



# COMMUNITY DEVELOPMENT SERVICES

## PLANNING AND BUILDING DEPARTMENT

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**DATE:** April 19, 2018 Agenda of: April, 24 2018  
**TO:** Board of Supervisors  
**FROM:** Evan Mattes, Assistant Planner  
**SUBJECT:** S10-0009-A/Villa Florentina Appeal; Findings for County Mandated Modification

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The Villa Florentina Bed & Breakfast appeal (S10-0009-A) was considered by the El Dorado County Board of Supervisors at a duly noticed public hearing on April 10, 2018. The property owners appealed the February 8, 2018 Planning Commission decision for modification of Special Use Permit S10-0009 (Villa Florentina), limiting the use of amplified music during special events until 7:00 P.M. In addition to the appeal the property owners requested that amplified sound be allowed throughout the entirety of the property.

Upon conclusion of the public hearing, the Board of Supervisors voted 4-0 to conceptually deny the Appeal and conceptually modify Special Use Permit S10-0009 to remove the ability to conduct special events, however allowing a stay of enforcement for the property owner’s three existing contractual obligations under the terms of the original permit, subject to the adoption of Findings (Exhibit A). Based on the evidence presented at the April 10, 2018 Board of Supervisors hearing, including documentary evidence submitted by members of the public (Exhibit B) and oral testimony (see public record), staff recommends that the Board of Supervisors make the following Findings of Fact in support of its action to **deny the Appeal and modify the Conditions of Approval as shown in Exhibit A to the Staff Memo.**

### Attachments to Staff Memo

- Exhibit A.....Revised Conditions of Approval (April 10, 2018)
- Exhibit B .....2016 Bollard Acoustical Analysis

### CEQA FINDINGS

#### 1.0 CEQA FINDINGS

- 1.1 This permit modification has been found to be Categorical Exempt from the requirements of CEQA pursuant to Section 15301 of the CEQA Guidelines because the remaining bed and breakfast use will take place in an existing facility and no new use or expansion of use is being proposed. As conditioned the project is consistent with the residential development standards of the RL-10 Zone District for the existing structures. The use as a Bed and Breakfast Inn is by ordinance an expanded home occupation.

- 1.2 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Development Services Department, Planning Services Division at 2850 Fairlane Court, Placerville, CA.

## **2.0 GENERAL PLAN FINDINGS**

- 2.1 As proposed, the modification is consistent with the Rural Residential (RR) land use designation as defined within General Plan Policy 2.2.1.2 because the remaining uses (i.e., bed and breakfast uses) are allowed within the land use designation with a special use permit.
- 2.2 The Bed and Breakfast Inn without special events resulting from the modification is consistent with General Plan policies 2.2.5.2 (General Plan consistency) 2.2.5.21 (land use compatibility), 2.8.1.1 (light and glare), 6.2.3.2 (fire safe access) and 10.1.7.4 (home occupations).

## **3.0 ZONING FINDINGS**

- 3.1 **The permit modification is consistent with Zoning Ordinance Section 130.54.090.A.4.**

El Dorado County Zoning Ordinance Section 130.54.090 states, “Any permit authorized under this Article may be revoked or modified by the county when it is found that conditions required for the approval of the permit have been violated, have lacked substantial compliance, or when the use is determined to be a public nuisance.” It further states that any permit may be revoked or modified by the county if any one of the following findings can be made:

- a. Circumstances under which the permit or authorization was granted have been changed by the applicant to the extent that one or more of the findings that justified the original approval can no longer be made;

Finding: In approving Special Use Permit S10-0009 on March 24, 2011, the Planning Commission found that the proposed uses were compliant with General Plan Table 6-2, delineating noise level performance protection standards within Community and Rural regions of the county. The Planning Commission also found that the proposed uses would not be detrimental to the public health, safety, and welfare or injurious to the neighborhood. In support of those findings, the Planning Commission considered statements of the applicant that the project would not be a major noise contributor for the area. (*See Minutes of the March 24, 2011, Planning Commission hearing.*) The Planning Commission also considered the October 18, 2010 Environmental Noise Assessment prepared by Bollard Acoustical Consultants, Inc. That report indicated that music from a sound system located in the covered patio area of the site would not be expected to exceed the County’s noise standards.

