



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Planning and Building



Date: April 20, 2016
Board Meeting Date: April 26, 2016
Special Notice / Hearing: 10-Day Notice/300 Feet
Vote Required: Majority

To: Honorable Board of Supervisors

From: Steve Monowitz, Community Development Director

Subject: Public hearing to consider an appeal of the Planning Commission's decision to deny a Use Permit Amendment and Design Review Permit, pursuant to Sections 6267 and 6565.3 of the San Mateo County Zoning Regulations, respectively, to legalize unpermitted construction and authorize the use of two patios at a 189-seat restaurant located at 8150 Cabrillo Highway in the unincorporated Montara area of San Mateo County. The Coastal Development Permit for this project will be reviewed separately under the jurisdiction of the California Coastal Commission.

County File Number: PLN 2015-00297 (La Costanera Restaurant)

PROPOSAL:

The La Costanera Restaurant is the current tenant of an 11,332 sq. ft. restaurant building with 189 seats at 8150 Cabrillo Highway, owned by Rahim Amidi of A&G, LLC. The restaurant is located adjacent to Montara State Beach on the west side of Cabrillo Highway. The applicant requests to amend the current use permit (UP 20-77) to allow seating and restaurant service on two outdoor patios without any change to number of total seats (189) allowed by the existing use permit. Two patios were constructed in 2008 and have been used by the restaurant for table service since that date to the present, without the required amendment to the current use permit. The lower patio is approximately 1,276 sq. ft., contains two fire pits, is accessible from the lower dining and bar area, and would seat 27 persons. The upper patio is approximately 850 sq. ft., is accessible from the main floor of the restaurant, and would seat 15 persons.

The applicant has made the subject application in response to violation notices from the County and the California Coastal Commission regarding illegal use of the patios for restaurant use since 2008, among other violations.

State Permit Required: The applicant has applied to the California Coastal Commission (CCC) to amend its Coastal Development Permit (CDP), Permit Number P-77-579,

originally issued by the CCC in 1977. The CDP amendment for the project will be processed by the CCC separately from the use permit amendment requested from the County. The applicant cannot act in reliance upon the County's use permit amendment until the CDP amendment is granted by the California Coastal Commission.

RECOMMENDATION:

That the Board of Supervisors uphold the appeal and approve a Use Permit Amendment and a Design Review Permit, to legalize the unpermitted construction and use of two patios at 8150 Cabrillo Highway, County File Number PLN 2015-00297, by making the required findings and adopting the conditions of approval in Attachment A.

DISCUSSION:

A. PLANNING COMMISSION'S DENIAL OF PERMITS

On January 13, 2016, the Planning Commission denied the subject proposal, finding that, given the status of unresolved violations at the property and the history of past violations, there is no assurance that the property owner/applicant would comply with current or new conditions of approval. The letter of decision is included as Attachment E of this report. The Planning Commission found that without such assurances, the requested expansion in the restaurant area will result in significant adverse impacts to coastal resources and neighboring residents, by: (1) limiting parking in the area, which impedes the ability of the public to access the beach and creates problems for residents; (2) increasing nighttime noise and lights; and (3) adding to the volume of trash and pollutants that end up on the beach and in the ocean.

In its review of the project on November 4, 2015, the Planning Commission received a presentation from Planning staff, as well as comments from the applicant and the public, and discussed the following specific concerns:¹

Violation History

1. Timing - Planning Commission review of this application is premature due to the continued presence of unresolved violations at the property, such as changes to the building's trim color and continued use of the patios.
2. Responsiveness - The owner should demonstrate compliance with all existing permit conditions. The County and the Coastal Commission have expended significant resources to gain compliance, but have been only partially successful in this regard.

¹ These concerns were outlined in a Supplemental Staff Report prepared for the Planning Commission public hearing of January 13, 2016. The content of the supplemental report has been included in this report.

3. Reliability - While use of the patio is a reasonable request, as several other Coastsides restaurants have outdoor patios, there is a lack of confidence that the owner will comply with the conditions of the amended permit.
4. Precedence - Granting forgiveness where the owner has a history of unpermitted work creates a negative impression that the County does not enforce its regulations.

