

**EL DORADO COUNTY DEVELOPMENT SERVICES
PLANNING COMMISSION
STAFF REPORT**



Agenda of: September 11, 2008
Item No.: 8.b
Staff: Aaron Mount

SPECIAL USE PERMIT

FILE NUMBER: S07-0021/Cozzi Landscaping

APPLICANT: Guy and Cynthia Cozzi

AGENT: Robert A. Laurie, Attorney at Law

REQUEST: Special use permit to allow a landscaping business to operate as an expanded home occupation.

LOCATION: On the south side of Fria Springs Road, approximately 2.9 miles north of the intersection with Green Valley Road and Deer Valley road in the Rescue area. (Exhibit A)

APN: 102-540-09

ACREAGE: 5 acres

GENERAL PLAN: Low Density Residential-Important Biological Corridor-Platted Lands (LDR-IBC-PL) (Exhibit B)

ZONING: Estate Residential Five-acre (RE-5) (Exhibit C)

ENVIRONMENTAL DOCUMENT: Statutorily Exempt pursuant to Section 15270(a) of the CEQA Guidelines.

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

1. Certify that the project is Statutorily Exempt from CEQA pursuant to Section 15270(a) of the CEQA Guidelines; and

2. Deny Special Use Permit S07-0021 as the required findings cannot be made based on the analysis in the staff report and as noted in Attachment 1.
3. If the Planning Commission takes other than the recommended action, the project should be continued to allow staff adequate time to prepare an environmental document, revise findings, and develop conditions.

BACKGROUND: The existing landscape business has operated at the current site since April of 2007. A business license was issued for the project site on April 3, 2007 with the following notes written by Planning Services:

Home occupation, no employees, explained guidelines allowed by zoning

Code enforcement actions were initiated for the zoning violation by a courtesy notice sent to the owner of the subject parcel on May 18, 2007. On June 7, 2007 a Code Enforcement inspector found the following conditions:

1. Operating commercial business in residential (RE-5) zone.
2. Storage of commercial equipment in residential (RE-5) zone.

This was followed by a Notice to Correct recorded on August 15, 2007 citing the above violations. As a result of the notice, the owner submitted a special use permit application on June 26, 2007. The application was deemed complete on July 26, 2007.

STAFF ANALYSIS

Project Description: The request is for a special use permit for an expanded home occupation consisting of a landscape business being conducted in a residential zoning. The project proposal includes:

- Ten employees arriving at the site each day in no more than 4 personal vehicles.
- Storage of 3-4 trucks, 3 small excavating machines, and one trailer.
- Employees will arrive on-site between 6:30 A.M. and 7:00 A.M. and park their vehicles in the designated parking area. The employees will return generally between 3:30 P.M. and 4:30 P.M., park the business vehicles and leave the site.
- No supplies will be stored on-site.
- No clients will visit the site.
- No manufacturing or construction activity relating to the business will take place on-site.

Site Description: The project site is an average elevation of 1,160 feet above mean sea level and is located in the Valley Oak Ranch #2 subdivision. The gently sloped parcel consists mainly of grassland with a riparian corridor at the southern end of the parcel which contains Mormon Ravine, an intermittent stream. The riparian feature contains valley oak and montane hardwood woodland.

Improvements include a single family residence and an accessory garage. A fairly significant portion of the parcel, approximately 5,250 square feet, was graded for parking and storage of vehicles related to the business.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	RE-5	LDR	Single family residence
North	RE-5	LDR	Single family residence
South	RE-5	LDR	Single family residence
East	RE-5	LDR	Single family residence
West	RE-5	LDR	Single family residence

Discussion: The project area is a mix of Low Density Residential and Rural Residential land use designations. The linear distance to appropriate sites would be 2.5 miles to the closest Industrial land use designated parcels and 2.7 miles to the closest Commercial land use designated parcels.

Traffic: The applicant proposes to have ten employees arrive at the project in no more than four vehicles. Planning staff has determined that if approved this condition, as part of the project description, would not be enforceable as it would rely on neighbors to file complaints to ensure compliance. With this condition not being enforceable there is the possibility of 28 daily trips associated with the business in addition to the nine daily trips associated with the residential use. The 28 daily trips include 10 employees arriving at the site, leaving and returning to the site in four trucks, and again leaving the site in their personal vehicles.

Visual impact: The project site is a very visible parcel as it is almost devoid of tree cover. The storage of business vehicles and equipment, employee’s vehicles, and congregation of ten employees would have a significant visual impact on a rural residential subdivision. A large area on the project parcel adjacent to Fria Springs Road was graded for parking and storage of equipment related to the business and is very visible due to the lack of screening at the site.