To that end, the report cautioned that, “[i]t is critical that the sound system is placed in the covered patio area to take advantage of the acoustical shielding provided by the project buildings. The DJ sound system should not be positioned anywhere other than the covered patio area shown in Appendix A.” With respect to guest noise, the report indicated that, although maximum noise exposure from guest noises might exceed the County’s evening noise standard, average exposure from guest noises would be expected to meet the County’s evening noise standard. Substantial evidence presented during the multiple hearings concerning this permit confirms that the project is not in substantial compliance with the standards of the El Dorado County Noise Ordinance, which implements General Plan Table 6-2, and that the permittee has failed to position sound equipment as specified in the 2010 Environmental Noise Assessment. Accordingly, the Board of Supervisors finds that the findings that justified the original approval can no longer be made.

- b. The permit or authorization was granted, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application, or in the testimony presented by the applicant during the public hearing;

Finding: Not applicable.

- c. One or more of the conditions of approval have not been substantially fulfilled or have been violated;

Finding: Special Use Permit S10-0009 contains the following Condition of Approval No. 3: “All amplified outdoor sound systems shall be placed in the covered patio area to take advantage of the acoustical shielding provided by the project buildings. Sound systems shall not be positioned anywhere other than that identified in Exhibit L, Appendix A. Noise levels during Special Events shall not exceed the levels specified in Table 6-2 of the General Plan.” The Board of Supervisors finds that the permittee violated this condition of approval in the following ways: (1) Substantial evidence, including, but not limited to, letters from Robin Smay dated March 14, 2017, August 18, 2017, and February 2, 2018, supports the conclusion that amplified outdoor sound systems were frequently positioned outside of the designated area. (2) Table 6-2 of the General Plan establishes the following standards for noises consisting primarily of speech or music in rural areas: 45 dB  $L_{eq}$  / 55 dB  $L_{max}$  between 7:00 a.m. and 7:00 p.m. and 40 dB  $L_{eq}$  / 50 dB  $L_{max}$  between 7:00 p.m. and 10:00 p.m. Substantial evidence, including, but not limited to, sound measurements submitted by neighbors of the subject property, supports the conclusion that special events occurring in 2016 and 2017 frequently exceeded the

established noise standards. Moreover, the report from Bollard Acoustical Consultants, Inc., dated November 30, 2016, which analyzed sound measurements conducted during an event held on November 5, 2016, concluded that the event exceeded the applicable noise standard by +18 dB  $L_{eq}$  and by +28 dB  $L_{max}$ . The report further noted that ambient noise levels were below County standards, with only occasional exceedances of  $L_{max}$  due to isolated environmental noise sources.

The Special Use Permit was considered by the Planning Commission on March 23, 2017, August 24, 2017, and February 8, 2018 and it determined that the Special Use Permit was not in substantial compliance with Condition of Approval No. 3, requiring the project to place all amplified outdoor sound systems in the covered patio area and to not exceed the sound levels specified in Table 6-2 of the General Plan, based upon documentary evidence and oral testimony (see public record). Documentary evidence included a sound study performed by Bollard Acoustic Analysts (Exhibit B) and logs of special events with accompanying decibel level measurements. The Board of Supervisors at a duly noticed hearing on April 10, 2018 concurred with the Planning Commission's decision.

- d. An improvement authorized in compliance with the permit is in violation of any applicable code, law, ordinance, regulation, or statute; or

Finding: Not applicable.

- e. The improvement/use allowed by the permit has become detrimental to the public health, safety, or welfare; or the manner of operation constitutes and/or is creating a public nuisance.

Finding: Substantial evidence was presented by numerous residents of the area surrounding the subject property that the noise generated by Villa Florentina's special events was impacting the quiet enjoyment of their properties. That the noise generated by Villa Florentina exceeded County standards was confirmed by sound measurements taken during 2016 and 2017, as more fully discussed above. Therefore, the Board of Supervisors finds that the special events conducted at Villa Florentina through the Special Use Permit are inconsistent with preserving a high quality of life within a rural residential area and that the negative noise impacts from the special events are detrimental to the welfare of the surrounding area.

## **CONCLUSION**

The Board of Supervisors made the above Findings of Fact in support of its action to modify S10-0009.