RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No XXX)

Staff recommends that the Board:

1) Adopt a resolution denying Appeal No. 97-7 (Conditional Use Permit No. 253, Yosemite Motels, applicant) based upon the Planning Commission’s findings of approval; and

2) Adopt a resolution denying Appeal No. 97-8 (Conditional Use Permit No. 253, Variance No. 97-2, Yosemite Motels, Applicant), based upon the Planning Commission’s findings of approval for Conditional Use Permit No. 253 and the inability to make required findings to approve Variance No. 97-2.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

See attached memorandum

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

See attached memorandum

COSTS: (XX) Not Applicable
A. Budgeted current FY $________
B. Total anticipated Costs $________
C. Required additional funding $________
D. Internal transfers $________

COSTS: ( ) 4/5th Vote Required
A. Unanticipated revenues $________
B. Reserve for contingencies $________
C. Source description: ____________________________
Balance in Reserve Contingencies, If Approved: $________

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

Memo to Board with Attachments
1. Skelton Appellant Information
2. Yosemite Motels Appellant Information
3. Planning Commission Approval Letter
4. Planning Commission Staff Report
6. Draft Board Resolutions

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: ____________________________

Original Action Form is # 98-36

Action Form Revised 10/95
A RESOLUTION APPROVING APPEAL NO. 97-8 (YOSEMITE MOTELS, APPELLANT), VARIANCE 97-2 AND CONDITIONAL USE PERMIT NO. 253, YOSEMITE MOTELS, APPLICANTS

WHEREAS, Appeal 97-8, appeals the Planning Commission’s denial of Variance 97-2 and conditional approval of Conditional Use Permit No. 253; and

WHEREAS, the Board of Supervisors is responsible for reviewing the Appeal and for the approval or denial of the Appeal; and

WHEREAS, the Board of Supervisors has held a duly noticed public hearing on the matter in accordance with County Code and State Law and has considered all input, written and verbal, delivered to the Board.

NOW THEREFORE BE IT RESOLVED, that the Mariposa County Board of Supervisors hereby approves APPEAL NO. 97-8, as outlined in Exhibit A attached hereto and incorporated by reference and based upon the findings contained in Exhibit B attached hereto and incorporated by reference.

PASSED AND ADOPTED by the Mariposa County Board of Supervisors on this 27th day of January, 1998 by the following vote:

AYES: Balmain, Parker, Pickard

NOES: Reilly, Stewart

ABSTAINED: None

EXCUSED: None

NOT VOTING: None

______________________________
PATTI A. REILLY, Chair
Mariposa County Board of Supervisors

ATTEST:

______________________________
MARGIE WILLIAMS,
Clerk of the Board

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

______________________________
JEFFREY C. GREEN,
County Counsel
EXHIBIT A

BOARD ACTION ON APPEAL NO. 97-8

Approve the variance to the side and front yard setbacks allowing limited expansion of
the restaurant to the west and modify the conditions of approval as follows.

(Additions are shown in *italics and double underline*, deletions are shown in
strikethrough)

1. The Use Permit is approved for the existing approximately 10,500 sq.ft.
restaurant, **and an expansion of the existing restaurant from approximately 10,500 sq.ft. to approximately 13,000 sq.ft.**, the conversion of approximately 650
sq.ft. of the existing restaurant (in the location shown on the approved plans) to
a bar, and the construction of approximately 40 new parking spaces. **Approximately 385 sq.ft. along the northwestern portion of the property is approved for use as storage of equipment and garbage. Approximately 670 sq.ft. along the westerly portion of the property is approved for use as restaurant space.** The remaining 1,445 sq.ft. is approved to the east of the existing building and shall meet all setback requirements. No construction is permitted between the existing building and the Merced River, except as necessary to provide structural support to the existing log cabin structure. When necessary to support the existing log cabin structure, construction shall restricted to as close to the existing structure as practical, as determined by the Planning Director. All new construction is subject to design review by the Planning Director, and no construction shall begin until the Planning Director has reviewed and approved construction level plans. **The Variance is approved to: Allow construction approximately 5 feet from the westerly property boundary and to allow construction approximately 13 feet from the front property line. All expansion within the westerly property boundary setback shall not exceed 1-story in height. The expansion to the west of the northerly portion of the existing building shall be for storage of equipment and garbage only.** All site work and grading shall be completed in accordance with the approved plans, project description, and design.

