



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Planning Commission Meeting
January 14, 2009
Agenda Item: **1.**

STAFF REPORT

To: Members of the Planning Commission
From: Community Development Department
Subject: 2000 Paradise Drive; File #10707; Conditional Use Permit to Replace an Existing Restaurant Building (The Caprice) with a New Restaurant Building; Point Tiburon Plaza, Inc., Owner; Hank Bruce Architects, Applicant; Assessor's Parcel No. 059-172-46
(Continued from December 10, 2008)
Reviewed By: _____

SUMMARY

On December 10, 2008, the Planning Commission held a public hearing on an application for a conditional use permit to replace the existing Caprice Restaurant at 2000 Paradise Drive with a new restaurant building. After considering the application, the Commission directed Staff to prepare a resolution denying the conditional use permit for consideration at its next meeting. The requested resolution has been prepared and is attached as Exhibit 1.

RECOMMENDATION

Staff recommends that the Planning Commission adopt the draft resolution denying the conditional use permit to replace the existing Caprice Restaurant with a new restaurant building.

Exhibit: 1. Draft Resolution

Prepared By: Daniel M. Watrous, Planning Manager

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RESOLUTION NO. 2009-(Draft)

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF TIBURON
DENYING A CONDITIONAL USE PERMIT APPLICATION TO REPLACE AN EXISTING
RESTAURANT (CAPRICE RESTAURANT, 2000 PARADISE DRIVE)
WITH A NEW RESTAURANT BUILDING**

ASSESSOR PARCEL NO. 059-172-46

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

Section 1. Findings.

A. On December 14, 2007, the Town of Tiburon received an application for a conditional use permit to replace an existing restaurant building (the Caprice Restaurant) with a new restaurant building for the subject property located at 2000 Paradise Drive (Application #10707). The application consists of the following:

1. Application form and supplemental materials received December 14, 2007
2. Revised project description, dated March 12, 2008
3. Site plan, floor plans and elevations prepared by Hank Bruce Architects, received February 12, 2008

The proposed project would include the construction of a new three-story restaurant building. The lower floor of the building would be converted into a 1,300 square foot lounge and wine cellar with 27 seats. The 2,425 square foot first floor level would contain the main dining room, with seating for 44 diners. The new 1,807 square foot upper level would include a 648 square foot banquet room, with seating for 54 diners. The restaurant would have 5,532 square feet of floor area and the total seating for the restaurant would increase from 114 seats to 125 seats. A small bar with seating for 3-5 patrons is proposed to be installed on each of the three floors. An elevator would connect all three floors. The building would be air conditioned.

The official record for this project is hereby incorporated and made part of this resolution. The record includes the Staff Reports, minutes, application materials, the Draft Initial Study/Mitigated Negative Declaration prepared by Leonard Charles & Associates, and all comments and materials received at the public hearings and throughout the administrative process.

B. The Planning Commission held a duly-noticed public hearing on December 10, 2008, 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 provide on-site parking or have a lease to provide the required parking off-site.
2. The current valet parking program provided on occasion by the restaurant often results in traffic safety and parking impacts on the surrounding area. Valets and customers who park their own cars overwhelm the on-street parking along Mar West Street and occasionally double-park along the street. Vehicles sometimes back up on Paradise Drive while waiting for valet service or to be picked up by customers leaving the restaurant, and occasionally perform illegal U-turns from the driveway apron. Sanitary District No. 5 representatives testified that valets often park vehicles that block the District office's driveways and make it difficult for the District to conduct its business.

C. The Planning Commission, based upon application materials and analysis presented in the December 10, 2008 Staff report 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 16-4.4.2 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. Although the restaurant has coexisted with its residential neighbors for over 40 years, the new three-story restaurant building would impact the views of adjacent residences. The more significant view blockage impacts that would be caused by the upper level of the proposed restaurant are less appropriate for a restaurant in the midst of a residential neighborhood than for a restaurant more centrally located within Downtown Tiburon.

- 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 proposal would increase the number of banquets per year from approximately 26 to 75, and the applicant does not proposed to limit

the number of banquets, nor the hours or days during which banquets could be held. The increased usability of the new restaurant building with a dedicated upper level banquet area would likely 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 at least partially 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 and could still result in traffic, parking and noise that would be noticeable to nearby residents. The view blockage impacts on neighboring residences that would be caused by the upper level of the restaurant may be inconsistent with the purposes of the Zoning Ordinance and the objectives of the General Plan. Limitations on the number and times of banquets and elimination of the upper level banquet room could address these concerns, but would be contrary to the stated purpose of the project to provide improved facilities for the restaurant to host more frequent banquets.

- D. The Planning Commission further finds that the subject application is inconsistent with Section 16-4.4.3 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.* The volume and character of traffic for the increased number of banquets that would be held at the new restaurant would be unusual for a predominantly residential neighborhood and have the potential to cause further inconvenience for residents in the vicinity.

- E. The Planning Commission further finds that the subject application is inconsistent with the following policies contained within the Land Use and Downtown Elements of the Tiburon General Plan:

- a. Policy LU-11 of the Land Use Element, which states that “development,

new construction and associated landscaping shall be so situated or kept low to interfere minimally with existing primary views.” While the adjacent three-unit residential building at 2002 Paradise Drive enjoys extensive views that would not be compromised by the proposed project, the upper level of the proposed restaurant building has the potential to significantly impact the views from the side windows of the living room and the kitchen window of Unit 2 of this neighboring building.

- b. Policy DT-8 of the Downtown Element, which states that minor floor area additions may be approved without the need for a General Plan or Zoning Ordinance amendment for additions “that do not add demand for parking... and do not increase traffic generation” if a finding can be made “that there will be no material adverse effects from the granting of the minor floor area addition.” A 58.1% increase in the floor area of the subject restaurant cannot be classified as a “minor addition.” 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 and would therefore “add demand for parking” for a restaurant that does not currently provide any parking spaces. Further, the increased intensity of use that would be associated with the banquet room of the proposed restaurant building would result in an increase the number of days that the restaurant would experience peak traffic and parking demand. Combined with the potential view impacts on the adjacent dwelling unit at 2002 Paradise Drive described above, these possible parking, traffic and noise impacts leaves Staff unable to identify substantial evidence in the record to support a finding that “there will be no material adverse effects from the granting of the minor floor area addition.”
- c. Policy DT-12 of the Down Element which states that “the maximum allowable intensity for lands designated Neighborhood Commercial is an FAR of 0.37.” The FAR of the proposed restaurant building would far exceed the maximum allowable intensity for the NC zone.
- d. The Planning Commission finds that the project would therefore not, on balance, further the goals and policies of the General Plan.

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 replace an existing the Caprice Restaurant building with a new restaurant building for the reasons set forth above.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the Town of Tiburon on January 14, 2009, by the following vote:

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

EMMETT O'DONNELL, CHAIRMAN
TIBURON PLANNING COMMISSION

ATTEST:

DANIEL M. WATROUS, SECRETARY

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