

CITY OF SANTA ROSA
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
STAFF REPORT FOR PLANNING COMMISSION
November 30, 2017

PROJECT TITLE

ZC17-0056 Applicant Appeal

APPLICANT

Rajinder Singh

ADDRESS/LOCATION

201 W 7th St.

PROPERTY OWNER

Jennifer Jensen, et al

ASSESSOR'S PARCEL NUMBER

010-155-008

FILE NUMBER

ZC17-0056

APPLICATION DATE

June 26, 2017

APPLICATION COMPLETION DATE

June 26, 2017

REQUESTED ENTITLEMENTS

Zoning Clearance

FURTHER ACTIONS REQUIRED

None

PROJECT SITE ZONING

R-1-6-H

GENERAL PLAN DESIGNATION

Low Density Residential

PROJECT PLANNER

Andrew Trippel

RECOMMENDATION

Deny Appeal

Agenda Item #8.2
For Planning Commission Meeting of: November 30, 2017

CITY OF SANTA ROSA
PLANNING COMMISSION

TO: CHAIR CISCO AND MEMBERS OF THE COMMISSION
FROM: ANDREW TRIPPEL, CITY PLANNER
PLANNING AND ECONOMIC DEVELOPMENT
SUBJECT: QUICK PICK MARKET – ZONING CLEARANCE APPEAL

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Planning and Economic Development Department (PED) that the Planning Commission, by Resolution, deny the appeal.

EXECUTIVE SUMMARY

Zoning Clearance ZC17-0056 authorized Continuation of Legal Nonconforming Use/Change of Business Ownership for Quick Pick Market, a Small Grocery Store/Neighborhood Center, located at 201 W. 7th Street, in the West End neighborhood. The appellant requested hours of operation 5:00 AM – 11:30 PM. Neighborhood residents assert that historic hours of operation have been approximately 8:00 AM – 8:00 PM and provided evidence to support this assertion. No substantial evidence was provided by the appellant to counter this assertion; therefore, a staff determination was made to authorize Continuation of Legal Nonconforming Use/Change of Business Ownership for hours of operation 8:00 AM – 8:00 PM based upon consideration of the evidence provided. Planning and Economic Development staff, with consultation from the City Attorney's office, determined that the vested right of the Legal Nonconforming Use is to the historic hours of operation of the Legal Nonconforming Use and not normal and extended hours of operation as defined by the Zoning Ordinance.

BACKGROUND

On January 18, 2017, business owner Ravi Siljander submitted a Zoning Clearance request for authorization of Continuation of Legal Nonconforming Use/Change of Business Ownership for a Small Grocery Store/Convenience Store type use located at 201 W. 7th. Substantial evidence and neighborhood resident testimonies confirm that a small-scale, neighborhood-serving grocery store has operated at that location for several decades; however, Zoning Clearances documenting Continuation of a Legal

Nonconforming Use/Change of Business Ownership have been issued only since 2013 and have not described existing business hours of operation. The Appellant sought hours of operation from 5:00 AM - 11:30 PM daily in the Zoning Clearance request and provided a description of a Convenience Store use.

According to neighborhood residents, the Appellant informed the neighborhood of plans to expand the store's hours of operation and change the store type to convenience store prior to requesting the Zoning Clearance. Upon learning through Permit Santa Rosa that the Appellant had submitted a Zoning Clearance request for hours of operation from 5:00 AM - 11:30 PM daily, neighborhood residents provided PED with digital imagery of the store's door and webpage reflecting hours of operation from 8:00 AM - 8:00 PM daily for the previously existing store operation, as well as written testimony indicating that the store had traditionally operated from approximately 8:00 AM - 8:00 PM daily. The Appellant has countered that this is not correct and that these hours were temporary pending the sale of the business to the Appellant.

In February 2017, the City Attorney's office determined that a Legal Nonconforming Use does not have a vested right to normal and extended business hours of operation as described by the Zoning Ordinance. Rather, the use only has a vested right to those hours of operation that have previously been defined and implemented by the use.

During the Zoning Clearance review and subsequent appeal application, PED requested in both email and in-person additional substantial evidence from the Appellant to corroborate the assertion that past hours of operation aligned with the proposed hours of operation. No compelling evidence was submitted that encouraged PED to reconsider its conclusion that the hours of operation have traditionally been approximately 8:00 AM – 8:00 PM daily. As a result, the City Attorney's determination that Appellant's business entity only has a vested right to hours of operation 8:00 AM – 8:00 PM stands.

