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STAFF REPORT

Item # 4

OFFICIAL ZONING INTERPRETATION #2012-01

(per Section 9-2B-8 Official Zoning Interpretation section of the Lemoore Zoning Code)

To:

From: Holly Smyth, Planning Director

Review Date: August 27, 2012

Subject: Request by Lucy Jones of The Vineyard Restaurant to place a 75' tall flag pole with a large American flag at 819 East Bush Street

Initial Background:

This year the City adopted a new Zoning Code that became effective May 18, 2012. During its first few months of initial use, staff is finding some gaps, as it anticipated, in the new code that are ambiguous and will need to be corrected or adjusted within 6-12 months so that multiple items can be addressed at once. In the mean time, "Section 9-2-B-8 Official Zoning Interpretation" outlines a process that allows the Planning Director or the Planning Commission to make a zoning interpretation should an ambiguity exist in the zoning regulation and then forward the decision to the city manager, City Attorney, City Council, an applicant if one is involved, and other interested parties and then keep a record for future incorporation into the code.

As outlined in the code, an "official zoning interpretation is a recorded decision on the meaning and/or application of development standards, allowed use regulations, or other standards contained within this title....it is not used to determine if a proposed use is similar to another". The interpretation is required to cite the provisions being interpreted, together with any explanation of the meaning or applicability of the provisions(s) in the particular or general circumstances that caused the need for the interpretation.

Circumstances:

A few weeks ago, the owner of the Vineyard Inn asked what approvals would be required if she wanted to place a 75' tall flag pole with a large American flag, 20' x30' in size, and could be installed. The purpose for putting up this large of a flag was to remember a recently deceased co-owner and husband of Mrs. Jones as well as provide visibility of the business from the freeway which is over 2,500' away with a light on the flag as it would be up overnight.

In looking at the entire Zoning Code, only one section discussed flags under 9-5F-2-D-2-c within the Signage Article. This section states the flags that are at least 10' from the public right-of-way, no taller than a 25' pole, with a maximum area of 25 square feet would be Exempt from sign permit and city review. However, it did not state if a larger flag pole or larger flag could be allowed and if so what sign permit or city review process would be needed, however it implies that some sort of City permit or review is needed if it doesn't meet the exemption. The sign Section 9-5F-2-A1 outlines four types of permit for signs; zoning clearance, sign program, highway-oriented sign, and variances. Logically, it seems reasonable that a type of "Zoning Clearance" (which is normally an over the counter staff approval) might apply given the structure is just a flag pole. However, given the height of the pole is a permanent 75', it seems appropriate that adjacent neighbors within 300' should be notified to provide an opportunity for public review and comment if any, which falls into the "Sign Variance" entitlement process (which is similar to the old Modifying Sign Provisions process). Lastly, Section 9-2-B-8 "Official Zoning Interpretation" allows a process that can make a determination of zoning text

ambiguities and suggest how to handle for a specific instance and how to better address in the Zoning Code later.

Definitions listed in Section 9-12-2: Unfortunately the sign definition does not exempt flags but is defined as “any device, structure, fixture, or placard displaying graphics, symbols, and/or written copy for the primary purpose of communicating with the public”. The definition of a “flag” is “any fabric or bunting containing distinctive colors, patterns, or design that displays the symbol(s) of a nation, state, local government, company, organization, belief system, idea, or other meaning” and does not state any exemptions as not being treated as a sign. A “structure” is defined as “anything constructed or erected, the use of which requires attachment to the ground or attachment to something located on the ground. Examples include, but are not limited to, buildings, fences and walls, pools, patio covers, decks, and signs. All buildings are considered structures but not all structures are considered buildings.”

Height and setback provisions:

Section “9-5A-2B Height limits and exceptions” states that “height limits are listed in article 9-5B (development standards by zoning district), where they are listed by zoning district. Additional height limits are established for outdoor lighting (section 9-5A-6), fences and walls (section 9-5A-7), residential accessory structures (section 9-5A-8), and signs (article 9-5F). Exceptions to height regulations are as follows: 1.....radio/television antennas, and similar structures.....may be erected on a building to a height greater than the limit otherwise established... and 2. Telecommunication facilities may be authorized to exceed the height limit established for the applicable zoning district as provided in section 9-4D-15 (telecommunication facilities).”

