

PD080726

Hearing Date: June 26, 2009

Exhibit A

Project Discussion

EXHIBIT A DISCUSSION

Permit History

The “Red Barn” sales operation began with its first Use Permit in 1969, which allowed indoor sales of second hand goods and an auction house. All sales and operations were to be located within the building. All citations in brackets “[]” are references to page numbers from Exhibit B.

ZA-505 (issued March 27, 1969) APN 141-013-005 [**Pages 1-7**]

This Use Permit allowed the sale of second hand goods and auction house. Conditions of approval required that all sales and operations be located within the building. The permit expired on March 27, 1972. Minutes from the public hearing at which the permit was approved show that the applicant stated all operations would be located within the structure. The Public Works Department staff was concerned that traffic entering and leaving the property would create “quite a traffic hazard.”

ZA-767 (issued October 29, 1970) APN 141-013-005 [**Pages 8-13**]

This Use Permit allowed the installation of a mobile home. The site plan showed that the site contained two houses, the “Red Barn” (minutes of the public hearing at which the permit was approved said it was “to be used as an indoor flea market”) and a store (minutes of the public hearing at which the permit was approved said it was a “small warehouse”). The applicant stated they only need the mobile home on a temporary basis. The permit expired on March 27, 1972.

ZA-846 (issued April 29, 1971) APN 141-013-005 [**Pages 14-22**]

This Use Permit allowed the addition of outdoor retail sales on two rows of 3’ x 8’ tables, a pony riding ring, a mini-bike track and crafts within the “small warehouse,” and a small outdoor nursery area. The permit expired on March 27, 1972.

ZA-1047 (issued March 30, 1972) APN 141-013-005 [**Pages 23-30**]

This Use Permit allowed the extension of Use Permits ZA-505, ZA-767, and ZA-846. The site plan showed an outdoor retail sales area, restrooms, nursery, refreshment stand, the mobile home, and the barn. The mini-bike track and pony ring were not shown. The permit expired on March 30, 1977.

ZA-1507 (issued August 30, 1973) APN 141-013-005 [**Pages 31-46**]

This Use Permit application proposed a produce stand and outdoor seating area for the snack bar. The site plan showed a wine tasting room as an existing operation. Caltrans submitted a letter, dated July 24, 1973, stating concerns with “additional conflicting movements and consequent distraction” from increased use of the property. They requested an additional traffic lane through this area and adequate driveways. The hearing minutes reflect that the applicant withdrew the seating area for the snack bar from the application and that the permit was issued for only the produce stand [**Exhibit B, Page 44**]. The permit expired on March 30, 1977 [**46**].

ZA-2449 (issued August 28, 1975) APN 141-013-005, 141-013-004, 141-013-008 (portion) [**Pages 47-70**]

This Use Permit allowed the expansion of the parking area to Assessor’s Parcels 141-013-004 and a portion of 141-013-008 (approximately five acres) [**48**].

ZA-2880 (issued in July 1976) [Pages 71-76]

This Use Permit allowed the relocation of a mobile home; it was unclear whether the use was for residential use or some other use.

ZA-3117 (issued April 14, 1977) APN 141-013-004, -005, and -011 [Pages 77-90]

This Use Permit allowed the renewal of Use Permits ZA-1047 and ZA-2449, as modified by this application. The application stated it was for "indoor and outdoor retail sales of new and used merchandise, beer bar, snack food bar, and wine tasting and sales" [77, 79]. The site plan showed an outdoor retail sales area within a dashed area, antiques and gifts inside the "Red Barn," snack bar, wine tasting, parking on the lower level of the property outside of the dashed area, and the relocated mobile home (from ZA-2880) [82].

The approval stated that "*said application for a Use Permit be granted as shown on the attached sketch.*" No conditions of approval were included [81, 82, 90].

ZA-3567-D (issued November 30, 1978) APN 141-013-045 [Pages 91-104]

This Use Permit allowed expanding the parking lot onto the terrace area above (south of) the "Red Barn" area approved for use in earlier permits. The application stated it was for "expansion of existing use permit to include all of C2-P zone (1000' back from Highway 101)" [91].