2. All mechanical equipment, electrical equipment, refuse storage areas, dumpsters, and propane tanks shall be screened from view from Highway 140 and adjoining parcels. **No mechanical or electrical equipment shall encroach closer to the property line than the building face.**

3. All lighting shall be designed and located so as to confine lighting directly on the premises and shall not shine light upon other properties or roadways adjacent to or in the vicinity of the project site. A light source shall not shine upon or illuminate directly on any surface other than the area required to be lighted.
4. All two-way driveways shall be a minimum of 18' wide, all one-way driveways shall be a minimum of 12' wide. All driveways and parking areas shall be paved.

5. Trees used in landscaping shall be a minimum of 15 gallons in size, shrubs used in landscaping shall be a minimum of 5 gallons in size.

6. Prior to issuance of a Certificate of Occupancy, landscaping on the project site shall be completed in accordance with a Planning Department approved landscape plan. Landscaping shall be provided between every 6 parking spaces and between the parking area and the highway. Additionally, the 5' western side yard setback shall be landscaped with a variety of trees and shrubs to provide an appropriate buffer and visual screen as approved by the Planning Director. There shall be no windows or doorways along this setback area.

7. Prior to issuance of a Building Permit (other than grading) the applicant shall submit evidence that the project site will be served by the National Park Service Wastewater treatment plant in El Portal.

8. Prior to issuance of a Certificate of Occupancy to the project, the applicant shall apply for and receive a domestic water supply permit from the State Department of Health Services/Drinking Water field Operations Branch. Verification of the domestic water supply permit shall be submitted to the Planning Director.

9. The project shall meet all standards of PRC 4290 and any requirements of the State Fire Marshall's Office and County Fire regarding commercial structures. Storage capacities shall be as required by the State Fire Marshall's Office or County Fire in order to satisfy Commercial Building water flow requirements. All new structures shall meet all pertinent sections of the National Fire Protection Association and Uniform Fire Code standards for such facilities.

10. Prior to issuance of a Building Permit a Hydraulic study of the proposed building and the floodplain shall be completed. The building shall incorporate all of the structural design recommendations of the engineered hydraulic analysis. Propane tanks shall be secured to withstand flood flows.

12. Yosemite Motels shall implement a Flood Warning and Evacuation Plan for this project. The Plan shall identify specific means to determine imminent flood hazards to the project premises, to notify employees and tourists, and to effectuate the actual evacuation of employees and tourists. The Plan shall be reviewed and approved by the Mariposa County Planning Department, and shall also be coordinated with the National Park Service Flood Plan and Early Warning System as appropriate. The Plan shall identify specific persons or employees in charge or responsible for the specific duties identified in the Plan. At least one responsible person or employee shall be on the project premises at all times. The Plan shall include an information posting requirement for all rooms to advise of flood hazards and to clearly describe procedures to follow in case of a flood emergency.
13. The bar shall be closed no later than midnight (12:00 a.m.). The bar area shall only be utilized when the restaurant is open and serving a full menu. Outdoor consumption of alcoholic beverages shall only be in conjunction with dining. Use of alcohol in exterior areas shall be prohibited after 11:00 p.m. Amplified music shall be prohibited after 10:00 p.m.

14. The applicant shall either merge all underlying legal parcels or record an agreement insuring that adequate facilities, including parking, open space, pathways, driveways, utilities, etc., will be available to the restaurant buildings.

15. All on-site signage shall comply with County Code requirements for the Resort Commercial designation. The sign plan shall be reviewed and approved by the Planning Director.

16. All fees associated with the processing of the application shall be paid.
EXHIBIT B

FINDINGS FOR ACTION OF APPEAL NO. 97-8

1. "There are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the 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."

The project parcel is substantially larger and of a less rectangular configuration than adjacent properties to the north and west. The project parcel is located within a resort complex, generally under the same ownership. The applicant has proposed to meet the intent of the front yard setback by being located in excess of 100 feet from Highway 140. The size, configuration, and nature of the property constitute exceptional circumstances.

2. "The granting of such variance will not be materially detrimental to the public welfare or injurious to the public welfare or injurious to the property or improvements in the zone or vicinity in which the property is located."

