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Agenda Date: 11/18/2015

Agenda Placement: 10B

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: Sean Trippi, Principal Planner - 299-1353
SUBJECT: Study Session - Art in the Public Realm & Use Permit Modification Process

RECOMMENDATION

STUDY SESSION - ART IN THE PUBLIC REALM & USE PERMIT MODIFICATION PROCESS

CEQA Status: This study session is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Request: Presentation and discussion on Art in the Public Realm and the Use Permit Modification Process.

Staff Recommendation: Informational Item. No action necessary.

Staff Contact: John McDowell, Deputy Director, (707) 299-1354 or john.mcdowell@countyofnapa.org, or Sean Trippi, Principal Planner, (707) 299-1353 or sean.trippi@countyofnapa.org

EXECUTIVE SUMMARY

Proposed Action:

This is a discussion item only; no action is requested, although the Commission may provide staff additional direction.

Discussion:

Recently, the Planning Commission requested the need for a study session to seek a better understanding of regulations associated with Art in the Public Realm and the Use Permit Modification process. Currently, the County does not have an ordinance addressing "art". However, the County's sign code, Section 18.116.065 (F), prohibits

statuary or representational figures used for advertising purposes. In addition, the Design Guidelines adopted for development on the Napa Pipe site requires compliance with the City of Napa's public art ordinance, which requires either the payment of a fee in-lieu of providing public art on a site within the Napa Pipe development area or the provision of public art approved by the permitting agency (i.e., the Director) prior to issuance of a building permit.

With respect to the processing of Use Permit modifications, it is very common for projects entitled through the use permit process to go through some form of change at some point during the life of the project subsequent to the Planning Commission's initial approval. Changes can occur during implementation/building permit process shortly after the Commission's action, or many years after the use has been fully implemented. These changes are classified into one of the following types as set forth in the Zoning Code, Standard Conditions of Approval and through long-standing Administrative Practice: 1) Major Modification; 2) Minor Changes; 3) Very Minor Modification; and 4) Substantial Conformance.

It should be noted that this item is not a formal public hearing, but staff recommends that any members of the public wishing to speak on this item be heard. At the conclusion of the discussion, the Commission may provide further direction to staff regarding next steps.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

This study session is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

In addition to a general discussion, staff is also seeking clarification regarding the Commission's direction regarding the following topics and possible next steps.

Art in the Public Realm:

Examples: Art viewable from public areas is not limited to winery sites, but may also be found on vineyards and on industrial, commercial, institutional and residential properties. Attached are several photographs representing a small sample of various art installations in the unincorporated areas.

Applicable Regulations: Currently, the County does not have an ordinance addressing "art". However, the County's Sign Code, Section 18.116.065 (F), prohibits statuary or representational figures used for advertising purposes. Furthermore, the County's Sign Code states the following:

Section 18.116.010 Purpose and Intent

A. It is the purpose of this chapter to eliminate excessive and confusing sign displays which do not relate to the premise on which they are not located; to eliminate hazards to pedestrians and motorist brought about by distracting sign displays; to ensure that signs are used as identification and not as an advertisement; and to preserve and improve the appearance of the unincorporated area of the county as a place in which to live, work,

and visit.

B. It is the intent of these regulations to protect an important aspect of the economic base of the county by preventing the destruction of the natural beauty and environment of the county which is instrumental in attracting nonresidents who come to visit, trade and vacation; to safeguard and enhance property values; to protect public and private investment in buildings and open space; and to protect the public health, safety and general welfare.

In addition, the Design Guidelines adopted for development on the Napa Pipe site requires compliance with the City of Napa's public art ordinance, which requires either the payment of a fee in-lieu of providing public art on a site within the Napa Pipe development area or the provision of public art approved by the permitting agency (i.e., the Director) prior to issuance of a building permit.

Since there are no specific Zoning Code provisions regarding regulation of art, staff generally reviews such structures on private property through the building permit process either in conjunction with development on the site or separate. Staff's review focuses on compliance with building height and setback requirements within the applicable zoning district, as well as, roadway setbacks, and lighting requirements.

Discussion Items:

As noted above, statuary or representational figures are not to be used for advertising purposes. Taken literally, sign copy on a statue or figure is not allowed. Should sign copy be allowed as part of an art piece if the piece of art is not a statue or figure? What about an iconic art installation that contains no sign copy, although it may serve as a landmark identifying the site; should it be considered a sign? Is it the Commission's desire to regulate or develop a permitting process addressing privately funded public art, placed on private property? Would you like staff to provide additional information about public art ordinances?

Use Permit Modification Process:

Existing Zoning Requirements and Administrative Practices: It is very common for projects entitled through the use permit process to go through some form of change at some point during the life of the project subsequent to the Planning Commission's initial approval. Changes can occur during implementation/building permit process shortly after the Commission's action, or many years after the use has been fully implemented. These changes are classified into one of the following types as set forth in the Zoning Code, Standard Conditions of Approval and through long-standing Administrative Practice: 1) Major Modification; 2) Minor Changes; 3) Very Minor Modification; and 4) Substantial Conformance. Detailed below are the differences in each type of change.

Major Modifications – Zoning Code Section 18.124.130.A sets forth that major changes to a previously approved project are processed in the same manner as the originally approved project, and thus follow the same process culminating in a Planning Commission level public hearing. Pursuant to Zoning Code Section 18.124.130.B, Major Modifications are required for any project change that affects overall concept, density, intensity, environmental impact, or substantially alters or deletes any environmental mitigation. Examples of major modifications would be increases in production and/or visitation levels, increases in employment levels, new or significantly altered environmental conditions, increases in the number of dwelling units (housing project) or business tenants (industrial project), and conversion of the project from one type of use to another such as a church to a school, or an art studio to a tasting room.

