

Town of Tiburon

STAFF REPORT



AGENDA ITEM _____

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TO: **PLANNING COMMISSION**

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

SUBJECT: **CONDITIONAL USE PERMIT #10507; VARIANCE #20550**
REQUEST TO OPERATE A RESTAURANT, WITH A VARIANCE FOR
REDUCED PARKING; 41 MAIN STREET; DORIS CACERES TRUST,
OWNER; EDDIE KUNG, APPLICANT; ASSESSOR'S PARCEL NO. 059-
151-04

MEETING DATE: **DECEMBER 8, 2005** REVIEWED BY: SA

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PROJECT DATA

Address:	41 Main Street
Assessor's Parcel Number:	059-151-04
File Numbers:	10507/20550
Lot Size:	2,870 square feet
General Plan:	Village Commercial
Zoning:	Village Commercial
Current Use:	Vacant Retail Space
Owner:	Doris Caceres Trust
Applicant:	Eddie Kung
Date Complete:	November 10, 2005
Preliminary CEQA Determination:	November 23, 2005

PROJECT DESCRIPTION

The project is the proposed operation of a restaurant located at 41 Main Street. This use would occupy the street level portion of a three-story mixed-use building. The ground floor of this recently constructed building has not yet been occupied.

The proposed use would be a sushi restaurant (tentatively named Sushi Place), with beer and wine sold for consumption on the premises. A total of 48 seats are proposed, either at tables or a sushi bar. No outdoor seating is proposed. The seating area would occupy approximately 820 square feet. A maximum of four employees would be present at any time. The restaurant would be open between 11:00 a.m. and 10:00 p.m. daily.

No parking spaces are provided for this building. A total of 14 parking spaces are required for a restaurant of this size. Therefore, a variance is requested for reduced parking.



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ANALYSIS

Use Issues

A conditional use permit (File #10105) for the subject building originally approved the use of the street level floor for retail purposes. Three residential condominium units occupy the upper two floors of the building. The site was previously occupied by a restaurant (Tiburon Tommie's), which was demolished to make way for the current building on the site.

The ground floor space has extensive windows facing Main Street to the front and San Francisco Bay to the rear. Two tables and the main entry would occupy the left side of the front of the building, with the kitchen to be installed on the right front side. Tables would occupy most of the center and rear, with a sushi bar and seating on the right side of the center of the restaurant. No exterior tables would be permitted on the walkway to the rear, as a public pedestrian easement exists across the entire walkway around the side and rear of the building.

Exterior changes to the existing building would be limited to signage normally associated with a restaurant, to be reviewed by the Design Review Board under a sign permit application. The appearance of the kitchen area through the windows may require some Design Review scrutiny as well to ensure that unsightly kitchen and storage conditions are not visible to passersby along Main Street.

Numerous other restaurants are situated in the immediate vicinity, including several nearby along Main Street. The proposed use would be the only sushi restaurant in Downtown Tiburon. A recent survey, commissioned by the Town, asked Tiburon Peninsula residents to suggest new uses which would be desirable in Downtown; a sushi restaurant was one of the most frequently mentioned responses to that question.

In general, restaurants are considered to be resident-serving uses that promote the vitality of a downtown area by encouraging activity on evenings and weekends. A mix of different types of restaurants often creates a synergy as part of the overall atmosphere of a commercial area, helping to promote Downtown as a place for a dining experience; various restaurant types often prove compatible in this way, rather than resulting in undue business competition.

Parking Issues

Planning Commission Resolution No. 2001-16 (Exhibit 2), which approved the ground floor commercial space and three dwelling units for this building, required the applicant to obtain long-term lease provisions for all of the required parking spaces for this building. The property owner was unable to obtain enough such leases from the owners of nearby parking lots to satisfy this condition of approval; as a result, this condition was modified in 2002 by Resolution No. 2002-05 (Exhibit 3), which still required long-term leases for 6 parking spaces for the residences, but granted a variance (File #20215) to waive the 5 spaces required for the retail component of the building.



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The revised configuration of the ground floor of the building as a restaurant would increase the number of parking spaces required by the Zoning Ordinance for this area from 5 spaces to 14. Like certain other retail businesses and restaurants along Main Street, the subject property does not have any on-site parking, nor provided any parking for the last 30 years. Like other businesses in the vicinity, customers of the proposed restaurant would be expected to park in one of several nearby privately-owned public parking lots. Although the use of the ground floor would change from the retail use originally anticipated for this building to a restaurant, the change in use would not alter the expectation that all customers for this space would be expected to park in off-site parking lots; nor is the additional amount of parking needed substantial.