Other Concerns

1. Restaurant capacity should be limited to the amount of required parking that is provided at the site.
2. Neighbors have been impacted by parking and other impacts of the restaurant's non-compliance with its use permit.

Based on these concerns, the Planning Commission directed staff to prepare finding(s) of denial and, subsequently, adopted a finding of denial at its meeting of January 13, 2016.

B. APPEAL OF PLANNING COMMISSION'S DECISION TO DENY

On January 26, 2016, the applicant submitted an appeal of the Planning Commission's decision to deny the project. In a letter dated January 22, 2016 (Attachment F), the owner, Rahim Amidi, states that the Planning Commission, in its denial of the project, (1) did not consider the restaurant's efforts over the past year to correct all past violations, (2) the finding made by the Planning Commission was not supported by evidence, and (3) that the decision contradicted the recommendation and findings of the staff report.

Regarding the restaurant's efforts over the past year to correct past violations, the Planning Commission's denial of the proposal was based on a description of resolved and unresolved violations in the November 4, 2015 Planning Commission staff report. As stated in that report, violations related to lighting and unpermitted signage, initially identified in the Notices of Violation issued on December 23, 2014, had been resolved.

The Planning Commission relied upon the following evidence to deny the project: 1) a detailed description of unresolved and resolved violations provided in the November 4, 2015 staff report, and 2) a summary of concerns discussed at that hearing and described in a supplemental report prepared for the January 13, 2016 hearing (the summary is also included in Section A of this report). In light of the restaurant's violation history, the Planning Commission found that it did not have adequate assurance that the property owner and restaurant tenant would comply with the conditions of approval of the use permit.

C. STATUS OF CURRENT VIOLATIONS

The property owner has not consistently complied with the conditions of the original Use Permit. In letters dated December 23, 2014 and July 10, 2015, the County issued two notices of violation (Attachment H). Violations related to lighting and unpermitted signage described in these letters have been resolved.

On October 16, 2015, Code Compliance Section staff issued an Administrative Citation (VIO 2014-00253), imposing a penalty of \$100 for unpermitted daytime events at the property on August 23, 2014; September 7, 2015; September 12, 2015; October 3, 2015; and October 10, 2015.

On March 17, 2016, San Mateo County issued a second Administrative Citation, imposing a penalty of \$200 for violation of hours of operation for an event observed on March 13, 2016 at 2:30 p.m.; stormwater discharge (specifically, surface washing from the trash storage area); and painting of the trim and fixtures a white color, when beige was approved through a Design Review Permit Exemption.² The following is a description of unresolved violations at the property:

1. Hours of Operations

The County requested that the property owner make changes to restaurant operations and the restaurant website to restrict all dining and events to after 5:00 p.m. every day. In a letter dated July 22, 2015, the property owner acknowledged reservation dates in 2015 for daytime events at the restaurant on September 7, 2015, September 12, 2015, October 3, 2015, and October 10, 2015. These reservations were made prior to February 2015. In his letter dated January 22, 2016 in Attachment F, Mr. Amidi states that “as of February 2015, the restaurant has ceased to contract future events prior to 5 p.m.” However, on March 13, 2016, staff received a complaint along with photos of persons dining within the restaurant, from a member of the public regarding a private event observed at the restaurant site and the beach at 2:30 p.m. that day. This violation is the subject of the County’s first and second citations issued on October 16, 2015 and March 17, 2016, respectively. The applicant has not provided explanation of the time and purpose of this event.

² In January 2013, the Board of Supervisors amended Chapter 1.40 (Administrative Remedies) of the San Mateo County Ordinance Code to authorize the Planning and Building Department’s Code Compliance Section to issue administrative penalties to person(s) responsible for a violation and/or to order correction of the violation. It established an enforcement procedure which includes provision of a warning notice, administrative citation, and imposition of penalties in the amounts of \$100 for the first violation, \$200 for a second violation with 12 months, and \$500 for third and additional violations within 12 months.

2. Restaurant Use of Unpermitted Outdoor Patios

The subject application, along with the CDP Amendment application to the CCC, is intended to legalize this use, which is ongoing.