The following conditions of approval were included [93]:

The approval stated "*that said application for a Use Permit be granted as shown on the attached sketch, subject to the following conditions:*

1. *That the site be landscaped and/or fenced by the applicant and that the landscaping and/or fence plan be approved by the Director of Planning.*
2. *That all landscaped areas and/or fences shall be continuously maintained in a litter-free, weed-free, health, growing condition.*
3. *That there be no increase in the sales activity on the existing or proposed parking lot areas."*

ZA-3629 (issued May 10, 1979) APN 141-013-007 [Pages 104-144]

This Use Permit allowed a parking lot on the parcel northeast of the "Red Barn" area approved for use in the earlier permits. The application stated it was for "Parking" (section 9) of about 950 spaces (section 13) [106]. The resolution approving the project included condition 9, requiring that "all traffic movements to and from Route 101 be restricted to right-turns only," and condition 11, requiring a rezoning of the property where the sales operations and earlier approved parking areas were located [109-110].

The following conditions of approval were included [109-110]:

The approval stated "*that said application for a Use Permit be granted as shown on the attached sketch, and subject to the following conditions:*

1. *That the site be landscaped, including land sculpturing and fencing, where appropriate, by the applicant and that a plan for such improvements be approved by the Director of Planning.*

2. *That all landscaped areas and/or fencing shall be continuously maintained by the applicant in a litter-free, weed-free condition, and all plant material shall be continuously maintained in a healthy, growing condition.*
3. *That the location, type, and wattage of all exterior lights on the property be approved by the Planning Commission.*
4. *That the proposed changes in access be approved by the California Transportation Commission prior to use. This also includes those opening to be closed.*
5. *Provide a drainage improvement study onsite and offsite. Study to be approved by the County Surveyor and California Department of Transportation.*
6. *That the frontage road connecting to the 60 foot easement at the northerly end of the property be a minimum of 100 feet from the intersection. Location to be approved by the County Surveyor.*
7. *Obtain an encroachment permit from Caltrans and construct a commercial driveway at the north end of the property as proposed, including acceleration and deceleration lanes in accordance with State standards.*
8. *That the parking area be maintained in a mud-free and dust-free condition.*
9. *That all traffic movements to and from Route 101 be restricted to right-turns only.*
10. *That it is the property owners responsibility not to impair any drainage facilities which could affect the drainage of the existing highway.*
11. *That the applicant request rezoning of his property from a "C-2-P-V" District to a "H-1-P-D-B-4" District."*

The applicant appealed the decision of the Zoning Administrator through their representative, Myron Etienne, Jr. [111]. On appeal to the Board of Supervisors, condition 11 was deleted, and a new condition was added requiring that the property owner notify the county of any change in property ownership [130].

Analysis

Zoning

Zoning of the property consisted primarily of two base zoning districts: "General Commercial" (C-2) and "Rural" (N). Exhibit E depicts the base zoning districts from 1976 to the present.

The Red Barn assessor's parcel and the property fronting Highway 101 to the southwest of the Red Barn assessor's parcel had a base zone of "C-2" from 1955 until 1991, with overlay districts of "Parking" (P) and "Mobile Home Exclusion" (V) during the late 1970s. In 1991, zoning was changed to "Light Commercial" (LC) with the adoption of the current Title 21.

The area of the property to the rear of the Red Barn frontage along Highway 101 and the property to the northeast were designated with an "N" base zoning district until 1991. In 1991, the northeast property (approved parking area for the Red Barn) was designated Light

Commercial. The area behind the Red Barn property highway frontage was designated "Rural Density Residential" (RDR), a similar zoning district to the old "Rural" designation.

The use of the site, if operated within the limitations of the permits, would be a legal and conforming use under current zoning regulations. The commercial uses located within structures are allowed by Administrative Permit today. The outdoor retail sales, parking areas, and ancillary outdoor uses would require a Use Permit. Any expansion of the outdoor retail sales area would require a Use Permit Amendment.

Current Use Permits

The permits issued through 1977 established land uses (i.e., sales within the building, mobile home, outdoor sales) for the site, but most expired [1-46]. ZA-2449 [47-70], which allowed a parking lot, was superseded by subsequent permits that allowed parking for the same area [77-90]. ZA-2880 was for relocation of a mobile home [71-76]. Current active Use Permits for the "Red Barn" operation include ZA-3117 [77-90] (indoor and outdoor sales; parking), ZA-3567-D [91-104] (parking expansion), and ZA-3629-D [105-144] (parking expansion).

