City of Sonoma Planning Commission

STAFF REPORT
Meeting: Planning Commission - 21 Feb 2019

Prepared Date
February 15, 2019

Staff Contact
David A. Storer, AICP, Planning & Community Services Director

Agenda Item Title
Public Hearing pursuant to Chapter 19.56 of the Sonoma Municipal Code to Consider and Possibly Take Action by Adopting a Resolution Relating to the Expiration of the Use Permit for the previously approved Sonoma Cheese Factory Development Project located at 2 West Spain Street (APN# 018-162-004) that was issued on May 13, 2004 by the Planning Commission and Finding that consideration of the expiration of the Use Permit is within the scope of the previously approved Categorical Exemption for the project, pursuant to Section 15303 of the State CEQA Guidelines - New Construction or Conversion of Small Structures

Applicant/Owner:

Site Address/Location:

PROJECT SUMMARY

Zoning: Base: Commercial (C) Overlay: Historic
Planning Area: Downtown

Environmental Review

☐ Environmental Impact Report ☐ Approved/Certified
☐ Negative Declaration ☐ No Action Required
☑ Exempt ☐ Action Requested
☐ Not Applicable

Staff Recommendation

Conduct public hearing and adopt a Resolution of the Planning Commission of the City of Sonoma that the Use Permit approval for the previously approved Cheese Factory Development Project located at 2 West Spain Street (APN# 018-162-004) is determined not to be expired pursuant to Chapter 19.56 of the Sonoma Municipal Code and finding that the determination thereof is within the scope of the previously approved Categorical Exemption for the project pursuant to Section 15303 of the State CEQA Guidelines - New Construction or Conversion of Small Structures.

PROJECT ANALYSIS

Detailed Project Description:

PROJECT REQUEST

On January 18, 2019, the City received a letter from Ms. Alicia Guerra, counsel for the Viviani Trust (Trust), requesting a hearing before the Planning Commission per section 19.56.040.D of the City of Sonoma Municipal Code (Attachment 1) for the previously approved Use permit for the Sonoma Cheese Factory project which was
approved by the Planning Commission in 2004. The requested hearing before the Planning Commission is to determine if the Use Permit for the Sonoma Cheese Factory should be determined to be expired or not. In the event that the Planning Commission determines that the Use Permit should not be determined to be expired, the Trust will have the ability to continue to pursue building permits based on their prior Use Permit entitlement.

**PROJECT SUMMARY**

In early 2004, the Trust requested approval of a Use Permit to allow two things to happen on their property: 1) Converting/remodeling the use of the whole building to retail use and subdivide the building into as many as nine tenant spaces. (The Trust was interested in converting the cheese production area to a retail use to add to the existing 2,860 square feet of retail that was then being used); and 2) To add several building additions totaling 8,480 square feet along the west side of the building, at the northeast corner and in a paved area at the northwest portion of the site.

On May 13, 2004, the Planning Commission approved a Use Permit (see Staff Report Attachment 2) that authorized the conversion of the existing Sonoma Cheese Factory building into a multi-tenant retail center but did not approve or deny the request to allow for the construction of new building area (See, Minutes Attachment 3). The Use Permit approval allowed for the remodeling of the existing 11,420 square feet of building space, allowing a maximum of 9 tenant spaces. The 2004 application also requested expansion/additions totaling 8,480 square feet. The expansion request was not granted by the 2004 Use Permit but was instead continued and left to “the discretion of the applicant” to bring back in order for issues related to off-site parking to be resolved. The Use Permit for the remodel/conversion became effective on the 16th day after the approval by the Planning Commission (as there was no appeal filed) on May 29, 2004. Prior to the expiration of the Use Permit on May 29, 2005, a building permit application was submitted for a portion of the building space (Area A) and subsequently issued approximately one month later (Attachments 4 & 5). The building permit was finaled/approved for occupancy almost 9 months later on March 16, 2006 after construction had been completed. Two additional building permit applications were submitted and later finaled/approved for occupancy in the First Quarter of 2006.

**Recommendation:**

Conduct public hearing and adopt a Resolution of the Planning Commission of the City of Sonoma that the Use Permit approval for the previously approved Cheese Factory Development Project located at 2 West Spain Street (APN# 018-162-004) is determined not to be expired pursuant to Chapter 19.56 of the Sonoma Municipal Code and finding that the determination thereof is within the scope of the previously approved Categorical Exemption for the project pursuant to Section 15303 of the State CEQA Guidelines - New Construction or Conversion of Small Structures.

**Attachments**

- SUPPLEMENTAL STAFF REPORT
- Resolution 3-2019
- ATTACH 1 - Letter to Cathy Capriola re Sonoma Cheese Factory
- ATTACH 2 - PC SR for Cheese Factory 2004
- ATTACH 3 MINUTES 5-13-04PC
- ATTACH 4
- ATTACH 5
- ATTACH 6 - Letter to Cathy Capriola City Manager City of Sonoma Nov 16 2018

**CC:**

n/a
SUPPLEMENTAL REPORT

Public Hearing pursuant to Chapter 19.56 of the Sonoma Municipal Code to Consider and Possibly Take Action by Adopting a Resolution Relating to the Expiration of the Use Permit for the previously approved Sonoma Cheese Factory Development Project located at 2 West Spain Street (APN# 018-162-004) that was issued on May 13, 2004 by the Planning Commission and finding that the consideration of the expiration of the Use Permit is within the scope of the previously approved Categorical Exemption for the project, pursuant to Section 15303 of the State CEQA Guidelines - New Construction or Conversion of Small Structures.

For the Planning Commission Meeting of February 21, 2019

DISCUSSION

At the request of the Viviani Trust (Trust), the Planning Commission has been asked to make a determination that the previously approved 2004 Use Permit is not expired pursuant to Section 19.56.040 of the Sonoma Municipal Code which reads as follows:

19.56.040 Time limits and extensions.

“A. Time Limits. Unless conditions of approval or other provisions of this development code establish a different time limit, any permit or approval not exercised within one year of approval shall expire and become void. The permit shall not be deemed "exercised" until the applicant has actually obtained a building permit and commenced construction, or has actually commenced the permitted use on the subject property in compliance with the conditions of approval.

B. Longest Time Controls. For projects having multiple permit approvals, the longest time limit associated with any one permit shall apply to all of the other permits.

C. Extensions of Time. Upon request by the applicant, the city planner may extend the time for an approved permit to be exercised for any permit approved by the city planner, and the planning commission may grant an extension for any permit approved by the planning commission.

1. The applicant shall file a written request for an extension of time with the division at least 10 days before the expiration of the permit, together with the filing fee required by the city fee resolution.

2. The city planner or the planning commission shall then determine whether the applicant has attempted to comply with the conditions of the permit. The burden of proof is on the applicant to establish with substantial evidence that the permit should not expire.
3. If the city planner or the planning commission determines that the applicant has proceeded in good faith and has exercised due diligence in complying with the conditions in a timely manner, the city planner or the planning commission may renew the permit for up to an additional two years from the date of the decision.

D. Hearing on Expiration. At the request of the applicant, the city planner may hold a hearing on any proposed expiration of a permit, in compliance with Chapter 19.88 SMC, Public Hearings.”

**ANALYSIS**

The following dates below outline building permit activity for the approved remodel/conversion of the property subsequent to the issuance of the Use Permit by the Planning Commission on May 13, 2004:

- **29 May 04** Use Permit for remodel/conversion becomes effective on the 16th day after approval by the Planning Commission.
- **19 May 05** Building Permit Application #17034 submitted for tenant improvements for 2,450 sqft. in Area A. (See attachment 5)
- **29 May 05** Date of expiration of the Use Permit (one year from May 29, 2004)
- **29 Jun 05** Building Permit #17034 issued
- **11 Jul 05** Building Permit #17302 submitted to replace two existing A/C units and to add one new A/C unit in Area A
- **14 Sep 05** Building Permit #17169 submitted for electrical improvements in Area A
- **23 Sep 05** Building Permit #17169 issued in Area A
- **10 Jan 06** Building Permit #17302 issued in Area A
- **6 Mar 06** Building Permit #17302 finaled/approved for occupancy in Area A
- **16 Mar 06** Building Permit #17034 finaled/approved for occupancy in Area A and #17169 - finaled/approved for occupancy in Area A

As can be seen from the information provided above, within a year of the approval of the Use permit, a building permit was timely submitted and later issued by the building department. Further, in total, three building permits have been timely filed and issued subsequent to the approval of the Use Permit. Based on the information in the staff report to the Planning Commission in 2004 and information contained in subsequent building permit approvals, a total of 11,420 square feet of area to be remodeled/converted was authorized pursuant to the 2004 Use Permit, 2,450 square feet of which was undertaken in 2005-2006.
CONCLUSION

In a letter dated November 16, 2018, Ms. Guerra, on behalf of the Trust (See Attachment 6) provided her opinion that the owner has vested rights to proceed under the 2004 Use Permit and also described therein the actions taken by the owner to establish and assert vested rights.

Based upon its own evaluation of the record, it is staff’s determination that the record shows that the permittee (Trust) has undertaken substantial construction in reliance on the 2004 Use Permit and therefore obtained a vested right. Vested rights entitle the development to proceed in accordance with the approved permit unless such rights are subsequently lost; loss of a vested right is a question of fact. The question relating to loss of vested rights depends upon whether the facts and circumstances show that the applicant intended to abandon the 2004 Use Permit.

In the present case, the Trust has indicated that it has exercised good faith and shown an intent to proceed with the use. The applicant has stated that their intent has always remained to establish individual tenant spaces within the existing building. The applicant has stated that it did not intend to abandon the 2004 land use entitlements at issue herein or to reserve the land for future purposes.

Staff recommends the Planning Commission take the following action:

MOTION TO APPROVE RESOLUTION 3 - 2019 - Adopting a Resolution Relating to the Expiration of the Use Permit for the previously approved Sonoma Cheese Factory Development Project located at 2 West Spain Street (APN# 018-162-004) that was issued on May 13, 2004 by the Planning Commission and finding that the consideration of the expiration of the Use Permit is within the scope of the previously approved Categorical Exemption for the project, pursuant to Section 15303 of the State CEQA Guidelines - New Construction or Conversion of Small Structures.

