



Planning Commission Staff Report

October 12, 2011
Item 6.a.

SUBJECT: PUD-93-02-10M

**APPLICANT/
PROPERTY OWNER:** Arpad Nagy

PROPOSAL: Application for a Major Modification to extend the approvals for two years, to expire on August 16, 2013, for an approved project (PUD-93-02-09M/PCUP-82) which consists of: (1) relocating the existing sales office building on Ruby Hill Boulevard northwesterly along Vineyard Avenue; (2) changing the existing office use to restaurant use; (3) establishing a pad location and design guidelines for a future single-family residence; and (4) a Conditional Use Permit to allow alcoholic beverage service at the restaurant after 10:00 p.m.

GENERAL PLAN: Open Space- Agriculture and Grazing

ZONING: PUD (Planned Unit Development) – A/OS/LDR (Agriculture/Open Space/Low Density Residential) District.

LOCATION: 2001 Ruby Hill Boulevard

EXHIBITS:

- A. Draft Conditions of Approval for PUD-93-02-10M (Exhibit A-1) and for PCUP-182 (Exhibit A-2)
- B. Written Narratives and Approved PUD-93-02-09 Development Plan
- C. City Council Ordinance No. 1956 and City Council Resolution 07-132
- D. Planning Commission Meeting Staff Report, Excerpt Minutes, Planning Commission Resolution No. PC-2007-22 (PUD Major Modification), and Planning Commission Resolution No. PC-2007-23 (PCUP-182), dated May 9, 2007
- E. City Council Meeting Agenda Report and Excerpt Minutes, dated June 19, 2007
- F. Public Comments
- G. Location Map
- H. Notification Map

BACKGROUND

In July 2007, after receiving the Planning Commission's recommendation for approval, the City Council adopted Ordinance No. 1956 approving a Planned Unit Development major modification application from the applicant for the proposed restaurant use and establishing a building pad for the future residence. The conditional use permit (PCUP-182) was approved by the Planning Commission (PC-2007-23) to allow alcoholic beverage service at the restaurant after 10:00 p.m. Applications for conditional use permit are normally review and acted on by the Planning Commission unless it is appealed to the City Council. For this project, since the PUD major modification was for a restaurant use and the conditional use permit was to allow alcoholic beverage service after 10:00 p.m. at the restaurant, the condition use permit was also forwarded to the City Council. The Council approved the conditional use permit on the same hearing it introduced Ordinance No. 1956.

As both the PUD development plan modification and the conditional use permit were for the same project, the expiration of the conditional use permit was conditioned to expire on the same date as the PUD modification¹. Condition No. 6 of Ordinance No. 1956 provides that the PUD development plan modification and the conditional use permit approvals expire two years following the effective date, unless a building permit is issued and construction has commenced, or an extension has been approved by the City. Based on this condition, the approvals were set to expire on August 16, 2009.

In December 2007, the applicant submitted construction plans for the restaurant to the Building Division for plan check. However, the applicant did not obtain the permit.

In May 2009, the applicant requested an extension of the project approval without modifications to the project. In accordance with Section 18.12.030 of the Municipal Code, the Zoning Administrator granted a one-year extension (to August 16, 2010). Meanwhile, building staff informed the applicant of the Statewide Building Code changes taking effect on January 1, 2010, and that if the building permit is not issued by the end of 2009, the applicant will be required to resubmit construction plans that conform to the new codes and pay the applicable plan check fees for the updated plans.

In August 2010, the applicant requested another administrative extension pursuant to Section 18.12.030. The Zoning Administrator granted the second one-year extension (to August 16, 2011). The applicants were also advised that this second extension was the last one which could be considered administratively.

In July of this year, Arpad Nagy contacted staff regarding building permit issuance and fees. He was reminded that the construction drawings submitted in 2007 are no longer valid and that the construction plans need to be updated per the current codes and plan checked by staff.

¹ PUD approvals are normally valid for two years and Conditional Use Permits are normally valid for one year.