General Plan: The General Plan designates the subject site as Low Density Residential (LDR). The LDR land use designation permits single-family residential development in a rural setting. Policy 2.2.5.2 requires that applications for discretionary projects, such as a Special Use Permit, shall be reviewed to determine consistency with General Plan policies.

Policy 2.2.5.21 *directs that development projects shall be located and designed in a manner that avoids incompatibility with adjoining land uses that are permitted by the policies in effect at the time the development project is proposed. Development projects that are potentially incompatible with existing adjoining uses shall be designed in a manner that avoids any incompatibility or shall be located on a different site.*

Planning staff has determined that proposed home businesses, with employees, the storage of equipment, and the parking of employee's vehicles would not be compatible with the surrounding residential neighborhood. This would be considered a commercial/industrial operation and should be relocated from the residential neighborhood to a compatible commercial/industrial zone district.

Policy 10.1.7.4 states that *home occupations shall be encouraged and permitted to the extent that they are compatible with adjacent or surrounding properties.*

Staff has determined that the home-based business would be inconsistent with this Policy as it would promote a home-based business within a residential district that would not typically be permitted within the same zone district elsewhere in the County. This is a residential area not intended to be the site of commercial/industrial businesses and is not compatible with surrounding RE-5 and RE-10 zoned properties. A home occupation shall be strictly secondary and subordinate to the primary residential use and shall not change or detrimentally affect the residential character of the dwelling, premises, or the neighborhood. The proposal would generate vehicular traffic measurably in excess of that normally associated with single-family residential uses and would have a significant visual impact.

Conclusion: The project has been reviewed in accordance with the El Dorado County 2004 General Plan policies, and it has been determined that the project is inconsistent with the General Plan. Findings of inconsistency with the General Plan are provided in Attachment 1.

Zoning: The subject parcel is within the Estate Residential Five-acre (RE-5) zone district. The purpose of the RE-5 districts is to provide for the orderly development of land having sufficient space and natural conditions compatible to residential and accessory agricultural and horticultural pursuits and provide for the protection from encroachment of unrelated uses tending to have adverse effects on the development of the areas so designated.

The proposed use is not specifically listed as a home occupation permitted by right under any residential zone district described in The County Code, and therefore can only be evaluated by submitting a special use permit. The following is the language used in the residential zone districts to describe home occupation allowed by right:

Home occupation such as accountant, advisor, appraiser, architect, artist, attorney, author, broker, dressmaker, draftsman, dentist, handicrafts, insurance, photographer, physician, therapist, musician, teacher and other similar occupations normally conducted by mail or telephone on the premises where the activities do not create a traffic problem; provided, that instruction is not given to groups in excess of four and concerts or recitals are not held, and no display of goods is visible from the outside of the property; such use must be carried on in the residence and be incidental to the residential use of the premises and be carried on by a resident thereon.

The following is the language used in the residential zone districts to describe home occupation requiring a special use permit:

...home occupations not listed in subsection C of Section 17.28.190 which require special consideration such as the use of power tools, accessory building, noise, and will not change the residential character of the premises or adversely affect the other uses permitted in a residential area also would require a special use permit.

Discussion: Planning Services routinely reviews anywhere from 10 to 30 business license requests per day and the vast majority are for home-based occupations. Because of direction from The County Code, it has been the practice on a consistent basis for many years to deny requests for home-occupation business licenses that requests to have employees, storage of equipment, or more than one commercial vehicle per occupant. The approved business license only allows a home office, no employees, to be carried out by residents on the subject parcel only, not to permit more than one business vehicle and not to allow employees on-site. The approved business license indicated the activity was a home occupation with no employees.

County Code does not permit Planning Services staff to routinely permit businesses of this type to exist on parcels designated by the Zoning Ordinance and the General Plan for residential uses. Many similar home-based occupation applications historically submitted have been told they cannot conduct an enterprise with similar proposals. Planning staff has determined that to approve the subject application request would legitimize a home occupation that would not be permitted by The County Code. Further, it would be contrary to the intent of the establishment of residential districts, especially low-density residential land use districts that are not intended to be areas for commercial businesses. The project proposal is not a home occupation as contemplated by the Zoning Ordinance. This is a commercial use not permitted in a residential zone.

Therefore, Planning staff recommends the Planning Commission deny the subject application request as being contrary to the intent of Zoning Code and General Plan.

