

TO: HONORABLE CHAIRMAN AND PLANNING COMMISSION
FROM: RON WHISENAND, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: REVOCATION OF CONDITIONAL USE PERMIT 07-009
1521 VINE STREET, APN 008-318-012

DATE: JANUARY 12, 2010

Needs: For the Planning Commission to consider revoking Conditional Use Permit 07-009 for a Bed and Breakfast Inn at 1521 Vine Street.

Facts:

1. The Planning Commission approved a Conditional Use Permit (CUP 07-009) in September 2007, subject to specific conditions of approval. In particular, the applicant was required to install six on-site parking spaces for use by bed and breakfast guests within six months of the date of approval.
2. The applicant signed an agreement with the City whereby the City agreed to extend the deadline for providing the on-site parking spaces an additional six months. To this date, the applicant has still not provided the required on-site parking spaces.
3. All transient occupancy businesses (e.g. hotels, motels, bed and breakfasts, etc.) are required to pay monthly transient occupancy taxes (TOT) to the City in compliance with Municipal Code requirements.
4. The applicant has only paid TOT for eight months during the 27 months since CUP 07-009 was approved for this business.
5. The applicant signed a flexible payment plan agreement with the City in March 2008 to assist the applicant in paying past due TOT payments. The applicant has not complied with the terms of this agreement.
6. The City Administrative Services Department reported in December 2009 that the last TOT payment check received for October 2009 was cancelled by the applicant.

**Analysis
and**

Conclusions: The City has worked with the applicant in good faith since the approval of CUP 07-009 to assist the business owner, Ms. Van Horn, in complying with the terms and conditions associated with approval of her CUP. Ms. Van Horn has not complied with the conditions of approval for her business, nor has she complied with the provisions of the time extension agreed to for compliance.

Additionally, Ms. Van Horn has only paid TOT owed to the City sporadically, has not complied with specific terms agreed to for payment of past TOT payments, and has recently cancelled a check for payment of TOT.

This business is not operating in compliance with City Zoning regulations or the Municipal Code requirements for payment of TOT. Therefore, this business is not legally operating in compliance with City Codes and Regulations.

Options: After considering the information presented and the public testimony received, the Planning Commission will be asked to select one of the following options:

- a. Revoke approval of CUP 07-009 by adopting the attached resolution, and direct that the bed and breakfast inn operations cease business.
- b. Amend, modify, or reject the above-listed actions.
- c. Request additional information and analysis.

Staff Report prepared by: Susan DeCarli, Planning Manager

Attachments:

- 1 – Resolution to Revoke CUP 07-009
- 2 – Agreement between the City and the Applicant
- 3 – Previously approved Resolution 07-087
- 4 - Notices

RESOLUTION NO.

A RESOLUTION OF
THE PLANNING COMMISSION OF THE CITY OF EL PASO DE ROBLES
REVOKING CONDITIONAL USE PERMIT 07-009
FOR A BED AND BREAKFAST INN LOCATED
AT 1521 VINE STREET
APN: 008-318-012

WHEREAS, Conditional Use Permit (CUP) 07-009 was approved by the Planning Commission on September 25, 2007; and

WHEREAS, CUP 07-009 was approved to allow the operation of bed and breakfast inn located at 1521 Vine Street (the "Inn"); and

WHEREAS, Resolution 07-087 established certain specific Conditions of Approval, including the installation and maintenance of six on-site parking spaces within 180 days of the date of approval; and

WHEREAS, all transient occupancy businesses operating in the City are required to pay Transient Occupancy Taxes ("TOT"); and

WHEREAS, on March 17, 2008, the City and Margot Van Horn, owner of the Inn ("Owner") entered into an Agreement Regarding Conditional Use Permit and Payment of Fees (the "Agreement") pursuant to which Owner agreed to pay certain processing fees for the CUP and to make timely payments of TOT; and

WHEREAS, pursuant to the Agreement, City agreed to an extension of time for construction of the six on-site parking spaces to September 25, 2008; and

WHEREAS, the owner of the Bed and Breakfast Inn at 1521 Vine Street has not complied with the Conditions of Approval that apply to CUP 07-009, is not in compliance with Municipal Code regulations regarding payment of TOT and is not in compliance with the terms of the Agreement; and

WHEREAS, the City has worked in good faith to assist Owner with complying with Zoning Code regulations and the Municipal Code TOT requirements, and Owner has not complied with regulations that apply to this business; and

WHEREAS, the Planning Commission held a duly noticed public hearing, including written notice to Owner, on January 12, 2010 to accept public testimony on this action to revoke Conditional Use Permit 07-009;

NOW, THEREFORE, BE IT RESOLVED, based on the operation of a bed and breakfast business by Owner that is not in compliance with the City's Zoning and TOT regulations and the Agreement, the Planning Commission of the City of El Paso de Robles does hereby revoke Conditional Use Permit 07-009.