All new construction allowed by the granting of the variance will be required to meet all Building Code and fire requirements. With the condition related to landscaping between the project site and the adjoining property, the lack of windows facing adjoining property, and conditions regulating noise generating activities, the project will not be materially detrimental to health, safety, morals, comfort, and general welfare. The granting of the front yard variance does not impact the ability of the existing roadway to provide adequate access. The granting of the sideyard variance provides the opportunity to screen garbage storage and mechanical equipment thereby enhancing the adjacent property.

3. "The granting of such variance will not adversely affect the comprehensive general plan."

The granting of the variance furthers the intent of the General Plan to develop Town Planning Areas as centers for commerce.

4. "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."

The variation in parcel sizes, irregular parcel configuration, interior lot lines, interior roadway, ownership pattern, and location within a resort complex are not typical conditions within the vicinity or County for Resort Commercial development. The zoning standards would require the applicant to setback further on side property lines than adjacent land owners. The granting of the front and side yard variance
allows the applicant to screen garbage areas, square off the existing building, and protect the existing log cabin.

5. "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."

The zoning standards would require the applicant to setback further on side property lines than adjacent land owners.
MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: ED JOHNSON, Planning and Building Director

FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: Appeal No. 97-7 (Ronald and Elizabeth Skelton, Appellant); Res. 98-36 and Appeal No. 97-8 (Yosemite Motels, Appellant); Res. 98-37

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on January 27, 1998

ACTION AND VOTE:

10:02 a.m. Ed Johnson, Planning and Building Director;

A) PUBLIC HEARING to Consider:

- Appeal No. 97-7 (Ronald and Elizabeth Skelton, Appellant), an Appeal of the Planning Commission’s Approval of a Portion of Conditional Use Permit No. 253, Yosemite Motels, Applicant;
- Appeal No. 97-8 (Yosemite Motels, Appellant), an Appeal of the Planning Commission’s Denial of Variance No. 97-2 and the Planning Commission’s Conditions of Approval on Conditional Use Permit No. 253, Yosemite Motels, Applicant

BOARD ACTION: Ed Johnson introduced the two appeals and recommended that public input and deliberation be held on each appeal separately -- Board concurred.

- Appeal No. 97-7: Jay Pawlek, Senior Planner, presented staff report. Staff responded to questions from the Board relative to the status of the restaurant as a non-conforming use; appeal of the Use Permit for a bar and whether there are any conditions for exterior use; and current use of the space proposed for the bar. Chair Reilly explained the hearing procedures.

Input from the public was provided by the following:

Appellants presentation:
Ron and Liz Skelton, appellants, were present. Ron advised that they are appealing the granting of the operation of a bar. They expressed concern with the noise this operation may generate. He noted that the applicant owns all of the property surrounding their lot. They have lived in El Portal for 26 years and purchased the neighboring property about 20 years ago. He referred to his experience with responding to situations at Cedar Lodge as a result of the bar operation and problems with accidents on the River road (Highway 140), with a large portion being alcohol related. He feels many of the employees drive while drinking, and they feel the bar in the area will increase the driving and drinking problem. The bar at Cedar Lodge has become a hang-out and there is no regular law enforcement presence in the late evening and the locals are aware of this and feel they can drink and drive. From his discussion with local law enforcement personnel, they are not happy with another bar in the area. They feel it is not in the public’s best interest to allow this bar operation because of existing conditions with the
Highway -- curves and ice creating a public safety issue. Liz advised that they are planning to build a small bed and breakfast (B&B) for their retirement on the neighboring lot to this project. She noted that she has been teaching at Mariposa County High School for approximately 25 years. She also expressed concern with noise impacts from a bar operation. She asked about the number of parking spaces for expansion if this is to only serve guests -- she feels it will attract patrons other than just guests of the hotel. She stated she is concerned with impacts from the bar with regards to their planned B&B operation. She advised that she has received comments from local law enforcement officials that they are happy with not having had to deal with the bar operation in this interim period since the flooding a year ago. In 1994, Students Against Drunk Driving (SADD) at the High School started a petition against the expansion of alcoholic beverages selling business on California Highway 140 between Midpines and Yosemite National Park, and that petition will be presented later in the hearing process by a student. Law enforcement personnel will need to deal with the usual types of problems with the presence of a bar -- drinking and problems with minors employed by the restaurant having access to liquor. It concerns her that the bar would be open until 2:00 a.m. with hard liquor being served and no meals. She does not object to having beer and wine with meals and a patio area open until 10:00 p.m. She feels the bar operation would be injurious to their property value. She referred to the tract record of the bar at Cedar Lodge with regards to the loud parties and disturbances and noted that it has become a "hang out" place, and is concerned that the proposed bar operation will be the same. She feels this proposed bar operation will attract local employees driving home from the Park after work. She responded to questions from the Board relative to the location of their property in relation to the proposed bar operation and the history of the creation of the parcel. Liz presented a drawing of their proposed plans for their B&B operation. Ron advised that they are working on obtaining a loan to construct their B&B, and responded to questions from the Board relative to the setbacks for their facility. Liz asked whether the bar could be confined to a small area and whether drinks would be allowed on the verandah. Liz responded to question from the Board clarifying their appeal issues. Ron noted that when he responds to incidents at Cedar Lodge, people are out of the bar area drinking and they are concerned that will happen with this operation.