Attachments:

1) Letter from Alicia Guerra to City Manager, dated January 18, 2019.
4) Site plan (showing Area A)
5) Building permit # 17034
6) Letter from Alicia Guerra to City Manager, dated November 16, 2018.
7) Resolution No. 3 -2019 - ADOPTING A RESOLUTION RELATING TO THE EXPIRATION OF THE USE PERMIT FOR THE PREVIOUSLY APPROVED SONOMA CHEESE FACTORY DEVELOPMENT PROJECT LOCATED AT 2 WEST SPAIN STREET (APN# 018-162-004) THAT WAS ISSUED ON MAY 13, 2004 BY THE PLANNING COMMISSION AND FINDING THAT THE CONSIDERATION OF THE EXPIRATION OF THE USE PERMIT IS WITHIN THE SCOPE OF THE PREVIOUSLY APPROVED CATEGORICAL EXEMPTION FOR THE PROJECT, PURSUANT TO SECTION 15303 OF THE STATE CEQA GUIDELINES - NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES.
CITY OF SONOMA

RESOLUTION # 3-2019

ADOPTING A RESOLUTION RELATING TO THE EXPIRATION OF THE USE PERMIT FOR THE PREVIOUSLY APPROVED SONOMA CHEESE FACTORY DEVELOPMENT PROJECT LOCATED AT 2 WEST SPAIN STREET (APN# 018-162-004) THAT WAS APPROVED ON MAY 13, 2004 BY THE PLANNING COMMISSION AND FINDING THAT THE CONSIDERATION OF THE EXPIRATION OF THE USE PERMIT IS WITHIN THE SCOPE OF THE PREVIOUSLY APPROVED CATEGORICAL EXEMPTION FOR THE PROJECT, PURSUANT TO SECTION 15303 OF THE STATE CEQA GUIDELINES - NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES.

WHEREAS, The Sonoma Cheese Factory Use Permit project is a 11,240 square foot commercial interior remodel/conversion development project that was approved by the Planning Commission on May 13, 2004 (“Project”); and

WHEREAS, the Use Permit for the above referenced project became effective after an appeal period had lapsed without the filing of an appeal prior to May 29, 2004; and

WHEREAS, the applicant submitted an application for a Building Permit (#17034) for the project on May 19, 2005 in Area A, an area of 2,450 square feet; and

WHEREAS, on June 29, 2005 the City issued Building Permit (#17034); and

WHEREAS, on July 11, 2005 the applicant submitted an application for a Building Permit (#17302) to replace two existing A/C units and to add a new A/C unit in Area A; and

WHEREAS, on September 14, 2005, the applicant submitted an application for a Building Permit (#17169) for electrical improvements in Area A; and

WHEREAS, on September 23, 2005, the City issued the Building Permit (#17169) for electrical improvements in Area A; and

WHEREAS, on January 10, 2006, the City issued the Building Permit (#17302) for more improvements to Area A; and

WHEREAS, on March 6, 2006, the City finalized/approved for occupancy the Building Permit (#17302) for the replacement of two existing A/C units and one new A/C unit in Area A; and

WHEREAS, on March 16, 2006, the City finalized/approved for occupancy the Building Permit (#17034) for tenant improvements for 2,450 square feet and also finalized/approved for occupancy the Building Permit (#17169) for electrical improvements;
WHEREAS, staff determined that building permits set forth above were submitted in a
timely manner and issued in accordance with the 2004 Use Permit that was approved by the
Planning Commission in 2004; and

WHEREAS, on January 18, 2019, the City received a letter from the Viviani Trust
(Trust), requesting a hearing before the Planning Commission per section 19.56.040.D of the
City of Sonoma Municipal Code for the previously approved Use Permit for the Sonoma Cheese
Factory project which was approved by the Planning Commission in 2004, to have the Planning
Commission make a determination relating to the expiration of the 2004 Use Permit; and

WHEREAS, the Planning Commission held a duly noticed public hearing on February 21,
2019 and considered all evidence submitted in the record prior to taking any action on the matter;
and

NOW, THEREFORE BE IT RESOLVED, that the Planning Commission of the City of
Sonoma hereby finds and declares as follows:

1. The record of proceedings (“Record”) upon which all findings and determinations
related to the Project includes, but is not limited to:

   a. Determination by the Planning Commission on May 13, 2004, that the project
was Categorically Exemption from CEQA pursuant to Section 15303 of the
State CEQA Guidelines;
   b. The staff reports, City files, records and other documents, and all other
information (including written evidence and testimony) prepared for and/or
submitted to the Planning Commission relating to the Project;
   c. All information (including written evidence and testimony) presented to the
City by the staff, applicant, public, environmental consultants and sub
consultants relating to the Project;
   d. All information (including written evidence and testimony) presented to the
City by other public agencies relating to the Project;
   e. All documentary and oral evidence received at public meetings, and hearings or
submitted to the City relating to the Project;
   f. For documentary and information purposes, the General Plan, its related
environmental document, the Sonoma Municipal Code and all other City-
adopted land use plans and ordinances, including, without limitation, specific
plans, guidelines and ordinances;
   g. All other matters of common knowledge to the Planning Commission,
including, but not limited to, City, state, and federal laws, policies, rules,
regulations, reports, records and projections related to development within the
City of Sonoma and its surrounding areas.
   h. The evidence, facts, findings and other determinations set forth in this resolution
   i. All other documents comprising the record of proceedings pursuant to
California Code of Civil Procedure Section 1094.5.
2. The findings contained in this Resolution are based upon the evidence in the entire Record relating to the Project. All the evidence supporting these findings was presented in a timely fashion, and early enough to allow adequate consideration by the City.

NOW THEREFORE BE IT FURTHER RESOLVED THAT:

1) The Planning Commission re-affirms that the use of a Categorical Exemption for the 2004 Use Permit was an appropriate level of review pursuant to CEQA Guidelines section 15303 – New Construction or Conversion of Small Structures; and

2) The aforementioned Categorical Exemption is still an adequate level of review for this determination by the Planning Commission in its consideration of the expiration of the 2004 Use Permit; and

3) That the Use Permit approval previously approved for the Project is hereby determined not to be expired pursuant to Chapter 19.46 of the Sonoma Municipal Code based on the following findings:

   a. The evidence in the Record established that the applicant/permittee submitted timely building permit applications and were issued permits by the City upon which construction was commenced and completed in a timely manner.
   b. The purpose of Section 19.56.040A is to prevent the reservation of land for future purposes when the applicant/permittee has no good faith intent to presently commence upon the proposed use;
   c. The applicants commenced construction and made substantial expenditures pursuant to the 2004 Use Permit in undertaking construction pursuant to 3 building permits issued and finaled relating to the project.
   d. The applicant/permittee has established and the Record clearly demonstrates that the applicant/permittee did not intend to abandon the 2004 approvals and was, under the circumstances presented, diligently proceeding with a good faith intent to commence work upon the proposed use.

The foregoing Resolution is hereby passed and adopted by the Planning Commission on February 21, 2019, by the following vote:

Ayes:
Noes:
Absent: Recuse:

Chair Felder
Attest
Cristina Morris
January 18, 2019

VIA E-MAIL

Ms. Cathy Capriola
City Manager
City of Sonoma
No. 1 The Plaza
Sonoma CA 95476

Re: Viviani Trust Uniform Application for the Sonoma Cheese Factory Located at
2 W. Spain Street, Sonoma

Dear Cathy:

Thank you for meeting with Nina Respicio, Maria Viviani, Andrea Bruce, Sharon Fong, and me last Thursday to discuss the status of the Viviani Trust’s Uniform Application for a Use Permit and related approvals to reconfigure and expand the Sonoma Cheese Factory located at 2 West Spain Street.

As we discussed, my client is reviewing options for the future of the Sonoma Cheese Factory, and is exploring how they might best fulfill Mr. Viviani’s vision for the business. Consequently, in response to your email of January 18, 2019 requesting that we indicate if the owners intend to proceed with the pending application or abandon it, we respectfully request that the City continue to defer the processing of the appeal of the Planning Commission’s approval of the Viviani Trust’s Use Permit that was filed last summer in the above-referenced matter until my client is able to complete their assessment later this spring.

In the meantime, I understand that members of the community have asked about the recent temporary closure of the Cheese Factory. As we discussed, in the past, my clients reduced hours and days open during the week in the winter months as that is the off-season. This year, after much deliberation, my clients decided to close their business for the winter as traffic on the Plaza has considerably slowed during the year. This is no different from many businesses on the
Plaza that often closed their businesses during the winter in prior years, many of whom have decided to close again this year. As we informed you, a consequence of the temporary closure of the Cheese Factory was that the employees were let go, so they would have the ability to collect unemployment. The employees will have the opportunity to re-apply for their positions when the business re-opens.

My clients have invested significant resources in the business to honor Mr. Viviani’s legacy, and take seriously their commitment to contributing to a strong and vibrant Sonoma. It is with that spirit that they are focused on realizing Mr. Viviani’s vision for the Cheese Factory.

Sincerely,

BUCHALTER
A Professional Corporation

By

Alicia Guerra

AG:sl

cc: Veronica Nebb
    David Storer
    Nina Respicio
    Maria Viviani
    Andrea Bruce
    Sharon Fong
    Lloyd Llewelyn
City of Sonoma Planning Commission

STAFF REPORT

Agenda Item Title: Application for a Use Permit to allow the remodel of the Sonoma Cheese Factory in conjunction with the provision of additional retail space.

Applicant/Owner: William Dimick, Architect

Site Address/Location: 2 West Spain Street

Staff Contact: David Goodison, City Planner
Staff Report Prepared: 5/7/04

PROJECT SUMMARY

Description: Application of William Dimick, Architect, for a Use Permit to allow the remodel of the Sonoma Cheese Factory in conjunction with the provision of additional retail space at 2 West Spain Street.

General Plan Designation: Commercial (C)

Zoning: Base: Commercial (C) Overlay: Historic

Site Characteristics: The property is currently developed with a number of buildings dating from 1940 to the present accommodating cheese production and a retail/deli and outdoor eating area.

Surrounding Land Use/Zoning: North: Casa Grande parking lot/Park
South: The Plaza (opposite West Spain Street)/Park
East: Barracks State Park/Park
West: Restaurant/Commercial

Environmental Review: ☑ Categorical Exemption ☐ Negative Declaration ☐ Environmental Impact Report ☐ Not Applicable

Approved/Certified ☐ No Action Required ☑ Action Required

Staff Recommendation: Approve the conversion of the existing building into a retail center.
Deny application for new building construction.
PROJECT ANALYSIS

DETAILED PROJECT DESCRIPTION
The Sonoma Cheese Factory, located on West Spain Street, is currently relocating its cheese production operation to a new facility on Eight Street East. The opportunity to convert existing production areas into other uses has led the property owner to propose a reconfiguration of the building that involves both the conversion of exist building areas to retail use and the construction of new building area, also proposed for retail use.

- Re-use of Existing Space. The Cheese Factor is a relatively large building, with a total area of 11,420 square feet. At this time, however, only 2,860 square feet is devoted to retail use. The remainder has been used for the cheese production and storage, as well as administrative offices. The property owner is proposing to devote the entire building to retail use, subdivided into as many as nine tenant spaces accessed via a central corridor. A retail outlet/deli for the Cheese Factory would serve as the anchor tenant. (Note: it appears that the existing second-floor office area would continue to be associated with the Cheese Factory retail outlet.) Other prospective tenants have not yet been identified. The subdivision of a commercial building into three or more tenant spaces is defined in the Development Code as a “shopping center” and is subject to use permit review.

- New Construction. The master plan submitted by the applicant also includes several building additions, totaling 8,480 square feet. These additions would occur along the west side of the building, at the northeast corner, and in a paved area at the northwest portion of the site. As stated in the project narrative, these additions would be constructed based on specific tenant proposals, rather than on spec. These additions would be considered an expansion of the “shopping center” use resulting from the conversion of the existing building and are therefore subject to use permit review.

If the proposed master plan were to be fully implemented, the building would have an area of 19,900 square feet. No off-street parking is proposed.

GENERAL PLAN CONSISTENCY (□ Not Applicable to this Project)
The property has a General Plan land use designation of Commercial. This designation is intended to provide areas for retail, service, medical, and office development, in association with apartments and mixed-use developments and necessary public improvements. The proposed retail uses are consistent with the purpose of the Commercial land use designation. The following goals and policies of the General Plan are applicable to the project:

- Local Economy Element, Policy 12: Promote ground-floor retail uses in commercial areas as a means of generating pedestrian activity.

In general, the project is consistent with the goals and policies of the 1995-2005 General Plan, however staff is concerned about parking impacts (refer to “Discussion of Project Issues”).

DEVELOPMENT CODE CONSISTENCY (□ Not Applicable to this Project)
Use: The property is zoned Commercial (C). The retail uses proposed under the application are permitted in the Commercial zoning district.
DISCUSSION OF PROJECT ISSUES

Parking Exception for New Construction: Pursuant to Development Code Section 19.48.050.A.1, the Planning Commission may modify off-street parking requirements in compliance with Code requirements for the granting of an Exception. The review of a parking exception includes consideration of potential impacts on neighboring properties or uses. In order to approve an exception application, the Planning Commission must make the following findings:

1. *That the adjustment authorized by the Exception is consistent with the General Plan, any applicable Specific Plan and the overall objectives of this Development Code;*

   The retail uses food involved in the application are consistent with the property's Commercial zoning land use and designation. However, it is clearly an objective of the Development Code that new development should include provision for adequate off-street parking.

2. *That the Exception to the normal standards of the Development Code is justified by environmental features or site conditions; historic development patterns of the property or neighborhood; or the interest in promoting creativity and personal expression in site planning and development;*

   It is true that, historically, many commercial buildings in the vicinity of the Plaza do comply with normal off-street parking requirements due to the circumstances of their development. This circumstance is recognized in the Development Code by the parking credit that is granted to existing buildings. The proposed parking exception, however, is associated with new construction. Typically, even in the Plaza area, off-street parking requirements have been applied to additions and new construction. The subject property could actually accommodate off-street parking, for example, where addition #2 is proposed.

3. *That the granting of the Exception will not be detrimental to the public health, safety, or welfare, or injurious to the property or improvements in the vicinity and in the same zoning district;*

   The off-street parking available in the vicinity of the project may or may not be sufficient to absorb the parking demand generated by the proposed addition without affecting other uses in the area. The availability of the on-street parking around the Plaza has been used as a basis for granting parking exceptions on previous occasions, but it seems difficult to support an exception that amounts to 28 spaces.

In consideration of these factors, staff feels that the findings needed to support an exception to the parking requirements cannot be made.

*Number of Tenant Spaces.* It can be argued that, in general, the greater the number of tenants spaces within a given building area, the greater the demand for employee parking. As discussed above, the existing Cheese Factory building has a parking credit that supports its conversion to retail use. However, the Planning Commission may legitimately limit the number of tenant spaces associated with this conversion. Based on the proposed site plan, it appears that nine tenant spaces are proposed (excluding the second-floor office space). The Planning Commission could choose to limit the conversion to a lower number.
Infill within the Historic Overlay Zone: Guidelines presented in the Development Code encourage new infill development in the Historic Overlay District to be compatible in scale and treatment with existing, older development and to maintain the overall historic character and integrity of the community (§19.42.040). To a large degree the guidelines relate to architectural considerations. Since the proposal, at this time, is limited to a site plan, the application cannot be evaluated against these criteria. Given the property’s prominent location within the Sonoma Plaza National Landmark District, and the proximity of various historically significant buildings, no final action the additions should be taken until elevations are made available to the Planning Commission for review. Pursuant to the Development Code, the Planning Commission is responsible for reviewing and acting upon the project site plan, building massing and elevation concepts. Subsequent review by the Design Review Commission is also required, encompassing elevation details, colors and materials, landscaping (including fences and walls), lighting, and any other issues specifically referred to the DRC by the Planning Commission (§19.54.080E).

Parking: As with all structures that front the Plaza, the building receives a parking credit of one space per 300 square feet of floor area. Based on the total existing floor area of the facility (11,420 square feet), the Sonoma Cheese Factory has a credit of 38 parking spaces. In comparison, the retail and production facility uses that have historically operated on the property require 27 parking spaces under current standards. In conjunction with the 20 additional spaces required for the outdoor dining areas (approximately 80 seats), the business at it has historically been operated requires a total of 47 parking spaces. Based on these calculations, operations on the property currently exceed the allotted parking credit, with a deficit of 9 parking spaces.

Considering that the business already operates with a parking deficit, it is difficult to support the additional 8,480 square feet of retail floor area proposed for the site. By itself, the additional retail floor area proposed under the application would generate a requirement for an additional 28 parking spaces, resulting in a total deficit of 48 spaces (this figure takes into consideration the conversion of the production facility areas to retail use). According to the project narrative, the operation of the Cheese Factory involved as many as 50 employees per day, as well as various delivery vehicles, including milk tanker trucks. The narrative suggests that that the conversion of the building to purely retail use will result in a reduction in the number of employees. However, it is by no means clear to staff that this would indeed be the case. The number of employees on shift at any one time is not provided. The employee demand associated with the proposed tenant spaces is unknown and there is no way to define what the tenants will be beforehand.

Applying the parking credit to the existing structure in order to allow its conversion to retail use is consistent with the Development Code and long-standing practice. However, even if it could be documented that this conversion would result in a reduction in the number of employees associated with the building, this does not provide a basis for approving the 28-space parking exception needed to allow the proposed building additions. As noted in the project narrative, when the Casa Grande parking lot was improved (about 20 years ago), the Cheese Factory contributed $50,000 to the project in order to pay for design upgrades needed to allow milk trucks access to the rear of the Cheese Factory property. This payment, however, did not result in any dedicated parking benefiting the Cheese Factory.

**CONSISTENCY WITH OTHER CITY ORDINANCES/POLICIES** (Not Applicable to this Project)

**ENVIRONMENTAL REVIEW** (Not Applicable to this Project)

Pursuant to Section 15303 of the State CEQA Guidelines, construction of up to 10,000 square feet of commercial space on a parcel within an urbanized area is Categorically Exempt from the provisions of CEQA (Class 3 – New Construction or Conversion of Small Structures).
Relation to State Parks Property. A representative of State Parks, which owns the Barracks State Park adjacent to the subject property on the north and east, has raised questions about the location of the eastern property line. The location of this property line will therefore need to be verified in order to ensure that the proposed walkway and landscaping improvements along the east side of the building do not encroach upon the State property.

RECOMMENDATION
Staff recommends that the Planning Commission take the following actions:

1. Approve the use permit allowing the conversion of the existing building into a multi-tenant retail center, based upon the attached findings and conditions of approval.

2. Deny the application for a use permit and exception allowing the construction of new building area.

The property owners may wish to consider a revised proposal that provides some off-street parking to support additional building area. As an alternative, the property owners may choose to monitor the City Council's pending review of Plaza parking requirements as this discussion may lead to changes in the current requirements for off-street parking.

Attachments
1. Findings (to be delivered Monday)
2. Draft conditions of approval (to be delivered Monday)
3. Location map
4. Project Narrative
5. Site Plan/Floor plans

cc: William Dimick
292 France Street
Sonoma, CA 95476

Sonoma Cheese Factory LLC
2 West Spurin Street
Sonoma, CA 95476
Project Summary

Project Name: Cheese Factory Use Permit

Property Address: 2 West Spain Street

Applicant: William Dimick

Property Owner: Lawrence and Jacquel Viviani

General Plan Land Use: Commercial

Zoning--Base: (CO) Commercial

Zoning--Overlay: Historic

Application Summary:
Application for a use permit allowing the conversion of an existing commercial building into multiple retail tenant spaces, for new construction of retail building area, and for a parking exception.

