

MARIPOSA COUNTY
BOARD OF SUPERVISORS

AGENDA
ACTION FORM

96-217
AGENDA DATE: May 14, 1996
AGENDA ITEM NO.: 6

DEPARTMENT: Planning

By: Jean Clark, Assistant Planner

Phone: 966-5151

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes X No)

Resolution denying General Plan/Zoning Amendment No. 95-38 and Development Agreement No. 96-1; Mack and Pam Toney, Applicants
This action is based upon the Planning Commission's recommendation.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

See attached memorandum.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

ALTERNATIVES: 1) Approve both applications as provided for in the project staff report, 2) modify conditions or terms of Development Agreement, 3) modify time frame for compliance.

NEGATIVE ACTION, or taking no action, would result in no amendment or Development Agreement.

COSTS: (X) Not Applicable
A. Budgeted current FY \$ _____
B. Total anticipated Costs \$ _____
C. Required additional funding \$ _____
D. Internal transfers \$ _____
COSTS: () 4/5th Vote Required
A. Unanticipated revenues \$ _____
B. Reserve for contingencies \$ _____
C. Source description: _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:
Memorandum to Board with Attachments:
1. Planning Commission Resolution No. 96-2
2. Planning Commission Minutes; April 19, 1996
3. Staff Report; GP/ZA No. 95-38
4. Staff Report; Development Agreement No. 96-1
5. Correspondence
6. Public Works Memorandum; April 17, 1996

Balance in Reserve Contingencies, If Approved:
\$ _____

CLERK'S USE ONLY

Res. No.: 96-217 Ord. No.: _____
Vote - Ayes: _____ Noes: _____
Absent: _____ Abstained: _____
 Approved Denied
 Minute Order Attached No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
ATTEST: _____
MARGIE WILLIAMS, Clerk of the Board

By: _____
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:

This item on agenda as:
 Recommended
 Not Recommended
 For Policy Determination
 Submitted for Comment
 Returned for Further Action
Comment: _____

A.O. Initials:

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: ED JOHNSON, Planning and Building Director
FROM: MARGIE WILLIAMS, Clerk of the Board *mw*
SUBJECT: RESOLUTION NUMBER 96-217

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,
ADOPTED THIS Order on May 14, 1996

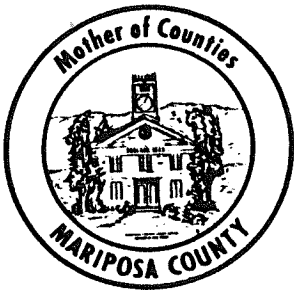
ACTION AND VOTE:

11:02 a.m. Ed Johnson, Planning and Building Director;
PUBLIC HEARING - General Plan/Zoning Amendment No. 95-38 and
Development Agreement No. 96-1; Mack and Pam Toney, Applicants
BOARD ACTION: Ed Johnson provided staff report, and responded to
questions from the Board relative to the Development Agreement,
expansion restrictions, and Rural Home Enterprise/Industry
regulations. Public portion of the hearing was opened. Persons
speaking in support: Mack and Pam Toney/applicants, were
present; and Pam advised that they obtained permits and followed
guidelines, they better understand and are now prepared to sign
the Development Agreement and feel that should make a difference
to the neighbors as the Agreement severely limits what they can
do on the property, and referred to the petitions supporting the
businesses. Elaine Dorman/owner of the beauty shop, stated she
does not feel there are alternatives for her for space in the
area, commented on the inadequacy of the structure at her
previous location, and feels her hours are compatible with the
restaurant operation. Persons speaking in opposition: Walter
Rottenkolber, neighboring property owner, stated he does not want
the re-zoning approved and he agrees with the Planning
Commission's recommendation; suggested that the owners of the
businesses operate them from their own homes; expressed concern
with impacts of traffic and noise from the businesses; feels this
"spot" zoning could lead to financial harm for surrounding
properties - feels the neighbors relied on the area remaining
residential; and stated he feels that initially the Toney's were
going to keep the same size of restaurant space as they had in
their previous location, but they increased the space. Martha
Chernoff, resident on Westfall Road, stated she opposes the re-
zoning as she does not see a need to allow for commercial
development in the area - feels that under the Neighborhood
Commercial-2 (CN-2) zoning, the parcel could be split, and the

