the outdoor seating areas. She said that she is concerned about highly colored or plastic materials being placed outside. She suggested adding a condition that states that the outdoor furniture must be consistent with the Saratoga Village Design Guidelines.

Commissioner Hlava pointed out that they are already subject to the approval of the Community Development Director and she is sure he wouldn't allow anything inappropriate.

Commissioner Cappello said he wanted to confirm that the Commission is looking both at the Use Permit and the signage this evening.

Planner Michael Fossati replied correct.

Chair Zhao asked how many chairs/seats would be located outside. She expressed concern about the distance of this seating from the walkway.

Planner Michael Fossati said he did not have an exact number yet. He added that the railing is in place to separate this seating area from the public walkway. He reminded that ABC has specific rules for outdoor alcohol service that this applicant must adhere to.

Commissioner Rodgers asked if it would be helpful to the Director to have a reference to the Village Design Guidelines rather than solely leaving approval of the outdoor furnishings to his discretion.

Director John Livingstone said that the Planning Commission could make the decision tonight if they would like to do so such as requiring wood furniture, etc.

Commissioner Rodgers pointed out that the front door would be on Big Basin Way rather than angled out. Will there be ADA access? Will this entrance be ramped?

Planner Michael Fossati:

- Explained that the Building Department says it depends on the scope of the project as far as requiring ADA access.
- Continued that they are proposing limited exterior changes, just replacing a window and adding a door.
- Assured that the applicant would do whatever they need to do.

Chair Zhao asked if the barbecue equipment would be what was on site yesterday or different. How big will it be?

Planner Michael Fossati said the applicant could clarify.

Chair Zhao opened the public hearing for Agenda Item No. 2.

Susan and Jim Nell, Applicants, introduced themselves.

Ms. Susan Nell:

- Explained that they are investigating handicapped access.
- Added that the two doors are 32-inches wide, which meets ADA standards.
- Reported that they live locally and about three years ago they bought a brewery out of Modesto. It is one of the oldest microbreweries in California, which celebrates its 25th anniversary in July.
- Said that they have lots of friends who live locally.
- Said that she grew up in a small community and likes the small community feel.
- Pointed out that it is sad to see so many commercial vacancies and she and her husband thought this would be a fitting business for Saratoga.
- Added that while there are lots of nice restaurants in Saratoga, there are fewer mid-scale restaurants.
- Assured that they are not proposing to be a low-end budget watering hole. They are a craft microbrewery. They are not large-scale producers of beer.
- Advised that it can cost as much or more than a bottle of wine to make a microbrew.
- Reported that she has a family, two children ages 6 and 7.
- Said that they are not a complete alcoholic place. They also make root beer, which is non-alcoholic.
- Explained that their brewery in Modest can make about 15,000 barrels of beer.
- Informed that her husband, Jim, is the expert brew master. He has been doing this since he was 15 and is 40 now.
- Assured that their business is nothing that would be distasteful.
- Reported that their umbrellas are a solid hunter green. Their signage consists of mahogany cabinetry.
- Said they look forward to bringing a fun and family-oriented business into the Village.

Mr. Jim Nell said that they would try to keep the outdoor furnishings tasteful in colors of hunter green with some blues.

Ms. Susan Nell described their use of lighting that will offer a very soft glow using very low wattage. This LED lighting lasts 10 years and uses approximately 10 watts.

Mr. Jim Nell said that they are estimating about 12 outdoor seats in front using three tables with four seats at each.

Commissioner Rodgers asked about the back seating area.

Ms. Susan Nell said that she envisions about three four-person tables and about two two-person tables.

Mr. Jim Nell added, if possible.

Chair Zhao asked the Nells how big is the barbecue.

Mr. Jim Nell said that it would be more like the size of a home grill.

Chair Zhao asked how this could be situated in front and still meet the 10-foot minimum distance from the structure.

Ms. Susan Nell said that it would have to be in the center of the court but she admitted that they are not so sure that this is possible.

Commissioner Rodgers asked if the food would be barbecued inside.

Ms. Susan Nell replied no.

