



DATE: September 11, 2023

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Brian Oh, Director of Community Development

SUBJECT: Resolution Denying an Appeal of a Planning Commission Decision to Uphold a Planning Administrative Decision to Deny a Minor Use Permit for The Floodway LLC Project Located at 4875 Petaluma Boulevard North, Assessor Parcel Number 007-422-028

RECOMMENDATION

It is recommended that City Council conduct the required public hearing and approve a Resolution (Attachment 1) to deny the applicant's appeal. The appellant is appealing Planning Commission's decision to uphold staff's denial of a minor use permit for the Floodway LLC project located at 4875 Petaluma Boulevard North/4951 Stony Point Road (File No. PLAP-2023-0002).

BACKGROUND

On October 24, 2022, the appellant submitted MUP application PLUP-2022-0027 proposing to use the property as a "community marketplace". The community marketplace would host mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and such – all of a mobile or transient nature – on a daily basis. The application states that participating vendors would generally be offered the opportunity to operate seven days a week from 6 A.M. to 12 A.M., which may vary by business needs. A proposed site plan depicts parking areas, a customer seating area, mobile vendor areas, vehicle drive aisles, and portable restrooms/wash stations. After staff issued a preliminary determination letter stating that the proposed project is not an allowable use in the city's Floodway zoning district and at the behest of the applicant to initiate a full review of the application, the City's Community Development Department formally denied the application on February 28, 2023 after a full review that concluded that the proposed project does not conform to the City's General Plan, land use, zoning designations and require a minimum level of development such as ADA-compliant access and amenities. The applicant subsequently appealed this decision to the Planning Commission, and on May 23, 2023, Planning Commission voted 6-0 in favor of upholding staff's denial of the minor use permit. A thorough staff analysis and background information was included in the Planning Commission staff report and included as Attachment 2 of this staff report. The

applicant submitted an appeal of this decision, which is now under consideration by the City Council.

DISCUSSION

Proposed Project

On October 24, 2022, the applicant submitted MUP application PLUP-2022-0027 proposing to use the property as a “community marketplace”. The application states that the community marketplace would host mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and such – all of a mobile or transient nature – on a daily basis. Participating vendors would generally be offered the opportunity to operate seven days a week from 6 A.M. to 12 A.M., which may vary by business needs. A proposed site plan depicts parking areas, a customer seating area, mobile vendor areas, vehicle drive aisles, and portable restrooms/wash stations.

Proposed Site

The proposed project site is an undeveloped parcel abutting the Petaluma River located at the northwest corner of the intersection of Petaluma Blvd N. and Stony Point Rd. addressed as 4875 Petaluma Blvd North, Assessor Parcel Number 007-422-028. The project site is designated Floodway in the 2025 General Plan Land Use Map and is zoned Floodway in the Implementing Zoning Ordinance (IZO) Zoning Map, which was last updated in 2016 as one of many measures the City has demonstrated to protect its community from impacts of flooding.

Flooding and FEMA’s Community Rating System (CRS)

The City of Petaluma has historically been impacted by flooding from sources such as general riverine and flash flooding from winter storms. The history of these events is well documented within the City’s adopted Local Hazard Mitigation Plan (LHMP). The City works on multiple fronts to prevent and mitigate the physical and financial impacts of potential flooding for the community. One example is its participation in FEMA’s Community Rating System (CRS). The CRS is a voluntary incentive program that recognizes and encourages community floodplain management practices that exceed the minimum requirements of the National Flood Insurance Program (NFIP). The National Flood Insurance Program (NFIP) is managed by the Federal Emergency Management Agency (FEMA). NFIP provides insurance to help reduce the socioeconomic impact of flooding and is available to anyone living in an area known as the Special Flood Hazard Area (SFHA) as defined by the FEMA’s FIRMs (maps). Petaluma is one of 23,000 participating communities around the nation. The City diligently maintains a Class 6 rating in the CRS (Community Rating System) so that property owners of property within the Special Flood Hazard Areas, including the City, receive a 20% discount on insurance policy premiums. In CRS communities, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the community’s efforts that address the three goals of the program:

- Reduce and avoid flood damage to insurable property.
- Strengthen and support the insurance aspects of the National Flood Insurance Program.
- Foster comprehensive floodplain management.

