



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: JULY 16, 2015
TO: PLANNING COMMISSION
FROM: PLANNING AND BUILDING SERVICES
SUBJECT: ADMINISTRATIVE APPEAL #AA 2015-0002

On June 16, 2015 Mr. Brian Momsen, acting on behalf of Alex and Anthony Chehada ("Appellants"), appealed Planning and Building Services issuance of building permit #BU_2015-0104 for the construction of a new 9,100 square foot retail store at 8451 East Road in Redwood Valley, APN 163-132-14. The permit was issued on June 8, 2015.

Background:

On February 24, 2015, the application for #BU_2015-0104 was submitted to Planning and Building Services. The application proposed a 9,100 square foot retail store with associated improvements including parking but excluding signage. The parcel is located on East Road in Redwood Valley, on the parcel directly north of the Savings Bank. There are commercial uses on both sides of East Road in this area, which serves as a "downtown" of Redwood Valley.

While a zoning clearance itself is not an action that requires a public hearing, Section 20.208.010 of the Mendocino County Code ("County Code") states that:

Request for hearing before the Planning Commission may be made by the property owner or any interested person from any decision, determination, or requirement of the Planning and Building Services Department by filing a notice thereof in writing with the Planning and Building Services Department within ten (10) days after such decision, determination or requirement is made.

This appeal was filed within the ten (10) day requirements and therefore requires a hearing by the Planning Commission.

Zoning Clearance:

The subject parcel has a General Plan land use designation of Commercial and is zoned C-2 (General Commercial District) in accordance with the General Plan's "Community- Specific Policies". In the "Community-Specific Policies" for Redwood Valley, the downtown area has been designated to function as a commercial hub for the surrounding community. These policies enable the maintenance of the current core while allowing for growth consistent with the community as a whole, including new commercial development south of School Way (Goal CP-RV-1). Section 20.092.005 of the Mendocino County Code describes the intent of C-2 zoning:

This district is intended to create and enhance commercial areas where complete retail sales and services are available and desirable for public service are available and desirable for public and convenience. Typically this district would be applied in the central core of community areas where central area

commercial facilities were desired, or at major roadway intersections. Uses in this district are also intended to facilitate live/work convenience through multiple story construction and shared parking arrangements for a range of residential and commercial uses.

Section 20.004.045, Effect of Zoning Enabling Plan, establishes that the new and existing use of this and every other parcel located within the unincorporated County is subject to the use limitations and development standards corresponding to the zoning district in which it is located. In this instance, the new store is located in the C-2 (General Commercial) zoning district. Accordingly, the zoning clearance for building permit #BU_2015-0104 was based on the C-2 zoning district as follows:

- The proposed project qualifies as either use type Food and Beverage Retail Sales (Section 20.024.075 of County Code), or use type Retail Sales, General (Section 20.024.120 of the County Code). Both of these use types are permitted by right within the C-2 (General Commercial) zoning pursuant to Section 20.092.010 of the County Code.
- The proposed retail building meets the development standards of the C-2 (General Commercial) zoning district presented in Chapter 20.092 of the County Code (see sections 20.092.025 through 20.092.045). The setbacks in this zoning require that all portions of the building must be setback at least 10 feet from the front property line, and 20 feet from the rear property line. The plot plan provided with the application clearly shows this. Submitted plans also show the building does not exceed the 50 foot height limit.
- The plans are in conformance with the 35-foot Corridor Preservation Setback required on East Road (Section 20.152.020 of County Code). Corridor Preservation Setbacks are required in order to ensure that there is sufficient space for public road repairs, improvements, and potential widening. It is measured from the center of the street and is in addition to any setbacks required by a parcel's zoning when it extends into a property. The distance of a Corridor Preservation Setback is determined by the Department of Transportation's classification of a road. In this instance, East Road has been identified as a "major collector", and requires a 35-foot Corridor Preservation Setback (Section 20.152.020 of the County Code). The plot plan provided clearly shows the building location complies with this requirement.
- The plot plan also clearly demonstrates that the project is in conformance with the requirements of County Code Chapter 20.180 Off Street Parking. County Code Section 20.180.020 states that "Retail stores, offices, commercial banks, savings and loans, food stores, drug stores and other similar uses not specifically mentioned in this section: one (1) parking space for each three hundred (300) square feet of gross floor area." The proposed building has 9,100 square feet and therefore requires 30 parking spaces.

