

Town of Tiburon

STAFF REPORT



AGENDA ITEM _____

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TO: **PLANNING COMMISSION**

FROM: **DANIEL M. WATROUS, PLANNING MANAGER**

SUBJECT: **CONDITIONAL USE PERMIT #10403: REQUEST TO INCREASE THE DURATION OF SEASONAL USE FOR A RESTAURANT AWNING STRUCTURE; 5 MAIN STREET (GUAYMAS RESTAURANT); ED ZELINSKY, OWNER; SPECTRUM RESTAURANT GROUP, APPLICANT; ASSESSOR'S PARCEL NO. 55-151-41**

MEETING DATE: **MARCH 10, 2004** REVIEWED BY: SA

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PROJECT DATA

Address: 5 Main Street
Assessor's Parcel Number: 55-151-41
File Number: 10403
General Plan: VC (Village Commercial)
Zoning: VC (Village Commercial)
Current Use: Restaurant
Owner: Ed Zelinsky
Applicant: Spectrum Restaurant Group
Date Complete: February 19, 2004
Preliminary CEQA Determination: March 5, 2004

PROJECT DESCRIPTION

Guaymas Restaurant is requesting an increase in the seasonal duration of use of a rooftop awning structure. The Town of Tiburon has previously required that the awning be erected only from November 1 to December 31 of each year (61 days), with five weeks (35 days) of additional time allowed for inclement weather. The applicant is requesting permission to keep the awning up from October to June (240 days) each year.

BACKGROUND

Guaymas has successfully occupied the site since 1985, and is currently operating under a conditional use permit approved in 1991 (File #19103; Resolution No. 91-14; Exhibit 3). It has an approved seating capacity of 412 seats (224 indoor seats and 188 outdoor seats). The restaurant contains indoor seating on the ground floor, along with outdoor seating on a deck to the rear (water side), and on a rooftop deck. The subject awning is located on the rooftop deck.



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Starting in the late 1980's, Guaymas began erecting a temporary tent-like structure above the rooftop deck area in order to provide sheltered seating during the winter months. Following the receipt of public complaints in 1999 regarding the aesthetics of the tent-like structure, the Town required that Guaymas submit a Site Plan and Architectural Review application for the tent, along with a Variance application for excess structure height. The Design Review Board reviewed this application on September 16, 1999, and denied the request. Resolution No. 99-2 (Exhibit 6), which denied the application, states that the Board could not make the findings necessary to approve the requested Variance, citing the "incompatibility of a white, excessive height structure in the downtown area," view and privacy concerns raised by nearby residents, and the visual mass of the structure as proposed.

A subsequent Site Plan and Architectural Review application (File #799171) was submitted for a revised design that complied with the Town's building height requirements. The modified project design included a V-shaped canvas awning to be mounted on a permanent steel frame. The Design Review Board approved this application on October 21, 1999, stating that the revised project design was a significant improvement over the previous version, and would not create any adverse visual or view impacts.

The awning structure was approved for installation on a temporary basis, subject to the following conditions of approval:

- The standard installation of the awning shall be limited, on an annual basis, to the time period between November 1st and December 31st.
- In the event of the necessity for an emergency installation of the awning due to anticipated inclement weather, the applicant shall submit a request to Staff one week prior to construction. The awning shall not be installed until the applicant has received written approval from Staff. The number of emergency installations shall be limited to 7 installations per year not to exceed two weeks per installation with a total not to exceed 5 weeks per year. If the weather permits the applicant to avoid having to use an approved installation, the request shall be deemed void and not counted toward the annual total. In the event of unanticipated inclement weather, the applicant shall submit a retroactive request post-installation and shall submit the request the very first business day after the installation. All installations will be included in the total maximum of 5 weeks per year.

Since the approval of this application, the applicants have appeared to be in compliance with these conditions of approval.

ANALYSIS

The applicant has now requested to keep the awning in place from October until June of each year. The purpose is to provide the restaurant with the ability to "aggressively market the space for banquet, receptions, and private parties during inclement weather." The applicant has indicated that the restaurant receives numerous requests for this type of business, but cannot accept the requests due to the time and expense necessary to put up and take down the awning



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for each event. A retractable awning was investigated by the applicant prior to installation of the current structure, but was rejected because such awnings have not proven to be adequately weatherproof.

The Town has received few, if any, comments or complaints about the current awning since the approval of its current design in 1999. The awning is generally perceived as part of the existing downtown landscape during the winter months, and has the visual appearance of an appropriate extension of the restaurant building. The awning does not appear to obstruct any significant views from the nearby Point Tiburon and Old Tiburon residences.

Occasional noise complaints have been received regarding noise from nighttime activities at the restaurant, including some regarding noise emanating from the covered rooftop area. These complaints are similar to those received about other downtown restaurants which sometimes hold events with amplified music during the evenings. Such complaints are handled by the Police Department on a case-by-case basis, and generally do not appear to represent a chronic noise condition for the restaurant. However, the extended duration of use for the awning, combined with the applicant's intention to "aggressively market the space" for additional events, could create more opportunities for noise conflicts. Planning Commission Resolution No. 91-14 contains conditions of approval regarding noise generation, requiring that "any music and entertainment provided shall not be audible beyond the area under control of the permittee," and that "all doors shall be kept closed at all times except in cases of emergencies, to permit deliveries, or for normal ingress and egress purpose." The Planning Commission should consider these potential noise impacts, and may wish to impose additional restrictions on noise generation from the rooftop deck as part of any approval.

The extended duration of use requested for the awning would not affect the amount of parking required for this restaurant. The parking calculations for this use are based on the seating capacity of the restaurant. As the rooftop deck is theoretically available as seating whether the awning is in place or not, the seating, and therefore the parking requirements, for the restaurant would remain unchanged.

ENVIRONMENTAL REVIEW

Staff has made a preliminary determination that the subject application is categorically exempt from the requirements of CEQA per Section 15301 (e) of the CEQA Guidelines.

CONCLUSION

The extended duration of use requested for the awning would allow more appropriate use of the facilities of the subject restaurant. The awning acts as an extension of the restaurant building, and does not create any view or visual impacts for nearby residents or pedestrians in the downtown area. The extended duration of use for the awning would better account for seasonal weather conditions in Tiburon, and allow the restaurant to more frequently utilize its approved number of seats year-round. The eight month period requested for the use of the awning should also eliminate the need for additional awning installations due to unanticipated inclement weather.

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The appropriate procedure to modify the seasonal duration of use of a rooftop awning structure would be to amend Planning Commission Resolution No. 91-14 to include the revised time limits for the awning. If the Planning Commission wishes to modify the existing noise restrictions contained within the resolution to deal with noise-generating activities on the rooftop deck area, such language may also be added as conditions of approval to the draft resolution (Exhibit 2).

RECOMMENDATION

Staff recommends that the Planning Commission take public testimony on this item, close the public hearing, deliberate upon the project merits, and adopt the draft resolution conditionally approving the project.

EXHIBITS

1. Application form and supplemental materials
2. Draft resolution
3. Planning Commission Resolution No. 91-14
4. Minutes of the September 16, 1999 Design Review Board meeting
5. Minutes of the October 21, 1999 Design Review Board meeting
6. Design Review Board Resolution No. 99-2
7. Letter from Point Tiburon Bayside Homeowners Association
8. Submitted plans