Agency and Public Comments: The following agencies provided comments on this application:

Hazardous Material Division of the Environmental Management Department: The Hazardous Materials Division responded to concerns that storage of landscaping materials and repair of equipment may involve the storage of reportable quantities of hazardous materials. If approved they recommend a number of conditions.

Department of Transportation: The DOT also recommended several conditions of approval.

At the time of the preparation of this report, staff had received multiple comments from the public. New issues may arise as a result of the public notice of the hearing which will be discussed at that time.

The Valley Oaks Ranch No. 2 Home Owners Association expressed concern that the added traffic would increase the exposure to liability should traffic accidents occur. The subdivision has only 10 lots with 12 residences and the potential additional daily trips the project has the potential of generating could increase the subdivisions daily trips by 20 percent. This would in turn accelerate

the maintenance needs of the streets paid for by the HOA. Further they expressed concern with the potential of hazardous materials being stored at the project site and spills related to the equipment.

Numerous letters and phone calls were received from concerned neighbors that all stated that the project proposal is a commercial/industrial use that is not consistent with the residential zoning of the area. Concerns ranged from traffic impacts, safety impacts, and especially visual impacts the business would have on the subdivision and surrounding area.

ENVIRONMENTAL REVIEW

This project has been found to be Statutorily Exempt from the requirements of CEQA pursuant to Section 15270(a) of the CEQA Guidelines stating that CEQA does not apply to projects which a public agency rejects or disapproves. In this case the project is inconsistent with a number of General Plan policies and the Zoning Ordinance, thus necessitating the recommendation for denial. Pursuant to Resolution No. 240-93, a \$50.00 processing fee is required by the County Recorder to file the Notice of Exemption.

SUPPORT INFORMATION

Attachments To Staff Report:

Attachment 1	Findings for Denial
Exhibit A.....	Vicinity Map
Exhibit B	General Plan Land Use Map
Exhibit C	Zoning Map
Exhibit D.....	Site Plan
Exhibit E	Business License 034074
Exhibit F	Site photos
Exhibit G.....	Aerial Photo
Exhibit H.....	Letters From Adjacent Land Owners

ATTACHMENT 1 SPECIAL USE PERMIT FINDINGS FOR DENIAL

**File Number S07-0021
Planning Commission/August 14, 2008**

Based on the review and analysis of this project by staff and affected agencies, and supported by discussion in the staff report and evidence in the record, the following findings can be made:

FINDING FOR DENIAL

1.0 CEQA Finding

- 1.1 This project is found to be Statutorily Exempt from the requirements of CEQA pursuant to Section 15270(b) of the CEQA Guidelines where the agency can determine that the project cannot be approved. The project is unapprovable due to numerous inconsistencies with General Plan policies.

2.0 General Plan Findings

- 2.1 The proposed special use permit is inconsistent with the Low-Density Residential (LDR) General Plan land use designation. The proposed home occupation is not secondary and subordinate to the primary residential use and detrimentally affects the residential character of the dwelling, premises, and the neighborhood.
- 2.2 The proposal, as conditioned, is inconsistent with the intent of Policies 2.2.5.21 and 10.1.74 because current adopted County Code directs that businesses such as the subject one, with employees, storage of equipment, and parking of employee vehicles, are not compatible with residential neighborhoods. The existing business generates vehicular traffic measurably in excess of that normally associated with single-family residential. The project has a significant visual impact on the existing residential zone district. Employees are not consistent with home occupations. The project has the potential to use and store hazardous substances which is not compatible with a residential use.

3.0 Special Use Permit Findings

- 3.1 **The issuance of the permit is consistent with the General Plan.** The special use permit is inconsistent with General Plan Policies 2.2.5.21 and 10.1.7.4 which states that development projects be located and designed in a manner that avoids incompatibility with adjoining land uses. The proposed landscape business is located within a residential subdivision and has increased traffic and created significant visual impacts. The use is an unduly intensive commercial use within a residential zone district with developed properties.

- 3.2 **The proposed use would be detrimental to the public health, safety and welfare, or injurious to the neighborhood.** Based on the conclusions contained in the staff report the proposed landscape business is located within a residential subdivision and impacts the neighborhood through increased traffic above the residential levels, significant visual impacts, and the potential to store hazardous materials. These are detrimental to the public health, safety and welfare, of the neighborhood. The use is an unduly intensive commercial use within a residential zone district with developed properties.
- 3.3 **The proposed use is specifically permitted by special use permit pursuant to this Title.** The proposed landscape business is a commercial use and is not permitted by Special Use Permit in the RE-5 Zone District and therefore, there is no authority to approve such a use.