The CRS system is based on a 10-point system, so the more points a jurisdiction maintains, the lower the Classification number you achieve. Every point reduction below 10 (those communities and counties that join but do absolutely the minimum to retain their participation) results in a 5% reduction in flood insurance policy costs. As a result of the City's Class 6 rating, property owners and tenants, including the City, who own and insure property within the Special Flood Hazard Area (SFHA) receive that 20% discount. Those who are not located within the SFHA but maintain flood insurance receive a 10% discount on their flood insurance policies. It amounts to hundreds of thousands of dollars saved by residents and the City. The potential financial impact of losing those discounts is one reason why the city diligently pursues compliance with the FEMA standards as well as the City's higher regulatory standards, for which we receive credit under Activity 412 of the CRS Manual. The City's Flood Plain Administrator has determined that approval of a MUP for the proposed project within the regulatory floodway could jeopardize the City's CRS Class 6 rating, which would result in a cost increase for all NFIP ratepayers.

General Plan Consistency

All proposed development projects must be found to be consistent with the General Plan. (See, *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 414-415) For projects proposing uses permitted by right, the land use is understood to be consistent with the General Plan; however, for allowed uses requiring discretionary approval, consistency must be established. (See, Section 24.060(E)(6) of the Petaluma Implementing Zoning Ordinance which requires a finding for conditional use permits that the proposed use conforms with the Zoning Ordinance and programs of the City's General Plan). While consistency with General Plan does not require that a proposed project complies with all relevant goals, policies, and programs, "A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear". (*Endangered Habitats League, INC v. County of Orange* (2005) 131 Cal.App.4th 777). The General Plan examples included below are applicable to proposed or existing Floodway development projects:

- The General Plan definition of the Floodway land use designation includes "No new development is allowed."
- Goal 1-G-5 seeks to develop land uses in proximity to the River to ensure restoration of the natural River corridor, provide for adequate storm flow capacities, and enable public access and stewardship.
 - 1-P-42 requires that development on lands affected by the PRC designation shall be subject to a discretionary review process beyond that required by CEQA.
 - 1-P-46 requires that new development shall acknowledge, preserve, protect, and enhance the ecological and biological health and diversity of the River.
- Program 4-P-1(H) states that "Transfer development rights (TDRs) shall not be applied to lands within the Floodway as there is no development potential within the Floodway."
- Program 4-P-1(K) "Prohibit placement of impervious surfaces in the Floodway (i.e., Parking lots, roadways, etc.) with the exception of pathways and emergency access improvements."
- 8-Goal-8 Surface Water Management policies, including:
 - Policy 8-P-28, designating the area upstream of the Corps weir and below the confluence of Willow Brook Creek with the Petaluma River, within the floodplain and adjacent to the Petaluma River as the Petaluma River Corridor (PRC) and

- directing that the PRC shall be a set aside for the design and construction of a flood terrace system to allow the River to accommodate a 100-year storm event.
- Policy 8-P-30, directs that, upstream of the Corps weir, within a 200' setback from centerline of the Petaluma River, no additional development shall be permitted on lands within that 400' wide corridor, given natural and physical constraints and includes a series of modeling and technical requirements and improvements.
- Policy 8-P-32 directs continued implementation of mandatory zero-net fill upstream, and when appropriate zero-net runoff.

A primary role of zoning districts is to implement the General Plan land use classifications' broad objectives, goals, and policies through the associated zoning district land use regulations and development standards. A project that cannot be found to be allowed in a zoning district could be considered inconsistent with the General Plan land use designation that the zoning district seeks to implement. Planning's determination is that The Floodway LLC proposed development project is inconsistent with goals, policies, or programs contained in the 2025 Petaluma General Plan; therefore, neither the project's proposed land use nor the site development required to support the proposed land use can be approved.

Land Use Regulations

Land use regulations applicable to the proposed development project are primarily located in the Petaluma Implementing Zoning Ordinance (IZO) Chapter 6. Section 6.050 Floodway District (FW) establishes Permitted uses and Conditional uses that are allowed subject to Conditional Use Permit approval. The review authority is the Zoning Administrator/Director or designee. Section 6.070 regulates physical development in all Areas of Special Flood Hazard within the City. Chapter 6 regulations applicable to the development of land located in Areas of Special Flood Hazard may more specifically regulate certain aspects of development, including land use, but they do not replace other land use and development regulations such as minimum parking requirements, driveway and circulation requirements, or performance standards, except where specified. They also do not modify Building or Fire Code regulations.

