RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes, No)

Resolution denying the appeals and upholding the following:

1) Planning Director's action to authorize the issuance of the building permit to change a non-conforming use on APN 15-060-025, and
2) Planning Director's determination that no Zoning Ordinance violation exists at APN 15-060-025.

Justification for the recommended action is provided in the attached memorandum.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

ALTERNATIVES:
1) Grant appeal and attach conditions to issuance of building permit;
2) Grant appeal, reversing Planning Director's determination and denying issuance of permit.

NEGATIVE ACTION would result in appeal being granted, and building permit being conditioned or denied.

COSTS:

A. Budgeted current FY
   $__________
B. Total anticipated Costs
   $__________
C. Required additional funding
   $__________
D. Internal transfers
   $__________

Balance in Reserve Contingencies, if Approved:
$__________

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

Memorandum to Board with Attachments:
1. Notice of Appeal (received 10/11/95)
2. Notice of Appeal (received 11/9/95)
3. Planning Director's Determination for Restaurant Conversion (9/25/95)
4. Planning Director's Determination for Zoning Ordinance Violation (10/30/95)
5. Home Enterprise/Rural Home Industry Standards effective in June, 1994
6. Non-Conforming Use Provisions (Zoning Ordinance)
7. Vicinity Map

CLERK'S USE ONLY
Res. No.: 55-512 Ord. No.: _________
Vote - Ayes: _________ Noes: _________
Absent: _________ Abstained: 0

Approved: √ Denied: ______

Minute Order Attached: No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _______
ATTEST: MARGIE WILLIAMS, Clerk of the Board

By: _______
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:

Recommended √
Not Recommended: ______
For Policy Determination: ______
Submitted for Comment: ______
Returned for Further Action: ______

Comment: ______

A.O. Initials: _______

Action Form Revised 10/95
TO:         ED JOHNSON, PLANNING AND BUILDING DIRECTOR  
FROM:       MARGIE WILLIAMS, Clerk of the Board
SUBJECT:    CLARIFICATION OF MINUTES FOR PUBLIC HEARING APPEALS RELATIVE TO APN 15-060-025  

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,
ADOPTED THIS Order on December 12, 1995

ACTION AND VOTE:

Approval of Minutes of 11/28/95, Regular Session
BOARD ACTION: Minutes were approved with change to clarify that it is the intent of the Board for the Planning Department to begin the zoning change process immediately and not wait until the commercial zoning process has been done with regards to the property involved in the appeal filed by Helen Kwalwasser.

cc:  File
MARIPOSA COUNTY BOARD OF SUPERVISORS

AMENDED
MINUTE ORDER

TO: ED JOHNSON, PLANNING AND BUILDING DIRECTOR

FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: PUBLIC HEARING - APPEALS OF PLANNING DIRECTOR'S DETERMINATION RELATIVE TO APN 15-060-025 Kwalwasser/APEPELLENT

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on November 28, 1995

ACTION AND VOTE:

10:34 a.m. Ed Johnson, Planning and Building Director;
PUBLIC HEARING to Consider an Appeal of the Planning Director's Authorization for Issuance of a Building Permit to Change a Non-Conforming Use on APN 15-060-025 and a Planning Director's Determination that No Zoning Ordinance Violation Exists on APN 15-060-025; Helen Kwalwasser, Appellant for Both Appeals
BOARD ACTION: Hearing was opened and continued to after a short recess. Board reconvened at 10:38 a.m., and Ed Johnson presented staff report and reviewed issues raised in the appeal, and commented on the appeal process itself. Public portion of the hearing was opened. Helen Kwalwasser/appellant, stated she is not opposing the two businesses on the property, just the Title 17 determination made by Planning staff; stated the building she questioned was a chicken coop that was red-tagged and condemned by the County; commented on the timeframe between the permit application for a storage facility and for a beauty shop; commented on the hours of operation for the restaurant and beauty shop and tenants on the property; presented letters from two previous employees of the restaurant (Ocean Sierra) relative to management of the business; and commented on traffic counts she had taken versus the average daily trips cited in the County's ordinance. Ms. Kwalwasser responded to question from the Board relative to clarification of the average daily trip information. Persons speaking in support of the appellant: none. Opponent's presentation: Pam Toney, owner of the property in question, stated they have always followed all of the rules and presented petitions supporting the businesses; they were not aware of the situation with the red-tagging of a building - everything is in compliance and permitted. Persons speaking on behalf of the opponent: none. Comments of a general nature: Lori Dorman,
owner of beauty shop in question, stated she has been in business in the area for eight and one half years and moved to this location on September 15th for a better facility; feels she has a low impact business on the area, works by herself and schedules appointments so that only one customer is present at a time; and commented on the deliveries to the restaurant. Ms. Dorman responded to question from the Board relative to the number of customers she serves in a day. Rebuttal by appellant: Helen Kwalwasser restated her objection to determination of Title 17 by Planning staff and that she is not opposed to the businesses. Ms. Kwalwasser responded to questions from the Board clarifying her objections to Title 17 determination, status of the red-tagged building, and reason for filing the appeals. Sarah Williams/Planning Manager, advised that building permits were received for the buildings. Public portion of the hearing was closed and Board commenced with deliberations. Discussion was held relative to Title 17 residency requirements, changes in use and expansion rules for rural home industry; and possibility of rezoning the property to Neighborhood Commercial. Jeff Green/County Counsel, provided clarification relative to the interpretation of Title 17 and the issues raised. (M)Taber, Parker (who passed the gavel), Res. 95-512 adopted upholding the appeals; directing staff to initiate the process to rezone the property in question to Neighborhood Commercial during the open window process; and allowing the existing businesses to continue to operate during the rezoning process time until the zoning issue is resolved. Planning Department is to begin the zoning change process immediately and not wait until the commercial zoning process has been done. Mr. and Mrs. Toney responded to question by the Board and stated they are in agreement with rezoning the property. Ayes: Balmain, Parker, Taber; Noes: Reilly; Excused: Stewart. Hearing was closed.