ZA-3117 (1977)

This Use Permit established the use of the site with outdoor retail uses for the first time in 1977. The application stated it was for "indoor and outdoor retail sales of new and used merchandise, beer bar, snack food bar, and wine tasting and sales." The approved Use Permit resolution, in the Decision section, stated that "said application for a Use Permit be granted as shown on the attached sketch." The attached site plan showed an outdoor retail sales area within a dashed area, antiques and gifts inside the "Red Barn," snack bar, wine tasting, parking on the lower level of the property outside of the dashed area, and the relocated mobile home (from ZA-2880). The parking area could fit approximately 260 vehicles, according to calculations conducted by the Public Works Department.

ZA-3567-D (1978)

This Use Permit allowed expanding the parking lot onto the terrace area above (south of) the "Red Barn" area approved for use in ZA-3117. The application stated it was for "expansion of existing use permit to include all of C2-P zone (1000' back from Highway 101)." The minutes of the public hearing at which the permit was approved stated that the applicant stated "he now has 1000 parking stalls in use." This statement relates to what would be on site if the permit were approved, as the existing site (prior to approval of this Use Permit) only had approximately 165 spaces. The parking area approved under ZA-3117 and ZA-3567-D could fit approximately 425 vehicles, according to calculations conducted by the Public Works Department. He also indicated that "he will not be increasing his sales area along with increasing his parking area" (emphasis added—99, Discussion section). The approved Use Permit resolution, in the Decision section, Condition 3 stated that "there be no increase in the sales activity on the existing or proposed parking lot area" [93].

ZA-3629-D (1979)

This Use Permit was issued after multiple public hearings [105-144] beginning at the Zoning Administrator, referred by the Zoning Administrator to the Planning Commission, referred back to the Zoning Administrator, and to the Board of Supervisors on an appeal from the Zoning Administrator's decision. The Aromas-Hall-Pajaro Land Use Advisory Committee had recommended denial of the parking lot expansion due to increased parking leading to drainage concerns downstream along Carneros Creek and that "additional traffic in this location would be dangerous" [123]. The first Zoning Administrator hearing occurred on March 15, 1979 [125;

137-138]; staff identified four concerns: traffic, General Plan consistency, growth inducement, and loss of residential land [125 -126].

It was clear during the hearings to consider the Use Permits issued during the 1970's, that County staff and Caltrans was concerned with traffic issues at this location [pages 42-43, 44, 119, 123, 125, 126, 137, 139, and 141]. Staff expressed concerns during hearings on the 1979 Use Permit that allowed the parking on APN 141-013-007 that approval for more parking spaces could lead to expansion of the commercial operations on the site [109, 112, 126, 138].

The zoning ordinance in effect at the time (Ordinance 911; 1979) allowed the "Uses Permitted" listed below (Exhibit F). Uses Permitted are those that are allowed uses if all standards are met. Other sections of the ordinance describe uses that required Use Permits.

Uses Permitted:

- (1) Retail stores and shops of a light commercial character and conducted within a building, including appliance stores, banks, barber shops, beauty parlors, book stores, laundrettes, cleaner or laundry agents, dress shops, drug stores, food stores, furniture shops, millinery shops, offices, radio sales, restaurants, shoe shops, storage garages, studios and tailor shops, and other uses which are of similar character to those enumerated and which will not be detrimental or obnoxious to the neighborhood in which they are to be located.
- (2) Pet shops and boarding kennels, auto sales, (except used cars), dancing academies, wholesale stores or storage (except those requiring a Use Permit under subsection 22b.), auto repair shops, service stations (except those requiring a Use Permit under subsection 22b.), auto laundries, bottling works, carpenter shops, lumber yards, undertaking establishments, paint, paperhanging and decorator's shops, plumbing shops, tinsmith shops, storage of household goods.
- (3) Signs appurtenant to any permitted use shall be permitted for each establishment according to the following formula:
 - (a) Signs shall be permitted to have an area not to exceed three (3) square feet for each one (1) foot of frontage, provided that any business establishment shall be allowed a sign of fifty (50) square feet and no more than three hundred (300) square feet, and further provided that the area permitted may be divided into not more than six (6) single or double faced signs; said formula shall apply to each street frontage.
 - (b) Signs not exceeding fifteen (15) square feet in area for each building site may be displayed for the purpose of advertising the sale or lease of property upon which displayed.