Because the project is a permitted use type and would be built consistent with the above applicable development standards and parking requirements the Planning Department granted a zoning clearance for the building permit.

CEQA

Section 15369 of the CEQA Guidelines states that "(a) ministerial decision involves only the use of fixed standards or objective measurements" and further clarifies that "(a) building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee."

Section 15268 of the CEQA Guidelines states that ministerial projects are statutorily exempt from the requirements of CEQA. This section reads (emphasis added):

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

(1) Issuance of building permits.

(2) Issuance of business licenses.

(3) Approval of final subdivision maps.

(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

As stated above, the project met all development standards as presented in the County Code. Therefore, the zoning clearance conducted for this project qualifies as a ministerial decision and is statutorily exempt from CEQA review.

The Appeal

The Administrative Appeal of the issuance of this building permit submitted by the Appellants argues that the project is inconsistent with CEQA Guidelines and the Mendocino County General Plan. Specifically, the appellants maintain CEQA case law has established the need for an environmental review on similar projects (citing *Day v. City of Glendale*, *Ideal Boat & Camper Storage v. County of Alameda*, and a recent lawsuit against the City of Joshua Tree, CA approving of a Dollar General Store). Also, the appellants state the project is inconsistent with the General Plan, specifically Policies CP-RV-1, CP-RV-2, CP-RV-7, 2.2, and Action Item CP-RV-3.2.

As a general response, the zoning is consistent with the general plan land use designation as shown in Table 3-1 of the General Plan. The General Plan Environmental Impact Report adopted in 2009 (EIR) examined the potential environmental impacts at the maximum level of development permitted by the General Plan land use designations. The site of this project, as well as the surrounding properties, has the General Plan land use designation Commercial.

During the process of updating the County's General Plan in 2009, discussion with the community and review of the most appropriate use of the land led the area of the subject parcel to be designated as commercial. The intent of this was to maintain and offer the possibility of an expansion of the previously established commercial center of Redwood Valley. The development standards being applied to this project are consistent with the land use designation and the General Plan.

The Appellant's letter makes reference to several General Plan policies. These are responded to individually below, but, in general, General Plan policies are only referred to for projects requiring discretionary action.

In reference to General Plan Policy CP-RV-7, which states that parking is to be relocated off the East Road frontage, there are no provisions in County Code Chapter 20.180 regulating Off Street Parking that would require this on a project with ministerial approval. Staff could only invoke that Policy on a project that required discretionary action, such as a use permit.

The appellants' letter refers to infill being defined as the use of land within an already built up area such as between buildings. While the granting of a building permit zoning clearance does not require staff to determine if the project qualifies as "infill", the subject parcel is currently vacant which is bordered by commercial use on both sides of the property.

Similarly, there are no community design requirements for the Redwood Valley in the County Code that would implement Action Item CP-RV-3.2. This Action Item states that commercial developments on East Road should have a consistent architectural theme and be compatible with the character of Redwood Valley. Again, this Action Item would only apply to projects involving a use that requires a use permit which is discretionary action.

Regarding the potential water usage by the project, the project is located within the Redwood Valley County Water District but will be utilizing a newly constructed well in addition to a preexisting well. These issues are under the jurisdiction of the Department of Environmental Health, which gave its clearance for building permit #BU_2015-0104.

As the project meets the development standards for its parcel's zoning, planning staff granted zoning clearance of the building permit. Because the project is a permitted use by right in its zoning and does not require an additional planning permit of any kind, staff has no authority to subject the project to any conditions of approval, or apply any additional General Plan policies to its zoning clearance.

Recommendation

Deny Administrative Appeal #AA 2015-0002, finding that the Building permit #BU_2015-0104 zoning clearance was granted based on staff's correct determination that:

- 1) The building permit zoning clearance for a permitted use is a ministerial decision that is statutorily exempt from CEQA review pursuant to Section 15268 of the CEQA Guidelines.
- 2) The proposed Food and Beverage Retail Sales and Retail Sales, generally are use types permitted by right in the C-2 (General Commercial) Zoning District.
- 3) The location and height of the proposed building complies to the C-2 (General Commercial) development standards and corridor preservation setbacks.
- 4) The proposed onsite parking lot complies with the County parking requirements.