cc: File
TO: ED JOHNSON, PLANNING AND BUILDING DIRECTOR
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: PUBLIC HEARING - APPEALS OF PLANNING DIRECTOR'S DETERMINATION RELATIVE TO APN 15-060-025 KWALWASSER/APPELLANT

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,
ADOPTED THIS Order on November 28, 1995

ACTION AND VOTE:

10:34 a.m. Ed Johnson, Planning and Building Director; PUBLIC HEARING to Consider an Appeal of the Planning Director's Authorization for Issuance of a Building Permit to Change a Non-Conforming Use on APN 15-060-025 and a Planning Director's Determination that No Zoning Ordinance Violation Exists on APN 15-060-025; Helen Kwalwasser, Appellant for Both Appeals
BOARD ACTION: Hearing was opened and continued to after a short recess. Board reconvened at 10:38 a.m., and Ed Johnson presented staff report and reviewed issues raised in the appeal, and commented on the appeal process itself. Public portion of the hearing was opened. Helen Kwalwasser/appellant, stated she is not opposing the two businesses on the property, just the Title 17 determination made by Planning staff; stated the building she questioned was a chicken coop that was red-tagged and condemned by the County; commented on the timeframe between the permit application for a storage facility and for a beauty shop; commented on the hours of operation for the restaurant and beauty shop and tenants on the property; presented letters from two previous employees of the restaurant (Ocean Sierra) relative to management of the business; and commented on traffic counts she had taken versus the average daily trips cited in the County's ordinance. Ms. Kwalwasser responded to question from the Board relative to clarification of the average daily trip information. Persons speaking in support of the appellant: none. Opponent's presentation: Pam Toney, owner of the property in question, stated they have always followed all of the rules and presented petitions supporting the businesses; they were not aware of the situation with the red-tagging of a building - everything is in compliance and permitted. Persons speaking on behalf of the opponent: none. Comments of a general nature: Lori Dorman, owner of beauty shop in question, stated she has been in business
in the area for eight and one half years and moved to this location on September 15th for a better facility; feels she has a low impact business on the area, works by herself and schedules appointments so that only one customer is present at a time; and commented on the deliveries to the restaurant. Ms. Dorman responded to question from the Board relative to the number of customers she serves in a day. Rebuttal by appellant: Helen Kwalwasser restated her objection to determination of Title 17 by Planning staff and that she is not opposed to the businesses. Ms. Kwalwasser responded to questions from the Board clarifying her objections to Title 17 determination, status of the red-tagged building, and reason for filing the appeals. Sarah Williams/Planning Manager, advised that building permits were received for the buildings. Public portion of the hearing was closed and Board commenced with deliberations. Discussion was held relative to Title 17 residency requirements, changes in use and expansion rules for rural home industry; and possibility of rezoning the property to Neighborhood Commercial. Jeff Green/County Counsel, provided clarification relative to the interpretation of Title 17 and the issues raised. (M)Taber, Parker (who passed the gavel), Res. 95-512 adopted upholding the appeals; directing staff to initiate the process to rezone the property in question to Neighborhood Commercial during the open window process; and allowing the existing businesses to continue to operate during the rezoning process time until the zoning issue is resolved. Mr. and Mrs. Toney responded to question by the Board and stated they are in agreement with rezoning the property. Ayes: Balmain, Parker, Taber; Noes: Reilly; Excused: Stewart. Hearing was closed.

cc: File
November 14, 1995

MEMORANDUM

TO: Mariposa County Board of Supervisors

FROM: Sarah Williams, Planning Manager
       Ed Johnson, Director

SUBJECT: Appeals of Planning Director’s Determinations Regarding Building Permit Issuance and Alleged Zoning Ordinance Violation on APN 15-060-025 (Pamela Toney, Permit Applicant and Property Owner; Helen Kwalwasser, Appellant)

Summary and Staff Recommendation

The Planning Department authorized issuance of a building permit to Pamela Toney, for renovation of existing restaurant space for the Ocean Sierra Restaurant to a beauty salon. The permit was issued pursuant to the non-conforming use provisions in the Zoning Ordinance. The Department’s action was appealed by Helen Kwalwasser.

In a separate but related action, the Department reviewed an alleged Zoning Ordinance violation and determined that the operation of the restaurant was in conformance with the business owner’s rights under the non-conforming use provisions of Code, and our interpretation of standards for home enterprises/rural home industries relative to operation of the business by permanent residents and amount of outside business activity. This determination was also appealed by Ms. Kwalwasser.

Staff recommends that the Board of Supervisors adopt a resolution upholding the Department’s actions, and denying the appeals.

Background and Development of Restaurant Use

- June 6, 1994: Pamela and Mack Toney, property owners, submitted building permit application to convert existing structure (formally a church) to restaurant use.
Memo to Board, 11/14/95

Permit authorized by Planning Division on June 17, 1994, because proposed use complied with applicable standards at that time for Home Enterprises/Rural Home Industries (standards included as Attachment 5) (project proposed restaurant chef to live in mobile home on-site; standards at time of permit issuance required that the on-site use be... "operated by permanent residents").

- **November 1, 1994:** Home Enterprise/Rural Home Industry standards changed by Board of Supervisors (Ordinance No. 879) to require that home enterprise/rural home industry use "be operated by the owner of the business who shall reside on the property on a permanent basis." Ordinance became effective on December 1, 1994.

Because restaurant business owners (Toneys) did not live on property, the restaurant business became a non-conforming use with adoption of ordinance.

- **August 18, 1995:** Pamela Toney submitted building permit application to expand restaurant use into small cabin adjacent to restaurant structure. Structure to be used for restaurant business office and equipment storage.

Permit authorized by Planning Division on August 25, 1995 as expansion of non-conforming use per Section 17.08.020.B of County Code (50% expansion of nonconforming use permitted) (nonconforming use provisions of Zoning Ordinance included as Attachment 6).

- **September 7, 1995:** Pamela Toney submitted building permit application to convert business office space to beauty shop.

Permit authorized by Planning Division on September 15, 1995 as change in non-conforming use per Section 17.08.020.C (change in use to another non-conforming use of similar or less intensity permitted). Written determination issued by Planning Director on September 25, 1995 (included as Attachment 3).

