

## FROM THE PLANNING COMMISSION MINUTES OF JANUARY 14, 2010

### **7. SPECIAL USE PERMIT**

**b. S07-0019/Olde Coloma Theatre** submitted by COLOMA CRESCENT PLAYERS, INC. (Agent: Carol Fallon) to authorize the use of an existing building for live theatre performances with a maximum occupancy of 149 persons. The property, identified by Assessor's Parcel Number 006-290-04, consisting of 19,602 square feet, is located on the south side of Monument Road, approximately 100 feet west of the intersection with Cold Springs Road, in the Coloma area, Supervisorial District IV. [*Project Planner: Jason Hade*] (Categorical Exemption pursuant to Section 15301 of the CEQA Guidelines) [*continued from 11/12/09 meeting; item re-noticed*]

Jason Hade explained that the item had been continued from the last meeting in order to provide a revised Staff Report, address the parking issue, and identify a more appropriate CEQA section. He indicated that significant changes were made to the proposed conditions of approval which included: (1) Limiting building occupancy to 45 people due to parking constraints (15 parking spaces available); (2) Hours of operation ending at 10:00pm to address noise concerns; (3) Requirement of a revision to the Special Use Permit if an off-site parking agreement is obtained; and (4) Fire District requirements. Mr. Hade indicated staff had received various public comment letters on this item.

In response to Commissioner Pratt's inquiry on the occupancy calculation, County Counsel Paula Frantz explained that 45 parking spaces would be needed in order to have a building occupancy of 149 people. However, only 15 parking spaces are available. In the past there had been an informal parking agreement with the owner of an adjacent property, but when the property was sold, there was no longer a parking agreement. She also stated that approximately three years ago, the Board of Supervisors determined that the Olde Coloma Theatre was not a legal, non-conforming use and they were directed to go through the Special Use Permit process. County Counsel Frantz indicated that the Board was allowing them to continue to operate while going through this process.

Significant discussion between the Commission and County Counsel ensued regarding how the definition of legal, non-conforming use applied to this situation and the parking issues (i.e., calculation, illegal parking on highway, off-site parking agreement).

Craig Sandberg/applicant's agent apologized for the lateness of his e-mail on amending certain conditions. He also disagreed with County Counsel's explanation on the Board's determination that they were not a legal, non-conforming use and stated that this Special Use Permit is to amend a non-conforming use to make it conforming. He discussed in detail the items addressed in his e-mail, in addition to the parking plan that had been included with it. His speaking points included: Hwy 49 is smallest highway in California; Creative parking is being utilized to provide more parking spaces; Park administration is reluctant to go into a long-term parking agreement; Bus groups (i.e., school-aged children) are now instructed to park on-site; On-site parking is better than shuttle service because most people will walk instead; Building is not

being expanded so building code improvements should be waived; and Can't operate with a building occupancy of 45 people, particularly when it is a school group.

County Counsel Frantz and Chair Mathews stated they had not seen Mr. Sandberg's e-mail. Commissioner Tolhurst was not comfortable proceeding without staff being provided adequate time to review Mr. Sandberg's proposal and would prefer to continue the item. He also voiced serious concern on their request to eliminate the requirements of a fire alarm system and fire hydrant.

Commissioner Tolhurst felt that the proposed parking plan submitted by Mr. Sandberg would be very expensive to complete due to grading, retaining walls, etc. He stated that in the past, Park representatives had shown a willingness to discuss a parking agreement with the applicants and he thinks this would be a more viable solution for them. Commissioner Tolhurst requested the Fire Department to be present to discuss the proposed parking plan as he wants safety assurances from them and he can't vote in favor of the project until then. Commissioner Rain agreed with the need of a sign-off from the Fire Department on the new proposed parking plan.

County Counsel Frantz stated that questions have been raised on if the building is compliant with ADA and fire standards and, therefore, these issues will also need to be addressed. In response to Mr. Sandberg's statement that they are not modifying the building nor increasing the use, County Counsel Frantz stated that the current building has the legal standard of an empty building since there is no permit for a theatre to operate in it. Therefore, operating a theatre out of the existing building would be an increase/change in use.

Commissioner Rain stated that due to County Counsel's statement, the building would have to be brought up to code.

County Counsel Frantz summarized the history of this project and the discussion that had occurred over the years which resulted in today's hearing. She also explained that even if Mr. Sandberg was correct in that this was a legal, non-conforming use, that once the use was extended and expanded, a Special Use Permit was required.

Chair Mathews voiced concern that staff's proposed conditions would shut down the theatre and felt that these rules were based only on conjecture and the desire to be "do-gooders".

Various members of the audience (Roberta Long/El Dorado Forum, Lauren Williams, Dave Bishop, Griffen Toffler, Maria Williams, Alex Gibbs, Dave Williamson, Cheryl Busby, Valerie Stevens, Joel Williams, Paul Gibbs, Lori Gibbs, and Edward Mecula) voiced support for the theatre and made the following comments:

- This is an asset and would be sad to see it closed down, even temporarily, due to permit restrictions;
- Disagreement with parking calculation as usually more than 3 people in a car;
- Provides kids an activity in the community;
- National treasure and County will lose an incredible asset;
- Limiting to 45 people is tying their hands in providing a service to community;

- Have stopped shows when cars illegally parked on highway;
- Staff arrives 2 hours before shows and leaves after the audience with instructions to leave quietly;
- Taking the theatre away would be traumatic;
- Request Commission to find a way to save theatre;
- Commission has shown great sympathy to this cause;
- This theatre is important to the community;
- Suggested Commissioner Tolhurst use his experience with the Tahoe arts community and assist them on how to work through the regulations;
- Unaware of any reports of injuries regarding the theatre and has had a safe experience;
- This is a rural setting and getting public financial support to fund required conditions of approval would be difficult;
- Request flexibility from Commission in order to find a compromise;
- Provides an outlet for home-schooled children;
- Performers aren't charged to act which allows more participation;
- Aisles are always clear and back door is unlocked/open;
- Addressing problems; and
- If grading is allowed, more parking spaces could be made.