Ms. Alyse Leibel, Tenant of Unit C in subject building:

- Said that she is very excited about this new business, which is a great addition to the building and to the City.
- Reported that she is a tenant on the second floor and has a few concerns. They include the potential for smoke impacts from the barbecue. Another concern is the proposal for live music. A jazz band with horns is fine if indoors. A third concern is the potential for smells during the brewing process. She admitted that she is not sure what that would be like. She said she could tolerate anything that is not too overpowering.

Mr. Pat Kirk, Landlord/Property Owner of subject building on Big Basin Way:

- Stated that he is the landlord of this building.
- Said he wants only what is best for all of his tenants.
- Assured that the language of the lease would protect the other tenants.
- Added that he does not want to lose any tenants and will deal with any issues.

Mr. Jim Sorden, Resident on Shadow Oaks:

- Outlined his community involvement including the Saratoga Historical Foundation; being a Trustee of the Cemetery; and being on the Heritage Preservation Commission.
- Reported that he went on his own tour of the Modesto facility.
- Advised that he cares very deeply about the Village.
- Distributed some photographs that he took of the applicants' Modesto location.
- Assured that their signs in Modesto are very tasteful. Their location is very clean and neat. Their garbage cans are very clean. They've done a good job on maintenance.
- Pointed to the second sheet of photographs that show the interior's leather and dark wood, which looks very nice, tasteful and subdued.

- Showed page three of his handout where he provides a map of the Modesto area. The City of Hughson is where their business is situated.
- Assured that this new business would be a wonderful addition to this community.

Commissioner Reis joked with Mr. Jim Sorden, asking him if he is on the Nells' payroll.

Mr. Jim Sorden replied that he has never met them.

Commissioner Reis said that he did a great job representing them.

Chair Zhao thanked Mr. Jim Sorden for providing the photographs.

Mr. Jim Sorden said the Commission was most welcome.

Mr. Brian Berg, Big Basin Way:

- Advised that he has resided on Shadow Oaks for 23 years and worked for 10 years in the Village.
- Said that there is lots of positive support for this proposal. This use will draw people to the Village.
- Added that a family draw is desirable.
- Stated that this will be a restaurant that sells quality beer.
- Concluded that he wanted to put in his good word in support.

Mr. Murray Hartmann, Resident on Springer Avenue:

- Said that he has resided for 41 years in Saratoga.
- Said that he knows these applicants.
- Asked the Commission to help them establish their business.
- Pointed out how noticeable all of the vacancies are in town. The City should not get in the way of letting them establish their business.
- Said that the City needs to figure a way to build enthusiasm for being in the Village. People want to see this happen.

Ms. Susan Nell, Applicant:

- Stated that she loves cooking with beer. She has a lot of enthusiasm for what beer can make and do.
- Added that her husband is the brewer.
- Pointed out that beer is healthier than wine. It is great for women with osteoporosis as it offers lots of calcium.
- Recounted that her own family has farmed in California for generations.

Mr. Jim Nell, Applicant:

- Said that they are excited to be here.
- Assured that they would do their best to address any issues.
- Stated that they want to be good neighbors.

Ms. Susan Nell thanked everyone for their support. You don't see that in big towns.

Chair Zhao closed the public hearing for Agenda Item No. 2.

Commissioner Hlava:

- Said that it appears that the conditions, Fire requirements and the landlord will protect the interests of all of the tenants in this building.
- Said that it would be neat to have a strolling musician outside in the patio areas.
- Pointed out that there are decibel level standards in the City as outlined in Condition 8. If noise becomes a problem, the Sheriff can be called to measure noise levels.
- Suggested amending the resolution to read, "...live, by more than one performer, indoors..."

City Attorney Jonathan Wittwer said that Code requirements regarding live music call for being indoors with windows and doors closed and no nighttime live music.

Commissioner Hlava:

- Said that it would be great for the Village to have that live music.
- Reminded that although one tenant expressed fears about smells from the brewing, that brewing would consist of only once a month classes of a minor size. If the smell becomes a problem, the Commission has continuing jurisdiction and can re-evaluate this use.

City Attorney Jonathan Wittwer clarified that nighttime hours are between 10 p.m. to 7 a.m. the next day.

Commissioner Rodgers pointed out that there are other locations in the Village that offer live performance.

Commissioner Hlava said that Bella Saratoga has live music outside with brunch. It is amplified.

Commissioner Rodgers listed several Village restaurants with live music. She said that it's nice to have life on the street.