- **September 7, 1995:** Request for Investigation received. Alleged Zoning Ordinance violations on APN 15-060-025.

- **October 11, 1995:** First Notice of Appeal received from Helen Kwalwasser (included as Attachment 1).

- **October 30, 1995:** Planning Director issues written determination that no Zoning Ordinance violation exists on APN 15-060-025 in response to Request for Investigation (included as Attachment 4).

- **November 9, 1995:** Second Notice of Appeal received from Helen Kwalwasser (included as Attachment 2).
Memo to Board, 11/14/95

Discussion of Recommended Action

Issuance of Building Permit for Change in Non-Conforming Use

The appellant's "Statement of Grounds of Appeal" is included in Attachment 1. The appellant lists her impression of what occurred on the Ocean Sierra property, and it appears that she is questioning dates of actions and how two commercial businesses, commercial office space and storage, and a rental mobile home could all exist on a 5 acre parcel. In her letter dated October 10, 1995, she describes alleged conversations with various county employees, as well as issues related to alleged Zoning Ordinance and Building Code violations (some of which is not related to this appeal). The appeal does not specifically identify what portion of the County's action or determination she questions or feels has been misinterpreted.

Detailed justification for Planning's authorization to change existing restaurant office space to a beauty shop is provided in the Director's written determination, included as Attachment 3. In summary, Planning considers the restaurant to be a non-conforming use, because its operation no longer complies with existing Zoning Ordinance standards for home enterprises/rural home industries relative to business owners/employees living on-site. Consequently, the project is entitled to be reviewed in accordance with the non-conforming use standards.

The Zoning Ordinance allows non-conforming uses to be expanded. In order to approve an expansion, three criteria must be met. First, the expansion must not exceed a fifty percent (50%) increase in square footage. The expansion complied with this criteria. Second, the expansion must not increase the number of (dwelling) units available for occupancy or increase the density above the maximum allowed by Title 17. No dwellings are involved so this criterion does not apply. Third, the expansion must not be a public or private nuisance or be objectionable by reason of noise, odor, smoke, dust, lights, vibrations, traffic, or drainage. The Planning Director found that the expansion met this criterion.

In addition, the Zoning Ordinance allows non-conforming uses to be changed to other non-conforming uses. In order to approve such a change, only one criterion must be met. That is, that the new non-conforming use must be of a similar or less intensive use. In the case of the restaurant use change to a beauty salon, the Director determined that the salon was similar or less intensive than the restaurant use. The Director's determination was based upon findings, including those supporting the intensity determination. The findings are listed on pages 2 and 3 of Attachment 3, and include specific information relative to traffic generation, parking demand and number of employees of the two businesses.

In essence, the basis for the appeal seems to be that the expanded use does not conform to the new Rural Home Industry Ordinance. However, the whole purpose of the non-conforming provisions of the Zoning Ordinance is to specifically allow conversion to another non-conforming use. There is only one test to be met, and that is that the new use not be a nuisance. Staff approved the use based upon specific Zoning Ordinance provisions for non-conforming uses which state that non-conforming uses can be expanded and can be changed. Staff did not feel it was relevant to make interpretations relative to the intent of the home
enterprise/rural home industry provisions in code. Staff recommends that the Board consider these issues, and uphold the Department’s action to authorize issuance of the building permit.

**Zoning Ordinance Violation Issues**

The second appeal is related to an alleged Zoning Ordinance violation, processed through the County’s formal “Request for Investigation” procedures. The original complaint alleged that the restaurant business was operating out of compliance with the following two requirements for rural home industries:

1. That, “the on-site use...is operated by permanent residents...” and
2. That, “no more than ten percent (10%) of the total business activity is conducted outside...”

Based upon a site inspection and information provided by the business owner, the Director ultimately determined that no violation exists. This determination is included as Attachment 4. The determination was based upon the business owner’s rights under the non-conforming use provisions, and our interpretation of Code. The standards in effect at the time the use was originally established are the standards that apply in this instance. The standards required that the use be “operated by permanent residents.” The business owner reported that a caretaker was living on-site, who was responsible for grounds watering and inventory receiving. A dictionary definition of “operate” includes “to conduct or direct the affairs of (a business, etc.)”. The caretaker is conducting some of the affairs of the business and is “operating” the business in accordance with this definition. This interpretation is consistent with previous Planning Director determinations regarding implementation of the standard. The determination regarding total outside business activity was based upon the number of tables and chairs located inside the restaurant, and those located outside the restaurant. Calculations for total percentage of business activity conducted outside considered the seasonal nature of the outside seating.

The appellant has not provided specifics in her grounds for the appeal of this determination, however it appears that she is questioning whether a caretaker living on-site and responsible for grounds watering and inventory receiving qualifies with the standards for business operation. The appellant has not provided any specific objective evidence regarding this determination, and it is the Director’s opinion that the operation of the business is still in compliance with applicable code sections. Consequently, staff recommends that the Board deny the appeal and uphold the Director’s determination that no Zoning Ordinance violation exists on-site.
ATTACHMENT 1

MARIPOSA COUNTY

NOTICE OF APPEAL

APPELLANT/CONTACT PERSON

NAME Helen Kwitwasser
MAILING ADDRESS 3125 Triangle Road
DAY TELEPHONE NUMBER 209-742-7354

☐ Check this box if the appeal form is being filed by additional appellants. Attach list with name, address, and signatures of appellants. You may designate two persons on the list to receive copies of all correspondence and staff reports related to the appeal. The list must contain a statement which states the person signing the list has reviewed the Notice of Appeal form.

☐ Check this box if appellant is also the application or permit applicant for the finding or decision being appealed.

