



EL DORADO COUNTY PLANNING & BUILDING DEPARTMENT

2850 Fairlane Court, Placerville, CA 95667
Phone (530) 621-5355, Fax (530) 642-0508

Date: December 15, 2022
To: Honorable Board of Supervisors
From: Melanie Shasha, Senior Planner
Subject: **Appeal CUP-A22-0001/Appeal Filed of Planning Commission Approval of Conditional Use Permit CUP20-0014 (Use Non-Conforming Use)**

Recommendation

Based on the analysis of Conditional Use Permit CUP20-0014, staff recommends the Board of Supervisors deny the appeal (CUP-A22-0001) and uphold the Planning Commission approval of Conditional Use Permit CUP20-0014.

Alternative Actions

1. Deny the appeal by David Cramer (CUP-A22-0001) and approve Conditional Use Permit CUP20-0014, as modified by the Board of Supervisors, and find the modified project to be exempt from California Environmental Quality Act (CEQA) pursuant to Section 15303 of the CEQA Guidelines (New Construction or Conversion of Small Structures).
2. Approve the appeal by David Cramer (CUP-A22-0001), thereby denying Conditional Use Permit CUP20-0014 and provide staff with Findings for denial of Conditional Use Permit CUP20-0014.

Background

An application for a Conditional Use Permit (CUP20-0014) was submitted on January 5, 2021 for a request to allow the existing unfinished and unpermitted Accessory Dwelling Unit (ADU) and five (5) additional existing unpermitted residential accessory structures on the subject property. The 10.54-acre property is located on the north side of Big Chief Trail approximately 300 feet north of the intersection with Wild Cat Court in the Cool area. The parcel, identified as Assessor's Parcel Number (APN) 072-030-014, has and a General Plan land use designation of Open Space (OS) and is Zoned as OS. The primary residence is a legal non-conforming use in the current OS zone. The residence was permitted (Permit No. 240426) by the County prior to the County's December 15, 2015 Zoning Ordinance Update. Conditional Use Permit CUP20-0014 included a request to allow one (1) existing, unfinished, unpermitted ADU and five (5) existing residential accessory structures consisting of a barn, wine processing building, workshop, and two (2) carports.

The project was found to be exempt from CEQA pursuant to Section 15303 of the CEQA Guidelines (New Construction or Conversion of Small Structures).

The project was processed in accordance with the authorizations of the El Dorado County Zoning Ordinance (Zoning Ordinance) Section 130.52.021 (Conditional Use Permit), and tentatively approved, subject to the standards found in Title 130, Article 5, Section 130.50.040 (General Review Procedure), by the Planning Commission at a publicly noticed hearing on November 10, 2022. As stated at the November 10, 2022 Planning Commission hearing, the decision to approve the project could be appealed to the Board of Supervisors by filing an appeal application and applicable fees to the County of El Dorado Planning and Building Department within the 10-working-day appeal period. The appeal period for this item began on November 10, 2022 (the date of Planning Commission approval) and ending at 5pm on November 29, 2022.

Appeal Filed

On November 23, 2022, Appeal CUP-A22-0001 to the Board of Supervisors was timely filed by David Cramer (Exhibit A). The appeal request includes six (6) statements (see Exhibit A and Staff Response to Appeal section below) as Mr. Cramer's basis for the appeal request.

Appellant provided no documentation and no additional explanation(s) supporting the statements and/ or claims at the time of submittal of the appeal request.

Pursuant to Zoning Ordinance Section 130.52.090 – Appeals, all decisions of the Planning Commission are appealable to the Board of Supervisors. All decisions of the Board are final.

Staff Response to Appeal

Below are staff's responses to the six statements included in the appeal request submittal.

Statement 1. Open Space Definition. This project does not resemble any of the definitions of open space zoning in the Land Use Regulations over the years.