Carol Fallon/Old Coloma Theatre Board Member spoke on the permit process that has taken over 2 ½ years. She explained that they are volunteers and do not know the process. Over the years, they have tried to resolve the most important problems with the neighbors (i.e., parking, lighting, noise). Ms. Fallon stated that they have taken the parking issue seriously and have used creative parking. She also provided a brief history on other parking solutions they have tried or investigated with Parks administration. She felt that the theatre was unfairly being blamed for noises occurring at a nearby Bed & Breakfast Inn (i.e., DJ & live music) and kids having parties at the cemetery. Ms. Fallon stated that they disagreed with the County's requirement of a state-of-the-art fire alarm system being installed as there are fire detectors and they would be willing to have a person identified as a fire monitor to walk around during the shows. She stressed that they have been diligently pursuing those items which they have control over and request that the Commission use discretion and flexibility to work with them.

Jerry Griffin stated that the theatre is a business, even if non-profit, and they need to comply with the rules. He expressed the following concerns/comments: (1) Egress issues (i.e., exit doors do not meet standards); (2) Plans need to be drawn by a licensed professional; (3) Any inspections conducted by staff in regards to seating plan and exit plan?; (4) Proposed parking plan does not show the correct distance from the property line; (5) Letter of support submitted to Commission contained no one with an address in Coloma; and (6) Process has gone on long enough and has cost taxpayers money due to these hearings. He requested the Commission take action so he can go forward by taking it to the Board of Supervisors and then legal action.

Chair Mathews felt that it was a tragedy that this discussion had to take place and that it was unfortunate that they had lost their parking. It had been his intent today to make this a legal, non-conforming use but County Counsel's statements have made it clear that he is not able to do that. He feels that this is a treasure of Coloma and that onerous conditions would kill it.

Commissioner Pratt thought that the accountability aspect was an issue since this group is made up of volunteers. County Counsel Frantz responded that since the Special Use Permit runs with the land, the conditions need to be quantifiable and objective.

Commissioner Pratt stated that nobody is disputing the artistic value and fulfillment of the Old Coloma Theatre but that does not make it exempt from the legal conformances and this has been going on for a long time. He stated that they need to work on sustainability and fundraising. Commissioner Pratt acknowledged that there is an adversarial relationship between the group and a neighbor. He said that there has to be a definitive plan that needs to be done now and no more dodging and weaving.

Commissioner Rain voiced concern on the financial aspect of becoming compliant with ADA and the fire alarm issue.

County Counsel Frantz reminded the Commission that if 149 people are allowed in the building, it needs to be addressed as to where they will be parking.

No further discussion was presented.

**Motion #1:**

**Motion: Commissioner Mathews moved, seconded by Commissioner Pratt (for discussion purposes), and FAILED (1-3), to take the following actions: 1. Certify that the project is Categorically Exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines; and 2. Approve Special Use Permit S07-0019 based on the findings proposed by staff, subject to the conditions as modified: (a) Amend Condition #1 with the following: Replace “45 persons” with “149 persons”; Delete sentence “Up to 15 employees are authorized for each performance, excluding performers.”; and amend wording in last sentence of second paragraph to make it consistent with Exhibit E provided in Craig Sandberg’s e-mail dated 1/12/10; (b) Amend Condition #8 to replace “15 off-street parking spaces” with “29 off-street parking spaces”; Amend Condition #9 to use wording provided in Craig Sandberg’s e-mail dated 1/12/10; and (c) Delete Conditions #17 and #18.**

**AYES: Mathews**  
**NOES: Rain, Pratt, Tolhurst**  
**ABSENT: Heflin**

Commissioner Rain indicated his opposition to the motion was primarily due to the parking issue.

Commissioner Tolhurst reluctantly suggested that the item be continued for more analysis on the proposed parking plan, at which point, they can then perhaps increase the building occupancy to 60-70 people to help them in the meanwhile. However, he stated that the ultimate solution for

obtaining occupancy for 149 people would be a parking agreement. Since the Commission does want to make this work, he requested Mr. Sandberg's assistance in taking the initiative to start negotiations. Commissioner Tolhurst confirmed with Mr. Sandberg that six weeks was sufficient time to complete this because if a parking agreement for 149 people is not brought back to the Commission at the next meeting, then it will be approved for 45 people.

Commissioner Pratt felt that what was more important than a fire alarm system was for them to have a documented executable evacuation plan, particularly for the children's safety.

Chair Mathews encouraged the group to obtain the parking agreement and get this done by the next meeting.

**Motion #2:**

**Motion: Commissioner Tolhurst moved, seconded by Commissioner Pratt, and carried (4-0), to continue the item to the February 25, 2010 meeting to allow time for the following to occur: (a) Analyze the parking plan proposed by the applicant; (b) Applicant's representative to assist in negotiating a parking agreement; and (c) Request Fire Marshall to attend next meeting to provide comments on applicant's proposal.**

**AYES: Rain, Tolhurst, Pratt, Mathews**  
**NOES: None**  
**ABSENT: Heflin**