PEACE BODY

Decision, finding, or determination is being appealed to
☐ BOARD OF SUPERVISORS (Submit appeal form to Clerk of the Board of Supervisors)
☐ PLANNING COMMISSION (Submit appeal form to Planning Commission Secretary)

DECISION BODY

Decision, finding, or determination being appealed was made by
☐ PLANNING COMMISSION
☐ OTHER COUNTY COMMISSION OR BODY
☐ COUNTY DEPARTMENT HEAD OR OFFICIAL

(Signature)

(Name)

(Senior Planner)

(Title)

DATE OF DECISION 9-25-1995

(Date)
DECISION, FINDING, OR DETERMINATION BEING APPEALED
(Attach copy of decision/findings)

APPLICATION NUMBER OR
TYPE OF PERMIT

OTHER (Specify)

SPECIFIC CONDITIONS, FINDINGS, AND/OR PORTIONS OF DECISION OR
DETERMINATION BEING APPEALED

How a private resident could be converted to a retail
rental space on a home industry zoned business,
with no employee or owner of either business living on
property. Now there is a restaurant, a mobile rental,
and a business office/storage area. A rental for a commercial business
not related to original business.

If additional space is needed, attach additional sheets to Notice of
appeal form. The grounds of appeal must clearly state those issues or
portions of the finding, decision, or determination being appealed. The
board of supervisors or planning commission will consider only those issues
which are raised in the appeal form.

Originally, this was a single-family home industry business.
Restaurant with living quarters for cook, and a mobile
for rent. Living quarters were turned into office/office.

Date? Then turned into a commercial rental space date?

For beauty shop - Neither business owner or employer
lives on property as Title 17 requires - Now there
are 2 commercial businesses - plus commercial office space,
plus commercial storage - plus a mobile rental all on a
5 acre home industry zoned parcel. Beauty shop opened
9-19-95

☐ Check this box if you request the right to submit additional
reasons for appeal and amendments or supplements to the appeal.
This additional information must be submitted no later than twenty-
five (25) calendar days prior to the hearing date of the appeal.

Signature of Appellant:  

Date: 10-5-95

4/13/93
HONORABLE BOARD OF SUPERVISOR'S
MARIPOSA COUNTY

OCT. 10, 1995

On Sept. 6, 1995 I took a complaint into the Mariposa County Planning Dept.. I spoke with Jay Pawlek, a County Planner. I asked for an explanation for Title 17, Home Industry. He researched extensively, his opinion was, Ocean Sierra Rest. was in violation of Title 17, by no employee or owner living on the property and they could not convert an existing building (residence, commercial office, commercial storage) not sure what it was at this point, into a commercial rental, without the owner living on the property on a permanent basis, I also contacted County Administration as County Counsel was out of town for an opinion, I received the same opinion from Administration.

On Sept. 11, 1995 I went back into planning, Mr Pawlek was out sick, I wanted to add outside Dinning/Storage to my complaint, the secretary Susan B. said nothing had been done as Sarah W. said no anything on the Toney complaint, she would handle it Wed. at Staff Meeting. I waited until Fri. Sept. 15, 1995 then called Sarah W. in Planning to find out the status on my complaint, as Lorri Dorman the proposed new tenant of the existing building had already started moving in and stated prior to Sept. 15, 1995 that everything had been approved by the Planning Dept. The building had now became a Beauty Shop.

Sarah confirmed that she had in fact rezoned the Toney's property to a non-confirming use and a permit had been issued that day I assume, even though on Sept. 5th everything had been approved according to Lorri Dorman by the Planning Dept. for a Beauty Shop to operate at that location. The Beauty Shop was open for business at that location on Tue. Sept. 19th.

I ask Sarah about someone living on the property and about the outside dinning and or storage, she said she had not had time to check on those as she was only working half days, even though she specifically ask to handle this complaint.

On Sept. 26, 1995 I received a letter from Sarah W. Mariposa Co. Planning Dept. stating her determination. As of the writing of this letter I do not believe Sarah W. has been on site for an inspection on my complaint, if she has I have not received the results of such an inspection.

In contrast on Sept.19, 1995 a complaint was made by the Toney's and or the Dorman's on Triangle for various things, within 3 hours there was an inspector on site for an inspection. It seems strange to me that a Dept. Head Ed Johnson runs two dept. totally different, or is it another case of inconsistency, or maybe someone the Planner might not like.

On Oct. 31st, 1994 the Toney's made a similar complaint as the one made on Sept. 19, 1995 all of which was addressed at that time again most of which was a harassment complaint, the only item on the complaint at that time was a 4x4 porch I replaced that was removed by the Toney's when they were tenants. I was not aware I had to get a permit for a 4x4 porch. All other items on complaint were not valid.
NOTICE OF APPEAL

APPELLANT/CONTACT PERSON

NAME
Helen Kuroswaisel

MAILING ADDRESS
3125 Triangle Rd
Mariposa, CA 95338

DAY TELEPHONE NUMBER
209-742-7357

☐ Check this box if the appeal form is being filed by additional appellants. Attach list with name, address, and signatures of appellants. You may designate two persons on the list to receive copies of all correspondence and staff reports related to the appeal. The list must contain a statement which states the person signing the list has reviewed the Notice of Appeal form.

☐ Check this box if appellant is also the application or permit applicant for the finding or decision being appealed.

APPEAL BODY

Decision, finding, or determination is being appealed to

☐ BOARD OF SUPERVISORS (Submit appeal form to Clerk of the Board of Supervisors)

☐ PLANNING COMMISSION (Submit appeal form to Planning Commission Secretary)

DECISION BODY

Decision, finding, or determination being appealed was made by

☐ PLANNING COMMISSION

☐ OTHER COUNTY COMMISSION OR BODY

☐ COUNTY DEPARTMENT HEAD OR OFFICIAL

Sara Williams
(Name)

ED Johnson
(Title)

DATE OF DECISION 10-30-95
(Date)
DECISION, FINDING, OR DETERMINATION BEING APPEALED
(Attach copy of decision/findings)

APPLICATION NUMBER OR TYPE OF PERMIT

OTHER (Specify)

SPECIFIC CONDITIONS, FINDINGS, AND/OR PORTIONS OF DECISION OR DETERMINATION BEING APPEALED

ON SITE use OPERATED by PERMIT RESIDENTS
10% of TOTAL Business Activity outside

See attached LETTER AND ORIGINAL APPEAL 10-11-95

STATEMENT OF GROUNDS OF APPEAL

If additional space is needed, attach additional sheets to Notice of Appeal form. The grounds of appeal must clearly state those issues or portions of the finding, decision, or determination being appealed. The board of Supervisors or Planning Commission will consider only those issues which are raised in the appeal form.)

☐ Check this box if you request the right to submit additional reasons for appeal and amendments or supplements to the appeal. This additional information must be submitted no later than twenty-five (25) calendar days prior to the hearing date of the appeal.

Helen Koshman
SIGNATURE OF APPELLANT

4/13/93
October 30, 1995

Pamela and Mack Toney
3292 E. Westfall
Mariposa, CA 95338

RE: Alleged Zoning Ordinance Violation at the Sierra Ocean Restaurant;
APN 15-060-025

Dear Mr. and Mrs. Toney,

This office has completed our review of the written complaint regarding the operation of your restaurant business on the above referenced parcel. Our review included both an on-site inspection, and consideration of written information you submitted. As you are aware, the complaint alleged that your business was operating out of compliance with two requirements for Rural Home Industries as follows:

1. “The on-site use...is operated by permanent residents...” and
2. “No more than ten percent (10%) of the total business activity is conducted outside...”

Based upon our review, the Planning Director has determined that no violation of these County Code requirements exists. The Director’s determination is based upon the following findings:

1. Leslie Schroder is currently residing in the mobile home on-site. According to her letter, Ms. Schroder is employed by Ocean Sierra Restaurant as “a caretaker responsible for grounds watering and inventory receiving.”

The standards which were in effect at the time your home industry was originally approved required that the business be “operated” by permanent residents. A dictionary definition of “operate” includes, “to conduct or direct the affairs of (a business, etc.).” As Ms. Schroder is conducting some of the affairs of the business, she is, in part, “operating” the business in accordance with this definition. Additionally, this determination is consistent with past Planning Director determinations regarding implementation of this standard. For at least two previous rural home industry businesses, the Director has approved an employee of the business living on-site as satisfying this code requirement. These
businesses included Tom Archibald’s mini-storage business (Archie’s) on Highway 49 North and Herb Brandauer’s auto repair business on Highway 140 in Midpines. In the case of the mini-storage business, an employee who is responsible primarily for grounds maintenance and security lives in a residential structure on the parcel. For the auto repair business, an employee who actually repairs automobiles lives on the parcel.

2. As part of an on-site inspection, we counted 13 tables inside the restaurant. The total seating capacity in the restaurant at the time of inspection was 41. Although no tables were set up for outside dining, there were 3 tables utilized for outside dining which were stored in the barn on-site. There were 12 chairs stored with the tables. Additionally, you stated that you provide outside dining for approximately 2-1/2 months during the year (from mid-June to the beginning of September), while your inside dining is provided for 12 months of the year.

Considering that you have 13 tables accommodating 41 people for inside dining for 12 months of the year, and 3 tables accommodating 12 people for outside dining for 2-1/2 months of the year, the “total business activity” conducted outside is either 4.8% (calculated for number of tables) or 6% (calculated for number of seats). These calculations are for the total business activity conducted throughout the year.

Based upon the Planning Director’s determination that a violation of County Code does not exist on your property, this office would typically have no further concerns regarding this matter. However, as you are aware, any determination of the Planning Director including this determination, can be appealed to the Planning Commission or the Board of Supervisors. As the recently submitted appeal for the beauty shop use addressed both of these issues (albeit premature of the actual determination), we plan to discuss these matters (operator living on-site, and amount of outside business activity) at the Board appeal hearing scheduled for November 28. We’ve attached appeals information and a Notice of Appeal Form for your review.

As always, if you have any questions regarding this determination, the standards of County Code, or the appeals procedures, please give us a call or stop by the office. Thank you for your cooperation regarding this matter.

Sincerely,

Sarah Williams
Planning Manager

Ed Johnson
Director

Appeals Attachments/CRRR

cc: Jeff Green, County Counsel (without attachments)
    Complainant (with attachments)
September 25, 1995

Pamela and Mack Toney
3292 E. Westfall
Mariposa, CA 95338

RE: Planning Approval Application for Conversion of Restaurant Office to Beauty Shop; APN 15-060-025

Dear Mr. and Mrs. Toney,

This office has reviewed your recently submitted building permit application for conversion of existing office space for your Sierra Ocean Restaurant to a beauty shop. In accordance with information included in your permit, the area for conversion totals 180 square feet.

Planning’s review of your project was in accordance with past development and uses on your parcel, and the Zoning Ordinance provisions for home enterprises/rural home industries and non-conforming uses as follows:

1. The restaurant use was originally reviewed by the Planning Department as part of a Building Permit Application to renovate an existing structure on the above referenced parcel to a restaurant. Planning authorized issuance of the permit on June 17, 1994 in accordance with the home enterprise/rural home industry provisions of the Zoning Ordinance (Sections 17.108.070 and 17.108.080). At the time of this approval, the Zoning Ordinance standards for home enterprises/rural home industries required that the business be “operated by permanent residents.” Your application indicated that the restaurant chef was to be residing on the project site.

2. On November 1, 1994, the Board of Supervisors adopted Ordinance No. 879, which amended Code to require that home enterprises and rural home industries be “operated by the owner of the business who shall reside on the property on a permanent basis”. The ordinance became effective on December 1, 1994. As of this date, your restaurant use became non-conforming, because you (the business owner) do not live on the property.

(A non-conforming use is defined as any use which was legally established in accordance with the then existing policies, provisions, regulations or zoning code, but which does not conform to the provisions of current code.)
3. An expansion of the non-conforming restaurant was authorized by the Planning Department on August 25, 1995, as part of a building permit application. The existing restaurant was 1,184 square feet in size. The expansion proposed a total of 300 square feet (in an adjacent structure). Planning’s authorization of this expansion was in accordance with Section 17.08.020 of County Code. This section allows non-conforming uses to be expanded, as long as the expansion does not exceed a fifty percent (50%) increase in square footage, does not increase the number of units available for occupancy, and/or does not increase the density above the maximum allowed by the Zoning Ordinance.