zoning change would open the possibility of what could be done on the property; stated she has no problem with the restaurant as long as the home enterprise restriction of having the property owner live on the property is enforced; feels the beauty parlor should be moved to the owner's property; and suggested the business owners be given one year to come into compliance with home enterprise regulations. Gordon Kjeldergaard, adjoining property owner, expressed concern with the visibility for traffic at the intersection of the driveway and East Westfall and Triangle Roads; opposed the re-zoning; and commented that the front of the property was enhanced, but the back has piles of refuse from the remodel. Mardel Sanders, an adjoining property owner, stated she moved here twenty years ago to be in a rural atmosphere and does not want commercial property next to her; and agrees with the restaurant staying as a Rural Home Enterprise, but opposes the zoning change. Mariella Haney, an adjoining property owner, stated she hoped the Board would protect the interest of the surrounding property owners - they enjoy the rural atmosphere of the area and a zone change would have an adverse impact on neighboring properties. Helen Kwalwasser stated she is trying to get zoned for commercial uses through the Open Window Period application process; she received her use permit eighteen years ago and under the Open Window Period process she will be restricted to her current uses; and she feels the proposed Development Agreement for the Toneys is different and could be cancelled or amended. Comments of a general nature: none. Rebuttal: Pam Toney commented that the prior use of the facilities was for a church; she did not solicit more names on the petitions due to the prior Board action; stated she feels the Development Agreement resolves the problems and does not mention being able to subdivide the property; the driveway was constructed in accordance with all rules; the previous tenants on the property had barking dogs which created a nuisance for the neighbors; and they like and have encouraged the rural quality of the area and noted that the deer wander through in the evenings. Public portion of the hearing was closed and Board commenced with deliberations. Ed Johnson reviewed options available for action and responded to questions from the Board relative to the amendment process for the Development Agreement. (M)Parker, (S)Balmain (who passed the gavel), to give direction to staff to continue with processing the re-zoning to CN-2 with a 30-year Development Agreement that limits the use to the existing uses and expansion to no more than 50%, to waive first reading and introduce ordinances for the zone change and Development Agreement with allowance for a B & B use and addressing the termination of the Agreement, failed by the following vote: Ayes: Balmain, Parker; Noes: Reilly, Stewart, Taber. (M)Taber, (S)Stewart, to deny the General Plan/Zoning Amendment based on the Planning Commission's recommendation, was amended following further discussion. Motion was amended, agreeable with maker and second, to include a one year extension for the owners to comply. Motion failed by the following vote: Ayes: Stewart, Taber; Noes: Reilly, Balmain, Parker. (M)Parker, (S)Stewart, Res. 96-217 adopted directing staff to work with representatives of the

Board, the applicants and other interested parties in an effort to find a workable solution; and for the hearing to be rescheduled and noticed/Ayes: Unanimous. Hearing closed.

cc: File



Mariposa County Planning and Building Department

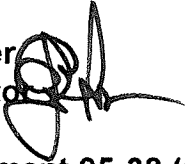
EDWARD J. JOHNSON
Director

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(209) 966-5151
FAX No. (209) 742-5024

May 3, 1996

MEMORANDUM

TO: Mariposa County Board of Supervisors

FROM: Jean Clark, Assistant Planner
Ed Johnson, Planning Director 

SUBJECT: General Plan/Zoning Amendment 95-38 (Ocean Sierra Restaurant);
Mack and Pam Toney, Applicants

SUMMARY AND PLANNING COMMISSION RECOMMENDATION

The Board of Supervisors initiated a General Plan/Zoning Amendment (GP/ZA) to change the land use classification and zoning district on APN 15-060-025 (Ocean Sierra Restaurant) from the Mountain Home (MH) Zone to the Neighborhood Commercial-2 (CN-2) Zone. Based upon mitigation measures developed through the Initial Study, a Development Agreement (DA) to limit future uses and expansions of existing uses was developed and processed by staff with the GP/ZA Application.