Commissioner Hlava agreed that it is already being done. At least this way (with conditions in the Use Permit) there is some control over it. She supported allowing one performer outdoors by putting it into the Conditional Use Permit.

Commissioner Cappello:

- Said that this proposal is exactly the type of business needed in the Village.
- Stated that he is thrilled and feels this fits the feel of the Village.
- Added that this business will meet a great need as a gathering spot.
- Cautioned that their biggest problem may end up being that their location is too small and that patrons will swamp their restaurant.
- Reported that the sausage he tried during the site visit was so delicious that he had second and third helpings.
- Stated that he would be thrilled to be a patron of this business.

- Asked the applicants to let the Commissioners know when they plan to open.

Commissioner Robertson:

- Seconded the comments of Commissioner Cappello and the other Commissioners who have spoken thus far.
- Said that he is glad that the applicants have chosen Saratoga.
- Thanked Mr. Hartmann for providing the photographs of the applicants' Modesto location.
- Said that he could make all the findings to support this.

Commissioner Bernald:

- Joked that the applicants had her when they mentioned root beer floats.
- Expressed some concerns about the outdoor music.
- Added that she wants music.
- Agreed that too many patrons may overwhelm the applicants, happily so.
- Stated that the Fire Department will straighten out the issue of the grill. That will be resolved.
- Said she has concerns about the back patio as far as impacts on Rockwood Design. She said that she wished that they were here this evening.
- Said that this project should just go forward.
- Informed that she can make the findings to support this.

Commissioner Rodgers:

- Said that she can make the findings.
- Stated that she is thrilled with this project.
- Advised that Saratoga has a reputation as being hospitality based. This use fits with Saratoga's reputation perfectly. The hospitality industry is our core. It is terrific to have another alternative type of establishment available for families.
- Said that this restaurant will offer good home-cooked specialty menus and will help add to the variety of types of restaurants in the Village. It will fit in beautifully.
- Stated that she is happy that the applicants have been working on ADA access and had thought about it before the Commission did. She thanked them for that sensitivity.
- Expressed concern that to meet the required 10-foot distance from the building, the barbecue would be located in the middle of the shared plaza with Rockwood Design.
- Continued that she is concerned about having a barbecue located right next to the street. She said that she was not sure if it was good for this business, pedestrians and/or patrons. Concerns about the back patio are a landlord/tenant issue to be worked out.
- Thanked Jim Sorden for providing the photographs.
- Said that she is happy to go with music as it states in the resolution. She said that she would like to give it a try. The issue can be re-evaluated if problems come up.
- Reiterated that this (live music) is a good development for Saratoga. Anyone with outdoor dining space may also be interested.

Commissioner Hlava:

- Said that everyone is now doing this (live music).
- Pointed out that these folks will be the only ones who will have a Use Permit that allows them to have live music.

- Suggested that it could become a “battle of the bands,” which might not be a bad thing for the Village.
- Stated that she could make the findings and is thrilled to have this business.
- Said that she loves to hang out on Big Basin Way as she lives up the street from the Village.
- Suggested that the condition be modified to read, “All live music, by more than one performer, shall remain indoors.” This leaves open the possibility to have a single musician (i.e. a guitarist) on the street.
- Said that the conditions are fine.
- Stated that she was impressed that Jim Sorden took a trip to Modesto to check it out.

Commissioner Reis:

- Said that he appreciates a good beer.
- Stated that he is looking forward to this business coming to the Village.
- Expressed support for the modified language regarding outdoor music.
- Agreed that the noise could be managed.
- Said he can make the findings to support this request.

City Attorney Jonathan Wittwer:

- Said that the amendment to Condition 8 put forth by Commissioner Hlava is fine.
- Stated that the title/heading above Condition 1 should be changed from Planning to Community Development.
- Suggested adding to Condition 1A, “...which is attachment 7 to this staff report.”
- Edited Condition 13, striking owner/applicant and replacing with “the use” shall be allowed to operate...

Chair Zhao said she could make the findings and agrees with the comments of the other Commissioners. She said that she looked forward to a place that she could take her kids and is very excited to see this business come to the Village.