The subject site is zoned as Mixed Use (MU). Section “9-7-6 Development Standards” subsection “B. Height” in a Mixed Use District gives structure height to be 25’ maximum, with 10’ additional feet allowed for towers, spires & similar features. For light fixtures on non-residential properties 24’ is the maximum for fixtures while City Street lights height are at 32’. In the Sign Section, freestanding signs in a Mixed Use district are limited to only a monument sign not to exceed 4’ in height per Table 9-5F-5-B1. Highway Oriented signs, which do not apply to this case as the business is more than 1,000 from the highway and is not an integrated development or contain more than 50 acres, allows for a maximum of 80’ tall structures but are reviewed by the Planning Commission with a noticed public hearing and must make 4 findings as outlined in Section 9-2B-18-E when greater than 40’ in height. Structural height limits identified in Table 9-5B-2 a range from 35’-40’ in single family residential/professional office/wetlands/parks districts, to 45-60’ in multi-family districts, no limit in Commercial districts, and 60’ in industrial districts. Telecommunication Facilities show antennas are allowed up to 75’ with a lowering mechanism down to the structural height maximum while fixed position cell towers can be 75’ by right after processing a Major Site and Architectural Review within some zone districts.

Reasonable Review Level:

The only similar zone provision that could be potentially be applied to determine the type of permit clearance that should be utilized given the specifics and other code sections listed above is when Section 9-5A-2B mentioned that exceptions to height regulations could include “Radio/television antennas and similar structures” . These are regulated under Section 9-4D-15 Telecommunication Facilities and are considered a “Telecommunication Facility – Minor”. In looking at the Allowed Uses Table 9-4B-2, a Minor Telecommunication Facility is permitted so long as it follows the regulations listed in 9-4D-15. Telecommunication Facilities that fall in the “Major” category might be allowed in the DMX-1, DMX-2, MU, NC, RC, ML, MH, PR, and CF Zone districts are “permitted by right, except that major site plan and architectural review is still required. Otherwise, a conditional use permit is required in addition to major site plan and architectural review.”

Section 9-4D-15-F-3-d Development Standards for Amateur Radio Antennas allows a “maximum height of 75’ so long as it is equipped with a lowering device capable of lowering the antenna to the maximum permitted height when not in operation” which is 12’. Section 9-4D-15-F4-d Development Standards for Tower (which is a major facility) show that a 75’ height limit being allowed with a footnote 13 that states “Facilities less than 75’ tall are permitted by right, except that major site plan and architectural review is still required. Otherwise, a conditional use permit is required in addition to major site plan and architectural review.” Therefore staff believes that the major site plan and architectural review process should be followed, which goes to Planning Commission to determine the Official Zoning Interpretation.

Staff Interpretation:

Because a cell tower up to 75’ is permitted by right in a Mixed Use (MU) district, the proposed 75’ flag pole with a 20’ x 30’ flag should be allowed on the site following Major Site Plan and Architectural Review approval. This process currently requires a noticed public hearing which staff has notified property owners within 300’ of the site and published a notice in the newspaper.

The proposed pole location is close to the northerly portion of the site closest to East “D” Street, The nearest existing residential property is located 568’ from the site, with the nearest vacant multi-family zoned residential property being approximately 150’ feet away. Given the perimeter landscaping at the site and the distance from residential properties, staff does not feel that the 75’ pole with large flag would negatively impact the adjacent neighbors and should be allowed. The only conditions that should be required is that the pole only accommodate a “flag”, as defined in Section 9-12 Glossary of Terms and listed above with no commercial messages and that a building permit be pulled to ensure that the structure and its foundation will support the structure with wind shear.

Future Code Fix:

Should Modify the following provisions of the Zoning Code as soon as practical:

Code Section	Proposed text additions and deletions
9-5F-2 –D2c.iv	<u>iv. Flag poles between 25’– 40’ in height shall require a building permit.</u> <u>v. Flag poles between 40-75’ in height shall require major site plan and architectural review process and must be located in the MU, NC, RC, ML, or MH zone districts and pull building permits after approval.</u>
9-12 Glossary of Terms	Flag. any fabric or bunting containing distinctive colors, patterns, or design that displays the symbol(s) of a nation, state, local government, company, organization, belief system, idea, or other meaning <u>containing no commercial messages.</u>
9-12	Sign. any device, structure, fixture, or placard displaying graphics, symbols, and/or written copy for the primary purpose of <u>advertising, promoting or attracting the attention of communicating with the public.....</u>

Section 9-1-1B – Purpose of the Zoning Code, states that the “title establishes regulations governing the development and use of land in accordance with the city of Lemoore General Plan in a manner that protects the public health, safety, comfort and convenience, and welfare of residents and businesses of Lemoore. The zoning code provides information to facilitate the efficient review of development proposals, while providing opportunity for public review and comment for proposals that may have a significant impact on the community”.

Recommendation:

Planning Commission should review the staff report and the various section of the Zoning Code referenced, hold a public hearing, take public testimony, and consider approving draft Resolution #2012-11 with any modifications needed based on the full record.