

FROM THE MINUTES OF MARCH 8, 2007

9. NON-CONFORMING USE (Public Hearing)

Consideration of the nonconforming use status of the Olde Coloma Theatre, located at 380 Monument Road, Coloma, CA. The property, identified by Assessor's Parcel Number 006-290-04, is located on the south side of Monument Road, approximately 300 feet west of the intersection with Cold Springs Road, in the Coloma area, (Supervisory District IV)

Staff: Peter Maurer said the theater is waiting for information from the park regarding a parking agreement. Staff recommends the Commission find this is not a legal non-conforming use. He understands there is a request in process to waive the fee for a special use permit. Staff recommends any action against the use of the theater be stayed as long as a use permit is being processed.

Commissioner Mathews said they lost their off-site parking. Mr. Maurer informed the Commission that originally the parking was all on-site. Commissioner Mathews said they are looking for additional off-site parking. Paula Frantz, County Counsel, explained a legal non-conforming use. There is a question as to whether the use was ever a legal non-conforming use. They never had all the permits needed to be a legal non-conforming use. Ms. Frantz read the pertinent sections from the zoning ordinance. She gave the Commission some background information on the operation and the pertinent sections of the zoning ordinance.

Commissioner Mathews asked if a special use permit can focus on the issue which is off-site parking. Ms. Frantz said you are not just talking about parking. When you deal with a special use permit you look at the entire site and everything connected to the use. You need a project description, parking, hours of operation, etc. You need adequate conditions. What happens if the parking is no longer available? The County cannot allow them to be a health and safety issue.

Mr. Maurer said staff would not be looking at this as if nothing had been there. Ms. Frantz said staff would be looking at the use before they did the illegal grading.

Commissioner Mathews said we would like to solve the problems, noise at night, kids walking on the highway, etc. A special use permit can shutdown the theater; it is a dead end for the theater financially.

Commissioner Mathews said we have the choice to close them down today. We can find they are a legal non-conforming use. If they want additional seating, they need to go through the special use permit process. Supervisor Briggs is putting together something to waive the special use permit fee. The Park is putting together an agreement. We need to ask the applicant what he wants today. This is the fifth time we have heard this issue. Code enforcement will not be done if they apply for the special use permit before a certain date.

Commissioner Mathews asked if you can apply conditions to a non-conforming use. Ms. Frantz replied there is nothing in the non-conforming use section that allows conditions. In lieu of terminating the use, you can say they need to do this, this, and this. However, there needs to be some type of mechanism to enforce the conditions.

Jerry Griffin stated the building that is there now is not the building that was given to them. It is his understanding that the material taken off the site has allowed additional parking. The additional parking needs to conform to the necessary requirements in place when the grading was done. They need to comply with the rules also. It was due to the liability that he does not allow parking on his property for the theater.

There was no further input.

Commissioner Machado said he listed three options for the applicant, and the applicant did not make any comments. He asked the applicant his choice of the options.

Commissioner Mac Cready asked if they would still need a special use permit if they get a parking agreement with the State Park. Staff commented that the operation has changed.

Chair Knight went over the options. He would like to see the theater stay open, but the Commission is put in a position of following the applicable ordinance.

Commissioner Mathews asked Dustin Weiland if they ever looked at grant money. Mr. Weiland replied they have not. If they have to get a special use permit, the concern is for the additional costs that may be involved. Mr. Weiland asked what if the special use permit is denied. Chair Knight replied that all the Commissioners have stated they want to keep the theater open. Ms. Frantz said if a permit is denied, the use must cease. There are many options with a special use permit. A use permit is not an all or nothing decision. The odds are that the Commission is not going to tell them they cannot do anything. The odds are that they will be allowed the use with certain conditions.

Commissioner Machado stated that while the special use permit is being processed they are limited to 40-person seating.

The public hearing was closed.

Commissioner Mathews said there is parking at North Beach. There can be shuttling. He feels the numbers can be increased.

Ms. Frantz said this has been a code enforcement issue that has been going on for some time, a number of years.

COMMISSIONER MATHEWS MADE A MOTION, SECONDED BY COMMISSIONER MAC CREADY TO FIND THIS A LEGAL NON-CONFORMING USE. **This motion was withdrawn prior to the vote.**

SECOND MOTION: COMMISSIONER MACHADO, SECONDED BY COMMISSIONER KNIGHT AND FAILING BY THE FOLLOWING VOTE: AYES – COMMISSIONER MACHADO AND KNIGHT; NOES – COMMISSIONERS MAC CREADY, MATHEWS, AND TOLHURST. IT WAS MOVED TO DECLARE THIS A LEGAL NON-CONFORMING USE WITH A CAPACITY NOT TO EXCEED 40 PARTONS AT ANY GIVEN TIME; FURTHER, ANY EXPANSION BEYOND THE 40 PATRONS WOULD TRIGGER THE NEED FOR A SPECIAL USE PERMIT PURSUANT TO SECTION 17.20.040. ANY EXPANSION WITHOUT A SPECIAL USE PERMIT WOULD BE CONSIDERED DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE.

Commissioner Tolhurst said circumstances have changed. The way they are operating now is not the way they were operating previously. He would go with the staff recommendation that they file for a special use permit by April 1, and the parameters would be defined at the time the use permit is considered by the Commission; further, they can operate until action is taken on the use permit.

As the second motion failed, the following action was taken:

MOTION: COMMISSIONER TOLHURST, SECONDED BY COMMISSIONER KNIGHT AND CARRIED BY THE FOLLOWING VOTE: AYES – COMMISSIONERS TOLHURST, MACHADO, MAC CREADY, AND KNIGHT; NOES – COMMISSIONER MATHEWS, IT WAS MOVED TO find:

1. There has been a change in circumstances since the theater acquired its building permit in the 1970s. These are.
 - a. The lot was split from the parent parcel
 - b. An informal agreement for parking on the adjacent property has been rescinded;
 - c. The theater parcel has inadequate space to meet the parking needs of the staff and patrons; and
 - d. No parking easement was retained for use of the adjacent property.
2. A safety hazard has been created in that theater patrons must walk along a narrow road to attend shows, due to the loss of available parking to the theater;
3. Bus parking and unloading has crated a public nuisance by obstructing the free passage on the public highway; and
4. Any legal nonconforming use of Assessor's Parcel Number 006-290-04 which may have existed for a theater is terminated.

FURTHER, ENFORCEMENT ACTION SHALL BE STAYED IF A COMPLETE SPECIAL USE PERMIT APPLICATION IS SUBMITTED TO PLANNING SERVICES NO LATER THAN APRIL 1, 2007, AND IS DILIGENTLY PURSUED BY THE COLOMA CRESCENT PLAYERS. DURING THE TIME THAT A SPECIAL USE PERMIT IS BEING PROCESSED, USE OF THE THEATER SHALL BE LIMITED TO AUDIENCES OF NO MORE THAN 40 PERSONS.

The action today can be appealed to the Board of Supervisors within ten work days.