BE IT FURTHER RESOLVED, that operation of the Inn located 1521 Vine Street shall cease business activities as of the date of this Resolution, January 12, 2010.

PASSED AND ADOPTED THIS 12th day of January, 2010 by the following Roll Call Vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

, Chairman

ATTEST:

Ron Whisenand, Planning Commission Secretary

**AGREEMENT REGARDING CONDITIONAL USE PERMIT AND
PAYMENT OF FEES**

This Agreement ("Agreement") is entered into this 17 day of March, 2008, by and between the City of El Paso de Robles, a municipal corporation ("the City"), and Margot Van Horn, an individual ("Owner").

RECITALS

WHEREAS, the Planning Commission of the City of El Paso de Robles ("Commission") approved on September 25, 2007, Conditional Use Permit 07-009 ("CUP") to establish a Bed and Breakfast Inn at 1521 Vine Street (the "Property"); and

WHEREAS, Owner owns the Property and is the owner and operator of the Bed and Breakfast establishment; and

WHEREAS, the Commission approved the CUP subject to various conditions requiring Owner to provide and maintain six (6) parking spaces (the "Parking Spaces") on the Property, in accordance with the Plot Plan attached to the CUP; and

WHEREAS, the CUP requires Owner to construct these Parking Spaces within 180 days of the CUP's approval and, to date, Owner has not complied with the Parking Space requirements; and

WHEREAS, Owner has incurred \$2,166.44 in permit processing fees (the "Permit Fees") related to the CUP application owed to the City, which remain unpaid; and

WHEREAS, Owner made an initial payment against the Permit Fees of \$200 on February^o25, 2008, leaving an outstanding balance of \$1,966.44; and

WHEREAS, City and Owner wish to extend the deadline contained in the CUP for the construction of the Parking Spaces and further wish to create a payment plan for the unpaid Permit Fees.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the City and Owner agree as follows:

AGREEMENT

1. Incorporation Of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth in full.
2. Payment of Permit Processing Fees. Owner agrees to pay in full the outstanding balance of One Thousand Nine Hundred Sixty Six Dollars and Forty-Four Cents (\$1,966.44) for Permit

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Fees incurred in the processing of Owner's CUP application. Owner agrees to pay this balance on the terms set forth below:

- a. Owner shall remit nine (9) monthly payments in the amount of Two Hundred Dollars (\$200) each, and a final, additional payment of One Hundred Sixty Six Dollars and Forty-Four Cents (\$166.44).
- b. All payments shall be made payable to "City of El Paso de Robles."
- c. Owner shall remit her monthly payments to the City's Administrative Services Department, 1000 Spring Street, Paso Robles, CA 93446.
- d. All payments are due on the first of each month, commencing with April 1, 2008, and will be past due if not received by the City by the fifth of each month. The final payment of \$166.44 is due on or before January^o1, 2009.

Owner further agrees to remain current in her payments of the City's Transient Occupancy Tax ("TOT") and Business License fees. Owner expressly agrees that a failure to timely remit payments of TOT, Business License fees, or the Permit Fee payments shall constitute a violation of this Agreement and a violation of CUP 07-009, as hereby extended, and shall cause the balance of the Permit Fees to be immediately due and payable in full. City expressly agrees that so long as Owner performs under the terms of this payment arrangement, City will refrain from any and all acts to obtain collection of the debt owed by Owner regarding these Permit Fees.

3. Extension of Time to Perform. City hereby agrees to extend the 180-day deadline contained in condition 13 of the CUP as it relates to the construction of the Parking Spaces to September 25, 2008. Owner expressly agrees to construct and complete the on-site Parking Spaces identified in the CUP, as shown on the Plot Plan attached thereto, by such date. Owner acknowledges and agrees that failure to construct these improvements by that date will constitute a violation of the CUP as hereby extended.

4. Not a Waiver. The provisions of this Agreement do not constitute a waiver of any other provisions of the CUP, any other remedy available to the City, nor any other rights or obligations held by the parties.

