

To: Mayor and Ross Town Council
From: Elise Semonian, Senior Planner
Re: Firestone, 30 Ross Common, CL Use Permit, File 1684
Date: May 2, 2008

I. Project Summary

Applicant: Kathleen Firestone
Owner: Deborah and Tony Montero
Location: 30 Ross Common
A.P. Number: 73-272-11
Zoning: C-L (Local Service Commercial)
General Plan: C (Local Service Commercial)/Special Planning Area
FIRM Designation: Zone AO (area of 100-year flood)
Draft FIRM Designation: Zone A (area of 100-year flood)

II. Project Description

An ice cream and frozen yogurt parlor/café in a ground floor tenant space with 675 square feet of interior space and 400 square feet of outside area. The applicant would sell organic ice cream and frozen yogurt as well as coffee, tea, fresh fruit, smoothies, nut milks and desserts. Proposed days and hours of operation are 6 am to 9 pm daily with three to five on-site employee and estimated customer traffic of 50 to 100 people per day.

III. Discussion

The applicant is proposing a new ice cream parlor/café in a ground floor space in the downtown commercial area. Various florist shops have occupied the space over the last several years, but the space is currently vacant. The new property owners, heirs of the prior owner, have pulled a building permit for work that is in progress at the site, including upgrading the electrical work and creating accessible paths and an accessible restroom.

According to the applicant, the parlor/café would focus on “artesian, local, organic, sustainable,” ice cream and frozen yogurt. However, she also plans to serve fresh fruit, coffees, teas, desserts, smoothies, soy products, juices and nut milks (see list prepared by applicant, attached). Hours of operation would be 6 am to 9 pm daily. The applicant estimates she will have three to five employees and customer traffic of 50 to 100 people per day if the use is successful. Of the three to five employees, the applicant indicates only two to three would actually be working at any one time. The applicant would remove the corrugated roofing over the patio area for outdoor seating.

Ice cream parlors and cafes are permitted in the CL zoning district subject to Council approval of a use permit. (RMC §18.20.020(a)). Chapter 18.20 regulates uses in the district and sets forth the following findings that Council must make to approve a use permit:

1. That the use for which the use permit is sought will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, convenience, or general welfare of persons residing or working in the neighborhood of the use and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood.
2. The proposed use will not be detrimental to or change the character of adjacent or neighboring properties in the area the use is proposed to be located;
3. The property on which the proposed use is to be located is suitable for the proposed use;
4. The traffic-generating potential and/or the operation of the proposed use will not place an unreasonable demand or burden on existing municipal improvements, utilities or services;
5. Adequate consideration has been given to assure protection of the environment;
6. The proposed use is consistent with applicable zoning provisions and the objectives of the general plan; and
7. Adequate consideration has been given to assure conservation of property values, the suitability of the particular area for the proposed use and the harmony of the proposed use with the planned development and future land use of the general area. (RMC Sections 18.44.030 and 18.20.030(b))

The Ross General Plan has several goals and policies relevant to this application:

- 2.1 Sustainable Practices (c) Preserve uses in the commercial area of the town that serve local residents and reduce the need to drive to other areas.
- 8.4 Downtown and Ross Common. Maintain the Town-owned Ross Common areas linked to uses and activities at Ross School, and linked to the Town's downtown area as the central recreation, gathering and local shopping area of Ross. Maintain the downtown area as an attractive, pedestrian-friendly, small retail/business area. Encourage smaller-scale housing units mixed with commercial uses.
- 8.5 Downtown Commercial Uses. Create a warm, friendly, attractive and economically viable shopping environment in the downtown by encouraging local-serving commercial uses that create a pedestrian feel in the Downtown, especially in ground-floor storefront locations. Create an attractiveness to the Downtown commercial area through regulation of signage, awnings, and other façade treatments, and through public improvements.

- 8.6 Gathering Places. Encourage and enhance community gathering places such as downtown, the Ross Common and the post office. Support the activities of Ross Recreation, Ross School, and the Marin Art & Garden Center.
- Relevant General Plan “New Ideas” 8.B Modify Downtown Commercial Zoning. Revise commercial zoning in the Downtown to prohibit offices in storefront locations, to encourage mixed use housing, and to encourage uses that are local-serving and would contribute to the vitality of downtown.

The proposed use would be a retail-type use in a storefront location, which is encouraged by the General Plan. The proposed ice cream parlor/café use would serve local residents and support the “pedestrian feel” in the downtown area. The use would further the goal of contributing to the vitality of downtown by attracting residents to the area.

Parking

Staff is concerned regarding the potential parking demand for the use, particularly for employees. The applicant estimates she will have two to three on site employees. There is no parking provided on site and the zoning code does not require any additional parking to be provided. Like most businesses downtown, employees that drive to work will park in the downtown area and adjacent residential neighborhoods where there are no time limits on parking.

Maintaining the availability of parking in the downtown area is critical to preserving the economic viability of the downtown businesses and to ensure that overflow commercial parking does not impact the character of adjacent residential neighborhoods. Downtown business owners and school employees have recently expressed concern with the availability of parking for customers and employees. Staff is not sure if the parking problem is actual or perceived, as staff has observed a surplus of spaces downtown, except during school pick-up hours, sports events, and on weekends. The parking issues may be resolved with recent modifications to the parking time limits to encourage turnover of the most convenient spaces. No comprehensive downtown parking study has been conducted, but parking will be considered with the plan for the downtown area. Staff does not believe two to three employees, which is consistent with the number of employees any other retail use of the space could have, will have a negative impact on parking in the area.