Motion: Upon motion of Commissioner Bernald, seconded by Commissioner Hlava, the Planning Commission granted Conditional Use Permit and Design Review approvals (Application CUP09-0007) to allow the establishment of a microbrewery and taproom within an existing 1,700 square foot tenant space on property located at 14554 Big Basin Way, as amended by the City Attorney including the addition to Condition 8, by the following roll call vote:

AYES: Bernald, Cappello, Hlava, Reis, Rodgers, Robertson and Zhao
NOES: None
ABSENT: None
ABSTAIN: None

Chair Zhao congratulated the Nells and thanked all who came this evening to speak to this application.

PUBLIC HEARING - ITEM NO. 3

APPLICATION ZOA09-0003 (City-Wide): Application to amend the City Code regarding Conditional Use Permits (including Article 15-55 of the City Code). The proposed amendments will create an expedited Administrative Conditional Use Permit process for certain permits similar to administrative design reviews, which require approval from the Community Development Director rather than by the majority vote of the Planning Commission. The proposed amendments are designed to reduce time and cost of obtaining such permits, encourage new businesses in Saratoga's commercial districts and reduce the number of commercial vacancies in the City. (Rina Shah)

Ms. Rina Shah, Planning Intern, presented the staff report as follows:

- Advised that amendments to City Code referencing Conditional Use Permits, including Article 15-55, to include an expedited Conditional Use Permit process are proposed.
- Reported that on March 3, 2009, Council directed staff to amend the Conditional Use Permit process to include an administrative process.
- Added that on April 21 2009, the Planning Commission reviewed the draft during a study session.
- Explained that the goal of the update is to reduce the time and cost of obtaining a Conditional Use Permit for a new business in a commercial zoning district or to allow for a generator. This is intended to encourage new businesses in Saratoga's commercial districts and reduce the number of commercial vacancies.
- Advised that Attachment 1 shows the proposed changes. All corrections to the draft proposed during the study session have been incorporated.
- Said that up to a 10,000 square feet tenant space has been established as the standard to be eligible for administrative consideration after talking to retailers and surveying some of the existing retail establishments.
- Stated that Attachment 2 includes uses allowed at a glance while Attachment 3 includes a detailed list of permitted and conditioned uses in different districts in the City.
- Recommended that the Planning Commission forward a recommendation of approval to Council to amend Code Section 15-55.

City Attorney Jonathan Wittwer:

- Said that there is one typographical error on page four, "...approved or..."
- Modified the first line for Section 15-55.100, "The Planning Commission and, as to uses identified in Section 15-55.065, the Director, ~~as applicable~~..."
- Advised that it would be up to the Planning Commission to revoke a Conditional Use Permit, as the Director does not want that right.

Commissioner Hlava expressed some concern about language for Section 15-55.030 (Variation from Standards). She said that she understands it to read that if a permitted use does not meet standards, an applicant can come in and get a Variation from Standards. Is that what is intended there?

City Attorney Jonathan Wittwer said no, that is not the intention of the existing language. He pointed out that a conditional use is not a permitted use. He suggested that additional text might be added, "... A use identified by this Code as a conditional use in a zoning district..."

Commissioner Hlava said that that language confused her and that City Attorney Wittwer's language should be adopted.

City Attorney Jonathan Wittwer suggested changing that Section's title to Variation from Standards for Conditional Uses.

Commissioner Hlava:

- Stated that the 10,000 square foot standard seems big to her.
- Added that this would be a major kind of use that might be too big for an administrative review.
- Suggested that the size be reduced, perhaps to 5,000 square feet.

Director John Livingstone explained that Planning Intern Rina Shah had done considerable research to establish that 10,000 square foot recommendation. He asked Ms. Shah to provide further details of her research.

Planning Intern Rina Shah advised that she called and surveyed all of the retail establishments along Big Basin Way and Saratoga-Sunnyvale Road. She found that most are approximately 3,000 square feet in size. The biggest was the Plumed Horse, which has 12,000 square feet. La Mer Michelle is 5,000 square feet. Most vary between 3,100 and 3,500 square feet in size.

Chair Zhao said that it appears in looking at the research data that the majority of businesses have tenant spaces that are between 3,000 and 3,500 square feet.

Intern Rina Shah agreed that most were 3,500 square feet or less.