Chapter 6 (Floodway and Flood Plain Districts) establishes land use regulations for properties situated in floodways and plain lands to minimize property damage from flood waters, safeguard public health, safety, and general welfare, and protect human life and health. Developing in a floodway can pose several dangers and risks. Some areas of key concerns associated with developing in flood-prone areas include:

- Increased flood risk: Floodways are areas designed to carry the highest volume of floodwater during a major storm event. Building in a floodway can disrupt the natural flow of water, leading to increased flood risk for the developed area and surrounding regions. Structures built in floodways may impede water flow, leading to higher floodwater levels and potential damage to the developed area and neighboring properties.
- Structural damage: Flooding can cause significant damage to structures. The force of moving water during a flood can erode foundations, weaken walls, and compromise the overall structural integrity of buildings. Even minor flooding can result in long-term damage and expensive repairs.

- Safety risks: Developing in a floodway can expose residents and property owners to significant safety risks. During a flood event, there is an increased likelihood of swift water currents, which can be dangerous for people trying to evacuate or rescue others. Floodwaters can also carry debris, toxins, and other hazardous materials that pose health risks.
- Increased insurance costs: Insurance companies typically charge higher premiums for properties located in flood-prone areas, including floodways. The increased risk of flooding and potential damage translates to higher insurance costs, which can significantly impact property owners' finances.
- Environmental impact: Developing in floodways can have adverse effects on the environment. Floodplains and floodways often serve as critical habitats for wildlife, and construction activities can disrupt or destroy these habitats. Altering an area's natural drainage patterns and hydrology can also lead to long-term environmental degradation.
- Regulatory and legal issues: In many jurisdictions, strict regulations and building codes govern development in flood-prone areas. Violating these regulations can result in legal consequences and potential fines. Obtaining permits and complying with the necessary requirements for building in a floodway can be complex and time-consuming.

When reviewing proposed development for compliance with the IZO, staff consider both the proposed land use and physical development needed to support the proposed land use. The applicable regulations used to make the determination for this proposed land use and development are principally found in Chapter 3 (Development and Land Use Approval Requirements), Chapter 6 (Floodway and Flood Plain Districts), and Chapter 24 (Administrative Procedures).

In an effort to provide the appellant with a viable land use alternative that would not require a Conditional Use Permit, staff reviewed the proposed development project for compliance with §6.050(B) Permitted Uses, Floodway District. Pursuant to §6.050(B), uses permitted by right for the property are limited to the following:

1. Open space agricultural uses not requiring a fence or closed building, such as cropland, orchards, and livestock feeding and grazing.
2. Circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department.
3. Modification of Native or Riparian Vegetation. Where modification or removal of native or riparian vegetation is required, such modification or removal may be permitted after obtaining a development permit consisting of written approval from the Director, provided that such proposed modifications in the Flood Plain have been found to be consistent with the General Plan.
4. Any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as the above-permitted uses.

It is important to note that the permitted by right use #2 (circuses, carnivals, etc...) would need a “zoning permit”, which can only be issued for a temporary use no more than 60 days in a year.¹ Staff relayed to the applicant that a modified project proposal that could fit this criteria could be considered but this was not a path that the applicant wanted to pursue, instead opting for a minor use permit (MUP).

Staff analyzed the MUP application for compliance with IZO §6.050(C) Conditional Uses, Floodway District, and §24.060 Conditional Use Permits. Section 6.050(C) Conditional Uses, Floodway District Pursuant to IZO §6.050(C), uses allowed subject to Conditional Use Permit approval are limited to low-impact river-related or recreational uses, public infrastructure, or river maintenance uses including:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields.
2. Private and public docking, mooring, and boat launching facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the designated floodway.
3. Above-ground public utility and private service facilities such as water and sanitation pipelines, telecommunication facilities in accordance with Chapter 14.44 of the Petaluma Municipal Code, roads, bridges, and similar facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the floodway.
4. Improvements in stream channel alignment, cross-section, and capacity, including modification of riverbank and flood protection levels, other than periodic dredging of material from the navigable portions of the Petaluma River for maintenance purposes, when said material is removed from the floodway area. Staff was unable to find that the proposed community marketplace use is similar to any of the uses listed above that may be allowed subject to Conditional Use Permit approval. Furthermore, §6.050(C) does not give the Zoning Administrator/Director or its designee the discretion to consider uses of the same general character as those conditionally allowed as it does in §6.050(B)(4) for Permitted uses.

