

Basis for Revocation:

Zoning Ordinance:

Sec. 130.22.260. – Revocation states:

“A. All permits authorized by this chapter shall automatically expire by operation of law when:

1. The timeframe established pursuant to Section 130.22.250 has elapsed; or
2. The use authorized by the permit has ceased for a period of one year for any reason.

When it is discovered that a permit has expired, the Development Services Division of the Community Development Agency shall send notice of such termination to the property owner and/or applicant. Failure to send such notice shall not affect the expiration of the permit.

B. Any permit authorized under this chapter may be revoked when it is found by the issuing authority, following a public hearing, that conditions established for the issuance of the permit have been violated or lack substantial compliance or when the use is considered to be a public nuisance.

C. Any permit revoked by the issuing authority, or which is determined by the Development Services Division Director, Zoning Administrator, or Planning Commission to have expired by operation of law, may be appealed in accordance with the provisions set forth in Section 130.22.220.”

Discussion:

Once approved, special use permits “run with the land”. However, if an approved use ceases for greater than a year for any reason the permit is expired by operation of law pursuant to Ordinance Section 130.22.260.A. Separately, if the conditions of approval have been violated or lack substantial compliance the permit may be revoked pursuant to Ordinance Section 130.00.260.B.

As detailed below, S78-0016 has both ceased for greater than a year and the current uses at the site lack substantial compliance with the conditions of approval.

I. Revocation when there is lack of substantial compliance with conditions of approval:

Special Use Permit S78-0016 was approved by the Planning Commission on March 9, 1978. The SUP allowed the operation of a stainless steel fabrication shop in an accessory building, including the use of power tools which require special consideration, as a home occupation. According to department history and information from neighbors, the application was approved to allow the property owner to construct kitchen range hoods. The following conditions of approval were included with the project:

1. Development is to be consistent with the site plan.

Response: S78-0016 was approved with a site plan showing the structure that was to be used as the shop located 40 feet from both the south and west property lines. Condition of approval Number 1 required that development be consistent with that site plan. Building permit and tax records show that the structure was 2,400 square feet when constructed. Currently the site plan submitted with the revision shows that the structure has been expanded to approximately 5,000 square feet and is located within the 30 foot setback at 20 feet from the south property line and is completely within the setback on the west property line as measured from the edge of the road easement. No building permits have been approved for the expansion of the structure and there is currently an open code enforcement case as a result. Failure to revise the special use permit prior to expanding the shop structure demonstrates a lack of substantial compliance with Condition 1.

2. Operational hours from 7:00 A.M. to 5:00 P.M.

Response: Condition Number 2 states that operational hours are to be from 7:00 A.M. to 5:00 P.M. Comments received from an adjacent property owner states that on multiple occasions employees have arrived and deliveries have been made prior to and after the allowed hours of operation. There is a lack of substantial compliance with Condition 2.

3. Structure to be painted earth colors.

Response: The structure is consistent with condition of approval Number 3 as it is painted tan with brown trim.

4. The use is exclusively for the applicant, not to include employees, and not transferrable with the sale of the property.

Response: Condition of approval Number 4 states that the use is exclusively for the applicant and is not to include employees. The applicant acknowledges that the business employs at least three people at the site and that multiple subcontractors work at the site at various times. The approval of S78-0016 was clear in that it was a home occupation that was to be performed by only the applicant that resided at the site. There is a lack of substantial compliance with Condition 4

The statement “not transferrable with the sale of the property” within Condition 4 was a common condition on special use permits at the time but is not legal or valid. Special use permits are by definition transferrable and run with the land and not the applicant. That is, where special use permits are concerned, all related property and personal rights are freely transferable, unless expressly prohibited by law (*Anza Parking Corporation v. City of Burlingame* (1988) 195 Cal.App.3d 855). Inversely, a conditional use permit may not lawfully limit the permittee from transferring it with the land since such a condition is beyond the power of the zoning authority (*Anza*, supra).

As detailed above, the current uses at the site lack substantial compliance with the conditions of approval for S78-0016 and consistent with Zoning Ordinance Section 130.22.260.B, S78-0016 may be revoked by the issuing authority. As the issue of revocation was previously heard by the Commission on March 12, 2015, the Commission could take action to revoke the special use permit at the hearing today.

II. Revocation when authorized use has ceased for a year:

The following is the special use permit and property ownership timeline:

S78-0016 Approved by the Planning Commission March 09, 1978 Owner Thomas H. Endean
Parcel Map P87-0004 approved June 11, 1987 Recorded November 10, 1988 Map requested by Thomas H. Endean
Grant Deed 3134-59 recorded May 10, 1989 Thomas H. Endean to John H. Mirande and Margaret A. Mirande
Grant Deed 2006-3244 recorded January 17, 2006 Margaret A. Mirande to Erik Martin and Carrie S. Martin

Thomas H. Endean was the applicant when S78-0016 was approved on March 9, 1978. According to County records and information from adjacent land owners he continued operation of the home occupation at the project site until he sold the property in 1989 to the Mirande's.

Mr. and Mrs. Mirande owned the project parcel for approximately 17 years. Evidence has been received that the Mirande's did not operate a business consistent with the conditions of approval of S78-0016 (Exhibit A). The email from Mrs. Mirande states that the structure associated with the special use permit was used for storage only and not as a stainless steel fabrication shop. Business license information for John H. Mirande shows that he owned a photography studio in Diamond Springs (Exhibit B). Zoning Ordinance Section 130.22.260.A.2 states that when a use authorized by the permit ceases for a period of one year or more for any reason the permit shall automatically expire by operation of law. Findings for revocation are at the end of this memo.

Conclusion:

Should the Planning Commission act on staff's recommendation, S78-0016 shall be considered revoked and of no effect as of the expiration of the required 10 day appeal period following this Planning Commission hearing. The action by the Planning Commission is appealable to the Board of Supervisors.

SUPPORT INFORMATION

Attachments to Memo:

Findings

Exhibit A.....	Email from Margaret A. Mirande; March 6, 2015
Exhibit B.....	Business License information for John H. Mirande (4 pages)
Exhibit C.....	Timeline of Correspondence and Letters (16 pages)