Additionally, County Code specifies that the expansion may not constitute a public or private nuisance or be objectionable by reason of noise, odor, smoke, dust, lights, vibrations, traffic, or drainage.

4. Your current project proposes to change 180 square feet of the recently expanded restaurant space to a beauty shop. The project proposes one beautician station, and the business is to be operated by the business owner. The business will not hire any employees and the business owner will not live on-site.

Section 17.08.020.C of County Code allows a non-conforming use to be “changed to another non-conforming use of a similar or less intensive use”. The Planning Director has determined that your proposed beauty shop use is similarly intensive or less intensive than the existing restaurant use and your building permit has been issued based upon the Director’s determination. This determination was made in accordance with Section 17.08.020.C of Mariposa County Code, and the following findings:

1. The project plans submitted for the building permit for the 300 square foot expansion proposes use of the expanded area (within an adjacent structure) for restaurant office and storage space. This office and storage function was theoretically occurring in the existing restaurant structure prior to the expansion. Accordingly, after the expansion, the space within the existing restaurant structure which was previously used for office and storage space, was then available to be used for restaurant seating, etc. Consequently, the intensity of the expansion should be evaluated from the perspective of restaurant use.

2. One measure of intensity of use is the amount of traffic generated by that use. In accordance with the Trip Generation Chart in the Mariposa County Road Improvement and Circulation Policy, which bases trip generation rates on the Institute of Transportation Engineers rates and local rates, the typical trips generated by a sit-down restaurant use are 75 trips per day per 1,000 square feet of restaurant space. Although a beauty shop use is not specifically listed on this chart, the typical trips generated by a professional office use are 25 trips per day per 1,000 square feet. Trips generated by a shopping center use are 75 trips per day per 1,000 square feet. Either of these uses are similar or less intensive than the restaurant use with respect to traffic generated. Consequently, it can be found that a beauty shop is similar or less intensive than a restaurant.
3. Another measure of intensity of use is the parking demand generated by that use. Using the parking requirements established in the Zoning Ordinance for commercial uses in the Mariposa TPA as a guideline, restaurant uses require 1 parking space for each 100 square feet of gross floor area. Beauty shops require 2 parking spaces for each beautician station. In accordance with these standards, the 180 square foot area proposed for a change in use would require 2 parking spaces if it were to be utilized for a restaurant use and 2 parking spaces for use for one beautician station. Consequently, it can be found that a beauty shop is similarly intensive to a restaurant with respect to parking demand.

4. A third measure of intensity of use is the number of employees who might be working on-site. The beauty shop use is to be owned and operated by one person, who will be traveling to and from the business one time per day. If the 180 square foot area were to be maintained for restaurant use, it is possible that more than one employee per day would be needed for the use. This is based upon the fact that restaurants may serve breakfast, lunch and dinner and it is unlikely that one employee would be working all three meals. Consequently, it can be found that a beauty shop is similarly or less intensive than a restaurant with respect to the number of employees who might be working on-site.

5. It might be argued that the intent of the home enterprise/rural home industry standards is to allow a home owner to operate a limited business on the owner's parcel, the conduct of which is compatible with the intensity of typical residential uses. Following this logic, it might be argued that the intent of the home enterprise/rural home industry standards is not to allow multiple home enterprises/rural home industries in a "shopping center" type use. There are no limits to the number of home enterprises or rural home industries a person could have on a parcel however, only limits to the number of employees for the business. Ultimately, the only other standard within County Code provisions for rural home industries which addresses intensity of use is that which specifies that the operation of the business can not be objectionable by way of noise, odor, dust or smoke. The intensity of potential impacts resulting from this project's traffic and number of employees have been addressed above, and it has been demonstrated that the proposed beauty salon use is similar in intensity or less intense than the existing restaurant use. Consequently, as the operation of the restaurant business (within the last year) has not been found to be "objectionable", the proposed project to change use to a less intensive use should not be expected to be "objectionable". However, the addition of any more uses to this parcel may exceed the intent of thresholds for intensity of development in a residential zone and would likely not be supported by staff.

6. Overall, the project was reviewed as a change in an existing non-conforming use, and not as a new home enterprise or rural home industry. The non-conforming use provisions do not specify that modifications in non-conforming uses must comply with other County Code sections, only that they be similar or less intensive than the existing non-conforming use.

However, the applicant should be advised that, if after the proposed beauty shop is established, it does result in impacts incompatible with residential uses, it is still subject to abatement procedures under the nuisance provisions of Section 17.08.020.B.
This determination can be appealed to the Planning Commission or the Board of Supervisors in accordance with County Policy. The appeal period is twenty (20) days from the date of written determination. Accordingly, the end of the appeal period is 5:00 p.m. on October 16, 1995. As you are aware, either appeal body can modify or reverse the Planning Director’s determination. I've included appeals information and a Notice of Appeal Form for your review.

If you have any questions regarding this determination, your permit, the applicable standards of the Zoning Ordinance, or the appeals procedures, please give us a call.

Sincerely,

[Signature]

Sarah Williams
Senior Planner

[Signature]

Ed Johnson
Director

cc: Jeff Green, County Counsel
October 30, 1995

Pamela and Mack Toney
3292 E. Westfall
Mariposa, CA 95338

RE: Alleged Zoning Ordinance Violation at the Sierra Ocean Restaurant;
APN 15-060-025

Dear Mr. and Mrs. Toney,

This office has completed our review of the written complaint regarding the operation of your restaurant business on the above referenced parcel. Our review included both an on-site inspection, and consideration of written information you submitted. As you are aware, the complaint alleged that your business was operating out of compliance with two requirements for Rural Home Industries as follows:

1. "The on-site use...is operated by permanent residents..." and
2. "No more than ten percent (10%) of the total business activity is conducted outside..."

