

RESOLUTION NO. 2005-(Draft)

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF TIBURON
DENYING A CONDITIONAL USE PERMIT APPLICATION FOR THE EXPANSION OF AN
EXISTING RESTAURANT (CAPRICE RESTAURANT)**

ASSESSOR PARCEL NO. 59-172-46

WHEREAS, the Planning Commission of the Town of Tiburon does resolve as follows:

Section 1. Findings.

A. On November 1, 2004, the Town of Tiburon received an application for a conditional use permit to expand an existing restaurant (the Caprice Restaurant) for the subject property located at 2001 Paradise Drive (Application #10411). The application consists of the following:

1. Application form and supplemental materials received November 1, 2004
2. Revised project description, dated November 15, 2004
3. Revised project description, dated March 7, 2005
4. Supplemental materials prepared by Mogens Bach & Associates, dated May 31, 2005
5. Focused Traffic Study prepared by Whitlock & Weinberger Transportation, Inc., dated May 31, 2005
6. Noise Analysis prepared by Lefler engineering, Inc., dated May 31, 2005
7. Site plan, floor plans and elevations prepared by Mogens Bach & Associates, received November 1, 2004

The proposed project would include the 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. The lower floor of the building would be converted 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.

B. The Planning Commission held duly-noticed public hearings on April 13 and June 8, 2005, and heard and considered testimony from interested persons. Information and testimony presented in the course of these public hearings included the following:

1. The approvals granted in 1961 and 1962 by Marin County for the operation of the restaurant included requirements that limited the number of diners to 50 and required provision of off-street parking. The restaurant has been operating for many years with a total seating capacity of 114, and does not either provide on-site parking or have a lease to provide the required parking.
2. The current valet parking program provided on occasion by the restaurant often results in traffic safety and parking impacts on the surrounding area. When returning vehicles, valet attendants often temporarily park within the Paradise Drive roadway, creating a potential traffic safety hazard. Customer parking, either by valet attendants or patrons themselves, often occupies most of the available public parking in the vicinity, limiting the use of these spaces by nearby residents.
3. Noise from the ongoing operations of the restaurant, including noise from mechanical equipment and garbage operations, has resulted in unwanted impacts to the adjacent residents at 2002 Paradise Drive.

C. The Planning Commission, based upon application materials and analysis presented in the April 13 and June 8, 2005 Staff reports as well as visits to the site and public testimony, finds that the proposal is inconsistent with the required findings necessary to approve the subject application for a conditional use permit application as described as follows within Section 4.04.02 of the Tiburon Zoning Ordinance:

- a. *Determine whether the location proposed for the Conditional Use applied for is properly related to the development of the neighborhood as a whole.*

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 and near the Point Tiburon Bayside condominium complex. Although the restaurant has coexisted with its residential neighbors for over 40 years, concerns have been raised regarding the impacts of this restaurant use on traffic safety, parking and noise impacts on nearby residences. The proposed addition would increase the number of times at which the restaurant would be operating a peak capacity, creating the potential for these impacts on surrounding homes to occur on a more frequent basis.

- b. *Determine whether the location proposed for the particular Conditional Use applied for would be reasonably compatible with the types and uses normally permitted in the surrounding area.*

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

- d. *Stipulate such conditions and requirements as would reasonably assure that the basic purposes of this Ordinance and the objectives of the General Plan would*

be served.

Although 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 would be more difficult to accommodate operationally. The proximity of the restaurant to residences around the site also increases the difficulty of mitigating noise impacts from the banquet room and valet parking area on these nearby homes.

D. The Planning Commission further finds that the subject application is inconsistent with Section 4.04.03 of the Tiburon Zoning Ordinance, which states that the following factors shall be considered in determining whether or not any conditional use should be permitted in a specific location:

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. Activities in the proposed banquet room and deck and associated with the relocated valet parking system would result in unwanted noise impacts on surrounding residential neighborhoods.

E. The Planning Commission further finds that the subject application is inconsistent with the policies contained within the Land Use and Downtown Elements of the Tiburon General Plan. Policies LU-9/DT-12 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. Policy DT-12 states that “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.”

A 39% increase in the floor area of the subject restaurant cannot be classified as a “minor addition.” Further, the increased intensity of use that would be associated with the proposed banquet room would result in an increase the number of days that the restaurant would experience peak traffic and parking demand. This increase in traffic and parking demand, along with the potential for noise from the banquet room and valet parking operations, would result in adverse effects on nearby residents.

Policy DT-20 would allow a transfer of intensity to accommodate the requested addition, as the owner of the subject property also owns the Point Tiburon Plaza, which has additional floor area capacity in excess of the additional floor area requested for the subject restaurant. However, such a transfer of intensity would not address the traffic, parking and noise concerns raised by the proposed addition.

The Planning Commission finds that the project would therefore not, on balance, further the goals and policies of the General Plan with respect to the proposed conditional use permit.

Section 2. Denial.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission of the Town of Tiburon does hereby deny the proposed application for a conditional use permit to expand the Caprice Restaurant for the reasons set forth above.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the Town of Tiburon on June 22, 2005, by the following vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

RICHARD COLLINS, CHAIRMAN
TIBURON PLANNING COMMISSION

ATTEST:

DANIEL M. WATROUS, SECRETARY

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