Staff Response: The Zoning Ordinance in effect at the time of issuance of the building permit for the primary dwelling in October 2015 allowed for a single residential structure by right in the OS zone (Section 17.68.040 Uses permitted by right) (Exhibit B). The Zoning Ordinance in effect when CUP20-0014 was approved in November 2022 by the Planning Commission excludes residential structures as an allowed use in the OS zone. However, because the primary residence was permitted at a time when the use was allowed in the OS zone, the residence is a legal non-conforming use and does not require any additional permits or entitlements as-is.

Additional uses allowed in the OS zone prior to the County's 2015 Zoning Ordinance Update included (and were not limited to) agricultural and accessory structures and the non-commercial growing and harvesting of crops grown by vines. (Exhibit B contains Chapter 17.68, Open Space (OS) District from Title 17, El Dorado County Zoning Ordinance, revised September 2013).

The one (1) existing, unfinished, unpermitted ADU and five (5) existing residential accessory structures were evaluated as an expansion of a non-conforming use, in accordance with Zoning Ordinance Section 130.61.050, in the Staff Report for Conditional Use Permit CUP20-0014

(Exhibit C). The Staff Report includes Findings and Conditions of Approval that were reviewed and approved as part of the Planning Commission hearing in November 2022.

Statement 2. Notice – Lot 07[2]-030-014 borders Auburn Lake Trails (ALT). ALT is a property owner regime. All property owners own a share of the common element. The trail directly in front of the property is a common element. All residents of ALT have a standing in this decision and any potential lawsuit. The panel concluded that a mail box for ALT was within a 1000' of the property. The closest ALT mailbox for ALT is the Maintenance Office. Supervisory Anthony Bender said his office did not receive notification.

Staff Response: Auburn Lake Trails Property Owners Association (ALT) was noticed for the Planning Commission hearing as required by Section 130.51.050 (Public Notice Requirements and Procedures) of the County Zoning Ordinance, which requires public notice regarding projects to be mailed to nearby property owners according to the distance radius of 1,000 feet from the project site parcel boundary as specified in Table 130.51.050.2. (Public Notice Requirements and Procedures – Discretionary Projects). The mailing addresses for ALT were obtained from data maintained by the Treasurer-Tax Collectors office. The notices were mailed to:

AUBURN LAKE TR PROP O ASSN
PO BOX 181
COOL CA 95614

AUBURN LAKE TRAILS PROP O ASSN
2277 WESTVILLE TRL
COOL CA 95614-2012

Statement 3. Commercial Use. Commercial use is not allowed in OS zoning. Uso has 800 grapevines to produce wine for him and his friends. Google maps shows Estancia Winery over the lot. Estancia Wine is available for purchase online. Google maps indicates Estancia Winery is temporarily closed.

Staff Response: Conditional Use Permit, CUP20-0014, as conditioned and approved, does not allow for a commercial or micro-winery use or operation on the subject property. If the applicant were to choose to pursue such an operation on the property, the applicant would be required to submit for further discretionary review along with any appropriate permit/ use/ General Plan Amendment/Zone Change applications, which would be processed in accordance with any applicable public noticing requirements.

The appeal request submitted by Mr. Cramer included a screenshot of a website selling wine from a winery by the name of Estancia Winery. It appears that the Estancia Winery in the screenshot in the appeal request submittal is located in Madera (Madera County, CA) and San Miguel (San Luis Obispo County, CA). The appeal request also included a screenshot of what appears to be a location shown in Google Maps labeled as Uso Estancia Winery. Google Maps is a web mapping platform that is partially user-updated and requests to add place names can be submitted by the general public. Staff has no further information about the exhibit provided by Mr. Cramer or the labeling of the location in Google Maps.

Statement 4. Board members showed obvious favor for the property suggesting conflict of interest.

Staff Response: *(Staff assumes that Statement #4 was referring to the Planning Commission since the comment is in the past tense and the item had not been heard by the Board of Supervisors.)* The members of the Planning Commission were provided with the staff report, applicant statement, and public comments received on the application/ hearing item prior to and during the November 10, 2022 hearing as a basis for reviewing and, subsequently, approving Conditional Use Permit, CUP20-0014. Staff is unaware of any conflict of interest pertaining to any Planning Commissioners that participated in the hearing.