In order to grant the requested parking variance, the Planning Commission must make all of the following findings required by Sections 4.03.05 and 4.03.06 of the Tiburon Zoning Ordinance:

- 1. Because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of this Ordinance will deprive the applicant of privileges enjoyed by other properties in the vicinity and in the same or similar zones.***

The subject property is very small (2,870 square feet) and is located between Main Street and San Francisco Bay. The property currently has no on-site parking, nor has on-site parking ever been provided on this property for restaurants that have historically operated on this site. This property is under separate ownership from the majority of properties along Main Street, which are held in a single ownership and which have access to parking in nearby lots under the same ownership. A strict application of the Zoning Ordinance would deprive the owner of privileges enjoyed by other properties in the vicinity not burdened by these physical, locational and ownership-related parking disadvantages.

- 2. The variance will not constitute a grant of special privileges, inconsistent with the limitation upon other properties in the vicinity and in the same or similar zones.***

As noted above, the vast majority of other properties in the vicinity either have adequate area to provide parking or benefit from the existence of parking lots under the same ownership that allow those properties to meet the technical parking requirements of the Zoning Ordinance. Other properties along Main Street that have no on-site parking and do not have the ownership-related parking advantages of off-site parking lots that meet the requirements of the Zoning Ordinance would be faced with the same problem in the event that a change of use or need to replace the building on the property arose. The parking variance would therefore not constitute a grant of special privileges that would not be available to other properties in the same vicinity and zone.

- 3. The strict application of this Ordinance would result in practical difficulty or unnecessary hardship.***

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Strict application of the Zoning Ordinance would require the provision or leasing of 9 parking spaces to serve the restaurant component of this building, as 5 spaces were waived under a previous variance. The applicant does not control any parking spaces in Downtown Tiburon and is beholden to other private property owners for a lease of spaces. Other property owners have proven to be unwilling to enter into such leases for the restaurant-related spaces that would satisfy the requirements of the Zoning Ordinance and still allow for an economically-viable use of the ground floor of this building. As noted above, the site does not have, nor has ever had, on-site parking. These situations result in practical difficulties and unnecessary hardships on the applicant to provide the parking required by the Zoning Ordinance.

4. ***The granting of the variance will not be detrimental to the public welfare or injurious to other properties in the vicinity.***

Granting of a variance for the restaurant component of this building would not be detrimental to the public in that there are several privately-owned but publicly available pay-parking lots that provide abundant parking for users of Downtown Tiburon. The restaurant that previously existed on this site operated for over 30 years without providing any parking and did not result in any evidence of adverse effects on parking or on other properties in Downtown Tiburon.

5. ***Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of the sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation.***

It is anticipated that the proposed restaurant would not generate significant amounts of additional traffic volume. The abundance of overall parking in Downtown Tiburon would not be adversely affected by the granting of the variance.

6. ***Granting of the variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets, or other private property, or on open space.***

Main Street in front of the subject property is a two-way street with limited travel way and no allowable on-street parking. It would be neither legal nor practical to attempt to park vehicles in front of the building for the purpose of patronizing the proposed restaurant. The general availability of parking to the public in nearby parking lots eliminates the potential for restaurant customers to abuse the parking regulations. Loading hours have been established for all businesses on lower Main Street; this restaurant would make use of the same loading zones and hours that are available to all of the other businesses on the street, and would not interfere with the free flow of traffic on the street. Any take-out orders



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would be able to make use of the free 20-minute parking available in the Main Street parking lot.

7. *Granting of the variance will not create a safety hazard or any other condition inconsistent with the objectives of this Chapter.*

As described above, it is not anticipated that either restaurant patrons or loading/unloading vehicles would illegally park on Main Street and thus create a safety hazard or other condition inconsistent with the Town's parking regulations. Such vehicles would use available nearby parking lots and existing designated loading zones along Main Street.

From the evidence provided, Staff believes that there is sufficient justification to grant the requested variance.

General Plan/Zoning Consistency

The proposed project has been reviewed for consistency with the Tiburon General Plan and with the requirements of the Tiburon Zoning Ordinance. Policy No. DT-2 of the Downtown Element of the General Plan states that "resident-serving land uses shall be encouraged throughout Downtown." Restaurants are generally considered to be resident-serving uses, and a recent opinion survey indicates that Peninsula residents desire this type of use in Downtown Tiburon.

ENVIRONMENTAL REVIEW

Staff has made a preliminary determination that the subject application is categorically exempt from the requirements of CEQA per Section 15303 (c) of the CEQA Guidelines.

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 (Exhibit 4) conditionally approving the project.

EXHIBITS

1. Application form and supplemental materials
2. Planning Commission Resolution No. 2001-16
3. Planning Commission Resolution No. 2002-05
4. Draft resolution
5. Submitted plans