5. Indemnification and Limitation of Liability. Owner shall be responsible for, shall defend against and shall indemnify and hold City and all its officers, agents, and employees harmless against all liability, suits, claims, demands, losses, expenses including attorneys' fees, damages or actions of every name, kind and description arising from City's extension of the CUP deadline, or from Owner's failure to comply with the original terms of CUP 07-009, including the failure to provide adequate parking as required by such CUP.

6. Amendment. This Agreement sets forth the entire Agreement between the City and Owner, and any modifications must be in the form of a written amendment agreed to by the

parties.

7. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, appointments or designations hereunder by either party to the other shall be in writing and shall may be given by any commercially acceptable means, including first class mail, personal delivery, or overnight courier, to the party to whom the notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by notice.

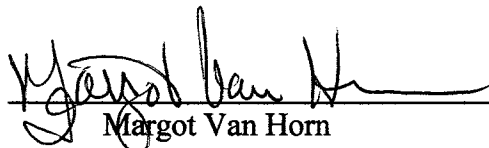
Owner: Margot Van Horn
1521 Vine Street
Paso Robles, CA 93446

City: City of El Paso de Robles
Attention: City Manager
1000 Spring Street
Paso Robles, CA 93446

8. Integration. This Agreement contains the entire understanding between the parties relating to the matters set forth herein. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) indicated below.

OWNER:


Margot Van Horn

Date: 3/17/08

CITY:

City of El Paso de Robles

By: 
James L. App, City Manager

Date: 3/17/08

RESOLUTION NO.: 07-0

A RESOLUTION OF
THE PLANNING COMMISSION OF THE CITY OF EL PASO DE ROBLES
APPROVING CONDITIONAL USE PERMIT 07-009
TO ESTABLISH A BED AND BREAKFAST INN LOCATED
AT 1521 VINE STREET, APN: 008-318-012
APPLICANT – JOHN MC CARTHY, MC CARTHY ENGINEERING, INC.

WHEREAS, Conditional Use Permit (CUP) 07-009 has been filed by John McCarthy on behalf of Margot Van Horn; and

WHEREAS, CUP 07-009 is a proposal to establish a Bed and Breakfast Inn located at 1521 Vine Street; and

WHEREAS, the City's General Plan and Economic Development Strategy include policies that support tourist oriented development; and

WHEREAS, no exterior alterations are proposed to the existing historic structure and the appearance of the home and landscaping are consistent with other Victorian era homes on Vine Street; and

WHEREAS, the proposed parking area in the rear of site which includes providing four parking spaces in the rear area in two rows of tandem parking and two tandem ribbon parking spaces in the front yard constructed with pervious pavers to provide the required parking spaces for renting three rooms in the home and the rear cottage for transient lodging, and for the residential use of the site as shown in Exhibit B; and

WHEREAS, the Planning commission has determined that tandem parking will not result in negative parking impacts or affect the character of the surrounding residential neighborhood; and

WHEREAS, the Planning Commission held a duly noticed public hearings on July 10, 2007, and September 25, 2007, and the City Council held a duly notice public hearing on September 4, 2007 to accept public testimony on this Conditional Use Permit 07-009; and

WHEREAS, based upon the facts and analysis presented the Planning Commission makes the following findings:

1. The project will not be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood of such proposed use.
2. The project is consistent with the General Plan Land Use Designation, and applicable zoning standards.
3. The bed and breakfast inn and associated tandem parking plan is compatible with surrounding residential neighborhood.
4. Oak tree protection measures recommended by the project Arborist shall ensure that the proposed parking area will not be detrimental to the health of the existing 42 inch oak tree on the property.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of El Paso de Robles does hereby approve of this Conditional Use Permit 07-009, subject to the following conditions:

STANDARD CONDITIONS

1. The project shall be operated in substantial conformance with the following conditions established by this resolution:
2. Any condition imposed by the Planning Commission in granting this Conditional Use Permit may be modified or eliminated, or new conditions may be added, provided that the Planning Commission shall first conduct a public hearing in the same manner as required for the granting of the original permit. No such modification shall be made unless the Commission finds that such modification is necessary to protect the public interest and/or neighboring properties, or, in the case of deletion of an existing condition, that such action is necessary to permit reasonable operation and use under the conditional use permit.
3. No underground or aboveground storage of hazardous materials shall be allowed on-site without first obtaining City approval.
4. No storage of trash cans or recycling bins shall be permitted within the public right-of-way.
5. Use and operation of the business and its appurtenances shall be conducted in compliance with the City's General Performance Standards for all uses (Section 21.21.040 of Chapter 21.21 Performance Standards of the City's Zoning Ordinance).