IZO §24.060(E) describes the standards for review of a CUP to ensure the proper integration of uses and appropriate land uses within a specific area. An affirmative finding for all criteria is required for approval of CUPs and includes the following:

- Finding 1: Adequate siting of buildings and uses.
- Finding 2: Adequate traffic circulation and parking.
- Finding 3: Compatibility of the proposed building(s) and use with its environment.
- Finding 4: Duration of proposed building(s) and use is compatible with adjoining uses.
- Finding 5: Is the use a matter of public convenience and necessity (finding for Alcoholic Beverage Establishments when required by ABC).
- Finding 6: Conformance with the applicable requirements of the IZO and applicable policies and programs of the City’s General Plan.

¹ Section 7.070 of the IZO (Short-Term Activities) requires applicants for like carnivals, circuses, concession stands and other temporary entertainment events to first obtain a “zoning permit” from the Director. The zoning permit duration is for a period not to exceed 60 consecutive days in any one calendar year.

Staff was not able to approve the project as it could not make the required findings to approve the MUP pursuant to IZO §24.060(E) in that:

- The undeveloped project site is not adequate to accommodate the proposed use in that the site is not improved with parking, vehicle circulation, or pedestrian pathways, restrooms, or electricity or running water, all of which would be required for the development.
- Outdoor activities are not adequately screened in that the site is undeveloped, and the project proposes that all operational activities would be visible from adjacent public rights of-way.
- The intensity of proposed activities is not compatible with adjoining floodway uses in that the project proposes retail use of the site on a daily basis.
- The proposed project is not compatible with the environment of the floodway, and adequate vehicle and pedestrian circulation is not present and cannot be provided in accordance with floodway zoning and General Plan Policies.
- The proposed project does not conform to the City’s General Plan as analyzed in General Plan Consistency, this section.

In making the decision to deny approval of the requested MUP, staff determined that (1) the proposed development project is not consistent with the General Plan in that the Floodway land use designation and other policies or programs seek to prohibit new development in the Floodway; And (2) the proposed “community marketplace” use is not a use conditionally allowed in the Floodway zoning district, is not a permitted use in the Floodway zoning district, and is not similar to other uses permitted in the Floodway zoning district. Both inconsistency with the General Plan and a finding that the proposed use was not an allowable use in the Floodway Zoning District are grounds to deny the application.

Pursuant to IZO §24.090.G, the review authority may consider any issue involving the matter that is the subject of the appeal and take one of the following actions:

1. Affirm, affirm in part, or reverse the action, determination, or decision that is the subject of the appeal;
2. Disapprove the land use permit approved by the previous review authority, even though the appellant only requested a modification or elimination of one or more conditions of approval; and
3. Adopt additional conditions of approval that may address issues or concerns other than the subject of the appeal.

Staff recommends that City Council affirm the Planning Commission decision made on May 23, 2023. Should the City Council vote to approve the appeal, thereby reversing the administrative decision to deny the Minor Use Permit, staff could be directed to re-evaluate the proposed project with any conditions set forth by City Council in mind.

PUBLIC OUTREACH

This agenda item appeared on the City’s tentative agenda document on August 07, 2023 which was a publicly-noticed meeting. Furthermore, a notice of the public hearing was published in

both the Press Democrat and Argus Courier and mailed to all property owners and occupants within 1,000 feet of the site.

CLIMATE ACTION/SUSTAINABILITY EFFORTS

The City has been at the forefront of climate action and sustainability efforts. Allowing a year round, permanent use as proposed in the city's Floodway zoning district would be counter to on-going efforts.

ENVIRONMENTAL REVIEW

The proposed project was excluded from California Environmental Quality Act (CEQA) review in accordance with Section 21080(b)(5) of CEQA Guidelines, which states that CEQA analysis is not needed for projects for which a public agency is recommending denial. However, if the project were to be considered for approval, further CEQA review would be required.

FINANCIAL IMPACTS

While there are no direct financial impacts of a decision on this project, staff anticipates an impact to the city's Community Ratings System, which would have an impact of a number of residents and their eligibility for reduced flood insurance rates.

ATTACHMENTS

1. Resolution
2. Planning Commission Resolution and Staff Report