Zoning Designations

RHS  Hillside Residential (1 D.U./10 acres, maximum)
RR  Rural Residential (2 D.U./acre, maximum)
RL  Low Density Residential (2.5 D.U./acre)
RS  Sonoma Residential (3.5 D.U./acre)
RM  Medium Density Residential (6-10 D.U./acre)
RH  High Density (9-12 D.U./acre)
RO  Housing Opportunity (1.5-2 D.U./acre)
RP  Mobile Home Park (7 D.U./acre, maximum)
MX  Mixed Use (1.2 D.U./acre, maximum)
C  Commercial (1.5 D.U./acre, maximum)
CG  Gateway Commercial (1.5 D.U./acre, maximum)
W  Wine Production
P/Pk  Public Facility/Parks
A  Agriculture

Legend:
- Historic Overlay
- Creek Setback Overlay
- Protected Open Space

City Limit
Sphere of Influence

Scale in Feet

0 200 600 1000 2000
NOTICE OF PUBLIC HEARING

The Project described below is located on property that lies within 500 feet of your property:

Notice is hereby given that the Planning Commission of the City of Sonoma, at a meeting on May 13, 2004, to be held in the Council Chamber meeting room at 177 First Street West, will conduct public hearings on the project described below at 6:30 p.m., or as soon thereafter as the matter may be reached:

**Project Description:** Application of William Dimick, Architect, for a Use Permit allowing the remodel of the Sonoma Cheese Factory in conjunction with the provision of additional retail space at 2 West Spain Street.

Public Response Requested: The public is hereby invited to comment by sending written comments to the Planning Commission, c/o Sonoma City Hall, No. 1 The Plaza, Sonoma, CA 95476, within 20 days of the date of this notice; no later than May 13, 2004. Interested persons are also invited to attend the public hearing and address any comments directly to the Planning Commission. The application and the project file are available for review at Sonoma City Hall. A Planning Department staff report on the project will also be available on the Friday prior to the meeting, at City Hall.

The City of Sonoma has, by resolution, adopted the time limits set forth in California Civil Procedure Section 1094.6. Pursuant to these time limits, should any member of the public seek judicial review of a decision on the project, such action must be filed no later than the ninetieth day following the date that the administrative decision becomes final.

Date of Notice: April 23, 2004

---

NOTICE OF PUBLIC HEARING

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Date of Notice: April 23, 2004
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>City, State, Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>DUNLAP HELEN P TR</td>
<td>WEYL KATHERINE TR</td>
<td>SONOMA, CA 95476-0185</td>
</tr>
<tr>
<td>PO BOX 185</td>
<td>132 W SPAIN ST</td>
<td></td>
</tr>
<tr>
<td>RAFFO INES TR</td>
<td>WAGAR KENNETH M &amp; CLAUDIA</td>
<td>SONOMA, CA 95476-5630</td>
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<tr>
<td>PO BOX 1610</td>
<td>301 1ST ST W</td>
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<tr>
<td>BOYES HOT SPRING CA 95416</td>
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<td>CLARKE BARBARA J ET AL</td>
<td>SPENCER WILLIAM</td>
<td>SONOMA, CA 95476-1252</td>
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<tr>
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<tr>
<td>MORRILL DWIGHT E</td>
<td>MISSION TERRACE HO ASSN</td>
<td>SONOMA, CA 95476-5705</td>
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<tr>
<td>327 1ST ST E</td>
<td>131 CLOVER HILL CT</td>
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<tr>
<td>DAHLBERG MARIANNE TR</td>
<td>RIEBLI ARNOLD J III &amp; ANNE</td>
<td>SAN FRANCISCO, CA 94131-1031</td>
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<tr>
<td>237 WARREN DR</td>
<td>APPLEMAN</td>
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<td>SONOMA CA 95476-5704</td>
<td>335 FIRST ST E</td>
<td></td>
</tr>
<tr>
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<td>KENRICK KATHERINE B</td>
<td>SONOMA, CA 95476</td>
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<tr>
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<td>363 1ST ST W</td>
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<td>RICHMOND CA 94801-4118</td>
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<tr>
<td>SWISS HOTEL INC</td>
<td>ROVAI MINERVA D TR</td>
<td>VINEBURG, CA 95487-0004</td>
</tr>
<tr>
<td>DBA SWISS HOTEL</td>
<td>476 3RD ST W</td>
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<tr>
<td>PO BOX 185</td>
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<tr>
<td>SONOMA CA 95476-0185</td>
<td>ROVAI MINERVA D TR</td>
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</tr>
<tr>
<td>SCHWARZMAN ARTHUR</td>
<td>SPAIN STREET PARTNERS</td>
<td>VIVIANI LAWRENCE P &amp;</td>
</tr>
<tr>
<td>ANDREW DVA 309961</td>
<td>C/O MARIAN E MARIONI</td>
<td>JACQUELYN R TR</td>
</tr>
<tr>
<td>363 1ST ST E</td>
<td>PO BOX X</td>
<td>405 2ND ST E</td>
</tr>
<tr>
<td>SONOMA CA 95476-5704</td>
<td>SONOMA CA 95476-0470</td>
<td>SONOMA, CA 95476-6705</td>
</tr>
<tr>
<td>E D I ASSOCIATES L P</td>
<td>CASTAGNASSO FAMILY LTD</td>
<td>MAHER RUTH G TR ET AL</td>
</tr>
<tr>
<td>DBA EL DORADO HOTEL</td>
<td>PO BOX 494</td>
<td>4701 WALLACE CREEK RD</td>
</tr>
<tr>
<td>PO BOX 8000</td>
<td>SONOMA CA 95476-0494</td>
<td>HEALDSBURG, CA 95448</td>
</tr>
<tr>
<td>MILL VALLEY CA 94942-8000</td>
<td></td>
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</tr>
<tr>
<td>CARDINAL B, C/O MORGAN CAPITAL INVESTMENT PROPERTIES</td>
<td>DETERT D. &amp; DETERT L. C/O LORI BREMNER</td>
<td>SONOMA, CA 95476-1561</td>
</tr>
<tr>
<td>3 HARBOR DR STE 303</td>
<td>PO BOX 1561</td>
<td></td>
</tr>
<tr>
<td>SAUSALITO CA 94965</td>
<td>HAVLEK STEPHEN WILLIAM &amp; LAURA N TR</td>
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<tr>
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<td>SONOMA, CA 95476</td>
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<td>MILL VALLEY CA 94942-8000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
LEHNER LAWRENCE K ET AL
134 CHURCH ST
SONOMA CA 95476

RUGGLES WALTER CHARLES
& MARIANNE J
445 1ST ST W
SONOMA CA 95476-6608

VELLA PROPERTIES
PO BOX 191
SONOMA CA 95476-0191

CULVER JOSEPH & CULVER
MARY ELIZABETH
562 ESTE MADERA
SONOMA CA 95476

SHERMAN UNA M TR
605 VENDOLA DR
SAN RAFAEL CA 94903-2936

MEZZETTA MARC D &
BARBARA
415 EASTIN DR
SONOMA CA 95476

HOWARD CHARLES O &
PAMELA M TR
4015 LOVALL VALLEY LOOP
SONOMA CA 95476-4908

WRIGHT ROGER LEO TR ET AL
17389 GEHRICKE RD
SONOMA CA 95476-4743

SOMMER PETER S & DYLIS TR
31 BIGELOW ST
MILL VALLEY CA 94941-1108
Tenant
450 1ST STREET E
SONOMA CA
95476.

Tenant
450 E 1ST ST #K
SONOMA CA
95476.

Tenant
450 E 1ST ST #E
SONOMA CA
95476.

Tenant
450 E 1ST ST #B
SONOMA CA
95476.

Tenant
452 1ST STREET E  #C
SONOMA CA
95476.
PROPOSAL STATEMENT

March 29, 2004

Project: Sonoma Cheese Factory  
Retail Shops Master Plan  
2 Spain Street  
Sonoma, CA 95476

Owner: Sonoma Cheese Factory, L.L.C.  
2 Spain Street  
Sonoma, CA 95476  
Phone:  707-996-1000  
Fax:  707-935-3535

292 France Street  
Sonoma, CA 95476  
Phone:  707-938-5627  
Fax:  707-938-8176
The Sonoma Cheese Factory at 2 Spain Street, Sonoma, CA, has historically existed as a cheese production facility and retail sales area that includes a deli type sandwich operation with outdoor patio eating area.

The several interconnected buildings date from the 1940’s to the present and all structures have been recently rehabilitated to current City of Sonoma requirement regarding earthquake code compliance.

As shown on the attached As-Built Floor Plan the building areas involved were as follows:

<table>
<thead>
<tr>
<th>Area</th>
<th>Square Footage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Sales</td>
<td>2,860 sq. ft.</td>
</tr>
<tr>
<td>Area A Cheese Making</td>
<td>2,462 sq. ft.</td>
</tr>
<tr>
<td>Area B Cold Storage</td>
<td>1,654 sq. ft.</td>
</tr>
<tr>
<td>Area C Wrapping, Packaging Storage, Mechanical</td>
<td>3,116 sq. ft.</td>
</tr>
<tr>
<td>Restrooms</td>
<td>356 sq. ft.</td>
</tr>
<tr>
<td>Second Floor Offices</td>
<td>972 sq. ft.</td>
</tr>
<tr>
<td><strong>Total Floor Area</strong></td>
<td><strong>11,420 sq. ft.</strong></td>
</tr>
</tbody>
</table>

Employee count for cheese production and retail operations was:

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production</td>
<td>30</td>
</tr>
<tr>
<td>Retail</td>
<td>20</td>
</tr>
<tr>
<td>Management/Office Staff</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>58</strong></td>
</tr>
</tbody>
</table>

Parking requirements for employees were in the range of 50 cars per day with 2 milk tanker truck deliveries and 5 to 10 delivery trucks and vans on an average business day.

The obvious conflicts involved in the operation of a food production facility in proximity to the Plaza and town center have become more apparent in recent years and the company has explored different remedies, including contracting with out-of-state production plants to partnering with a larger cheese making organization to facilitate the complete modernization of the current facility. The ultimate decision has been to relocate the cheese making, storage, packing and shipping operation to a newly constructed facility on 8th Street East in Vineburg and maintain the existing sales and deli operation in its current location. At the present time the new production plant is nearing completion and all cheese making
equipment, milk and whey tanks, modular employee break dressing room, etc. have been relocated to the new site.

