

*Submitted by
Uwe Groscheper
Item 12*

Ref.: Public Hearing at the MPWMD on March 17th, 2014 - Item 12

To all Board members, the General Manager and your staff we want to thank you for all the efforts and time spent in helping us to find an amicable solution.

We understand that our landlord A.G. Davi is not agreeable to having deed restrictions on his property. He believes it is too restrictive and would cloud the title of his property.

Does the property owner's refusal to record the Conditions on the property title affect your decision today ? It should not and we hope that you do not hold us responsible for his action and punish us for it !

We are asking this Board to reconsider our application for variance.

We received an application form for variance from staff without giving us any alternative to proceed otherwise while staying within group II water use.

We are not sure whether granting us a variance is the correct procedure and has any legal standing in this case. Also, we do not want to set a precedence for other group II users.

Staff claims that it was the District's practice since the 80's to describe a deli as a business that sells primarily take-out food, does not offer full service and serves food on disposable plates. Staff refers to rule # 20 with the argument of non-compliance. Rule 20 states that any extension or change of use requires a new permit. Yes, documents were signed by us and clearly identify the proposed use as a deli. But in an exercise sheet issued by the MPWMD explaining how to calculate commercial water permit fees with groups for water use it also states that: "Where there is no increase in the size of a structure, a change of use from one commercial category in group II to another in group II shall not be deemed to cause an intensification of water use". This is exactly what happened in our case. A Café, Coffee House, Bakery, Pizzeria or Deli fall all into the same category and since we see most group II users in the peninsula operating similar to how we operate we never questioned whether we were not in compliance. We never modified, added to or changed the source of water supply other than replacing existing equipment with a more efficient one. Our average water usage of less than 36 percent over a 3 year period confirms that we are in compliance.

Your rule # 20 nor any other rule or ordinance does NOT require the use of disposables or restricts the service to only counter service for group II users. We believe that staff's letter of non-compliance needs to be revoked!

We believe that your implied restrictions cannot be enforced on any group II user unless it was previously approved by either the permit holder itself or your board or a superior court. What should have priority is that the usage stays within its allocation. The way a user operates is without merit and secondary in our opinion. What we would like to see from staff are recommendations of how to save water rather than putting conditions on businesses. Putting restrictions on businesses when exceeding the water limits would make sense but as long as a business operates within its limit it should be free to operate according to industry standards set by their associations and not by your staff alone.

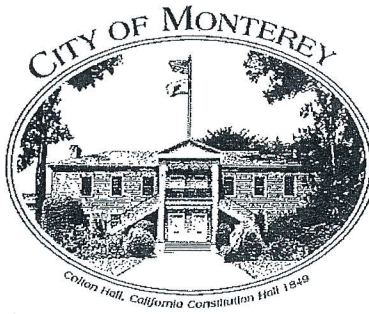
If this Board still decides to go with the application for variance we ask you to review exhibit 12-G for the proposed conditions of approval and to keep this variance simple and replace these conditions with : " At this location the water use under group II allows table service and the use of china, silverware and glassware due to special circumstances."

We want you to understand that the conditions for variance as proposed by staff will put a heavy strain and burden on the value of our business which is the same reason why A.G. Davi does not want to have any restrictions on the deed for his property. We do NOT want any clouded water use permit either!

We welcome your idea to have a Committee be tasked with reviewing definitions for food service since your implied restrictions can have a tremendous impact on any business. A clear difference in categories between (Fast Food/Sandwich), (Bakery/Coffee House/Cafe/Bistro/Pizzeria) and usual Restaurants/Bars should be made using the size of operation as a parameter rather than seat count. We support the idea that you have direct access to Cal-Am water records for ALL Water Permits instead of arbitrary.

We are attaching a letter sent by the Mayor of the City of Monterey to your General Manager supporting our appeal. The fact that City Council allowed table service at our patio in 2004 and again for the ABC license in 2007 shows that not many people know about your implied restrictions.

Thank you for giving me the opportunity to speak today.



February 26, 2014

Mayor:
CHUCK DELLA SALA

Councilmembers:
LIBBY DOWNEY
ALAN HAFFA
NANCY SELFRIDGE
FRANK SOLLECITO

City Manager:
FRED MEURER

Mr. David Stoldt
General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

Subject: 484 Washington Street – Santa Lucia Café – Water Variance

Dear Mr. Stoldt,

I am writing you to request your support for an existing restaurant located in the City of Monterey and its owner – Santa Lucia Café and Uwe Grobecker.

On February 13, 2014, the MPWMD Board of Directors considered an appeal of a decision to require a water permit for a change of use from a deli (Group II) to a restaurant (Group III) for the Santa Lucia Café. I understand that the Board continued the item to March 17, 2014.

As you know, the City of Monterey supports the District's efforts to conserve our valuable, but limited water resources. The City's support of Mr. Grobecker's appeal is not in conflict with our past and continuing efforts. Mr. Grobecker has informed City staff that based upon Cal Am records, for the past three (3) years, the entire site uses less than 50 percent of the amount of water available for consumption based upon water use factor calculations. The consumption numbers are reflective of the European-style restaurant use for the Santa Lucia Café, which is effectively a hybrid between a deli and a full-service restaurant. This use has operated for many years in its current format.