The applicant indicated that there would not be adequate time to revise the construction drawings and obtain the building permit prior to the project expiration date. He then inquired about extending the project approvals again. Staff informed him that there is no further administrative extension that can be granted for this project, but he could apply for a PUD modification to modify the expiration date. The applicant filed for a PUD modification to extend the approval for two more years until August 16, 2013.

A modification to extend the approval without changing the project, such as this request, is normally processed as a PUD minor modification. Notices of the requested modification are sent to the surrounding property owners/residents. If no concerns regarding the requested modification were received during the public comment period, the Zoning Administrator has the authority to make a decision on the request, and the decision is forwarded to the Planning Commission and the City Council as a Zoning Administrator Action item. Either the Planning Commission and/or the City Council can appeal the Zoning Administrator's action. If concerns are raised from the public notice, the proposed PUD minor modification becomes a PUD major modification. A PUD major modification applicant is subject to review and approval by the City Council, following recommendation on the application by the Planning Commission.

For this particular request, two Ruby Hill residents raised objections to the requested extension after receiving the notice. Therefore, the PUD minor modification becomes a PUD major modification subject to review by the Planning Commission and the City Council.

SITE LOCATION

The subject site is located within the Ruby Hill Planned Unit Development (PUD-93-02). The overall development was originally approved by Alameda County prior to its annexation to the City of Pleasanton in 1993. Development of the site is subject to the County's planned development conditions of approval, the Ruby Hill Development Agreement, the South Livermore Valley Area Plan policies, and conformance to the Conservancy Easement. An existing conservation easement limits the amount of land not in grape production to a maximum of 2.5 acres.

Existing uses on the site are vineyards and an existing two-story building previously used as the Ruby Hill sales office. Permitted uses within the 2.5-acre area include, but are not limited to: home, winery, tasting room, restaurant, and lodging.



Site Location

SITE DESCRIPTION

The subject site is a relatively flat site located on the south side of Vineyard Avenue between the Mitchell Katz Winery and the signalized entrance to Ruby Hill. It is approximately 36 acres in size and contains an active vineyard operated by Wentz Brothers. Access to the site is provided by an existing driveway from Ruby Hill Boulevard before the entrance kiosk. A seasonal drainage channel running in a north-south direction bisects the property.

Surrounding uses are the following:

North:	Gravel Quarries (Alameda County)
East:	Vineyards and Commercial (Ruby Hill Winery and Casa Real Event Center)
South:	Vineyards and Ruby Hill Development
West:	Vineyards and Ruby Hill Development

PROJECT DESCRIPTION

The current request is to modify Condition No. 6 of City Council Ordinance No. 1956, therefore, to extend the approvals for Case Nos. PUD-93-02-09M and PCUP-182 for two more years to expire on August 16, 2013. No revisions to the original project have been proposed. Otherwise, the original project includes the following:

- * Change the existing use of the building from sales office to restaurant;
- * Relocate the existing two-story, approximately 4,200-square-foot former sales office building toward Vineyard Avenue and to the east side of the seasonal drainage channel;

- * Create basement area for use as a wine cellar;
- * Construct a new driveway off of Vineyard Avenue and a 100-space parking lot for restaurant staff and patrons;
- * Remodel the building interior and operate a restaurant that serves dinner to the public daily and holds private functions during non-dinner hours;
- * Allow consumption of alcoholic beverages at the restaurant after 10:00 p.m. (PCUP-182);
- * Establish a building envelope at the former sales office building location for the construction of a future residence; and
- * Approve proposed design guidelines for the future home.

The proposed restaurant would be open daily. It is dinner-only restaurant with the following operation hours:

- Sunday -Thursday: 6:00 p.m.-10:00 p.m. – dining hours
- Friday/Saturday, and the day before a Federal holiday: 6:00 p.m.-11:00 p.m. – dining hours

Staff of the restaurant may be on premises from 9:00 a.m. to closing time for daily administrative duties and restaurant preparation.

The applicant also proposes to host daily private functions at the restaurant. These functions may include weddings, corporate events, etc. In order to offset any scheduling conflict and any potential impacts to Ruby Hill residents, restaurant patrons, and the public in general, the private functions would take place during non-dining hours, i.e., between the hours of 11:00 a.m. and 5:00 p.m. It allows one hour to get the restaurant ready for the 6:00 p.m. dining schedule.

