



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 12/17/2008

Agenda Placement: 9F

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning

REPORT BY: John McDowell, Deputy Director - 299-1354

SUBJECT: Zoning Code Amendment Concerning Expansion of Non-Conforming Uses

RECOMMENDATION

NAPA VALLEY RESTAURANT GROUP, INC / BISTRO DON GIOVANNI - ACCESSORY USE EXPANSION FOR NON-CONFORMING USES ORDINANCE - PROPOSED ORDINANCE #P08-00368-ORD

CEQA Status: The project is Categorically Exempt from the provisions of California Environmental Quality Act pursuant to Section 14 CCR 15061(b)(3) - General Rule; and Section 15305 - Class 5, Minor Alteration to a Land Use Limitation.

Request: Proposal by the operators of Bistro Don Giovanni to amend County Zoning Ordinance Section 18.132.030 pertaining to Legal Nonconformities. The applicant requests that the ordinance be changed to allow for up to 500 sq. ft. of expansion to accessory uses, such as storage, associated with legal nonconforming uses.

Ordinance Title: *An Ordinance of the Board of Supervisors of the County of Napa, State of California, Amending Napa County Code Section 18.132.030 (Conditions for Continuance of Legal Nonconformities) allowing 500 square feet of cumulative surface area expansion for accessory uses for legal nonconforming parcels in existence on May 1, 2008.*

Staff Recommendation: That the Planning Commission conduct a public hearing and consider forwarding a recommendation to the Board of Supervisors.

Staff Contact: John McDowell 299-1354

EXECUTIVE SUMMARY

Proposed Action:

1. That the Planning Commission recommends to the Board of Supervisors approval of the proposed ordinance.

Discussion:

Bistro Don Giovanni Restaurant located on the east side of Highway 29 immediately north of the city limits of the City of Napa is a legally-established nonconforming use. The commercial facility is located on land that is designated Agricultural Resource in the County General Plan and zoned Agricultural Preserve (AP). As a nonconforming use, County Code prohibits the expansion of the use. The restaurant requires more space to store items necessary to operate the restaurant. Presently, they are storing the items in a residential accessory building located on the same property as the restaurant in violation of County Code. This ordinance will rectify the violation by changing County Code to allow expansion of up to 500 square feet for accessory uses, enabling the operator to move the storage from the residential accessory structure into the expanded restaurant building. The ordinance would also allow other nonconforming restaurants in existence prior to 1993 to expand their accessory uses by 500 square feet. Staff is recommending approval of the ordinance.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The project is Categorically Exempt from the provisions of California Environmental Quality Act pursuant to Section 14 CCR 15061(b)(3) - General Rule; and Section 15305 - Class 5, Minor Alteration to a Land Use Limitation.

BACKGROUND AND DISCUSSION**Proposed Zoning Text Change:**

Current zoning requirements pertaining to legal nonconformities do not allow expansion of the footprint, increase in the intensity of use, or increases in the degree of nonconforming setbacks. The ordinance does allow minor expansions solely to meet the requirements of the Americans with Disabilities Act (ADA), and does allow minor relocations of structures where such movement decreases the degree of nonconformity.

The proposed ordinance will change those requirements by allowing up to 500 sq. ft. of expansion to legal nonconforming restaurants in existence prior to July 1, 1993, and will limit expansion to accessory space, such as storage. Since this only applies to nonconforming restaurants, the scope of this new policy would only apply to approximately a dozen uses throughout the County. The ordinance is proposed by the operators of the Don Giovanni restaurant located on Highway 29 just north of the City of Napa. If approved, the ordinance will allow the operators to construct a small storage space addition to the facility to house supplies. Presently, the operators store supplies in another existing structure on site in violation of County Code. This ordinance will rectify the violation and allow the operator to continue to store these supplies on site. The operators and owner have diligently been working with County staff to rectify the violation. If the ordinance is not approved, the operator will need to store these supplies off-site, and has expressed concerns that it will impact operations. It is unknown whether any other nonconforming restaurant in existence prior to July 1993 will seek to utilize this new provision, if adopted.

Adoption of this ordinance would by no means predispose the County to adopt any other possible zoning amendment requests to allow expansion of other forms of non-conforming uses.

General Plan Conformity:

General Policy AG/LU-46 allows all existing legal nonconformities to continue. The policy reads:

"All existing and legally established nonconforming uses shall be allowed to continue to operate and to use existing buildings and/or facilities provided they are not determined to be a public nuisance or voluntarily abandoned as defined by the zoning ordinance. Legal nonconforming buildings and facilities may be rehabilitated or rearranged, as long as there is no increase in the intensity of use."

Staff believe that this ordinance can be found consistent with the General Plan on the basis that the ordinance does not permit an increase in the number of seats, and consequently would not increase intensity of use. Determining intensity of a use is a difficult task. For restaurants, the County has an established administrative practice of relying on the legally-established number of seats in the restaurant as the determinant of use intensity. The proposed ordinance will allow a 500 square foot expansion only for accessory uses for such things as storage, the kitchen, refrigerator space, wine cellars, bathrooms, hallways, etc.

It appears that there are essentially two decision-making options available. First, if the Commission feels that expansion of accessory space does not represent an increase in use intensity (on the grounds that total seats is the controlling factor on intensity), then the General Plan can be found to support this ordinance. Second, if the Commission feels that expansion in building size, even for accessory uses, constitutes increased intensity of a nonconforming use, then the ordinance likely cannot be supported by the General Plan. The Commission's recommendation, either for or against the proposal, will be forwarded to the Board of Supervisors for final action.

As an private party initiated ordinance, Staff has requested that the applicant do outreach to potential stakeholders. It is Staff's understanding that the applicant has discussed the proposal with some members of the public.

Property History:

1960's - A restaurant use was first established on the subject property in the location of what is now Bistro Don Giovanni. This portion of the site was zoned Commercial. The remainder of the property was zoned residential and contained a residence, 6 rental cottages, a barn and a garage. The barn and garage were accessory uses to the main residence and to agriculture.

1968 - The site was rezoned AP - Agricultural Preserve.

April 1982 - A residential storage building permit was granted to expand the barn. This is the building where unauthorized restaurant storage is currently occurring.

April 1991 - The restaurant was granted a Certificate of Legal Nonconformity (CLN) recognizing the restaurant a legal nonconforming use.

November 1994 - Measure V was approved by voter which allowed Bistro Don Giovanni to expand the restaurant by 80 seats and add 500 square feet of storage for the purpose of storing restaurant supplies. The 500 sq. ft. storage addition was constructed shortly afterward. The ballot measure did not include enabling language to authorize storage in the barn.

October 2006 - Code Compliance contacted the property owner (George Altamura) and restaurant owner (Donna Scala) after conducting a site inspection and discovering the barn was being used for restaurant-related storage.

September 2007 - The property owner filed a Certificate of Legal Nonconformity application requesting recognition

of the barn as pre-existing legally-established storage space for the restaurant. In March, 2008 the applicant withdrew the request prior to the Zoning Administrator hearing the item and after a staff report recommending against the CLN was produced.

May 2008 - Application for this zoning ordinance text amendment was filed.

SUPPORTING DOCUMENTS

- A . Applicant's Proposed Zoning Text Narrative
- B . Application and Narrative
- C . Draft Ordinance

Napa County Planning Commission: Approve

Reviewed By: John McDowell