Commissioner Reis said that at the Council session, the average was given as 3,000 square feet. He agreed that 10,000 square feet seems big for an administrative process and that 5,000 would cover the majority of spaces.

Chair Zhao said that she sees only four sites that are above the 3,500 square foot size so that covers at least 90 percent already.

Commissioner Rodgers asked that the Commissioners consider the future too if someone wants to enlarge their current space into an adjacent one.

Commissioner Hlava said she would support lowering the maximum to either 3,500 or 5,000 square feet but she was willing to listen to the others.

Commissioner Cappello:

- Reminded that the spirit of this change in process is to give businesses the opportunity to go through a fast track process for approval.

- Added that a Director-level review and approval process does that.
- Suggested that more scrutiny would be appropriate for larger tenants such as Safeway and Long's and others that are quite large.
- Said that the 5,000 square foot limitation might jeopardize a larger use coming in such as a restaurant consisting of 6,000 or 7,000 square feet.
- Cautioned that the City does not want to do that. Instead it wants to give businesses incentives to pursue a business in our community. That is the spirit of what we want to accomplish here.

Commissioner Rodgers asked staff about the rough outline of the proposal for the area outside of the Village. Are any spaces above 5,000 square feet?

Director John Livingstone said that he was not sure yet. That is still up in the air and plans have not yet been submitted to the City.

Chair Zhao opened the public hearing for Agenda Item No. 3.

Mr. Gary Hansen, Senior Vice President NIBT Commercial:

- Said that he appreciates the opportunity to be here.
- Expressed the need for a more expeditious manner to bring services to the community.
- Said that this cannot be a hospitality-based community with a Conditional Use Permit requirement for tenant spaces at 5,000 square feet. It's counter-intuitive.
- Pointed out that other communities allow their Director to approve 20,000 to 30,000 square foot spaces before that requirement is imposed.
- Stated that the question is how do we get businesses into this community.
- Reported that the Conditional Use Permit process exasperates business owners. They can take between 10 and 12 months to process in this City, which results in reducing the number of people participating in this community by 90 percent. Most don't want to go through the Planning process.
- Reminded that the goal is to invigorate the downtown and retail areas of the City. To do so requires a quick approval process.
- Stated that 5,000 square feet equals a very small retail use.
- Encouraged the Commission to bring the incentive to retail to become a part of this hospitality community.
- Suggested that the Commission retain the 10,000 square foot standard in this Ordinance.
- Opined that Saratoga has a capable Director in John Livingstone who is careful in his decisions.
- Recommended adoption of the update as proposed.

Chair Zhao closed the public hearing for Agenda Item No. 3.

Commissioner Robertson:

- Agreed with the comments made by Mr. Hansen and Commissioner Cappello.
- Said that most of the retail spaces are small storefront shops.
- Stated that the City has a great Community Development Director who can make sure that the citizens' interests are protected.

- Expressed support for the draft.

Commissioner Bernald:

- Advised that she still has some reservations.
- Reminded that there is no guarantee that this director will always be here.
- Questioned staff as to whether it is accurate that a Use Permit takes 10 months to process.

Director John Livingstone said that the Use Permit heard earlier this evening was submitted less than 30 days ago as indicated on the timeline included in the staff report. They came in with a complete application for a request that was not too complicated.

Commissioner Bernald:

- Stated that she wanted to be sure that the Planning Commission and City Council are still keeping in mind that citizens have concerns and often rally, much like they did tonight.
- Said that she wanted to say for the record that uses such as sale of alcohol, institutional facilities, theaters, public utilities and mortuaries are some that she would have reservations about undergoing an administrative process over a public hearing with the Planning Commission.
- Expressed concern over a 5,000 square foot maximum versus 10,000 square foot maximum standard to qualify to undergo an administrative process.
- Said that she does feel that it is time to move forward with this but she is simply explaining where she is coming from here.

Commissioner Hlava:

- Said that upon reflecting on Mr. Hansen's comments, she can move from a 3,500 to a 5,000 square foot standard.
- Stated that she actually thinks that the 10,000 square foot recommendation is a long way to go from where we are.
- Reported that when she was on the Planning Commission the first time around, more than 20 years ago, there was an administrative process in place that got a lot of flack. That is the reason that the administrative process was changed to a public hearing.
- Said that considering a use in a 10,000 square foot tenant space without benefit of a public hearing is a problem.
- Expressed her preference for the 5,000 square foot standard.

Commissioner Cappello reminded that the Director review process is still public and noticed. Is that correct?

Director John Livingstone said that noticing takes place but not a public hearing. As a safety mechanism, administrative actions can be appealed. Also, the Planning Commission has jurisdiction over Conditional Use Permits, which can be called up for review.

Commissioner Cappello asked what happens with the noticing.

Director John Livingstone:

- Said that the same process is followed as for Administrative Design Review.
- Stated that a project is reviewed internally. The applicant is asked to turn in neighbor notification forms. Once complete, a notice of approval is sent with 15 days for comment or appeal. People can comment and/or come in and look at the plans.
- Said that options include approval, holding a hearing before the Director or referring the item on to the Planning Commission for a public hearing.

Commissioner Cappello said that the administrative process still includes public notices and offer parties the opportunity to provide input before the Director's decision is made. This still offers opportunities for public participation.

Director John Livingstone advised that, per the City Attorney, any member of the public can ask for a public hearing.

Commissioner Cappello asked if the Commission has the opportunity to bring an item to the Planning Commission for review.

City Attorney Jonathan Wittwer said if referred by the Community Development Director.

Commissioner Cappello sought clarification on the order of jurisdiction. The Director reviews an administrative item. Either a member of the public can ask for a public hearing or can appeal an administrative decision made by the Director to the Planning Commission.

Commissioner Hlava reminded that Council had wanted appeals of administrative items to come directly to them. She said that as drafted now, the process includes an initial appeal to the Planning Commission and any subsequent appeals to Council.

Director John Livingstone said that is correct. Initial appeals of administrative items have been kept at the Planning Commission level.

Commissioner Hlava:

- Outlined the process. First there is a notice. Next comes the administrative review. Any appeals go to the Planning Commission. Re-noticing occurs. The public hearing is held and there is a 15-day time period before the action of that hearing is final.
- Pointed out that this does not seem to expedite the process.
- Suggested that the Planning Commission is better suited to dealing with appeals of Use Permits than Council. They do these types of hearings more often, every two weeks, so they have more familiarity with the process.

Commissioner Robertson asked who could appeal an item.

City Attorney Jonathan Wittwer said that any member of the public could request a public hearing. Anyone can appeal a Director or Planning Commission's decision. He added that the Director could elect to bring an item directly to the Planning Commission over an administrative process if he feels there is controversy.

Director John Livingstone said that staff works with all parties. If they cannot work out all issues, they take an item to the Planning Commission at that point.

Commissioner Robertson said that that sounds like the process as it is now.

Director John Livingstone said that usually if he defers something to the Planning Commission it is because he is recommending denial and needs the findings to do so.

Commissioner Cappello:

- Reiterated that there is opportunity for public input and to bring something on to the Planning Commission if necessary.
- Added that there are safeguards in place for right projects to be approved and wrong projects to be denied.
- Said that having the threshold at 10,000 square feet is not such a leap due to these safeguards that are in place.
- Reminded that the spirit of this process is to help invite businesses to establish in Saratoga.
- Said that if an applicant has to go to the Planning Commission, there is an unknown component associated with it. As a result, as soon as the Planning Commission process is mentioned, that deters a lot of business owners from pursuing their application.
- Stated that he does not want that obstacle in place.
- Said that there is a process and review systems in place.

Commissioner Bernald said that she has many times heard someone say that they did not get a public notice even though the mailing shows that such notices were indeed properly mailed. She stressed the importance of the Saratoga News getting the word out to the public on the processes available. She asked staff if the community needs to be educated on the process.

Director John Livingstone said that the neighbor notification form works well. The applicant knocks on doors and talks with neighbors about their plans. This occurs before the application comes into the City. He said that this really is the key step and then the envelope in the mail backs that up.

Commissioner Rodgers:

- Said that she is happy to hear comments of business owners and people on this Commission who have historic perspective on the City's processes.
- Agreed that this City has a great Planning staff.
- Warned that staffing does change so that makes her conservative on process.
- Stated that the citizens of Saratoga are very involved in their community.
- Reminded of the 1,000 plus residents that signed a petition in opposition of the proposed Starbucks in the Village.
- Said that she is worried about piecemeal decisions. Individual decisions may be okay but together or cumulatively perhaps sometimes not so much. An example of that might be the Sunnyvale Towne Center.
- Stated her preference that administrative actions be appealed to the Planning Commission over the Council.