Typically, major modifications take a minimum of 3 months to process but generally take 6 months or more depending on the period of time spent achieve a complete submittal, working through design issues, and composing an environmental document. Most major modifications result in the issuance of a Negative Declaration or Mitigated Negative Declaration.

Minor Modifications – Projects that do not affect overall concept, density, intensity, environmental impact, or substantially alter/delete environmental mitigations qualify for processing as a minor modification. Zoning Code Section 18.124.130.A allows increases in building size of no more than 25% or one story in height provided that the applicant demonstrates above listed thresholds are not crossed. Minor Modification require a noticed public comment period sent to all property owners within 1,000 ft. of the project site, and if any member of the public requests a hearing during the comment period, the item is re-noticed as a public hearing before the Zoning Administrator. After the hearing, decision making options for the Zoning Administrator are approval, approval with changes, denial, or referral of the item to the Planning Commission.

Most minor modifications qualify for Categorical Exemptions under CEQA (California Environmental Quality Act). Some minor modifications are processed with Addendums or Subsequent Negative Declarations. As a general statement, any project triggering a new Negative Declaration or Mitigated Negative Declaration cannot be processed as minor modification. Typical processing time for a minor modification is 6 weeks from the date the application is complete, however it is not uncommon for minor modification to be in process for 6 months as Staff works with applicants on completeness and design issues. The Zoning Code sets forth that the Zoning Administrator inform the Planning Commission of all Zoning Administrator actions. This communication occurs as part of the Deputy Director's Report on the Commissions' regular agendas.

Very Minor Modifications – This process was added to the Code in 2002 as a customer service item to reduce process for project changes that did not rise to the minor modification level. It was intended more as a documentation tool to address changes that happen as a project evolves from concept to reality. It was also for "minor, non-controversial" changes such as additions of covers over previously approved pads; less than 10% changes in square footage or building footprints; realignment of internal circulation roads; one year time extensions to previously approved but not yet "used" use permits; and similar items at the discretion of the director. Operative Zoning Code Section is 18.124.130.C. Public notice is not required for these types of modifications, however, staff routinely will provide a courtesy notice if there has been past controversy on the item or it staff believes the proposal has some potential to be of interest to neighbors. Very minor modifications are acted on by Staff on behalf of the PBES Director. Staff has the option to refer controversial matters to the Planning Commission.

Like minor modifications, very minor modifications generally qualify as Categorical Exemptions. Very minor modifications also can rely on the originally adopted environmental document but that generally only occurs when the CEQA document was more recently adopted. Very minor modifications are often processed concurrent with building permit submittals and can occur in as little as 2 weeks although that is rare. More typically, a minor modification takes approximately 6 weeks and at time longer when courtesy noticing occurs or if there are design issues. The Zoning Code does not require the Director to inform the Commission of these staff level actions, however as part of the Deputy Director's Report on the Commissions' regular agenda, Staff routinely reports out on staff-level modifications.

Substantial Conformance – Virtually every use permit issued since the mid-1980's contains a substantial conformance clause within the first condition of approval that outlines the scope of the project. Although the standard language has altered slightly over the years, it allows changes to a project to be approved (through the building permit process) which are in substantial conformance with the Planning Commission action. Typical changes approved under substantial conformance are minor relocations and/or reconfigurations of floor plans, building elevations and site improvements, such as moving office areas from one area to another without expanding the number of office spaces, and revisions to parking areas without increasing the number of spaces. Substantial conformance determinations are made by Staff and do not involve noticing. It should be noted that Staff does place a memo in the file notating such changes. Generally, Staff does not inform the Commission of these determinations as is done for minor and very minor modification actions.

Discussion Items:

Number of Sequential Modifications – The Zoning Code is silent on how often a project can be modified. As such, there is potential for a project to go through several minor modifications which in aggregate result in a substantial change in the overall concept of the project. Within the last year, public concerns have been raised about this potential. One project involving a third minor/very minor modification within a two year period of time was recently referred to the Commission over this particular concern.

Although Staff believe some updating to code language are now appropriate, as noted in the following section, Staff believe that the time and cost involved with processing use permit modifications present a substantial disincentive to applicants to consider sequential modifications. It is more efficient from a time, cost and project controversy standpoint to move forward with a Commission-level major modification than to knowingly attempt to avoid that process through sequential modifications. Generally, when a project goes through sequential modifications, it is the result of encountering unforeseen obstacles and/or minor changes in vision from the permittee.

Thresholds between Substantial Conformance, Very Minor Modifications, and Minor Modifications – Staff support update of Zoning Section 18.124.130 (and possibly other sections) to more clearly define the differences between the various types of project changes, and to close potential inconsistencies. For example, an existing 1,000 sq. ft. project seeking approval of a 300 sq. ft. addition is obligated to go through the major modification process because the addition is more than 25% over the size of the initial structure. That same 300 sq. ft. addition, when applied to a 10,000 sq. ft. development represents a less than 10% change and thus qualifies for an administrative level very minor modification. Setting clearer thresholds between the categories of modification could reduce disagreement between Staff, applicants and interested third parties.

SUPPORTING DOCUMENTS

- A . Public Art
- B . Use Permit Modification Fact Sheet

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina