

Town of Tiburon STAFF REPORT



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TO: **PLANNING COMMISSION**

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

SUBJECT: **CONDITIONAL USE PERMIT #10411;
REQUEST TO EXPAND AN EXISTING RESTAURANT (CAPRICE
RESTAURANT); 2000 PARADISE DRIVE; POINT TIBURON PLAZA,
INC., OWNERS; ASSESSOR PARCEL NO. 59-172-46**

MEETING DATE: **APRIL 13, 2005** REVIEWED BY: SA

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PROJECT DATA

Address:	2000 Paradise Drive
Assessor Parcel Number:	59-172-46
File Number:	10411
Lot Size:	3,315 square feet
General Plan:	Neighborhood Commercial
Zoning:	NC (Neighborhood Commercial)
Current Use:	Restaurant
Owner:	Point Tiburon Plaza, Inc.
Applicant:	Mogens Bach
Date Complete:	March 25, 2005
Preliminary CEQA Determination:	April 8, 2005

PROJECT DESCRIPTION

The project is the proposed upgrade and expansion of an existing restaurant (the Caprice Restaurant) located at 2000 Paradise Drive. The application includes the following improvements:

- Construction of a new 1,380 square foot third floor addition to the building. The project would relocate the banquet room from its current location on the lower level of the building to the new upper floor, with a 648 square foot banquet area proposed. New restrooms would be constructed on the upper floor as well, which would be accessible by a new elevator to be installed. An exterior deck would extend from the southeast corner of the new upper floor.



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- Conversion of the lower floor of the building into a wine cellar and an office, with a new restroom also installed on that floor.
- The main (street) level of the restaurant would remain relatively unchanged, with the elevator and a new walk-in refrigerator occupying the location of the current restrooms. The entry would be moved to this location as well, removing the existing vestibule.

The exterior design of the proposed improvements is intended to be consistent with the existing design of the building. The roofline of the proposed upper floor addition would mimic the pitch of the existing building when viewed from Paradise Drive. The addition would use similar colored siding and other exterior finish to match the current restaurant appearance. A screening wall, finished to match the remainder of the building, would be installed on a portion of the upper floor to screen views of rooftop mechanical equipment from adjacent residences.

EXISTING FACILITIES AND SURROUNDINGS

The subject property is a 3,315 square foot parcel situated at the intersection of Paradise Drive and Mar West Street. The two-story building extends to within 8 feet of the front property line and stretches to both side property lines. The building is set on piers and extends beyond the mean high tide line into Raccoon Straits.

The main dining room and kitchen are situated on the street level of the building. A small bar and restrooms are also situated on the main floor. The lower level is used primarily for banquets and meetings, and contains another bar and wine storage area. There is no formalized on-site parking; most customers park their vehicles either in the public parking lot across the street or use available on-street parking spaces in the vicinity, primarily along Mar West Street. The restaurant provides valet parking service on most busy nights.

A three-story, three-unit apartment building is situated directly to the northeast of the site at 2002 Paradise Drive. The administrative offices and sewage treatment plant for Sanitary District No. 5 are located across the street at the northwest corner of Paradise Drive and Mar West Street. A small public (Town-owned) parking lot is situated at the other corner of the intersection, with the Bayside units of the Point Tiburon condominium complex further west. Elephant Rock fishing pier and Shoreline Park are situated to the west of the site.

PERMIT HISTORY

A single-family residence was constructed on the subject property in the late 1950's. In 1961, a conditional use permit (File #16103) was approved by the Marin County Planning Commission



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to “permit the establishment of a dinner-restaurant in an existing one-story residence.” This use permit included the following conditions of approval:

1. That there be no bar.
2. That the dining capacity be limited to 50.
3. That off-street parking shall be constructed and maintained in a quantity, at a location and at a time to be determined and set forth by the Marin County Planning Commission with the granting of Architectural Supervision approval.

Later in 1961, an Architectural Supervision application was approved for the project, with the following conditions of approval:

1. That a written lease for 24 parking spaces be filed prior to the issuance of a building permit for the project.
2. That no bar other than a service bar be allowed.
3. That a proposed basement addition be approved only if the County Counsel opinion states that the restaurant use could be extended into that area.

In 1962, the County Planning Commission approved another conditional use permit (File #16201) “to establish a restaurant use in the basement area of the Caprice Restaurant.” A subsequent Architectural Supervision application was approved for the basement area later in 1962, and the restaurant has operated continuously since that time.

Physical improvements to the building have been very minor over the years. Town records show only minor mechanical improvements and an entry awning have been installed for the restaurant. In 2001, the Town discovered that additional rooftop mechanical equipment had been installed on the restaurant without first obtaining the necessary permits from the Town. The owner of the adjacent residential property at 2002 Paradise Drive complained that the equipment impacted the views from her home. The Design Review Board ultimately approved a Site Plan and Architectural Review application (File #701147) for the equipment which required the installation of several wooden lattices to screen the equipment.

The restaurant itself appears to have evolved considerably since the 1962 use permit was issued. The current dining capacity has intensified to 114 seats, while the parking lease expired decades ago and was not renewed.



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ANALYSIS

Summary of Primary Issues

Town Staff has identified the following primary issues associated with this project:

1. Magnitude of the proposed upper story addition relative to FAR limits.
2. Adequacy of parking for the proposed restaurant expansion.
3. Extent of view blockage from nearby properties resulting from the proposed addition.

These issues are addressed below.

Consistency with Applicable General Plan Policies

The section that follows is a review of the proposal with directly applicable policies of the Tiburon General Plan. In determining consistency of a proposal with a General Plan, the standard of review is that a project is consistent if, on balance, it promotes or furthers the goals and policies of the General Plan.

LU-4. The Town recognizes and wishes to preserve its bay and waterfront as significant resources and shall closely consider the sensitivity of its coastal environment through the development review process, and shall encourage public access to the waterfront.

Consistent. The proposed restaurant expansion would not have adverse impacts on the waterfront or the coastal environment, nor would it alter any public access to the bay. It is possible that alterations or enhancements to the existing piers supporting the building would be required to provide adequate structural support for the proposed upper floor. Such supports would need to be engineered to comply with Building Code requirements, but would not extend further into the bay than the current structure.

LU-9/DT-12. These policies establish floor area maximums for Downtown parcels which grandfather existing square footage on parcels already built in excess of 0.17 FAR, but allow for expansion under certain conditions.

Inconsistent. The property is located within the Neighborhood Commercial (NC) land use district, which allows Resident-serving commercial uses and offices, and mixed (commercial-residential or office-residential) uses. The floor area limit for the NC district is nominally 0.17, with existing structures grandfathered at existing FARs if they exceed the 0.17 FAR limit. Additions to buildings which already exceed the FAR limit may be considered under Policy DT-12, the pertinent portion of which reads as follows:



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Applications for minor floor area additions on properties exceeding the maximum floor area ratio limits may be considered on a discretionary, case-by-case basis, without need for a General Plan or Zoning Ordinance floor area ratio amendment, provided that any such addition improves the usability of the facility to the public, and does not result in increased traffic or parking demand, nor result in other adverse effects.

In order to approve the proposed square footage additions without a general plan amendment and a zoning ordinance text amendment, the Town would need to find the proposal consistent with Policy DT-12.

Definition of "minor" additions. Policy DT-12 provides no quantitative direction on this matter, leaving the interpretation to the Town on a case-by-case basis. The Town has approved requests for excess commercial floor area on four previous occasions:

- In 1990, a 258 square foot addition to the Servino Restaurant at 114 Main Street was approved.
- In 1991 a 115 square foot addition to the building at 10/14 Main Street was approved.
- In 1998, a 3,000 square foot addition was approved to convert the building at 25 Main Street in the Water's Edge Hotel. Although the size of the addition itself was somewhat large, it represented only a 19.2% increase over the size the previous building.
- In 2001, approval was given to demolish the building at 41 Main Street, and to construct a new 6,740 square foot retail and residential building, representing a 12.3% increase in the floor area for that property.

The current application proposes to add 1,380 square feet of floor area to an existing 3,500 square foot building, which would represent a 39.4% increase in the size of the building. The percentage increase is of a larger magnitude than previous requests, and would be more than double the largest percentage increase previously approved. The requested increase in floor area does not appear to be consistent with the intent of allowing minor increases in floor area, but would appear to be a more substantial increase than is intended under this exception procedure.

Increased usability of the facility to the public. The current lower level area of the restaurant is not particularly conducive for holding banquets and larger group functions, as the design of this space is cramped and does not take advantage of the views to the bay offered by this site. The proposed upper floor banquet space would be more usable and open, with windows and a deck



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which would offer spectacular views. This design would therefore increase the usability of the banquet facilities of this restaurant to the public.

Increased traffic or parking demand. As previously noted, the original use permit for this restaurant limited seating for the restaurant to 50 diners and required a lease agreement for 24 parking spaces. The applicant has stated that the restaurant “has been operating for many years with a total seating capacity of 114,” which would increase by 10 to 124 diners under the proposed application. The Tiburon Zoning Ordinance requires that a restaurant provide one parking space for each 60 square feet of seating area. By replacing the existing 426 square foot lower level banquet area with a 648 square foot banquet space on the upper floor, the parking requirement for the restaurant would increase from 22 spaces to 25 spaces.

The applicant has indicated that at least 24 parking spaces can be made available within the Point Tiburon parking lot for use by the restaurant. These spaces would be marked for use of the restaurant from 5:00 p.m. until midnight each day. The applicant contends that this parking lot is generally used by commuters and daytime patrons and employees of other businesses in the Point Tiburon Plaza, making the needed parking spaces more available for use by restaurant customers in the evening. In general, this arrangement would appear to be consistent with the intent of allowing multiple uses to share parking spaces (described in Section 5.08.10). However, the Point Tiburon Plaza parking lot has a history of filling up for long periods on busy weekends, particularly during the summer. The Caprice also allows the banquet room to be used on occasion as early as 11:30 a.m. During these weekends and mornings, the parking spaces proposed to be designated for the restaurant may already be in use, leaving only on-street parking in the vicinity of the restaurant and the nearby public parking lot to meet the needs of the business.

Valet parking service has been provided on weekend evenings, and is proposed to also be provided when the banquet room is used. Traditionally, customers of the Caprice have either utilized this valet service or have parked in the nearby public parking lot or along Mar West Street. The Point Tiburon parking lot is more than a quarter mile away from the restaurant, making it unlikely to be used on a regular basis by customers unwilling to park so far away and walk such a distance to the restaurant. More frequent use of the valet parking service may be able to address some of the additional parking demand generated by the proposed project. However, Staff believes that the distance to the Point Tiburon Plaza parking lot and other demands on its use limit the effectiveness of this option, and that the project would therefore result in an increased demand for parking in the vicinity of the restaurant.

The proposed banquet area would represent a small increase in the amount of usable dining area for the restaurant, but is more likely to be used on a regular basis than the current lower level banquet space. The Planning Commission should determine whether the proposed addition would result in a substantial increase in the parking demand for the restaurant, and



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whether the proposed parking lease agreement, in conjunction with the proposed valet parking arrangement, would satisfactorily meet the resulting parking demand for the restaurant.

Other adverse effects. The proposed upper level addition would adversely affect views from two of the adjacent dwelling units at 2002 Paradise Drive. This adjacent three-unit residential building has one dwelling unit on each of its three floors. Unit 1 is on the lowest floor, roughly level with the main level of the adjacent restaurant. The proposed addition would be well above the floor level of this unit, and would not block any significant views for this home.

Unit 2, on the middle floor of the building, has extensive views toward San Francisco and the Golden Gate Bridge from the living room and rear deck. The side windows of the living room and the kitchen window face the adjacent restaurant; the proposed addition would block almost all views from these windows, including views toward Downtown Tiburon and a portion of Belvedere Island, intruding past the horizon line of the view from these windows. The entry for all three units is also situated on this level; the proposed addition would block some views and late afternoon sunlight into this glass-walled entry area.

The upper level home, Unit 3, is situated at a level well above both the existing restaurant and the proposed addition. The addition would block a small portion of water views from the side living room and kitchen windows of this residence.

No other homes in the vicinity have significant views that would be affected by the proposed addition. The upper level addition would substantially increase the visual mass of the building when viewed by motorists, bicyclists and pedestrians traveling along Paradise Drive, but would not block any water or San Francisco views.

The proposed upper level addition has the potential to significantly impact the views from at least one of the adjacent residences. The Planning Commission is encouraged to visit the homes at 2002 Paradise Drive to further evaluate these potential view impacts.

On balance, the size of the floor area requested relative to the existing restaurant floor area, the potential for increased parking demand and for view impacts on neighboring residences would appear to make the proposed project inconsistent with the criteria for floor area exceptions contained within Policy DT-12.

DT-B. To balance Downtown Tiburon's role as a viable retail-oriented part of Tiburon with the objective of promoting resident-serving uses.

Consistent. A more usable banquet room for this restaurant would better serve residents and out-of-town visitors looking for an attractive location for larger dining facilities.



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DT-3. The Neighborhood Commercial land use designation shall permit primarily resident-serving commercial uses and ancillary residential uses, and shall strongly discourage tourist-oriented uses.

Consistent. The proposed banquet room addition would serve both resident and out-of-town visitors, but is unlikely to be frequented by tourists on a regular basis.

DT-20. Transfers of Intensity. A transfer of intensity between commercially-designated Downtown properties (NC and VC districts) may be permitted, subject to discretionary review, provided that the properties are under the same ownership and the combined intensity does not exceed limits established in Policy LU-9 for underdeveloped properties.

While a transfer of intensity to accommodate some or all of the requested additions has not been proposed at this time, it remains a possibility should the Town have difficulty in determining the proposed addition to be *Aminor* per Policy DT-12. The Point Tiburon Plaza has additional floor area capacity in excess of the additional floor area requested for the subject restaurant. The applicant would need to demonstrate that both of these properties are under the same ownership to pursue a transfer of intensity between the two properties.

OSC-3. Outward Views. Property owners cherish their views. New structures and associated landscaping should be so situated or kept low to avoid interference with existing outlooks.

Inconsistent. As described in the discussion under Policy DT-12 above, the proposed upper floor addition would significantly obstruct views from at least one of the residences at 2002 Paradise Drive. The addition of a third story to this restaurant would not be a design “situated or kept low to avoid interference with existing outlooks.” In fact, the addition would increase the overall height of the restaurant to over 30 feet, which would exceed the maximum building height allowed under the Zoning Ordinance, and require approval of a Variance.

Zoning Ordinance Conformance

The section which follows comprises an analysis of conformance of the proposal with provisions of the Tiburon Zoning Ordinance.

A restaurant is a conditionally-permitted use (requiring a Conditional Use Permit) under Section 2.11.02; intensification of the existing restaurant use requires a Conditional Use Permit. Additions to buildings in the Neighborhood Commercial Zone also require a Conditional Use Permit. In reviewing a conditional use permit, the Planning Commission is directed to consider the following issues under Section 4.04.02:

- (a) *Whether the location proposed for the Conditional Use applied for is properly related to the development of the neighborhood as a whole?*

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The location of the existing restaurant is at the edge of Downtown Tiburon, adjacent to the beginning of the Lyford Cove/Old Tiburon residential area. Although the restaurant has coexisted with its residential neighbors for over 40 years, concerns have been recently raised regarding the impacts of improvements to this building on the views of adjacent residences. The more significant view blockage impacts that would be caused by the proposed upper level addition are less appropriate for a restaurant adjacent to a neighborhood than for a restaurant more centrally located within Downtown Tiburon.

- (b) *Whether the location proposed for the particular Conditional Use applied for would be reasonably compatible with the types of uses normally permitted in the surrounding area?*

The Caprice Restaurant has been reasonably compatible with its surroundings for many years. The increased usability of the proposed upper level banquet area could result in an increased intensity of use of the restaurant that would be less compatible with the surrounding residential uses.

- (c) *Whether or not adequate facilities and services required for such use exist or can be provided?*

Adequate facilities and utilities can be provided to serve the proposed use.