City staff met with Mr. Grobecker earlier this week. Mr. Grobecker represented that the underlying property owner (Anthony Davi, Sr.) agreed to maintain water consumption below allowable as calculated by applying District use factors. This would allow the restaurant to continue to provide a European-style dining experience, while not consuming more water than is allocated for a Group II use. This will also benefit the community by not requiring the use of disposable tableware which will end up in our landfill.

Thank you for your consideration of this appeal, the City believes that this is a unique situation that should be supported by staff and the Board.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chuck Della Sala".

Chuck Della Sala
Mayor

e: Michael McCarthy, Interim City Manager
Hans Uslar, Interim Assistant City Manager
Chip Rerig, Chief of Planning, Engineering, and Environmental Compliance
Kimberly Cole, Managing Principal Planner

EXHIBIT 12-G

DRAFT

Proposed Conditions of Approval
Variance to Group II for 484 Washington, Monterey, CA
March 17, 2014

1. Property Owner and Tenant(s) agree that compliance with these Conditions of Approval shall be required to continue operation of 2,277 square-feet (sf) of the 7,990 sf building (Site) as a Group II water use. Failure to adhere to these conditions or failure to maintain water use at the Site at or below 0.856 acre-foot per year shall be just cause to require a Water Permit from MPWMD for a Change in Use from Group II (Deli) to Group III (Restaurant).
2. In the event the requirement to obtain a Water Permit for failure to adhere to the Conditions of Approval is enforced, the District shall issue a Water Permit for a Change in Use with a maximum of 23 seats, unless additional water is authorized from the City of Monterey.
3. Property Owner agrees to authorize the following deed restrictions to be recorded on the title of the property:
 - a. Recordation of Notice and Deed Restriction Regarding Limitation on Use of Water on a Property (including these Conditions of Approval), and
 - b. Notice and Deed Restriction Provide Public Access to Water Use Data.
4. China and glassware may be used to serve beverages.
5. Take-out orders must be in disposable packaging.
6. Hot food, liquid food (e.g. pasta and soups), and food with high moisture content (e.g. salads with dressings) may be served on china.
7. All other food shall be served on disposable plates or in baskets.
8. Silverware may be utilized.
9. Service is not restricted to counter ordering.
10. Pizza shall be served on paper-wrapped paddles.
11. These Conditions of Approval shall be binding on future tenants.

Monterey Peninsula Water Management District

5 Harris Court, Bldg. G - P.O. Box 85 - Monterey, CA 93942-0085
(831) 658-5601 - Fax (831) 644-9558

COMMERCIAL, INDUSTRIAL AND GOVERNMENTAL PROJECTS (Non-Residential)

For commercial, industrial and governmental projects, fees are computed on the anticipated water use of a project based on the development's projected capacity for water use.

Any change in use from one commercial category in one group to another commercial category in a higher water use group, or from any category in Group III to another category in Group III, as shown on Table No. 2, shall be deemed an intensification of use requiring an expansion/extension permit, or an amended permit pursuant to District Rules. Where there is no increase in the size of a structure, a change in use from one commercial category in Group I to another category within Group I, or a change of use from one commercial category in Group II to another in Group II, however, shall not be deemed to cause an intensification of water use.

Group I - Low to Moderate Use: 0.00007 acre-foot per square-foot

Auto Uses	Church	Fast Photo	Office	Warehouse
Bank	Family Grocery	General Medical	Manicure/Pedicure	Storage
Chiropractic	Florist	General Retail	Gym	

Group II - High Use: 0.0002 acre-foot per square-foot

Bakery	Convenience Store	Intensive Medical	Sandwich Shop
Candy Store	Deli	Pizza	Supermarket
Coffee House	Dry Cleaner	Photographic	Veterinary

Group III - Miscellaneous Uses - Each Category is Calculated Separately

Bar	0.02 af/seat (capacity counted)
Beauty Shop	0.0567 af/station
Car Wash	Call District
Child Care	0.0072 af/child
Dental	Call District
Dorm	0.04 af/room
Gas Station	0.0913 af/pump
Landscaping	Call District
Laundromat	0.2 af/machine
Luxury Hotels	0.21 af/room
Meeting Hall	0.00053 af/sf
Motel/Hotel/Bed and Breakfast:	0.1 af/room
Plant Nursery	0.00009 af/sf total land
Residential Care	Call District
Restaurant	0.02 af/seat (capacity counted)
Restaurant (24-Hour & Fast Food):	0.038 af/seat (capacity counted)
Self-Storage	0.00001 af/sf
Spa	0.05 af/spa
Swimming Pool	0.02 af/100 sf surface area
Theater	0.0012 af/seat

Unique commercial/industrial uses not included in Group III may be determined according to District Rule 24-G, Special Circumstances.