1. Project Description

The Legal Nonconforming Use is located in the ground floor of a mixed-use building at 201 W. 7th St. in the historic West End Preservation District. The property was developed in 1919 and consists of a ground-floor commercial space with a second-floor residential unit. Parking is generally off-site on public streets bordering the parcel. Site and building design are consistent with traditional small-scale, neighborhood-serving mixed-use development that was popular in walkable, urban neighborhoods of traditional design and with limited dependency on the automobile.

2. Surrounding Land Uses

North: Single Family Residential

South: Single Family Residential; Light Manufacturing

East: Single Family Residential

West: Single Family Residential

The West End Preservation District is a predominantly single-family residential neighborhood comprised of modest, single story homes developed primarily in the 19th and early 20th centuries and is notable because its ethnic history as Santa Rosa's large and long-standing Italian neighborhood. The District is bounded by North Dutton to the west, W. 9th St. to the north, the Smart Train railroad to the east, and W. 6th St./Santa Rosa Creek to the south. The majority of non-residential uses are located along the eastern boundary of the District, but there is a small 2-parcel node of commercial use located in the southern portion of the District at the intersection of Madison and W. 7th streets where the subject use is located.

3. Existing Land Use – Project Site

The existing land use is neighborhood-serving Convenience Market ("Neighborhood Center") licensed for off-site sales of beer and wine. A residential dwelling unit is located above ground floor retail space.

Small-scale commercial retail uses located in residential areas are not unusual, especially in neighborhoods such as West End that reflect Traditional Neighborhood Design principles. The Zoning Ordinance codifies these uses in the Neighborhood Center land use type and reflects the importance of these uses in its definition of Neighborhood Center, which is:

A small scale retail and/or service use, which may include a small grocery store or convenience store that is oriented to the daily shopping and services needs of nearby residents. A neighborhood center does not detract from the surrounding residential character of the neighborhood due to intensity, over-concentration or design.

Key characteristics expressed in this definition include orientation of use to the daily shopping and service needs of nearby residents and the mitigation of potentially negative impacts by careful attention to the intensity of the use. The Zoning Ordinance refers to hours of operation as an operating characteristic of a use that can be used to evaluate intensity of use.

4. Project History

Contacts were received by neighborhood residents and the State Alcoholic Beverage Control (ABC) office prior to submission of the Zoning Clearance Worksheet on January 18, 2017. Below is a list of the most important contacts and activities.

November 14, 2016: A Council member received an email from a neighborhood resident who expressed concerns about the neighborhood corner store on west 7th and Madison applying for a hard liquor license.

December 1, 2016: Planning staff met with neighborhood residents to discuss concerns about Appellant's proposed changes to store format, hours of operation, and sale of alcoholic beverages. (Note: ABC subsequently confirmed that the application under consideration was for the business-to-business transfer of an existing Type 20 Off-sale Beer and Wine license and not for issuance of a Type 21 Off-sale General license.)

January 17, 2017: ABC indicated that the business-to-business transfer of the Type 2 license was approved.

January 18, 2017: Appellant submitted Zoning Clearance Worksheet seeking authorization for continuation of existing *General retail—Up to 20,000 sf of floor area* use as Quick Pick Market. Proposed business is described as "Sell beer, wine, cigarette, lotto, tobacco, candy, milk, breads, coffee, etc. Business hours 5 AM to 11:30 PM 7 days a week."

January 20, 2017: In response to a Planning staff request for additional information, an appellant representative forwarded an email from the previous business owner who stated that "The Summer and Winter hours of operation were from 6:00 AM – 11:00 PM and that store hours of 8:00 AM – 8:00 PM were only for a recent period of time due to staff shortage and upcoming closing of escrow."

January 26, 2017: Planning staff emailed the appellant representative requesting additional documentation of store hours of operations from prior years such as published hours, sales records, advertising that lists hours, etc. On January 31, 2017, the appellant representative responded that the previous business owner's records are no longer available.

January 30, 2017: Planning staff received an email from a neighborhood resident with computer screenshots from a La Chatita Market website copyrighted 2015 indicating that the hours of operation were from 8:00 AM – 8:00 PM.

January 31, 2017: Planning staff received an email from a neighborhood resident indicating that the market had never opened at 5:30 AM or stayed open until 11:00 PM.

February 1, 2017: Planning staff, in coordination with the City Attorney's office reviewed the information presented and determined that there is no vested entitlement to normal and transitional business hours (6:00 AM – 11:00 PM) as defined by the Zoning Ordinance and that the evidence supports business hours from 8:00 AM – 8:00 PM. The appellant and appellant representative were notified of the determination.