Speakers in support of the applicants:

Elijah Butler, member of SADD, presented the petitions against the expansion of alcoholic beverages selling business on California Highway 140 between Midpines and Yosemite National Park. He noted that they feel the road is dangerous enough without adding the opportunity for people to stop at the bar and drink and drive.

Applicants presentation:

Art Baggett, representing Yosemite Motels, advised that they do not condone drinking and driving, and he feels it is a separate issue as to whether bars should exist in the County. He noted that there was a bar on this site since at least 1963. He presented a blue print drawing of plans of the existing building and noted the bar area is 620 square feet with no exterior windows or entrances. The bar will only be open when the restaurant is open and patrons will pass by the cashier. Their remodel of the building is designed to preserve the existing log cabin structure. They propose eleven seats versus bar stools and two-person tables. The design is to mitigate the noise impacts, there is no place for music and they do not have television, so it will not be a "sports bar." He referred to the previous bar operations beginning with the Red Vest Bar of 1800 square feet and then the area was converted to a hotel. During the flood last year, the building was severely damaged and removed. He presented documents from the State Department of Alcoholic Beverage Control reflecting Jette's use of the facility from 1975-89 for serving beer and wine. In 1990, the Houtz's owned the liquor license, and the license is with the site until after the results of today's hearing. With regards to the bar operation at Cedar Lodge, Yosemite Motels is just the landlord, and the operators (Houtz) have responsibility. Art also referred to his review of the Assessor's records. He stated he
agrees with the concerns relative to drinking and driving; however, this bar operation is proposed to serve as an amenity for guests at the restaurant and the drinking and driving laws should be enforced. With changes in the law, new liquor licenses cannot be obtained -- only existing licenses can be transferred. The current parking meets conditions required for the restaurant, etc. When they rebuilt the facility, they assumed the bar went with the restaurant approval. They would agree to a condition to approval of the Use Permit that the bar is only to be open when the restaurant is open, and to no television. He noted that the Cedar Lodge facilities were in operation before Yosemite Motels became involved. He would also agree to conditions that there be no exterior windows or doors (none exist now), as access is through the restaurant. In terms of outside operation, he would agree to closing the bar at 11:00 p.m. as a condition of approval. He responded to questions from the Board relative to the location of the Merced River in relation to the project. He also noted that there would be no pool tables or recreation equipment in the bar and no smoking. He responded to additional questions from the Board relative to clarification of the hours for the bar and whether meal service would be available; location of the outside areas for meal service; clarification of the permitting for the restaurant and status of the bar; as to who the operators of the facility will be and who will hold the liquor license; whether off-site sale of alcohol will be allowed; and with regards to existing licenses held by Yosemite Motels for off-site sale of alcohol and on-site sale. Barry Brouillette, representing Yosemite Motels, provided additional response to question relative to the liquor licenses held by Yosemite Motels. Art Baggett presented photographs of the project.

Speakers in opposition to the appellants:

Kevin Shelton stated he has lived at Cedar Lodge for two years and has been present at many of the incidences when Ron Skelton provided assistance -- he does not feel that most of these incidences were related to alcohol consumed from the bar, many were health related. He said people are not allowed to take alcohol outside of the bar.