The owner now proposes to develop the property as a retail shopping mall with an expanded Cheese Factory retail area as the theme and anchor store and the balance of the existing space offered for lease on a design/build basis. The mall aspect of the design is to take advantage of the pedestrian flow from the State Parking Lot to the Plaza. As shown in the attached Master Site Plan drawing, the owner also proposes to build out the undeveloped portions of the site on a demand basis.

As shown on the attached Proposed Master Plan, the areas involved are:

### Area Tabulation:

<table>
<thead>
<tr>
<th>Description</th>
<th>Area (sq. ft.)</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Area</td>
<td>21,124</td>
<td>0.48 AC</td>
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<tr>
<td>Existing Coverage</td>
<td>11,232</td>
<td>53 %</td>
</tr>
<tr>
<td>Proposed Coverage</td>
<td>4,980</td>
<td>24 %</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>16,214</strong></td>
<td><strong>77 %</strong></td>
</tr>
<tr>
<td>Open Space</td>
<td>4,912</td>
<td>23 %</td>
</tr>
</tbody>
</table>

### Floor Area:

**Existing:**

- Retail Sales/Deli: 2,860 sq. ft.
- Second Floor Offices: 972 sq. ft.
- Restrooms: 356 sq. ft.
- Area A: 2,462 sq. ft.
- Area B: 1,654 sq. ft.
- Area C: 3,116 sq. ft.

**Total Existing Floor Area:** 11,420 sq. ft.

**Proposed:**

- Addition 1: 384 sq. ft.
- Addition 2 (1st Flr.): 2,300 sq. ft.
- Addition 2 (2nd Flr.): 2,300 sq. ft.
- Addition 3 (1st Flr.): 1,200 sq. ft.
- Addition 3 (2nd Flr.): 1,200 sq. ft.
- Addition 4: 1,096 sq. ft.

**Total Proposed Floor Area:** 8,480 sq. ft.

**Total Floor Area:** 19,900 sq. ft.
The owner further proposes to maintain the architectural appearance of the existing building fronting Spain Street, while the existing and new north facing building on the State Parking Lot will be developed as the tenant space is leased. All new work will be subject to approval by the City’s Architectural Review Committee.

Estimate of employee count for the proposed retail shops would be less than half the original cheese making production and store.

As to employee and customer parking, it is understood that all existing space is exempt from any requirement for off-street parking. The newly build out space need be considered in relation to the number of cheese production related employees and delivery vehicles that have been eliminated. Furthermore, there is a history of the Cheese Factory’s financial participation in the construction of the State Parking Lot which provided for employee parking and access to the milk delivery station to eliminate truck access to the Spain Street alley.

Those recently abandoned spaces and traffic impact should be considered in my new requirement for off-street parking.

All considered, the proposed project presents a less intense use of the property, an opportunity to upgrade the existing buildings, and new infill structures in keeping with the general character and ambiance of the downtown Plaza area. The owner therefore, requests that a Use Permit be granted for the project to provide a road map for the development of the proposed shopping mall.

William L. Dimick, AIA

Date
City of Sonoma
Planning, Building and Public Works
No. 1 the Plaza
Sonoma, CA 95476

Uniform Application

Before submitting your application, have you checked with:
✓ The Planning Division ✓ The Building Division ✓ The Public Works Division ✓ The Fire Department

Applicant Information
Name: William L. Dimiche & A
Address: 792 France Street
Phone: 707-938-5776

Owner Information
Name: Sonoma Cheese Factory L.L.C.
Address: 2 W. Spain St.
Phone: 707-990-1000

Type of Application
☐ Environmental Review
☐ Conditional Use Permit (Major/Minor)
☐ Exception
☐ Subdivision Map (5+ lots)/Parcel Map (4 or fewer lots)
☐ Planned Development
☐ Prezoning/Annexation
☐ Rezoning: from ________ to ________
☐ General Plan Amendment: from ________ to ________
☐ Variance
☐ Design Review
☐ Development Project
☐ Temporary Use Permit
☐ Second Unit (Ministerial)
☐ Certificate of Compliance
☐ Lot Line Adjustment/Merger
☐ Public Notice

Project Information
Project Location (by address or nearest cross-street): 2. West Spain Street
Assessor’s Parcel Number(s): 

General Plan Land Use Designation: Mixed Use; Zoning: 
Brief Project Description: Retail Shops, Mixed Use, Remodel & Addition

Submittal Requirements: SEE ATTACHED SHEET.

I, the undersigned ("Applicant"), hereby state that I am the owner of record of the affected property or a duly authorized agent of the Property owner(s) (An agent must submit a letter of authorization signed by the property owner) and that all information submitted as part of this application is true and accurate.

I agree to the terms, conditions and obligations set forth in this Application.

I agree that I will provide written notice to the Planning Division in the event that there is a change in Applicant’s interest in the property, the project, or the billing address or contact person for said project.

I agree to indemnify and hold City harmless for all costs and expenses, including attorney’s fees, incurred by City or held to be the liability of the City in connection with City’s defense of its actions in any proceeding brought in any State or Federal court challenging the City’s actions with respect to the Applicant’s project.

Signature: 
Dater: 3/26/04

Phone: (707) 938-3743 Fax: (707) 938-8775 E-mail: cityhall@sonomacity.org Web: www.sonomacity.org
April 1, 2004  
Thursday 1:27 pm  
By: BARB  

* City of Sonoma *

No 1 The Plaza SONOMA, CA. 95476

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<th>I.D. Number</th>
<th>Amount Paid</th>
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<tr>
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<tr>
<td>Cmt: CHEESE/2 WEST SPAIN ST/REMODEL CHEESE FACTORY</td>
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<td>.00</td>
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</tr>
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</table>

Paid By.: SONOMA CHEESE FACTORY
CITY OF SONOMA
PLANNING COMMISSION
REGULAR MEETING OF
May 13, 2004

I hereby declare under penalty of perjury that the agenda for this meeting was posted on Friday, May 7, 2004, on the bulletin board outside the front of Sonoma City Hall, #1 The Plaza, Sonoma, California.

CALL TO ORDER: 6:30 p.m. Council Chambers, 177 First Street West – Chair Anderson presiding

ROLL CALL: Present: Chair Anderson, Comms. Cuclis, Paynter, Cook, Gallian, Yankovich
Absent: Comm. Heigel
Also Present: Planning and Community Services Administrator Goodison, Associate Planner Guestland, Assistant Planner Thériault, Administrative Assistant Rogers

COMMENTS FROM THE PUBLIC: none
APPROVAL OF MINUTES: none
CORRESPONDENCE: Correspondence received after the distribution of the packets: workshop notice from Sonoma State University Planning Workshop for May 17, 2004; Minutes from November 8, 2001 regarding Item #4.

ITEM #1 – PUBLIC HEARING: Application for a Tentative Map to subdivide a 0.69-acre parcel into three lots; 498 East Napa Street. Applicant/Property Owner: Daniel Casabonne/The Estate of Lois More

Assistant Planner Thériault presented staff’s report and suggested that Parcel #1 be amended to decrease the depth by seven feet, with the additional depth added to Parcel #3 which is the smallest lot, making it more usable.

Chair Anderson opened the public hearing at 6:45 p.m. Tony Tucker, representing the three adjacent parcels to the east, said he appreciated staff recommending that the driveway easement for the subdivision be located on the east side. He cautioned against possible flooding problems due to development, referring to the Campobello estates. Regarding the existing vegetation that is overgrown, he stressed the need for landscaping.

City Planner Goodison responded that the City Engineer was reviewing flooding issues for the development. Assistant Planner Thériault said the Commission may wish to include landscaping requirements in the Conditions of Approval, since this proposal may not come back for planning review if they meet all zoning requirements.

Tom Hauser, East Napa Street, agreed with staff’s recommendation to add seven feet to Parcel #3 which would support a single-story home versus the only option being two stories. Chair Anderson closed the public hearing at 6:55 p.m.

The Commissioners discussed the possible change in lot configuration between Parcels #1 and #3, concluding that it wouldn’t affect the ability to construct an attached two-car garage on Lot #1, since either way there is only room for a one-car garage. Comm. Yankovich stated that an attached garage could only be accommodated on the south, not in the rear.

Comm. Yankovich asked what landscaping was planned. Staff suggested that only street trees be required since the development was small. Since the property belongs to a trust, weed abatement can be taken care of through the fire department until a new owner takes over.

Comm. Cuclis stated that for someone who would purchase this, landscaping would not be an issue, but setbacks that inhibited construction of a garage, would be an issue. Thériault reviewed the depth of the parcels, saying that there was ample room in the front yard setbacks for the garage, even though typically garages are now built in the rear of a property.

Comm. Gallian asked for clarification on protecting the oak tree. Staff said that the Tree Committee had recommended protection for the oak tree in the Conditions of Approval.

It was moved by Comm. Cuclis, seconded by Comm. Yankovich, to approve the tentative map, adding to the conditions of approval that the setback for Parcel #1 will be decreased by seven feet, with the additional depth added to Parcel #3. The motion carried unanimously.

ITEM #2 – PUBLIC HEARING: Application for a tentative map allowing subdivision of a property into 7 lots in order to implement an approved Planned Development Permit; 19957 Broadway. Applicant/Property Owner: Tracy Anthony Investments/Morgan and Joanne Sanders

Chair Anderson recused himself due to proximity.

Assistant Planner Thériault presented staff report.

Acting Chair Cuclis opened the public hearing at 7:10 p.m. There were no comments. Acting Chair Cuclis closed the public hearing at 7:10 p.m.
Acting Chair Cuclis stated that they Commission has already spent a lot of time on this application in the past and asked for a motion.

It was moved by Comm. Yankovich, seconded by Comm. Gallian, to approve the tentative map application, subject to the conditions of approval. The motion carried unanimously.

ITEM #3 – PUBLIC HEARING: Application for an exception to front and side yard setback requirements for additions to a residence; 55 Contento Court.

Applicant/Property Owner: Norm Oliver/Michael Bendik

City Planner Goodison presented staff’s report.

Chair Anderson opened the public hearing at 7:15 p.m. Michael Bendik, Contento Court, asked the Commission to approve the application recommended by staff.