The Planning Commission, after consideration of public input, adopted a resolution recommending that the Board of Supervisors deny the GP/ZA and DA.

BACKGROUND

November 28, 1995 As part of an appeal hearing, the Board of Supervisors initiated a GP/ZA to change the land use classification and zoning on the Ocean Sierra Restaurant site from MH to CN-2.

April 5, 1996 The applicants requested a continuation of the scheduled Planning Commission public hearing on the GP/ZA. The Planning Commission took testimony from those people who had attended the hearing.

April 19, 1996 The public hearing on the GP/ZA and the DA was held on this date. Planning Staff recommended the Planning Commission approve the projects, with a modification to the recommended conditions, to allow a Bed and Breakfast on the site.

The Planning Commission, after consideration of public input, acted to recommend that the Board of Supervisors deny the GP/ZA because two of the four mandatory general plan amendment findings could not be made for the project. All four findings must be made to approve a project. The Planning Commission's motion included a recommendation that the Board (1) allow the present businesses to operate under the original home enterprise standards with the business operators having to live on the site; and (2) give the existing business one year to comply with the home enterprise standards with possible 6 month extension which may be granted by the Planning Director upon a finding of good faith effort toward compliance.

SUMMARY OF PUBLIC COMMENTS

One person, representing the beauty shop owner, spoke in favor of the GP/ZA, stating that the only impact is from traffic. He wanted the project approved with no restrictions.

Eight people spoke against the amendment, including four whose properties abut the subject property. The people speaking against the project were concerned that a rezoning would allow a number of commercial uses and that the property could be subdivided; a loss of property values would result; traffic and air pollution would increase; the zoning was being changed to correct the illegality of a business operation; the DA would prove difficult to enforce; future commissions and boards would be able to change the DA and noted that the Agreement was "already being changed" with Planning Staff's recommendation that the Bed and Breakfast restriction be eliminated from the DA.

Some of the people who spoke against the rezoning stated that they had no objection to the operation of the restaurant if it were operated as it originally, legally opened -- as a home enterprise with a business operator living on the site. Others had no objection to the operation of both restaurant and beauty shop, if the business operators lived on the site.

PLANNING COMMISSION RECOMMENDED FINDINGS FOR DENIAL

Finding No. 1: *The amendment is not in the general public interest and could have a significant adverse effect on the general public health, safety, peace, and welfare.*

There is no public need to amend the land use and zoning designation on the project site when: 1) the existing business was originally legally established as a home enterprise and can still be operated as a home enterprise; and 2) the modification of the land use classification and zoning district could adversely impact the adjacent residential properties. Dust, traffic, air pollution, lighting, noise, and fire hazards resulting from future possible neighborhood commercial development could all be intensified to negatively impact the neighboring properties.

Finding No. 2: *The amendment is not desirable for the purpose of improving the General Plan with respect to providing a long term guide for County development and a short term basis for day-to-day decisionmaking.*

The Mariposa County General Plan Land Use Element promotes "a balanced and functional mix of land uses consistent with community values." The Land Use Element sets policies and standards to provide a reasonable degree of protection for scenic resources and establishes site suitability for commercial development based upon compatibility with adjoining uses. Rezoning APN 15-060-025 to CN-2 is not consistent with community values and could result in significant impacts to property values based upon permitted uses in CN-2 and the rural residential character of the neighborhood. The amendment is not necessary to allow the restaurant business to continue operating, and there are other commercial properties in the vicinity of the site. Rezoning this parcel to CN-2 could be considered "spot zoning" (the zoning of an isolated parcel in a manner which is inconsistent or incompatible with surrounding zoning or land uses, particularly if done to favor a particular landowner) which is not "good planning." This project is not desirable in either the short term or the long term.