Based upon our review, the Planning Director has determined that no violation of these County Code requirements exists. The Director's determination is based upon the following findings:

1. Leslie Schroder is currently residing in the mobile home on-site. According to her letter, Ms. Schroder is employed by Ocean Sierra Restaurant as "a caretaker responsible for grounds watering and inventory receiving."

The standards which were in effect at the time your home industry was originally approved required that the business be "operated" by permanent residents. A dictionary definition of "operate" includes, "to conduct or direct the affairs of (a business, etc.)." As Ms. Schroder is conducting some of the affairs of the business, she is, in part, "operating" the business in accordance with this definition. Additionally, this determination is consistent with past Planning Director determinations regarding implementation of this standard. For at least two previous rural home industry businesses, the Director has approved an employee of the business living on-site as satisfying this code requirement. These
businesses included Tom Archibald's mini-storage business (Archie's) on Highway 49 North and Herb Brandauer's auto repair business on Highway 140 in Midpines. In the case of the mini-storage business, an employee who is responsible primarily for grounds maintenance and security lives in a residential structure on the parcel. For the auto repair business, an employee who actually repairs automobiles lives on the parcel.

2. As part of an on-site inspection, we counted 13 tables inside the restaurant. The total seating capacity in the restaurant at the time of inspection was 41. Although no tables were set up for outside dining, there were 3 tables utilized for outside dining which were stored in the barn on-site. There were 12 chairs stored with the tables. Additionally, you stated that you provide outside dining for approximately 2-1/2 months during the year (from mid-June to the beginning of September), while your inside dining is provided for 12 months of the year.

Considering that you have 13 tables accommodating 41 people for inside dining for 12 months of the year, and 3 tables accommodating 12 people for outside dining for 2-1/2 months of the year, the “total business activity” conducted outside is either 4.8% (calculated for number of tables) or 6% (calculated for number of seats). These calculations are for the total business activity conducted throughout the year.

Based upon the Planning Director's determination that a violation of County Code does not exist on your property, this office would typically have no further concerns regarding this matter. However, as you are aware, any determination of the Planning Director including this determination, can be appealed to the Planning Commission or the Board of Supervisors. As the recently submitted appeal for the beauty shop use addressed both of these issues (albeit premature of the actual determination), we plan to discuss these matters (operator living on-site, and amount of outside business activity) at the Board appeal hearing scheduled for November 28. We’ve attached appeals information and a Notice of Appeal Form for your review.

As always, if you have any questions regarding this determination, the standards of County Code, or the appeals procedures, please give us a call or stop by the office. Thank you for your cooperation regarding this matter.

Sincerely,

Sarah Williams
Planning Manager

Ed Johnson
Director

Appeals Attachments/CRRR

cc: Jeff Green, County Counsel (without attachments)
Complainant (with attachments)
or sale of agricultural product such a manner as to constitute a nuisance.

B. The on-site harvesting

C. Utilities, including but not limited to, receiving, transmission, and distribution lines, towers and poles. Substations may be considered subject to the use permit determination process specified in Chapter 17.116 of this Title.

D. Public schools, parks and other public facilities such as fire departments are permitted uses in the RR, MH, MT, MH, MT, MG, GF, MP, and AE zones.

E. Portable sawmills and portable planing mills for the milling and planing of timber harvested on-site.

F. Accessory buildings or structures.

G. Loading and unloading facilities.

H. On-site parking. (Ord. 704 Sec.1, 1988).

I. Private schools for twelve (12) or fewer students and conducted in a residential structure shall be a permitted use in the RR, MH, MT, MG, GF, MP, and AE zones subject to the standards contained in section 17.108.170. (Ord. 816 Sec.III, 1991)

17.108.070 Home enterprises.

Home enterprises on a parcel of land shall be considered as a permitted use in the RR, MH, MT, MG, GF, MP, and AE land use classifications, subject to the following:

A. On site sales shall be limited to the sale of products fabricated or produced on site or merchandise that is sold as a secondary enterprise and is related to the primary enterprise;

B. The on-site use has no more than one (1) employee per acre up to twenty (20) employees and is operated by permanent residents;

C. The use and its principal activities are conducted primarily within structures or dwellings;

1. No outdoor storage and no more than ten percent (10%) of the total business activity is conducted outside;

2. The exterior use and any supporting activities or facilities are located at least fifty (50) feet from all external property lines, streets, roads, or other public right-of-ways;

D. Bed and breakfast and residential transient rental establishments, as regulated by Section 17.108.180 of this Title. (Ord. 704 Sec.1, 1988).

17.108.080 Rural home industry.

Rural home industry is a permitted use in the same zones as listed in home enterprise above except RR. These are trades or industries of a limited character, which are not detrimental to the district or to the adjoining residential areas, by reason of appearance, noise, dust, smoke, or odor. Excludes any use the normal operation of which causes objectionable noise, odor, dust, or smoke to be emitted, radiated, or carried beyond the boundaries of the property on which the operation is located. Rural home industries are also subject to the same standards specified for a home enterprise in Section 17.108.070, with the following exceptions and additional conditions:
A. If a parcel has both a home enterprise and a rural home industry, an aggregate of no more than one (1) employee per acre up to twenty (20) employees is permitted.

B. Storage of supplies or materials may take place outside of a structure or dwelling provided such storage is not visible from external property lines, streets, roads or other public right-of-way fronting on the property or site.

C. The use and all supporting activities or facilities are located at least fifty (50) feet from all external property lines, streets, roads, or other public right-of-ways.

D. Junk yards, wrecking yards and/or dismantling yards and solid waste sites, are prohibited uses in zones wherein rural home industry is allowed. "Junk yards", "wrecking yards" and "dismantling yards" in this Section means a place of more than two hundred (200) square feet in size per parcel used for the storage or keeping of junk, including scrap metals or other scrap materials, and/or for the dismantling or wrecking of automobiles or other vehicles or machinery. "Junk" means any worn-out, cast off, or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use. Any article or material which, unaltered, or unchanged, and without further reconditioning, can be used for its purpose readily as or when new shall not be considered junk. (Ord. 704 Sec.1, 1988).