SITE SPECIFIC CONDITIONS

6. A sign permit shall be required prior to installation of any signs, and shall be reviewed and approved by the Development Review Committee.
7. The property owner shall maintain continuous residency of the home at all times while the site is used as a B&B.
8. The applicant shall obtain written approval of the San Luis Obispo County Health Dept. within 30 days of approval of this CUP.
9. Six parking spaces shall be provided and maintained on the property, including two tandem spaces in the front of the lot and two rows of tandem spaces (4 parking spaces) in the rear area of the site as shown on the approved Plot Plan. The property owner shall inform all guests that they are to park their car in on-site parking spaces.
10. The applicant shall change the parking information on the business website so that it reflects the requirement for all guests to park in on-site parking spaces.
11. All oak tree protection mitigation measures noted by the project Arborist shall be adhered to in compliance with the Arborist Report, including installing pavers or other permanent, permeable materials in the rear parking area within the Critical Root Zone of the existing 42 inch oak tree.
12. The fire and building departments shall conduct an annual inspection of the B&B.
13. The applicant shall construct the required six on-site parking space improvements in compliance with Exhibit B of this CUP and the recommendations of the project arborist as provided in the applicable Arborist Report within 180 day from approval of this CUP.

14. Staff shall report back to the Planning Commission one year after the on-site parking spaces have been constructed to report if the parking plan is functioning appropriately and if any parking related complaints have been received.

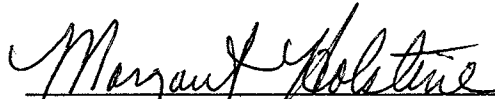
PASSED AND ADOPTED THIS 25th day of September, 2007 by the following Roll Call Vote:

AYES: Johnson, Treach, Withers, Peterson, Holstine

NOES: None

ABSENT: Flynn, Steinbeck

ABSTAIN: None



Margaret Holstine, Chairman

ATTEST:



Ron Wisenand, Planning Commission Secretary

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION/CITY COUNCIL
PROJECT NOTICING

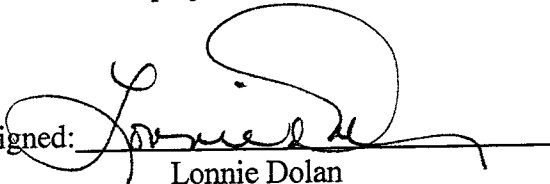
Newspaper: Tribune

Date of
Publication: December 29, 2009

Hearing
Date: January 12, 2010
(Planning Commission)

Project: Revocation of Conditional Use Permit
07-009 (Van Horn-1521 Vine Street)

I, Lonnie Dolan, employee of the Community
Development Department, Planning Division, of the City
of El Paso de Robles, do hereby certify that this notice is
a true copy of a published legal newspaper notice for the
above named project.

Signed: 
Lonnie Dolan

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CITY OF EL PASO DE ROBLES
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of El Paso de Robles will hold a Public Hearing on Tuesday, January 12, 2010 at 7:30 p.m. at the City of El Paso de Robles, 4000 Spring Street, Paso Robles, California, in the City Council Chambers, to consider the following action:

Revocation of Conditional Use Permit 07-009 for operating a Bed and Breakfast business not in compliance with applicable Conditions of Approval and in compliance with the Paso Robles Municipal Code, Chapter 5.05 Transient Occupancy Tax. The subject business is located at 1521 Vine Street, APT 008-318-012.

The staff report may be reviewed by January 9, 2010 at the Community Development Department, 4000 Spring Street, Paso Robles, California. Copies may be purchased for the cost of reproduction.

Written comments on the Revocation of Conditional Use Permit 07-009 may be mailed to the Community Development Department, 4000 Spring Street, Paso Robles, CA 93446, provided that the comments are received prior to the time of the public hearing. Oral comments may be made at the hearing. Should you have any questions regarding this action, please call Susan DeCari at (805) 237-8570 or email at sdecari@city.com.

If you challenge the application in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council, all of prior to the public hearing.

Susan DeCari, AICP
Planning Manager
December 29, 2009 6862057

**AFFIDAVIT
OF MAIL NOTICES**

PLANNING COMMISSION/CITY COUNCIL PROJECT NOTICING

I, Susan DeCarli, employee of the City of El Paso de Robles, California, do hereby certify that the mail notices have been processed as required for Revocation of Conditional Use Permit 07-009 on this 31st day of December 2009.

City of El Paso de Robles
Community Development Department
Planning Division

Signed: Susan DeCarli
Susan DeCarli