Rebuttal by appellants:

Liz Skelton thanked Art Baggett for agreeing to time limits for the open hours of the bar and restaurant. She requested clarification as to manager for Cedar Lodge as she thought she understood that Barry Brouillette was the manager following the Planning Commission's hearing, and today it was stated the Houtz’ manage this facility. She stated they are concerned about management for the bar and the conditions and how it will be controlled. She further stated they are opposing the hard liquor license -- the beer and wine license is there, and she asked who will have title to the liquor license. For about 26 years, there was not a bar on these premises. The one at Parkline caused problems and she reiterated her previous comments that it has been a relief to law enforcement to not have to deal with problems in the interim. She feels the employee environment at Cedar Lodge causes the call-outs for emergency assistance, and she expressed concern with the type of people who are hired, and stated she does not want to see that proliferated. She feels the drinking outside of the bar area at Cedar Lodge occurs due to limited law enforcement resources. She requested that the restaurant be open for full-service during the hours the bar is open.

Rosemary MacCallum stated she lives in El Portal and works in the Park in a dining room. The employees stopped at the bar (old Parkline) and would drink on their way back to Midpines and Mariposa. She agrees with the need to control the drinking, and she referred to a murder incident at Cedar Lodge that was bar related. She responded to question from the Board as to where employees stop for a drink currently.

Public portion of the hearing was closed and Board commenced with deliberations. Staff responded to questions from the Board relative to the conditional use of a bar versus expansion -- conversion of a portion of the existing restaurant use to a bar; offer from the applicant to use permit conditions during this hearing process; and requirements for posting and notification of transfer of a liquor license and whether there
is an appeal process. Barry Brouillette responded to question from the Board relative to
the purpose of posting the notice of transfer of a license. Staff responded to additional
questions from the Board relative to conditions for outdoor use and whether there was
discussion during the Planning Commission hearing on this issue. Ed Johnson advised that
this project is in Resort Commercial area and he feels it is reasonable to expect that there
will be ancillary uses such as this, and he recommended that the Board impose the
conditions offered by the applicant and uphold the Planning Commission's determina-
tion. Supervisor Stewart stated he felt that if there is a problem with lack of law enforce-
ment in the area, there should be a request to provide more service. (M)Parker, (S)Bal-
main, Res. 98-36 adopted denying appeal No. 97-7 based on the Planning Commission's findings and
directing that the following conditions be imposed as discussed today: restrict the use of the
bar/lounge to hours when the restaurant is open for full-service; hours of operation are
not to exceed 12:00 a.m.; consumption of alcoholic beverages is not allowed outside of
the established restaurant serving area and the bar/lounge area; and outside use is not to
exceed 11:00 p.m./Ayes: Unanimous.

11:37 a.m. Recess

11:45 a.m. • Appeal No. 97-8: Ed Johnson advised that this appeal involves the
footprint of the structure and the setbacks. Jay Pawlek provided detailed staff report.
Staff responded to questions from the Board relative to the Planning Commission's
actions to grant the variances; setback requirements for this parcel and for the neighboring
parcel owned by the Skeltons; setback requirements if the applicant had not merged two
of their parcels; whether utility easements are addressed within the proposed setbacks;
existing setback for the restaurant area; and whether there are provisions to handle
drainage from neighboring roof lines.

Public portion of the hearing was opened.
Appellants presentation:

Barry Brouillette and Art Baggett presented their appeal. Barry referred
to the historic pattern of variances being allowed in El Portal, and advised that Yosemite
Motels merged the two parcels for finance reasons for this project. Art advised that the
slabs for the patio and walkways within the setback areas were poured with the rest of the
cement work because they thought they had agreement to acquire the neighboring parcel.
He stated if there was an adopted Specific Plan for El Portal, the setbacks would be five
feet. Art further advised that they have dropped the request for a front yard setback along
Highway 140. They want the setback variance on the wall along the restaurant to enclose
the area where they will have their trash bins and mechanical units for heating and air.
They are willing to agree to having no windows on the wall proposed for the side yard
variance that will be used to square off the building and provide for internal circulation to
the restaurant. For the setback variance along the River edge of the property, they want
to be able to extend out for views from the restaurant -- such as previously existed with
the former structure, and he noted that the neighbors may want to do the same. He noted
that it needs to be clarified whether the slab can be covered and not enclosed within the
setback area. On the side opposite from the Skelton's lot, he requested clarification of
their ability to expand their use. He cited the findings needed to support a variance and
stated he feels they meet those requirements. He feels they are being penalized for
merging the two lots over what other individual parcels can do. He noted that three sides
of the project are under the same ownership. He referred to the Planning Commission's
findings to deny the variance:

Finding No. 1/provisions of County Code -- other parcels have
enjoyed this benefit and special circumstances exist with preserving the log structure.
Finding No. 2/exceptional circumstances applicable to the property
-- he advised that if the parcels were not merged and if prior interpretations of using
existing corners of previous structures for building were used, their proposal would be
allowed. Because of the historical nature of the log building, the current structure was designed to preserve the log building at great expense to meet earthquake standards, etc. The corridor is necessary to make this project functional. If they were designing a new structure, it would be different.

Finding No. 3/affect on neighboring property -- he stated the project has increased public health and safety as they have installed a fire hydrant, etc. He feels the property values have increased due to the development. The side yard and front yard setbacks will decrease noise impacts and grant more benefit to the public and neighbors by providing an additional buffer with a structure that will contain no windows or openings. He also feels the neighboring lot will need to request the same variance.

Finding No. 4/consistency with the General Plan -- he feels the object is to generate commercial use in a Town Planning Area.

Finding No. 5/special circumstances applicable to the property -- the parcels in the area are convoluted as the neighboring parcel can build to a five foot setback; and with their parcel merger, they have a wider setback requirement.

Barry Brouillette commented on their variance request and advised that it will make the building more attractive for the neighbors and mitigate the noise impacts. He advised that they are willing to share the setback by the River with the neighbor.

Art Baggett advised that there are two issues in the appeal: the variance and the Use Permit. They want to be able to expand without having to go through another process.

Chair Reilly asked about continuing the hearing until after lunch. Rosemary MacCallum requested an opportunity to speak in opposition to the variance request prior to the lunch recess. The applicant/appellants agreed with her request.

Rosemary MacCallum entered her letter and a letter from her son into the record. She stated she does not agree that Yosemite Motels has preserved historic structures in the area, with the exception of this one building. She expressed concern with the light pollution from the development. She liked the old Parkline structure and feels this project will be at the expense of the Skelton’s view. She feels Yosemite Motels should not have poured the cement slabs prior acquiring the neighboring property or obtaining permission. She feels the Skeltons are in the middle of a large empire.

Hearing was recessed and continued to 1:30 p.m.

12:36 p.m. Lunch

1:35 p.m. Art Baggett added additional input for the appellant’s presentation. He advised that they are willing to drop the request for a variance on the back yard setback along the River. Any construction along the five foot side yard setback would be limited to one-story with the same quality of construction as the rest of the structure. He also requested that they be allowed 2,500 square foot expansion which would need staff level design review.

Speakers in opposition to the applicants/appellants:

Ron and Liz Skelton responded to question from the Board relative to the new proposal from Yosemite Motels and whether that would be agreeable. Ron expressed concern with the view up River from their lot through the Parkline slab -- he would be okay with an agreement that their view not be obstructed. Liz stated she feels like they are in a “David and Goliath” struggle. She feels the variance requirements should be maintained -- they are there for a reason, to protect the privacy and views of the neighboring property. She does not feel the new wall will be as attractive as what presently exists and does not understand the need for it. With appropriate landscaping, she would not object as much, but it would close them in a little more. She expressed concern that the applicant may come back and ask for another variance and leave them in a hole with the River at the back of their lot being their only view. She expressed concern with whether there is adequate space for emergency access in the area. She wants all of
their proposed B&B bedrooms to have a view to and up the River and she does not want the roof line raised on this project. She also requested that the large structural beams be removed now that the applicant has withdrawn the variance request along the River. Ron advised that, since there is no assurance that the applicant will not want to build out on the River in the future, presented his testimony as to why the variance should be denied. He stated he feels the setbacks are necessary to allow people to have space, and they have a small lot. They have sewer and utility easement rights through their twelve foot dedicated access. He reviewed the Planning Commission’s findings to deny the variance, agreeing with them and adding that he feels the granting of the variance would be detrimental to their property especially if development occurs on both sides of them; and that he plans to comply with the zoning ordinance regulations for his project. Ron further commented that the air ducts already protrude into the existing setback area; the applicant used his property to access the project site for pouring the slabs without permission; and he noted the structure was built before the plans were approved.

