

Mariposa County  
Planning Department  
P.O. Box 2039  
Mariposa, CA 95338-2039

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STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
PLANNING COMMISSION

Resolution

No. 2007-043

A resolution approving Variance No. 2007-134 John W. Hertle and Mary Ellen Hertle, applicants. Assessors Parcel Number 013-124-003.

WHEREAS an application for Variance No. 2007-134 was received on August 31, 2007 from John W. Hertle and Mary Ellen Hertle for a property located at 5109 Highway 140 in the Mariposa Town Planning Area, also known as Assessors Parcel Number 013-124-003; and

WHEREAS APN 013-124-003 is 5,180 square feet in size and contains a 2-story structure. The existing structure has a building footprint of 2,100 square feet. The upper main floor is 2,100 square feet in size with a 584 square foot exterior patio area. The existing structure also has a 1,860 square foot basement area and a 675 square foot patio area. There is one on-site parking space on APN 013-124-003; and

WHEREAS the most recent non-conforming use within the upper floor of the existing structure was an office; and

WHEREAS previous non-conforming uses within the upper floor had expired; and

WHEREAS an office within a 2,100 square foot area requires 6 on-site parking spaces pursuant to the Zoning Ordinance; and

WHEREAS Variance No. 2007-134 proposes to allow the upper floor of the existing structure, including 2,100 square feet of space, to be used as a restaurant without meeting the required 14 on-site parking space requirement; and

WHEREAS Variance No. 2007-134 also proposes to allow the 584 square foot exterior patio area to be used as seating area for the restaurant, without meeting the required 4 on-site parking space requirement; and

WHEREAS the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS a duly noticed public hearing was scheduled for the 19<sup>th</sup> day of October 2007; and

WHEREAS a Staff Report was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS staff recommended denial of the variance application based upon concerns about the project's potential impacts on private parking in the area. Staff did not have information to verify that there was adequate public parking in the area for the

restaurant use and staff did not have information to substantiate 3 of the required 5 findings; and

WHEREAS the Planning Commission did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report, testimony presented by the public concerning the application, the comments of the applicant, and new written information submitted by the applicant on October 18, 2007.

NOW THEREFORE, BE IT RESOLVED THAT the Planning Commission of the County of Mariposa does hereby approve Variance Application No. 2007-134 based upon the specific findings presented by the maker of the motion, as contained in Exhibit 1.

BE IT FURTHER RESOLVED that this approval for a variance to the parking standards is only made pursuant to Mariposa County Code Zoning. Any and all other requirements for establishing and operating a restaurant at this location, including but not limited to Building and Health Code requirements, shall be met by the applicant.

ON MOTION BY Commissioner Skyrud, seconded by Commissioner Ross, this resolution is duly passed and adopted this 19<sup>th</sup> day of October 2007 by the following vote:

AYES: Ross, Skyrud, and DeSantis

NOES: Rudzik

EXCUSED: Francisco

ABSTAIN: None

  
Robert L. Rudzik, Chair  
Mariposa County Planning Commission

Attest:

  
Carol Suggs, Secretary to the  
Mariposa County Planning Commission

## Exhibit 1 – Findings

**FINDING:** There are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to the property or class of use in the same zone or vicinity. (§17.120.050.A, Mariposa County Zoning Code)

**FINDING:** The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the property is located. (§17.120.050.B, Mariposa County Zoning Code)

**FINDING:** The granting of such variance will not adversely affect the comprehensive general plan. (§17.120.050.C, Mariposa County Zoning Code)

**FINDING:** There are special circumstances applicable to the property in which the strict application of zoning ordinance regulations will deprive the property of privileges enjoyed by other property in the vicinity and under the identical zone. (§17.120.050.D, Mariposa County Zoning Code)

**FINDING:** The granting of such variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated. (§17.120.050.E, Mariposa County Zoning Code)

1. Based upon public testimony, there are over 300 hotel rooms within the Mariposa Town Planning Area. The majority of tourists walk to their destinations, including restaurants.
2. The applicant submitted shared parking agreements.
3. The neighboring businesses are supportive; only one opposes the application.
4. The structure has historically been a restaurant since 1948.
5. There is no evidence of complaints about parking.
6. There is an inconsistency in time extensions for non-conforming uses in the town planning area and county-wide standards.
7. There is not a Sal's Restaurant issue but a restaurant issue.
8. The structure was built as a restaurant.
9. There was overwhelming public testimony supporting the variance.