Comm. Gallian asked if any of the neighbors had any concerns over the side yard exceptions. The applicant replied that he had talked to the neighbor on the side of the addition and she had no objections. Chair Anderson closed the public hearing at 7:18 p.m.

It was moved by Comm. Yankovich, seconded by Comm. Cuclis, to approve the side yard setback exception subject to the conditions of approval. The motion carried unanimously.

ITEM #4 – PUBLIC HEARING: Application for a Use Permit and an exception to the parking standards to allow construction of four additional rental units and to convert the existing residence to a Live/Work unit on the property; 1141 Broadway (formerly 20161 Broadway).

Applicant/Property Owner: Victor Conforti/Larry Chiappellone

Chair Anderson recused himself due to proximity. Assistant Planner Thériault presented staff’s report.

City Planner Goodison said that staff had received a petition from several neighbors who were out of town and asked to continue the item. Comm. Cook said the forum for citizens who are unable to attend is to submit a letter stating their position. The Commissioners agreed there was no reason to delay the hearing.

Assistant Planner Thériault summarized the application involving an amendment to an approved mixed-use development. Staff recommended denial of the application due to the amount of development on a constraint site.

Acting Chair Cuclis opened the public hearing at 7:40 p.m. Architect Victor Conforti presented details of the project and addressed some of staff’s concerns. Applicant Larry Chiappellone said he was not being treated equally. While surrounding properties have two-story structures, he is being asked to build a one-story structure.

Comm. Yankovich responded that staff’s report was not concerned with height, rather other problems having to do with setbacks, parking, the property being overbuilt, and the number of exceptions being requested.

David Segal, Beasley Way, said that the mature trees along the property line are only green six months of the year. Since his property backs 80% of Mr. Chiappellone’s property, he would lose all privacy. He objected to the other adjacent developments being two-story and he strongly opposes this project.

Jeff White, Cox Street, said that he was not against development in Sonoma, but wants it done correctly.

Comm. Cuclis asked Mr. Segal if the balconies were the greatest concern, perhaps there was a way to mitigate the privacy issue. Mr. Segal said the concern was not only height but also mass, and referred to what he called a promise by the Commission too not over build this area. Acting Chair Cuclis closed the public hearing at 8:45 p.m.

Comm. Cook said changes in code on the one hand allow higher densities in mixed-use zones, but require greater setbacks, attempting to balance the number of infill units and impact on neighbors. Goodison said the new zoning does strive for higher density, but at the same time there must be compatibility with the neighborhood and an adequate transition between mixed-use zones.

Comm. Cuclis said one of the constraints of this project was retaining the existing house. She opposed the project due to inadequate parking and setback issues.

Comm. Paynter acknowledged that privacy issues are common when density increases and it is harder now to be equitable with recent changes in setbacks for two-story buildings. He said either a two-or three-unit structure, single story, would be a more acceptable approach for these neighbors.

Comm. Gallian said he agreed that the project should be denied, that the project must have appropriate setbacks, meet parking requirements, and eliminate tandem parking. The maximum units possible to support the required parking on this property would be two units in the back, the approved four-plex, and possibly splitting the house in front for a duplex.
Comm. Yankovich expressed that there are inherent conflicts with mixed-use projects. He said the two-story structures are not really an issue if they fall within the required setbacks. He objected to the number of variances with this proposal.

It was moved by Comm. Yankovich, seconded by Comm. Paynter, to deny the project. The motion carried unanimously.

**ITEM #5 – PUBLIC HEARING: Application for a Use Permit allowing the conversion of a commercial building into a shopping center and provision of additional retail space; 2 West Spain Street.**

**Applicant/Property Owner:** William Dimick/Lawrence and Jacquel Viviani

City Planner Goodison presented staff’s report. The Commission discussed at length the parking deficits, the number of employees and potential tenants that would impact parking.

Chair Anderson opened the public hearing at 9:15 p.m. Project Architect Bill Dimick, discussed the project, the promenade connecting Casa Grande parking to the Plaza, converting the existing structure to retail use, and a proposed building addition. He hoped that the Planning Commission would focus on the project and not just count parking spaces.

Comm. Gallian asked about the $50,000 that Sonoma Cheese Factory put into the parking lot improvements and whether they owned some portion as a result. The applicant said no, there wasn’t any kind of written agreement.

Chair Anderson said the idea of a promenade was significant, allowing pedestrians to walk to the square from Casa Grande parking, adding significant commercial value. It would also be valuable to move the light industrial function out of the Plaza, giving more opportunity for the retail type of stores found in the Plaza.

City Planner Goodison said if the project moves forward, the Commission would need to review the elevations before it goes to the DRC. The historic photograph shown by Mr. Dimick shows a functional building and place for delivery trucks. With that production function gone, the building exterior begs for improvement.

Comm. Yankovich suggested that the Commission approve the concept of the project, bearing in mind that the City Council will be reviewing a possible reduction in parking requirements on the Plaza at their next regular meeting.

Captain John Crossman, State Park Superintendent for the Silverado section, said the State has an interest in the historic servants’ quarters that were recently protected with a new roof. The adobe is sensitive to water damage and there is even concern that the plantings near the patio could cause damage. The lot line is difficult to determine with improvements over the years, and some markers have been obliterated. Regarding capacity, parking in Casa Grande during special events was full, with 111 spaces plus gravel areas. Regular use of the lot also includes tour buses that take up many spaces. He suggested that historic consultant John Marian Hurley, who has assisted the State Parks Department, be contacted for more information.

Comm. Paynter asked if a traffic study would be helpful. Staff said that the issue is more of a parking inventory than a use inventory. Chair Anderson closed the public hearing at 9:50 p.m.

Comm. Gallian said the project was going in the right direction, but more information was needed on the history of parking usage and work shifts at the Cheese Factory associated with parking use, to determine what impacts can be mitigated.

Comm. Yankovich said the proposal for upgrading the existing building was welcomed. He said it would be wise to wait on the proposed new retail space to see if the City Council modifies parking requirements on the Plaza.

Comm. Cook said he would encourage Mr. Dimick to consider the input from Captain John Crossman regarding the adobe servants’ quarters due to the historic designation.

It was moved by Comm. Paynter, seconded by Comm. Yankovich, to approve the conversion of the existing space to a retail center, but to table the new building addition. The new additional retail space proposal will be continued to a future hearing at the discretion of the applicant, at which time the applicant can provide additional guidance on the historic parking allowances, and a report based on the City Council’s review of parking allowances on the Plaza, scheduled for May 19, 2004. The motion carried unanimously.

Comm. Gallian moved to amend the motion, adding that the applicant would work with Captain John Crossman, State Park Superintendent, over the historic adobe servants’ quarters that are sensitive to water. The motion was seconded by Comm. Cook. The motion carried unanimously.
ITEM #6 – PUBLIC HEARING: Application for a tentative map allowing a two-way division of property, in conjunction with setback exceptions, as well as approval of a second unit, a home occupation permit, and a solar panel array; 873 First Street West.

Applicant/Property Owner: William Willers and Carol Marcus

City Planner Goodison presented staff’s report.

Chair Anderson opened the public hearing at 10:10 p.m. Applicant Bill Willers described the proposal in detail using computer images of the site plan and elevations. The allowable density has increased from 12 units per acre to 20 units per acre in the HDR zone, since the project was originally approved in 2001. This allows the potential for three units. The new proposal is to subdivide the parcel, construct a single-family residence with a detached second unit, and leave the southern parcel undeveloped. He asked to repeat the setback exceptions that were allowed in Heritage Court and to lock in a five-foot easement on the zero lot line for maintenance.

Comm. Cook asked if any of the Heritage Court neighbors had objections. The applicant replied that there had been no objections from neighbors and for several owners this is a second property for weekend use.

Comm. Gallian asked why the applicant’s own house was downsized and if there would be a problem marketing the second parcel with the access easement. Mr. Willers said they liked the compactness of the new design better and that they didn’t plan on selling the second parcel until their family was raised.

Chair Anderson said that the west property line of four feet was approved before and given the setbacks throughout the Heritage Court subdivision, these were compatible. Although a zero lot line is unique, the owner owns both lots right now. Therefore he said the setbacks were a reasonable exception.

Comms. Cook and Yankovich said the applicant made a convincing argument that the setbacks are compatible with the Heritage Court subdivision.

It was moved by Comm. Cook, seconded by Comm. Gallian, to approve the tentative map and exceptions proposed for Lot 1 including the second unit, the home occupation, and the solar panels; to eliminate Condition of Approval #1a, requiring a five-foot setback requirement along the western and southern property lines, amending #1a to require an access easement. The Planning Commission also stipulates that project does not require DRC approval, since it is compatible to the previously approved project. The motion carried unanimously.

ITEM #7 – PUBLIC HEARING: Environmental review of a proposal to construct storm drain conduit and related improvements; East side of First Street West, north of West Spain Street.

Applicant/Property Owner: City of Sonoma

City Planner Goodison presented staff’s report, recommending that the Planning Commission adopt a negative declaration with regard to the proposed improvements along First Street West. He also reported that the Community Services and Environment Commission voted 4-1 wanting the City Council to consider other options for improvements in order to preserve the ditch. City Engineer Bonnoiit researched the possibility of designing the storm drain in the middle of the street to absorb run off water, and at the same time support some vegetation in the ditch; the plan however wasn’t feasible.

Comm. Yankovich referred to the Initial Study with regards to Biological Resources, which did not indicate “potentially significant impact” on riparian habitat or adverse effect on wetlands.

Chair Anderson referred to the recommended removal and replacement of the eucalyptus trees, finding no issues with the arborist’s recommendations.

Chair Anderson opened the public hearing at 11:00 p.m. Will Pier, Community Services and Environmental Commission said he preferred an open system for flood control versus a closed system. Closed systems throughout the country are breaking down, are costly to repair, have more run off into the creek. In addition, the open system can increase the volume for capacity during flood time.