March 13, 2017: Planning staff received an email from Appellant that included images of one (1) transaction receipt with Date/Time of November 14, 2016 @ 20:34 PM and one (1) daily sales and employee hours summary print-out with Time of @ 20:53 PM. Staff concluded that the images did not provide sufficient evidence to establish hours of operation because the date/time data applied only to those specific transactions.

March 13, 2017: Zoning Clearance ZC17-0056 was issued for “Change of ownership: continuing use as neighborhood market (Quick Pick Market) selling food, beer, and wine. Hours of operation 8:00 a.m. to 8:00 p.m.”

May 18, 2017: Planning staff met with Appellant, Appellant representative, property owner, adjacent property and business owner, and two employees of adjacent business. Planning staff reiterated that ZC17-0056 is valid, that absent any additional information the determination would stand, permit pathways to seeking a change in hours of operation, and the applicants right to appeal the staff determination.

May 22, 2017: The appellant representative submitted via email a letter of support and the results of a survey conducted by the appellant. Planning staff analyzed and summarized the survey data. In the survey, participants were asked “*Time you remember this store being open in the past [sic]*” and “*Hours that you store to be open [sic]*”. Forty-nine participants responded to one or both questions. Twelve participants (24.4%) responded to the question asking about the store’s past hours of operation. Responses ranged from 8:30 PM to 9:30 PM with the most responses being 9:00 – 9:15 PM.

June 26, 2017: Appellant submitted Application for Appeal.

PRIOR PLANNING COMMISSION REVIEW

Not applicable.

ANALYSIS

The current retail use is a Legal Nonconforming Neighborhood Center land use. Archival records are not available to determine when the use was established; therefore, approved hours of operation cannot be determined. Continuation of Legal Nonconforming Use/Change of Business Ownership has been authorized by Zoning Clearance in recent years through ZC02-0579 (2002) and ZC13-0253 (2013). Neither ZC02-0579 nor ZC13-0253 recorded hours of operation. The appellant requested hours of operation 5:00 AM – 11:30 PM in Zoning Clearance Worksheet dated January 18, 2017.

In January 2017, two neighborhood residents informed Planning staff via email that the store’s hours of operation had been traditionally been approximately 8:00 AM – 8:00 PM

daily. Documentation provided included a screenshot of the existing business's website where hours of operation were posted and a photograph of the hours of operation that were posted on the entrance door at the business location.

During review, Planning staff requested substantial documentation from the appellant to corroborate the appellant's assertion that the historic hours of operation 8:00 AM – 8:00 PM were incorrect. The following were provided:

- One (1) forwarded email communication from the former business owner stating that the "Summer and Winter hours of operation were from 6:00 AM – 11:00 PM and that store hours of 8:00 AM – 8:00 PM were only for a recent period of time due to staff shortage and upcoming closing of escrow."
- Image of one (1) transaction receipt with Date/Time of November 14, 2016 @ 20:34 PM
- Image of one (1) daily sales and employee hours summary print-out with Time of @ 20:53 PM.

Based upon the information provided, Planning staff and the City Attorney's office determined that there is no vested right to normal (6:00 a.m. to 6:00 p.m.) or transitional (6:00 p.m. to 11:00 p.m.) hours of operation defined by the Zoning Ordinance if the actual hours of operation of a Legal Nonconforming Use differ from normal and transitional hours of operation. Upon weighing the evidence provided, it was determined that the hours of operation had historically been approximately 8:00 AM – 8:00 PM daily.

No evidence submitted by the appellant was substantial enough to reverse the determination. The appellant has been informed on numerous occasions that a Minor Conditional Use Permit application for a *Neighborhood Center* use, which is conditionally permitted in R-1-6 zoning district, may provide a pathway to achieve the hours of operation sought in the original Zoning Clearance Worksheet submission.

1. General Plan

The parcel's General Plan Land Use designation is Low Density Residential. This classification is mainly intended for detached single family dwellings; however, the continuation of a Legal Nonconforming Use is allowed by the General Plan.

2. Other Applicable Plans – Downtown Station Area Specific Plan

The parcel is located in a Historic Residential Sub-Area of the Downtown Station Area Specific Plan Area and is subject to Downtown Station Area policies and regulations. There are no specific policies or regulations that would impact the Legal Nonconforming Use of this property.