County Staff, in 1979, pointed out to the hearing bodies that the commercial uses, if the owner established any of the Uses Permitted, would only be controlled by the number of parking spaces. Due to this concern relating to Uses Permitted under the zoning ordinance, staff and the Zoning Administrator were concerned that the applicant could expand commercial activities by adding Uses Permitted to the site, thus increasing the site intensity without any county controls. Staff recommended denial of the permit [138, 140], noting that the only control over many commercial uses was the parking requirements. By expanding parking, the site use could be greatly intensified without any county controls. The Zoning Administrator was concerned that permitted uses could lead to site intensification, which would lead to exacerbating traffic concerns already identified at this location. The Zoning Administrator referred the application to the Planning Commission, for a recommendation [125].

The Planning Commission held a public hearing on April 11, 1979, with a staff recommendation that the Commission recommend that the Zoning Administrator deny the permit [126; 139-140].

After hearing from the applicant's representative, the Planning Commission recommended that the Use Permit be approved, that it be conditioned to require landscaping to lessen the visual impact, and that it "be conditioned to require a zoning district that would provide for substantially more control over the commercial development than currently exists..." including a "D" designation [126].

The Zoning Administrator considered a staff recommendation reflecting the Planning Commission's recommendation on May 10, 1979 [141-142; 144]. In the resolution approving ZA-3629-D [109-110], the Zoning Administrator found, in part, that "the relocation of the existing parking now in a "C-2" district will allow further development of that property" and that "[i]t is necessary to obtain Use Permit control over any new uses in order to review the possible impact of those uses on the area and to mitigate any adverse effects" [109]. These statements appear to have led to the disagreement between the applicant and county staff over whether the issuance of this series of Use Permits allowed expansion of the outdoor retail sales area. However, in researching the files, staff has determined that the concern had to do with the lack of control over permitted uses for the site. New uses could be constructed at the site with just a building permit, thus intensifying the use of the site without any ability to require reasonable conditions of approval to control site intensification and existing traffic concerns.

The Zoning Administrator's approval of ZA-3629-D included Condition 11 [110], which required that the applicant request rezoning from a "C-2-P-V" (General Commercial, Parking and Trailer Exclusion) district to an "H-1-P-D-B-4" (Highway Frontage, Parking, Design Control, Building Site) district." The rezoning requirement was referring to the "Red Barn" property and the parking areas approved under ZA-3117 and ZA 3567-D, not the new property being added under ZA 3629-D, which had an "N-J" zoning designation [108]. Condition 11 was imposed due to concerns relating to expansion of the commercial uses at the site. For this reason, the Zoning Administrator required the rezoning. The project applicant appealed the decision on May 29, 1979, specifically the condition requiring the rezoning. The owner's representative stated, in a letter to the Board of Supervisors on May 29, 1979, that "no additional commercial uses are proposed which warrant rezoning in accordance with condition 11" [111]. The Board of Supervisors, on appeal, eliminated condition 11. The Board of Supervisors added a new condition 11 that "the County receive 90 days notice prior to any change in property ownership" [130].

Outdoor retail sales were not a Permitted Use in the Zoning Ordinance in effect at that time. Uses Permitted were outlined in Ordinance 911, Section 22.a (Exhibit F). Section 22.b.4 of Ordinance 911 clearly described that outdoor retail sales were a conditional use, which required a Use Permit prior to allowing the use. Allowing an expansion of an outdoor retail use would have required an amendment to the existing Use Permit(s) or a new Use Permit. As can be seen in Exhibits F1 and F2, outdoor retail sales have required a Use Permit from prior to 1977 through the present day. No amendment to this Use Permit, to allow an expansion of outdoor retail sales, has been found. No statements relating to expanding the use have been found in any of the files. The concerns related to potential site intensification by "Uses Permitted" did not mean that the expansion of outdoor retail sales was foreseen or viewed as allowable. Such expansion would have required a Use Permit under the zoning ordinances in effect since 1977.

The actions by these permits do not show any intent to expand the outdoor retail sales beyond that allowed under Use Permit ZA 3117. The minutes of the hearing for ZA-3567-D [page 99] state that the applicant "will not be increasing his sales area along with increasing his parking area" (emphasis added). The approved Use Permit resolution, in the Decision section, Condition 3 [page 93] states that "there be no increase in the sales activity on the existing or proposed

parking lot area.” The information contained in the file for ZA-3629-D did not provide any indication of an expansion of the outdoor retail sales.

Based on this evidence in the record, staff has concluded that no expansion of the outdoor retail sales area was applied for and no expansion was authorized by any of these permits. The limits established by the original 1977 permit still apply to the use of the site for outdoor retail sales.