Caitlen Cornwall, Sonoma Ecology Center, presented two approaches to urban storm water management. The first system was in practice up until ten years ago, involves the use of underground pipes to collect high water flow that later comes out in the Sonoma Creek. The old systems are expensive to fix and there is a loss of habitat. The second approach, an open system, features surface water and benefits of dilution of pollutants and spreads water out versus dumping directly into the creeks. She agreed that the ditch was not an exotic habitat, but urban streams frequently become parks for community enjoyment. Chair Anderson closed the public hearing at 11:15 p.m.

Comm. Cook described a similar situation along East MacArthur where there was a proposal to underground a ditch. Due to community interest in preserving the ditch, it was preserved as an amenity enjoyed by many. He thought this item was an open and closed case until hearing public testimony of potential benefits. In his view, the removal of the eucalyptus trees could benefit the ditch as they inhibit growth under their canopies.
Comms. Gallian, Cuclis, and Paynter agreed that there wasn’t enough data to determine the impacts on hydrology and it would be difficult to make a decision based on the environmental checklist. Comm. Paynter questioned whether the Public Works Department had given any consideration to other alternatives that might allow the ditch to be retained. Comm. Gallion raised the question of whether the removal of the ditch would lead to an impact on groundwater and expressed concern that that issue had not been adequately addressed in the initial study.

Goodison reviewed the findings of the initial study with respect to hydrology and a discussion followed between the Commissioners.

Comm. Cuclis agreed with staff that the Commission’s role was to determine if the project would create any significant environmental impact according to CEQA and that the City Council would look at the merits of the project.

Comm. Paynter asked whether consideration had been given to any cultural resources that might extend out from the ditch. Goodison said that they examined the ditch, and the standard condition of approval require that when construction is occurring and something is found, work must stop to evaluate the discovery.

It was moved by Comm. Yankovich, seconded by Comm. Gallian, to adopt the negative declaration, with the recommendation that the City Council consider other methods of addressing the flooding issue that would allow the ditch to be preserved. The motion carried four to two, Paynter and Cook dissenting.

ITEM #8 – PUBLIC HEARING: Consideration of amendments to Development Code revising the density ranges associated with various zoning designations in conformance with the Housing Element of the General Plan; City-wide.

**Applicant/Property Owner:** City of Sonoma

Planning Administrator Goodison presented staff’s report.

**Chair Anderson opened the public hearing at 11:22 p.m.**

There were no comments from the audience.

**Chair Anderson closed the public hearing at 11:22 p.m.**

It was moved by Comm. Yankovich, seconded by Comm. Cuclis, to adopt a negative declaration with regard to the proposed amendments to the Development Code, and recommend that the City Council adopt the amendments to the Development Code. The motion carried unanimously.

**Issues Update** – none

**Comments from the Commission** – none

**Comments from the audience** – none

Meeting adjourned at 11:25 p.m. to the regular meeting scheduled for June 10, 2004, at 6:30 p.m.

Approved:

______________________________
Debra N. Rogers, Administrative Assistant
City of Sonoma
Development Services Department
BUILDING PERMIT # 17034
Project Description
TENANT IMPROVEMENT
STORE EXPANSION

Job Address
2 W. SPAIN ST.,

Owner/Builder
SOMMA CHEESE FACTORY

Contact Name
H. WILLIAM L. DIMICK

Contact Phone
018-162-004

Contact Address
7.42 FANCE ST.

Permit Date
05-19-05

RB 2005-06-28

Estimated Total Project Cost: $ 10,000

Check all that apply
□ Holding Tank □ Plumbing □ Siding □ Grading
□ New □ Electrical □ Alteration □ Repair □ Demolition
□ RPD □ Duplex □ Apartment □ Condo □ RUL
□ Commercial Bldg. □ Accessory □ Pool □ Retain
□ Other

LOT
17820

LAND USE
Residential

FIRE DEPARTMENT
No Sprinkler System required

Applicant Checklist
□ Filed Sewer □ Septic System □ NA - No plumbing

Design :

Applicant Signature

Owner/Builder Signature

Contractor Signature

Applicant Address

Owner/Builder Address

Contractor Address

Applicant Telephone

Owner/Builder Telephone

Contractor Telephone

Permit Valuation: $ 161,357

DEPOSIT

Permit Validation

By

Date

UP TO $ 1,000.00

27 JUNE 05

15% HOLDING FEE FOR DECEMBER 1, 2005, AND IT MUST BE PAID WITH THE REST OF THE PERMIT FEE.

NO PROVISION EXIST TO REFUND WITHDRAWAL OF PERMIT.

IN-SUBJECT COPY

IN CASE OF CHANGE IN ANY OF THE ABOVE INFORMATION, THE PROJECT PERMIT WILL BE REVOKED.
**Building Permit Inspection Record**

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**Swimming Pool**

| Pool Pre-Granite                     |      |          |
| Deck Electrical Bonding              |      |          |
| Pool Pre-Plaster                     |      |          |
| Swimming Pool/Equipment Final        |      |          |

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**Use Approval / Occupancy Permit**

Approval must be obtained from all applicable departments listed below prior to using or occupying the structure or portion thereof.

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<th>Department</th>
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Only authorizes use or occupancy after all applicable departments have given approval.

**Building Division**

Use/Occupancy Approval

Elect. Meter Authorization (Bldg. Div.)

Gas Meter Authorization (Bldg. Div.)

**Notes:**

Also see Permits

#1 5/19 71 69

Final Inspections

9/18/69

File 060

Lev.
**Building Permit Inspection Record**

**Job Address:** W. Spain St.

**permit No.:** 17034

**Date:** 6-29-05

**Description of Work:** REMODEL

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### Inspections

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**Smoking Pac**

- Pool: Pre-Gunter
- Doors / Gate
- Pool Electrical Bonding/Plumbing
- Pool Pre-Plaster
- Swimming Pool/Equipment Final
- Pool Deck Elec. Bonding

**Fire Department Inspections**

- Underground Fire Sprinkler / Hydro
- Overhead Fire Sprinkler / Hydrant Test
- Fire Alarm System
- Fire Sprinkler System / Alarm
- Cooking Equipment Fire Systems
- Piping / Extinguishers

**Fire Sprinklers Req'd. Under Separate Permit**

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**Final Inspection**

Approval must be obtained from all applicable departments listed below prior to using or occupying the structure or portion thereof.

---

**Use Approval / Occupancy Permit**

When all applicable signatures have been obtained, this document will constitute an approval for use and occupancy under this permit. See reverse side for additional information.

**Department**

- Sonoma Public Works Department
  1# The Plaza, Sonoma
  (707) 935-2284
  For Public Improvements

- City of Sonoma Fire Department
  350 Second Street West, Sonoma
  (707) 935-2102
  For Fire Dept. Final Approval

- City of Sonoma Planning Division
  1# The Plaza, Sonoma
  (707) 935-3061
  For Landscaping, Exterior Design

- City Hall
  1# The Plaza, Sonoma
  (707) 935-3061
  For Verification of Business Licenses

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**Department**

- Sonoma County Permit & Resource Management
  2550 Venture Ave.
  Santa Rosa - (707) 885-1001
  For Use / Occupancy Permits

- Sonoma County Health Department
  3275 Airway Dr., Suite D
  Santa Rosa - (707) 885-8541
  For Public Health Establishments

**Building Division Will Authorize Use or Occupancy After All Applicable Departments Have Given Approval and Final Building Division Inspection Approval Has Been Obtained.

**City of Sonoma Building Division**

- #1 The Plaza, Sonoma
  (707) 935-3061
  Bldg. Meter Authorization (Bldg. Dw)
  Gas Meter Authorization (Bldg. Dw)

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**NO SIGNATURE REQUIRED**
November 16, 2018

VIA E-MAIL

Ms. Cathy Capriola  
City Manager  
City of Sonoma  
No. 1 The Plaza  
Sonoma CA 95476

Re: Sonoma Cheese Factory

Dear Ms. Capriola:

I represent Comerica Bank & Trust, N.A., Trustee of the Lawrence P. Viviani and Jacquelyn R. Viviani Trust FBO Nina T. Respicio UAD 02/22/1983 and The Lawrence P. Viviani and Jacquelyn R. Viviani Trust FBO Maria Ann Viviani UAD 02/22/1983. The two trusts own the Sonoma Cheese Factory (“Sonoma Cheese Factory”), and are the property owner of the parcel located at 2 West Spain Street, Sonoma, California (the “Property”).

I understand City staff recently inquired about the status of vested rights which attached to the Property under the 2004 Use Permit that the City of Sonoma (“City”) granted to allow the remodel of the existing Sonoma Cheese Factory to include additional retail space (“2004 Use Permit”). Accordingly, the purpose of this letter is to address the City’s questions about the vested rights that have attached to the Property since the approval of the 2004 Use Permit and the remodel of the Sonoma Cheese Factory. It is within that context, I would also like to explain why we believe that the City may approve a further remodel of the space in order to complete the building renovation authorized by the 2004 Use Permit and effectuated with the issuance of building permits in 2005.

Background

The Sonoma Cheese Factory is an existing 11,420 square foot building located at 2 West Spain Street in the City of Sonoma (the “Property”). As of May, 2004, 2,860 square feet area on
the south end of the building was primarily devoted to retail sales, and the remainder of the building was used for cheese production, storage, and administrative offices.¹ The cheese production operation was relocated to a facility on Eight Street East in Sonoma.²

Circa April 1, 2004, the building owner and grantor of the Trust submitted an application to convert the entire Sonoma Cheese Factory building to a retail public market use. On May 13, 2004, the Sonoma Planning Commission approved the April 1, 2004 application and issued the Use Permit. The Conditions of Use provided among other requirements:

“The existing 11,420 square foot building [to] be remodeled/converted to accommodate retail use in conformance with the project narrative and approved site plan” with certain modifications enumerated in the Conditions of Project Approval. The project narrative is set forth in a March 29, 2004 letter to the City from Architect William Dimick (“Dimick Letter”), also enclosed.

The project narrative acknowledged that, “[t]he owner now proposes to develop the property as a retail shopping mall with an expanded Cheese Factory retail area as the theme and anchor store and the balance of the existing space offered for lease on a design/build basis.” The 2004 Use Permit became effective on May 29, 2004, and it authorized the conversion of the existing building into multi-tenant retail center, based upon the City’s findings and conditions of approval.