- (d) *Whether appropriate conditions and requirements have been imposed which would reasonably assure that the basic purposes of this Ordinance and the objectives of the General Plan are served?*

The increased parking demand that would be caused by the proposed project could be technically mitigated through conditions of approval that require a valet system and a specific number of off-site parking spaces to be provided for use by the restaurant; as a practical matter, the increased parking demand caused by the proposed addition may be more difficult to accommodate operationally. The view blockage impacts on neighboring residences that would be caused by the addition would likely be inconsistent with the purposes of the Zoning Ordinance and the objectives of the General Plan.

- (e) *Whether the Town is adequately served by similar uses presently existing or recently approved by the Town?*

Staff believes that the existing restaurant is part of an adequate supply of full-service restaurants in Tiburon.



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In accordance with Section 4.04.03 of the Zoning Ordinance, factors to be considered in determining whether or not any conditional use should be permitted in a specific location are:

(a) *The relationship of the location proposed to:*

- (1) *The service or market area of the use or facility proposed;*
- (2) *Transportation, utilities, and other facilities required to serve it; and*
- (3) *Other uses of land in the vicinity.*

Staff believes that the restaurant is properly related to its service area, and that transportation facilities and utilities needed to serve the use are available. As noted above, the location of the restaurant adjacent to a residential neighborhood has proven to be appropriate in the past, but the increased activity and potential view impacts caused by the proposed upper level banquet room may be incompatible with the residential surroundings of this site.

(b) *Probable effects on persons, land uses, adjoining properties, and the general vicinity, including:*

- (1) *Probable inconvenience, damage, or nuisance from noise, smoke, odor, dust, vibration, radiation, or similar causes;*
- (2) *Probable hazard from explosion, contamination, or fire;*
- (3) *Probable inconvenience, economic loss, or hazard occasioned by unusual volume or character of traffic or the congregating of a large number of people; and*
- (4) *The number of such uses presently existing or recently approved within the area.*

The proposed addition is not anticipated to result in adverse noise, smoke, odor, dust, vibrations, or explosion/contamination impacts. The small size of the facility is unlikely to cause inconvenience, economic loss, or hazard as a result of the volume or character of traffic which would be generated by the proposed addition. No other restaurants or other commercial activities presently exist or are recently approved in the immediate vicinity of the subject property.

(c) *The need of the community for additional numbers of such uses, paying particular heed to whether the neighborhood is already served by similar uses.*

See response to (b) above.

In addition, as previously noted, the addition would cause the overall height of the restaurant building to increase to 36.3 feet, which would exceed the 30 foot maximum building height for



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Neighborhood Commercial Zone established under Section 2.11.03 (1) of the Zoning Ordinance.

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. This exemption is available for additions to existing structures, provided that the addition will not result in an increase of more than 10,000 square feet if “the project is in an area where all public services and facilities are available to allow for maximum development permissible in the [Tiburon] General Plan, and [if] the area in which the project is located is not environmentally sensitive.” As the subject property is situated within a fully developed portion of Tiburon and adjacent to Paradise Drive, Staff believes that this exemption would be appropriate.

CONCLUSION

The proposed improvements to the Caprice Restaurant would provide more usable banquet facilities for the restaurant, which would enhance its ability to serve the needs of Tiburon and out-of-town residents. However, the addition would likely result in an increased intensity of use of the restaurant and increased parking demand. Unless an effective, continuous valet parking system is implemented, the parking proposed to be provided in the Point Tiburon Plaza parking lot is unlikely to be used by customers unwilling to walk a quarter mile to the restaurant. As a result, the demand on parking in the immediate vicinity of the restaurant would likely increase. The proposed upper floor addition would be inconsistent with several General Plan policies, as this structure would adversely impact the views from homes at 2002 Paradise Drive.

Staff believes that the size and potential impacts of the proposed addition would make this project ineligible for a floor area exception under General Plan Policy DT-12. A transfer of intensity under General Plan Policy DT-20 is possible to allow the additional floor area if the applicant can demonstrate that the subject property and the Point Tiburon Plaza property are under the same ownership. However, a transfer of intensity would not address the parking and view blockage impacts caused by this project.

RECOMMENDATION

Staff recommends that the Planning Commission take public testimony on this item, close the public hearing, deliberate upon the project merits, and direct Staff to prepare a draft resolution denying the project.

EXHIBITS

1. Application form and supplemental materials
2. Original Marin County conditional use permits
3. Submitted plans