Statement 5. Uso recently held public office. He sat on the board at Georgetown Divide Public Utility. He has stated the treatment plan at ALT was his project. The project cost 16 million dollars. An outgoing board member said it should cost 5 million.

Staff Response: This statement does not appear to be relevant to the appeal process or project. Staff has no response to this comment.

Statement 6. *(Note that this statement is unnumbered in the appeal submittal. Staff has numbered it for the purposes of preparing this memo.)* A senior planner said I will get the information I want the night before the appeal deadline. This is a complicated issue that needs further review.

Staff Response: The Staff Report for Conditional Use Permit CUP20-0014 includes an evaluation of the applicant's request to permit the existing unpermitted structures as an expansion of a non-conforming use, in accordance with Zoning Ordinance Section 130.61.050, in the Staff Report (Exhibit C). The Planning Commission approved the request based on information in the Staff Report, including the Findings and Conditions of Approval presented in the Staff Report. Further, this memo reflects staff review of and responses to the issues raised in the appeal request.

Multiple planners have had extensive discussions and correspondence with the appellant. During these discussions, Mr. Cramer mentioned multiple times that he was sure that he was going to file an appeal and that he would like more information on which to base his decision. In response to inquiries from Mr. Cramer prior to his filing of the appeal request, staff assured Mr. Cramer that he would be provided with feedback regarding his inquiries prior to the end of the appeal period

Staff Observations

As discussed in the Alternative Actions section above, staff has identified two (2) alternative actions that the Board of Supervisors may choose to enact in lieu of enacting staff's recommendation. Staff would like to note that the Board of Supervisors also has the option to approve appeal CUP-A22-0001 based on information presented at the appeal hearing that may not be included in the original appeal request, including (but not necessarily limited to) finding that the change or expansion of the nonconforming structures are not compatible with the surrounding conforming uses and the area overall.

As discussed in the Staff Report for Conditional Use Permit CUP20-0014 (Exhibit C), there is an open Code Enforcement Case (CE20-0249) for the five (5) unpermitted accessory structures and ADU. In the event that the Board of Supervisors approves the appeal – whether based on

information presented by the appellant regarding one or more of the statements listed in the appeal request or based on information presented or discussed at the appeal hearing – it is expected that El Dorado County Code Enforcement would move forward with the existing code enforcement case. As such, the applicant could be subject to cumulative fines relative to the violations related to the open Code Enforcement Case. Fines would continue to accumulate until the violations are remedied. Examples of remedies for Code Enforcement Case CE20-0249 may include (but are not necessarily limited to) a finding by the Hearing Officer in favor of the applicant (during an administrative hearing, if requested by the applicant), applicant removal of the structures associated with the case’s violation, and/ or an applicant-initiated rezone of the subject property to a zone that would allow for the existing and in-progress development and uses. It is expected that rezoning the property would also require an applicant-initiated General Plan Amendment.

Staff Conclusion

Planning staff reviewed the application for a Conditional Use Permit CUP20-0014 and made Finding 130.61.050(D)(2) which states that the change or expansion of the nonconforming use will not have a negative impact on the surrounding conforming uses and the area overall.

The project has been sufficiently reviewed pursuant to the County’s Design Review Permit requirements and CEQA, and has been conditioned to conform to various agency and departmental requirements. Based on this analysis, staff recommends the Board of Supervisors deny the appeal (CUP-A22-0001) and uphold the Planning Commission approval of the Conditional Use Permit CUP20-0014.

Attachments

- Exhibit A.....Appeal Submittal (CUP-A22-0001)
- Exhibit B.....Chapter 17.68 of 2013 El Dorado County Zoning Ordinance
(revised September 2013)
- Exhibit C.....Staff Report