3. Zoning

The parcel is zoned Single-Family Residential Historic District (R-1-6-H). The use

of the parcel for *Convenience Store* or *General retail*—Up to 20,000 sf of floor area is not an allowed use; however, the parcel's current use is the continuation of a Legal Nonconforming Use. [Section 20-61.020 Nonconforming uses](#) allows the continuation, transfer, or sale of nonconforming uses in compliance with the Zoning Ordinance.

Neighborhood Center use—a small scale retail and/or service use, which may include a small grocery store or convenience store that is oriented to the daily shopping and services needs of nearby residents—is allowed in residential zoning districts with a Minor Conditional Use Permit. The Zoning Ordinance additionally states that “A neighborhood center does not detract from the surrounding residential character of the neighborhood due to intensity, over concentration or design” ([§ 20-70.020](#)). Inclusion of Neighborhood Center as a conditionally permitted use indicates that these uses are appropriate for the R-1 Zoning District but that they may have potentially negative impacts on surrounding residential uses and must be carefully evaluated.

4. Neighborhood Comments

Comments from several neighborhood residents have been received via email, phone call, and one-on-one meetings. The primary concerns expressed have been focused on changes to the store format and hours of operation. Public noticing is not required prior to issuance of a Zoning Clearance. It is Planning staff's understanding that residents' knowledge of the appellant's acquisition of the business and their concerns resulted from a meeting between the appellant and neighborhood residents where changes to the store format and hours of operation were announced.

Neighborhood residents initiated contact with Planning staff and provided evidence of historic hours of operation. This evidence was used to establish hours of operation authorized in Zoning Clearance ZC17-0056.

5. Public Improvements/On-Site Improvements

Not applicable.

6. Appeal Statement and Commission Options

Pursuant to Zoning Code Chapter 20-62, appeals of land use decisions made by the Director shall be evaluated by the Planning Commission. The Commission may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for appeal.

With respect to the Zoning Clearance, the Council may:

- Affirm, affirm in part, or reverse the action, the determination, or decision
- that is the subject of the appeal; or

- Adopt additional conditions of approval, that may address issues or concerns other than the subject of the appeal; or
- If new or different evidence is presented on appeal, the Commission may refer the matter back to the Director for further consideration.

The appellant has provided the following grounds for the appeal; the full appeal statement is provided as an attachment. Staff responses follow the item.

#1. Prior to purchasing the property, the appellant was told by Planning and Economic Development that there would be no restriction on operating hours. The hours of operation information provided by neighborhood residents is contrary to all other evidence presented on the historical hours of operation.

Staff Response

It is staff's understanding that the appellant visited the Planning and Economic Development Customer Help Desk prior to purchasing the business and inquired about the hours of operation. City records providing information about prior uses (ZC02-0579 and ZC13-0253) do not indicate hours of operation, so specific hours of operation could not have been provided upon request. Permitted or conditionally permitted retail uses have the right to normal and transitional hours of operation as defined by the Zoning Ordinance unless otherwise conditioned through a discretionary permit process.

A nonconforming use only has a vested right to the hours of operation established by previous business operations. Section 20-61.020 of the Zoning Ordinance does not allow changes to a nonconforming use that would increase the degree or intensity of the nonconformity without review through a discretionary process. The bulk of the evidence provided by the appellant and neighborhood residents indicates that the hours of operation have historically been approximately 8:00 AM to 8:00 PM. Planning staff are required by the Zoning Ordinance to authorize only those hours of operation that can be substantiated with the evidence available.

FISCAL IMPACT

Approval or Denial of this appeal does not have a fiscal impact on the General Fund.

ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 in that the project involves the operation and permitting of an existing structure and use.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

This appeal hearing was noticed as a Public Hearing per the requirements of Chapter 20-66 of the City Code. Notification of this public hearing was provided by posting an on-site sign, publishing notice in a newspaper of general circulation, mailed notice to surrounding property owners, electronic notice to parties that had expressed interest in projects taking place in this geographic area of Santa Rosa, and bulletin board postings at City Hall and on the City website.

ISSUES

The Planning Commission has two options before it: denial of the appeal or approval of the appeal. Approval of a resolution denying the appeal of ZC17-0056 would maintain the current hours of operation as 8:00 AM – 8:00 PM daily, while approval of a resolution approving the appeal of ZC17-0056 would establish the hours of operation as 6:00 AM – 11:00 PM daily.

ATTACHMENTS

Attachments:

Attachment 1 – Disclosure Form

Attachment 2 – Location Map

Attachment 3 – Zoning Map

Attachment 4 – ZC17-0056

Attachment 5 – Appeal Application

CONTACT

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