3. Stormwater Discharges

Based on observations by staff and the Midcoast Community Council, restaurant wash down activities continue to occur in the south parking lot, whereby wash water enters an inlet which drains to the beach. In an inspection performed by Code Compliance staff on March 15, 2016, surface water was again observed in the trash storage area and the storm drain inlet immediately down slope within the south parking lot. This violation is the subject of the County's second citation issued on March 17, 2016.

In order to minimize stormwater pollution from the trash area and associated wash down activities, staff has added Condition No. 10, which requires the applicant to modify trash storage areas with a building permit, subject to review and approval by the Department of Public Works, to ensure that wash water from the trash storage area is not discharged onto the beach or into the marine environment.

4. Violations Relating to Trim and Fixture Paint

The applicant obtained a Design Review Exemption (PLN 2015-00179), under the review of County and CCC staff, to permit trim, sign, and gutter painting to a beige color, in response to County and CCC violation notices regarding painting of portions of the restaurant and signage using bright white paint. The owner states that the approved color was used to paint the trim, sign, and gutter. On February 3, 2016, staff notified the applicant that the color appeared white and that only a color which appears beige may be used. This violation is the subject of the County's second citation issued on March 17, 2016.

As of the writing of this report, these violations have not been resolved.

D. STAFF'S RECOMMENDATION

Planning staff recommends approval of the project, among other reasons, because the recommended conditions of approval added to the amended Use Permit will allow the County to better regulate the site going forward compared to a denial of the project which would eliminate the current opportunity to clarify and supplement the terms of the existing use permit. Approval of the use permit would legalize the current use of the patios in a manner that is consistent with the County's General Plan and Design Review standards, thereby allowing the

property owner to resolve one of the violations at the property without intensifying the restaurant use and associated parking impacts.

Based on past and current history of violations and in order to allow for closer monitoring of the project, staff recommends a Use Permit Amendment term of 5 years, whereby the applicant must demonstrate compliance with the approved conditions of approval for permit renewal. In addition to recommending a shorter permit term, staff recommends annual administrative reviews of the project (Condition No. 2 of Attachment A). The current use permit does not have an expiration date and does not require renewal or regular administrative reviews.

Staff also supports the approval of the use permit amendment as it would assist the County's code enforcement efforts in the following ways:

1. The use permit, which would impose a term of 5 years, would replace the current Use Permit (UP 20-77), which does not expire and therefore, would not undergo the compliance monitoring required for use permit renewals.
2. The use permit would require administrative reviews, which are not required by the current use permit.
3. The use permit allows staff to add conditions of approval relating to stormwater pollution prevention, lighting, and protection of beach user parking on the adjoining State-owned parcel that were not included in the original Use Permit.
4. The use permit would clarify outdated conditions of the current Use Permit, as shown in strike-through and underline format in Attachment A and described in the November 4, 2016 Planning Commission staff report (Attachment K).

Planning staff will continue to work with Code Compliance staff, CCC staff, and interested members of the public to monitor the site and hold the property owner accountable for compliance with the approved conditions of approval.

Should the Board of Supervisors desire to approve the project, findings for project approval are included in Attachment A.

Should the Board of Supervisors desire to deny the project, a finding for project denial is included in Attachment B. A final decision of project denial would prohibit use of the patios for restaurant or other uses. As to the patios physical existence, only those aspects that were constructed pursuant to approved building permits may remain. All other unpermitted improvements would need to be removed and would be subject to enforcement procedures. The property would be subject to the requirements of the current use permit.

FISCAL IMPACT: There is no fiscal impact.

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ATTACHMENTS:

- A. Recommended Findings and Conditions of Approval
- B. Alternative Finding for Denial
- C. Location Map
- D. Seating and Plans and Windbreak Photos
- E. Planning Commission Letter of Decision, dated January 19, 2016.
- F. Application for Appeal and Letter from Rahim Amidi, dated January 22, 2016.
- G. Letter of Decision for UP 20-77 and CDP 83-67, County of San Mateo, dated February 27, 1984
- H. Letters from the County, dated December 23, 2014 and July 10, 2015
- I. Letter from Jo Ginsberg, Enforcement Analyst at the California Coastal Commission, dated July 13, 2015
- J. Updated Chronology
- K. Staff Report for November 4, 2015 Planning Commission