Outdoor dining/activity hours are limited to 9:00 p.m.

ANALYSIS

Two Ruby Hill residents raised concerns regarding the extension request. One questioned if the project would be constructed as it has been four years since it was originally approved and if it was a feasible project, it would have been built.

With the challenging economic climate in the past few years, the applicant has advised that it was difficult to secure financing, which delayed construction. As previously recommended by staff, the originally approved project conforms to the South Livermore Plan and echoes the development in the Livermore valley wine country areas. Staff believes that the request for extension is understandable and supportable. With the recent changes in the Statewide building codes, the non-residential CalGreen mandatory measures, stormwater, etc., the original PUD-93-02-09M conditions of approval were revised by staff to include the latest code requirements applicable to this project as well as new standard conditions. New and modified conditions are shown in *italics with underscore* in the draft conditions.

This extension request does not change the scope of the project. Therefore, the conditions for the original conditional use permit (Case No. 182) pertaining to restaurant operation remains unchanged (see CC Res. 07-132) except for the project expiration condition of approval.

For detailed project analysis, please refer to the staff report dated May 9, 2007, prepared for the Planning Commission (Attachment D).

Traffic, security, noise, and alcohol (e.g. public intoxication and drunk drivers) were the concerns raised by a few Ruby Hill residents. The proposed development would relocate the existing sales office building toward Vineyard Avenue. This relocation would separate the proposed restaurant from adjoining residential uses, which would reduce the impacts from the restaurant activities onto residential uses. However, a condition is included that if noise levels become a concern, the project can be reviewed again to add mitigating conditions of approval. Additionally, condition requires all outdoor activities be concluded at 9:00 p.m.

As proposed, the entrance to the restaurant would be directly from Vineyard Avenue. There would be a sign at the entrance to identify the facility. There would be no direct access from the restaurant to Ruby Hill. It is unlikely that patrons of the restaurant would be allowed in at the guard kiosk to wonder around the residential neighborhood. Additionally, conditions of approval require a full menu be available for patrons of the restaurant during operating hours and when alcoholic beverage are served, and employees that serve alcohol would be required to undergo a training program that is designated to prevent intoxication, underage drinking, and drunk driving.

PUBLIC COMMENTS

Notice of the proposed extension request was sent to properties within Ruby Hill and within 1,000-foot radius of the subject site. Upon receipt of the project notification, Kenneth Thompson, resident at 2455 Pomino Way, stated that it has been several years since the project was initially approved. He does not support the requested extension as he believes that if it is a good venture, the project would have already been constructed, and that extending the project is a waste of time.

Ms. Elaine Lusher, a Ruby Hill resident, contacted staff via email (see Attachment F). Ms. Lusher objected to the sales office being used as a restaurant. She felt that changing the office to a restaurant use would jeopardize the security of the Ruby Hill neighborhood.

Santokh Sohal, a Ruby Hill resident, emailed staff stating that the proposed restaurant would bring noise to the community and serving alcohol after 10 p.m. would result in having drunk people wondering near the Ruby Hill entrance.

Cyrus Razavi and Roya Safiei, Ruby Hill residents, emailed staff, stating that they were assured by the real estate sales representative that the former sales office building was part of the common property and that it would not be used for commercial purpose. They believe that the proposed restaurant would bring traffic to the neighborhood and, therefore, violate the property owners' rights to enjoy the common property and the access roads.

CONCLUSION

The request is to extend the approval of the project for two additional years (to August 16, 2013) with no changes to the project, except those required by State law to reflect updated Statewide building codes and stormwater requirements. The request would not change the original design of the project, which was recommended for approval for the reasons set forth in the May 9, 2007 report to the Planning Commission (Attachment D).

STAFF RECOMMENDATION

Staff recommends that the Planning Commission recommend to the City Council approval of this PUD major modification to extend the project approval for two years subject to the Conditions of Approval as listed in Exhibit A-1 (PUD modification) and Exhibit A-2 (Conditional Use Permit).

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