17.108.090 Mobile home parks.
The same standards as listed in Section 17.108.100 below, shall apply except mobile home parks located in TPAs with adopted specific plans are subject to all standards contained in the specific plan of that community. Mobile home parks shall be allowed in all residential zones, i.e. RR and MH. (Ord. 704 Sec.1, 1988).

17.108.100 Planned or cluster residential development and preservation of open space.
Planned residential developments and cluster residential subdivisions are subject to the requirements of this Section. The purpose of a cluster development is to permit a procedure for development which will result in improved living conditions, promote economic subdivision layout, encourage a variety of housing types, encourage ingenuity in site and subdivision design, preserve open space, and promote development of adequate public services and utilities.

A. Planned or cluster residential development proposals may be allowed in RR and MH zones. Planned or cluster residential development proposals shall be considered a prohibited use in all other zones. Nothing in this provision shall be interpreted to preclude construction of clustered or multiple family residences in any zone as provided in Section 17.108.050.

B. A planned or cluster residential development shall include, but not be limited to multi-family or apartment units, common wall, condominium, mobile home or detached residential unit subdivisions, and mobile home parks.

C. Prior to obtaining any construction permits, the planned residential development shall be approved by the planning
Chapter 17.08
GENERAL PROVISIONS

Sections:

17.08.010 Consistency with
17.08.020 Nonconforming use
17.08.030 Relation to previous regulations.
17.08.040 Application.
17.08.050 Fees.
17.08.060 Completeness of applications.
17.08.070 Planning commission.
17.08.080 Burden of proof.
17.08.090 Site plans required.
17.08.100 Approval or disapproval.
17.08.110 Resubmittal of application.
17.08.120 Interpretation by the planning director.
17.08.130 Notice to county assessor and owner.
17.08.140 Single family dwelling site plans.
17.08.150 Commercial, industrial, or multi-family dwelling site plans.
17.08.160 Site plan processing procedures.
17.08.170 Permit time limits.
17.08.180 Extension of time.
17.08.190 Project completion.
17.08.200 Applications deemed approved.

17.08.010 Consistency with general plan and specific plans.
Approval of rezoning, design and site plans, development plans, sub-division plans, and review of use permits pursuant to this Title shall be based on a finding that said approval is compatible with the: policies, goals, objectives, programs, and standards of the Mariposa County general plan, and with any applicable specific plan adopted by the Mariposa County board of supervisors. Applications for rezoning, design and site development review, use permits or subdivisions shall be denied if found to be inconsistent with the Mariposa County general plan or with the applicable specific plan. (Ord. 704 Sec.1, 1988).

17.08.020 Nonconforming uses.
Any use which was legally established in accordance with the then existing policies, provisions, regulations or zoning code, but which does not conform to the provisions of this Title, shall be deemed a nonconforming use.

A. A nonconforming use established prior to the effective date of this Title, or prior to any subsequent amendment which creates such nonconformity, may be continued, expanded and maintained, including necessary repairs, consistent with the provisions of this Section. Continuation of a nonconforming use may include a change of ownership, tenancy or management where the previous line of business or other function is substantially unchanged.
B. Nonconforming uses may be expanded through approval of a site plan application processed in conformance with Sections 17.08.140, 17.08.150 and 17.08.160 of this Title. However, under no circumstances shall the expansion exceed a fifty percent (50%) increase in square footage. Notwithstanding anything to the contrary contained herein, if a proposed expansion would result in increasing the number of units which are available for occupancy, or increasing the density above the maximum allowed by this Title, the expansion shall be denied. In addition to the factors specified in 17.08.160, an application shall not be approved if a determination is made that the expansion will constitute a public or private nuisance or will be objectionable by reason of noise, odor, smoke, dust, lights, vibrations, traffic, or drainage. Determinations made regarding these applications may be appealed in accordance with Chapter 17.136 of this Title.

C. Change in use: A nonconforming use may be changed to another nonconforming use of a similar or less intensive use. Whenever a nonconforming use has been changed to a less intensive use, or to a conforming use, such use shall not thereafter, be changed to a more intensive use.

D. Discontinuance of uses: If the use of a building or premises does not conform to the land use regulations of the zone in which it is located, and that use is discontinued for a period of thirty-six (36) consecutive months, any subsequent use of the building or premises shall conform to the regulations of the zone in which it is located.

E. Restoration: When a building or other structure, which does not conform to the provisions of this Title is damaged or destroyed, it may be restored or rebuilt to accommodate its original use. Such restoration or rebuilding shall conform to the existing building requirements.

F. Prior permits: Nothing contained in this Title shall require any change in plans, construction size, or designated use of any building or structure or part thereof for which a building permit has been issued and is valid and unexpired, before the effective date of this Title. An extension of these permits shall be granted the same as for any permit. (Ord. 704 Sec.1, 1988).

17.08.030 Relation to previous regulations.
No previously issued permits, issued in accordance with county code or ordinance, shall be deemed revoked, null and void, altered or otherwise affected as a result of enactment of this Title. Any structure which was erected, constructed, enlarged, moved, or otherwise legally established in accordance with the provisions of county code or other regulations, but which does not conform to the provisions of this Title shall be deemed a legal structure. Any addition or expansion of a legal structure shall be required to conform to the provisions of this Title unless otherwise provided herein. (Ord. 704 Sec.1, 1988).

17.08.040 Application.
The regulations established by this Title shall apply to all property within the boundaries of Mariposa County, except such
Mariposa County Board of Supervisors,

In response to the appeal of the Planning Department decision regarding my business operation at 3292 E. Westfall known as Ocean Sierra Restaurant, I have the following statement:

During the almost four years my husband and I have owned and operated our business we have worked to build a reputation of respect in our community. We support as many other small local businesses as possible because we understand difficulty of operating such a business. We have consistently abided by all local, state and federal agencies guidelines and requirments. The issue at hand is no different. We are well within our rights as per Mariposa County Planning Department Regulations to continue operating as we are now doing.

I have kept my statement brief because I believe the facts presented to you speak for themselves and I trust that my reputation also speaks for itself.

Sincerely,

Pam Toney
Ocean Sierra Restaurant