During the application to expand the parking area under file number ZA-3629-D, staff had a concern that the property owners could expand the site with commercial uses that were “Uses Permitted” under the zoning ordinance in effect at that time (Exhibit F). None of those listed Uses Permitted have occurred since the issuance of those permit amendments or exist on the site at this time.

The owner and representatives have stated that the Use Permits that allowed the expansion of the parking area also allowed the expansion of the outdoor retail uses. In a December 3, 2008, letter from Myron Etienne, Jr. to the Monterey County Planning Department, Mr. Etienne states that “[f]rom 1979, on outdoor sales have been held on the entire southwestern side of the property under the C-2 zoning designation” (Exhibit G, 12/3/08 letter from Etienne to Novo, page 2). However, an application submitted in 1990 for a restroom/office building shows parking in the area in conformance with the parking area as described and approved in the 1977 Use Permit. In other words, in 1990, the project plans still showed the outdoor retail uses confined to the small area of the site approved in 1977 for outdoor retail uses (Exhibit I).

Staff has reviewed the files and finds no statements that support the owner’s position. In the file for ZA-3567-D, the applicant states that “he will not be increasing his sales area along with increasing his parking area” (emphasis added) [99]. In the file for ZA-3629-D, the applicant’s representative stated that “no additional commercial uses are proposed which warrant rezoning in accordance with condition 11” [111]. No statements are found in the files that support the applicant’s contention that the outdoor retail sales were intended to be expanded outside the area authorized by the 1977 Use Permit. Concerns discussed by staff and at public hearings related to intensification of the site by Uses Permitted, not those that would require a Use Permit. Outdoor sales required a Use Permit. In addition, no statements have been found in the files, staff reports, resolutions, or any other documents prepared by county staff, or approved by the Planning Commission or Board of Supervisors, that allowed expansion of the outdoor retail sales area.

Code Enforcement Activities

In 1981, Monterey County Planning Investigator Carolyn Anderson sent the property owner a letter stating that display and sales areas had encroached into the parcel to the northeast, in the Rural zoning district, in violation of Use Permit ZA-3629-D [136]. We have no evidence that the sales area has encroached into that area since the letter was issued. The letter also stated that the parking area had also encroached into the Rural zoning district, in violation of Use Permit ZA-3567-D. Photographic evidence shows that parking or storage of vehicles has occurred in this area in this decade.

In November 2008, the property owners were notified that the outdoor retail sales were in violation of Use Permits issued for this property. A Notice of Violation and letter were issued on November 21, 2008 (Exhibit G). A letter was sent on March 17, 2009 (Exhibit G) outlining the outcome of research related to the issued Use Permits for the property. Staff met with the property owner and representatives in December 2008 and again in April 2009 to discuss

possible solutions. To date, staff and the applicant have not agreed that a violation of conditions exists or that the outdoor retail sales area has exceeded the area authorized by the Use Permits.

Pending Violations Identified

At the meeting on December 15, 2008, and again on April 1, 2009, County staff presented their evidence of the operation's non-compliance with the Use Permits and their conditions. As a result of those meetings, staff agreed to review the files and information in the record to identify all known violations. The violations identified, after research for this staff report, include the following:

- Outdoor retail sales outside the authorized area (Use Permit ZA-3117, ZA-3567 D, Condition 3, and ZA-3629-D)
- Left turn from Highway 101 into the site (Use Permit ZA-3629-D, Condition 9)
- Parking and storage of vehicles in Rural Density Residential area (Use Permit ZA-3567)
- Lack of required landscaping (ZA-3629, Conditions 1 and 2; approved landscaping plan)

The list of identified violations has changed over the last few months as research was conducted as a result of discussions with the applicant and in preparation for this staff report.

Conclusion

The County issued a Use Permit for outdoor retail sales for a specified area at the "Red Barn" location and issued subsequent Use Permits to allow expansion of the parking areas. Staff has requested that the applicant return use of the site for outdoor retail sales to the area designated for outdoor retail sales in the 1977 Use Permit (ZA-3117; Exhibit B, Page 82).

Several options are open for the Planning Commission's discussion and direction, including but not limited to the following:

1. Determine that the operations are in compliance with the approved Use Permits.
2. Determine that the operations are not in compliance with the approved Use Permits and/or their conditions of approval and direct staff to prepare modifications to the Use Permits and/or the conditions of approval.
3. Determine that the operations are not in compliance with the approved Use Permits and/or their conditions of approval and direct staff to prepare a staff report, and set a public hearing, to revoke the Use Permits.