Based on the small size of the business and estimated customer traffic, staff expects the customer parking demand will be similar to, or overlap with, Café Marmalade or Eddie’s/Ross Grocery. Staff anticipates that the use will not increase short term parking demand significantly. Many customers may be Ross residents that are already in the downtown area or Ross Common. The use is one that will attract residents that will walk from adjacent neighborhoods.

Other Issues

The applicant indicates that her business, focused on organic ice cream and frozen yogurt, will be different from Café Marmalade. However, the proposed business will

serve some items that are also sold by Café Marmalade, such as coffee, smoothies, fruit, and desserts. The owner of Marmalade's has expressed concern that this business may take away their customers and impact them financially. While the Town seeks to support existing businesses, court decisions preclude the Town from using the use permit regulations to directly restrict competition. Therefore, the Council must restrict their consideration to the use permit findings outlined above, which relate to the Town interests in protecting the general welfare of the community (parking, traffic, noise, etc.).

Where the products overlap, customers have the option of supporting the existing businesses over new ones. Ideally, both businesses will attract customers that will benefit all the merchants in the downtown area.

IV. Recommendation, Findings, & Conditions

Staff believes the use permit, as conditioned, is consistent with the CL zoning regulations. Staff recommends approval of this application with the following findings and conditions:

Findings:

1. This project is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA) under CEQA Guideline Section 15303, conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.
2. The use for which the use permit is sought will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, convenience, or general welfare of persons residing or working in the neighborhood of the use and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood. The proposed ice cream parlor/café use is similar to other businesses in the downtown area that have not been found to be detrimental to the public welfare or injurious to property or improvements in the neighborhood. Conditions of project approval require the business to comply with County Health Department regulations. Based on the small size of the proposed use and anticipated customer traffic and number of employees, the project is not anticipated to generate significant traffic or parking demand.
3. The proposed use will not be detrimental to or change the character of adjacent or neighboring properties in the area the use is proposed to be located. The proposed use will be in an existing small structure that has been used for retail use in the past. The character of the neighborhood is a downtown commercial district, which is appropriate for the proposed use.
4. The property on which the proposed use is to be located is suitable for the proposed use. The existing structure is being renovated to upgrade electrical work and finishes. An accessible restroom will be installed. The conditions of approval require County Department of Environmental Health approval of the business.
5. The traffic-generating potential and/or the operation of the proposed use will not place an unreasonable demand or burden on existing municipal improvements,

- utilities or services. The business will occupy approximately 1,000 square feet of space and client traffic is estimated at 50 to 100 customers per day. The major intersections in Town operate at non-congested conditions and the number of trips generated by this small business is not sufficient to lower these Levels of Service. The site is served by existing utilities and services and requires no additional municipal improvements.
6. Adequate consideration has been given to assure protection of the environment. The project is considered categorically exempt from the California Environmental Quality Act because it is the type of project that typically does not have a significant effect on the environment. The only potential environmental impact is an increase in the parking demand in the area. However, that is not anticipated to be a significant environmental impact.
 7. The proposed use is consistent with applicable zoning provisions and the objectives of the general plan. With approval of a use permit, the proposal complies with the applicable zoning provisions. The proposed use would be a retail-type use in a storefront location, which is encouraged by the General Plan. The proposed ice cream parlor/café use would serve local residents and support the “pedestrian feel” in the downtown area. The use would further the goal of contributing to the vitality of downtown by attracting residents to the area.
 8. Adequate consideration has been given to assure conservation of property values, the suitability of the particular area for the proposed use and the harmony of the proposed use with the planned development and future land use of the general area. The proposed small-scale ice cream parlor/café use is appropriate for the downtown area and is consistent with the policies in the general plan for the downtown area.

Conditions:

1. The use permitted under this use permit shall be established and conducted in conformity with the description in the use permit application and subject to the following conditions of approval.
2. This use permit shall expire within one year from the date of approval if not exercised.
3. Any expansion or modification of the approved café use shall be through a subsequent public hearing.
4. All exterior trash shall be confined to approved receptacles and enclosures. The location of the trash enclosures shall be shown on a site plan provided to the Planning Department prior to establishment of the use. The Town may require the applicant to provide public trash receptacles if found to be necessary.
5. The applicant is responsible for ensuring that all improvements comply with disabled access regulations, regardless of whether a building permit is required for the work.
6. The applicant shall secure all necessary approvals from the County Department of Environmental Health and any other agency prior to opening for business at the site.
7. A sign permit is required from the Town prior to installation of any new signage. Any exterior modifications, including repainting, shall require approval by the Planning Department staff.

8. Any encroachment into the public right of way, such as for installation or replacement of awnings, signage, or seating, requires prior approval of a revocable encroachment permit from the Director of Public Works.
9. This project shall comply with the following requirements of the Department of Public Safety: 1.) A street number must be posted {minimum four inches on contrasting background}; 2.) A local alarm system is required.
10. **NO CHANGES FROM THE APPROVED PLANS AND USE SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL.**
11. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee.
12. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.