On May 19, 2005 and within one year of the expiration of the 2004 Use Permit, Mr. Dimick submitted an application for a Building Permit for “TENANT IMPROVMT [sic.] STORE EXPANSION” that was consistent with the 2004 Use Permit authorized uses. The diagram submitted with this application identified the “AREA-A” as the area of focus for the improvements. The Estimated Project Cost was listed as $70,000 and Permit Valuation was $161,357. The Planning Department reviewed the 2005 Building Permit application and sent a letter on May 31, 2005 to Mr. Pete Viviani. The May 31, 2005 letter stated that:

- “The Planning Department has reviewed your building plans in conjunction with approved site plans, elevations, materials, and conditions of approval.”
- “As you are aware, the improvement plans, submitted for Planning Commission review in May of 2004, called for installation of landscaping along the east and north side of the subject property.”
- The Commission’s conditions of approval [from May 13, 2004] for the proposal required submittal of a final landscape plan . . .”
- “. . . the Planning Division is passing [emphasis added] the Zoning Compliance Check for Building Permit application dated May 19, 2005. However, in order to comply with

¹ See Exhibit A
² See May 7, 2004, Planning Commission Staff Report for May 13, 2004, Meeting Agenda Item #5 at p.2
the Planning Commission’s conditions of approval for use of the site, any additional conversion of the building to retail use will require the submittal and Design Review Commission review of the required landscape plans prior to issuance of additional building permits.”

Mr. Viviani and his family continued using the Sonoma Cheese Factory for retail uses that existed both before and after the 2004 Use Permit, and conducted such uses in a manner consistent with the conditions of approval in accordance with Sonoma Municipal Code Section 19.56.040(A). The Sonoma Building Department approved the building permit application and issued Building Permit #17034 on June 29, 2005 pursuant to the City’s determination that the building plans complied with the 2004 Use Permit. Mr. Viviani performed work in substantial reliance on the 2004 Use Permit and Building Permit #17034 and completed the following building renovations in accordance with the City’s findings and conditions of approval:

- removal of a demising wall between the original retail area and Area-A;
- improvements to Area-A to transform it from its manufacturing build-out into a retail sales space; and
- finishing the resulting approximately 5,500 – 6,000 s.f. area into a single open space with separately distributed: (e.g., deli, walk-in refrigerator for sales of bottled drinks, outdoor bar-b-que; wine shop; café; and non-food merchandise).

The City issued additional building permits for interior space improvements pursuant to the 2004 Use Permit. On July 11, 2005, in furtherance of the improvements authorized by the 2004 Use Permit, Peterson Mechanical submitted an application for a second Building Permit to “Replace 2 existing rooftop AC units. Install 1 new rooftop AC unit.” The Building Department approved the mechanical in Building Permit #17302 on January 10, 2006. On September 14, 2005, Voltair Electric submitted an application for a third Building Permit for “Electrical Improvements.” The City approved Building Permit #17169 on September 23, 2005.

On March 6, 2006, the City granted Use / Occupancy Approval for the work completed under Building Permit #17302. On March 16, 2006, the City granted Use/Occupancy of Permits #17034, and #17169. Following the approval, the owner began using the entire 11,400 square feet of the building for retail and public market type uses in accordance with the 2004 Use Permit. The retail use continues to this day. The remodeled 5,000 – 6,000 square foot southern portion was (and is) public-facing. The remaining area was (and is) used for back-of-house: product and display storage; employee break areas; display preparation; office, shipping, gift basket assembly, and other associated back-of-house uses just as contemplated in the use permit.

The 2004 Use Permit was in Effect in 2005 and Remains in Effect Today.

The Sonoma Municipal Code provides that with certain exceptions not relevant here, “[a]ny land use permit or other approval required by this development code shall be obtained...
before the proposed use is constructed, otherwise established or put into operation . . .” *Sonoma Muni C* §19.03.020(B). The Code further provides, "[a] use permit shall be exercised within one year from the date of approval or the permit shall become void, unless an extension is approved in compliance with Chapter 19.56 SMC.” *Id.* at 19.54.040(G). “The approval of a planning permit shall become effective on the sixteenth day following the date of application approval by the appropriate review authority, where no appeal of the review authority’s action has been filed in compliance with Chapter 19.84 SMC, Appeals.” *Id.* at 19.56.020. Section 19.56.040(A) further provides that, “[t]he permit shall not be deemed "exercised" until the permittee has actually obtained a building permit and commenced construction, or has actually commenced the permitted use on the subject property in compliance with the conditions of approval.” Finally, the code provides that the planning commission must grant any extensions for any permit originally approved by the planning commission. *Id.* at §19.56.040(C).

The Sonoma Planning Commission approved the Use Permit application on May 13, 2004. Pursuant to the Municipal Code, the approval became effective 16 days later or on May 29, 2004. The Planning Department then determined that the building plans and application that were filed on May 19, 2005 were consistent with the project authorized by the 2004 Use Permit, and thus, “passed” the permit on May 31, 2005 to the Building Department for issuance of the building permit.\(^\text{3}\) Since the Planning Department “passed” the permit on May 31, 2005, “the use permit was exercised within 1 year from the date of approval.” In other words, the Municipal Code provides for the City to exercise the Use Permit, and since the Planning Department determined that the building plans were passed for approval as consistent with the 2004 Use Permit before the expiration of the 2004 Use Permit, an argument may be made that the Use Permit was effectuated before it expired. Subsequent building permits were also obtained for interior space mechanical and electrical work in furtherance of the 2004 Use Permit. Thus, the owner has vested rights to proceed under the 2004 Use Permit. Even if all of the 2004 Use Permit work was not completed under the first building permit, documentation in the City’s files indicates that any remaining work could be conducted in the future as long as it was consistent with the 2004 Use Permit. And that is still the case today.

**The Property Owner has Common Law Vested Rights to Complete the Sonoma Cheese Factory Approved Under the 2004 Use Permit.**

*AVCO Community Developers, Inc., Plaintiff and Appellant, v. South Coast Regional Commission et al.* (17 Cal.3d 785 (1976)) holds that if a property owner has performed substantial work and incurred substantial costs in good faith reliance upon a permit issued by the government, the property owner acquires a vested right to complete construction in accordance

\(^\text{3}\) The 365th day would have fallen on a Saturday. Under rules for counting dates, if a deadline falls on a weekend or holiday, the next business date is the effective date. Thus, the 2004 Use Permit 1-year term would have expired on May 31, 2005.
with the terms of its permits. Here, my client has perfected its common law vested rights under the 2004 Use Permit by conducting the use authorized by the Use Permit and applying for and obtaining building permits and certificates of occupancy from the City for the use of the space. Moreover, since June 2005, my client initiated the interior space improvements necessary to remodel the existing building on the property for use as an open floor plan, public market style, multi-tenant retail and restaurant project. The use of the space was consistent with the 2004 Use Permit and the conditions of approval prior to its expiration.

We recognize that the Building Department issued the first building permit on June 27, 2005, after the Use Permit expired. Nonetheless, even the AVCO Court recognized that there are times when a building permit was not “an absolute requirement under all circumstances for acquisition of a vested right.” In some cases, the Court noted that a public agency:

“*.*.*may grant another type of permit, such as a conditional use permit, which affords substantially the same specificity and definition to a project as a building permit, and that in such instances a builder might acquire a vested right even though the document was not designated a "building permit." (supra, 17 Cal. 3d 790, 794).

That was the case here; the City of Sonoma granted a conditional use permit that defined the location of the proposed retail tenant spaces in the building. The owner then filed the 2005 building permit application for the interior space reconfiguration, and the Planning Department “passed” it to the Building Permit before the 2004 Use Permit expired. Unlike the situation in AVCO, where the applicant did not file a building permit application and did not inform the public agency of its plans to develop its property, here, Mr. Viviani submitted an application with detailed building plans consistent with the Use Permit plans the City recently approved for the reconfiguration of the retail portion of the existing building. And the use of the space has been consistent with the retail/cheese shop public market type uses allowed in 2004 that simply reconfigured the prior operations authorized on the Property, and the uses have continued since that time. Consistent with that understanding, the City issued other building permits, inspected the work, and issued a certificate of use and occupancy all consistent with the 2004 Use Permit. Thus, the Property Owner has secured common law vested rights to continue using space in accordance with the Use Permit and the 2005 Building Permits.

The 2004 Use Permit Runs with the Land and is the Zoning on the Property.

Section 19.54.040.H of the Sonoma Municipal Code states:

“Use Permits to Run with the Land. A use permit granted in compliance with this section shall continue to be valid upon a change of ownership of the site, business, service, use or structure that was the subject of the permit application. (Ord. 2003-02 § 3, 2003).”
A use permit runs with the land meaning that if the use permit was “exercised” before it expired, then it remains in effect on the Property until the City adopts a new use permit or changes the zoning on the property. Thus, the public market use approved in 2004 runs with the land. That is the zoning. It was “exercised” within a year of the Use Permit expiration, with the further City approval of the 2005 Building Permit and the issuance of the Certificate of Use and Occupancy for the space.

The building was modified per the building permit issued on June 29, 2005 in reliance on the Use Permit. In addition to the zoning running with the land, because substantial work was performed in reliance on the 2004 Use Permit and the 2005 Building Permit (as evidenced by the inspections and certificate of use and occupancy), my client has common law vested rights to proceed with further renovations that may be undertaken in accordance with the 2004 Use Permit. Under the Sonoma Building Code, every building permit that is issued becomes invalid unless the work authorized by the permit is commenced within 180 days after its issuance. No extension was granted because the certificate of use and occupancy was issued on March 6, 2006 which was within one year of the issuance of the June 2005 building permit. For all of these reasons, I believe that my client has demonstrated that it has vested rights to continue operating the existing Sonoma Cheese Factory, and that it may proceed with further tenant improvements in accordance with the 2004 Use Permit which runs with the land.

We look forward to working with you to complete the Sonoma Cheese Factory improvements authorized by the 2004 Use Permit. Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

BUCHALTER
A Professional Corporation

By

Alicia Guerra

AG:sl

cc: Andrea Bruce
Sharon Fong
Lloyd Llewelyn