Rebuttal by the applicant/appellant:

Art Baggett reiterated their agreement to drop the variance request for setback along the River and with deleting the request for along the Highway. He advised that they cannot reach a civil compromise, a variance is required for this type of matter. He requested clarification of the Planning Commission’s action relative to the variance request. He reiterated his previous testimony that the variance on the side yard setback is necessary for the function of the building and that if the lots were not merged or if a Specific Plan was adopted, they would have had a five foot setback requirement. He feels there will be less noise with their proposal and it will be safer and provide a greater buffer. He feels the General Plan promotes development within Town Planning Areas, and special circumstances exist with regards to the log structure. He requested that the variance to the setbacks for the side yard and front corner of the building be granted. He reiterated his willingness to agree to one-story construction and design to be consistent with the other construction on the site subject to design review by staff. He stated they need to expand the Use Permit. He responded to questions from the Board relative to changes in proposed construction with deletion of portions of the setback requests along the River, whether the steel structural beams would be removed, and the proposed use of the area between the building and the River.

Public portion of the hearing was closed and Board commenced with deliberations. Ed Johnson advised that staff is representing the action taken by the Planning Commission. Staff responded to questions from the Board relative to original proposal for expansion of the restaurant versus testimony today that the area is used for storage of garbage and the mechanical equipment; size of overall expansion request and approval process; Planning Commission’s determination for overall size of the project; and changes between the Planning Commission’s hearing and the testimony presented today.

Since new issues were raised, Chair Reilly reopened the public portion for comments related only to the new issues.

Public input was provided by the following:

Barry Brouillette advised that at the Planning Commission’s hearing there was not a deliberation relative to the reduction in size of the project, action was taken to be consistent with changes in the variance request for setbacks.

Ron Skelton noted that granting of the variance will allow for those areas to be built on; granting of the side setback will allow building out toward the River on the one edge -- or the applicant could merge his lot with the parcel across the River and then build to the River without any setback requirements; and he requested that the side yard setbacks be required. He responded to a question from the Board relative to construction being allowed if the lot across the River is merged with the parcel for the project. Ron further stated he felt the issue is whether the Board can make the required findings to grant the variance for the setbacks.
2:47 p.m. Recess

2:54 p.m. Board continued with deliberations. (M)Parker, (S)Pickard, Res. 98-37 adopted approving the appeal with amendment to conditions and with direction that based on the request to change the first portion of the side setback use to garbage storage and for mechanical equipment with the heating/air conditioning system from restaurant expansion and that the second portion is necessary for internal circulation, that the variance be granted for the side yard setback; the setback request for along the Highway and along the River was withdrawn; approval was conditioned with the restriction that no construction occur in the setback area at the corner of the side yard and the River; and allowing expansion of square footage to include what is proposed, with the condition that no further construction occur along the River side of the existing structure. Motion was amended, agreeable with maker and second, to include direction that construction be restricted to one-story within the side yard setback, and that appropriate measures be taken to handle snow and water drainage. Staff clarified that the action includes adding back in conditions 6 through 10 as outlined in the staff report. Barry Brouillette advised that space is needed in the setback area along the River side of the structure to roof over the existing log building. Ron Skelton reiterated his previous request that the existing beams be removed and stated he is agreeable to encroachment in the setback area for the roof as long as their view is not obstructed for up the River. Staff responded to question from the Board as to whether this would create a greater restriction on the subject property versus for the neighboring parcel. Ron Skelton advised that they plan to build a deck along the River side. Findings were made as recommended by staff including the following:

the intent of the applicant changed for use of the first portion of the side yard setback from restaurant expansion and the request will enhance the adjoining property by screening the garbage storage and mechanical unit area;

for the second portion of the side yard setback, expansion is for one-story with no windows and with landscaping which will address the issue to not being a detriment to the adjacent property and allow for squaring-off the exterior of the structure which is contained on an unusual lot size;

for the River corner of the side yard setback, variance is approved for a support structure given the nature of trying to maintain the integrity of the original log structure; no building is to occur between the structure and the River side of the parcel to protect the views for the neighboring parcel; and

2500 square foot expansion is allowed consistent with building requirements and staff design review, with that amount to include the portions allowed in the approved variances.

Ayes: Balmain, Parker, Pickard; Noes: Reilly, Stewart. Hearings were closed.

cc: File