- Pointed out that the public always brings up things that we've not thought of. They come to the Planning Commission to work out issues.
- Said that Council has enough on its plate without having to hear appeals on administrative Conditional Use Permits.
- Said that 10,000 square feet is a lot more than the current zero. Greater than 5,000 square feet makes better sense being heard before the Planning Commission.
- Suggested another option. Allow the standard to be 5,000 square feet along Big Basin Way and in the Ch-1 and Ch-2 zoning districts. The standard could be 10,000 in other commercial districts.

Commissioner Reis said that he loves that last suggestion. He said that all of the emotion is tied up in Big Basin Way so that takes that out of it.

Chair Zhao:

- Said that she agrees with Commissioner Rodgers that 5,000 is a good number. There is only one existing business that is larger than that.
- Reminded that Saratoga is a small community and its residents are very involved. They like to have their voices heard.
- Said that she would like to stay with 5,000 right now. It can be changed in the future, if necessary, but would be a big step right now.

Commissioner Bernald asked what about Quito.

Commissioner Rodgers said that she is proposing 5,000 in the Village and 10,000 square feet everywhere else in Saratoga.

Commissioner Cappello said that this is a creative suggestion. He reiterated that the major reason for this amendment is to entice businesses to the Village. However, whatever is done should impact the City as a whole in the same way.

Commissioner Robertson:

- Agreed with Commissioner Cappello.
- Questioned what the lost opportunities might be that were lost because the process deterred businesses?
- Said that he did not want to deter the right opportunities to get business to the Village.
- Reminded that smaller sized businesses don't always work and don't always last. There are too many commercial vacancies.
- Suggested the need for high-end high-quality anchor tenants to draw to the Village. Right ones and not the wrong ones.

Commissioner Bernald:

- Said that this amendment should be moved forward to the City Council. It may be that a project such as the remodel of the Buy n' Save is what is needed more than a change in the Conditional Use Permit process for the boost that Saratoga needs.
- Stated that she tends to support the 5,000 square foot standard for everybody.
- neighbors out there want to have their say.

- Cautioned that she is not convinced this is the mechanism that makes it happen.

Chair Zhao reminded that this is the first of three processes proposed to help.

Commissioner Hlava said that the City is trying to get businesses to the Village. Expediting this is not what is going to make that happen. She stressed her support for the 5,000 square foot standard.

Director John Livingstone suggested a straw vote and reminded that Council would be looking at this Ordinance amendment.

Commissioner Cappello:

- Agreed that Council would make further adjustments to this document.
- Said that he would like to see this forwarded on to Council tonight.

Commissioner Rodgers agreed that it should be moved forward.

Chair Zhao asked if there is consensus with the 5,000 square foot standard. The straw vote indicated that there was consensus.

Commissioner Hlava restated the amendments outlined by City Attorney Jonathan Wittwer. Section 15-50.03 is intended to refer to conditional uses and not to variations from standards. Section 15-55.060(a)(1) should be amended from 10,000 to 5,000. Amend Section 15-55.100 to refer to the continuing jurisdiction of the Planning Commission and Community Development Director.

Motion: Upon motion of Commissioner Hlava, seconded by Commissioner Cappello, the Planning Commission recommended that the City Council approve amendments to City Code regarding Conditional Use Permits (including Article 15-55 of the City Code) to create an expedited Administrative Conditional Use Permit process, as amended, by the following roll call vote:

AYES: Bernald, Cappello, Hlava, Reis, Rodgers, Robertson and Zhao
NOES: None
ABSENT: None
ABSTAIN: None

DIRECTOR'S ITEMS

There were no Director's Items.

COMMISSION ITEMS

There were no Commission Item.

COMMUNICATIONS

There were no Communications Items.

ADJOURNMENT TO NEXT MEETING

Chair Zhao adjourned the meeting at approximately 9:20 p.m.

MINUTES PREPARED AND SUBMITTED BY:
Corinne A. Shinn, Minutes Clerk