

**PLANNING COMMISSION REGULAR MEETING  
COUNCIL CHAMBERS, RICHMOND CITY HALL**  
450 Civic Center Drive, Richmond, CA  
September 5, 2019 2019  
6:30 p.m.

**COMMISSION MEMBERS**

Andrew Butt, Vice Chair	Nancy Baer
Jen Loy	Michael Huang
David Tucker	Brandon Evans

The regular meeting was called to order by Vice Chair Butt at 6:30 p.m.

**ROLL CALL**

**Present:** Vice Chair Andrew Butt; Commissioner Nancy Baer, Jen Loy, Yu-Hsiang (Michael) Huang, David Tucker and Brandon Evans

**Absent:**

**INTRODUCTIONS**

**Staff Present:** Planning Staff: Emily Carol, Director of Planning Lina Velasco, and Attorney Shannon Moore

**MINUTES –**

July 18, 2019

August 1, 2019

**ACTION: It was M/S/Community (Baer, Tucker) to approve the Minutes of July 18, 2019 and August 1, 2019; which carried by the following vote: 6-0 (Ayes: Butt, Baer, Loy, Huang, Tucker, Evans; Noes: None).**

**AGENDA**

Vice Chair Butt provided an overview of meeting procedures for speaker registration, public comment, and public hearing functions. He said items approved by the Commission may be appealed in writing to the City Clerk by Monday, September 16, 2019, by 5:00 p.m. and he announced the appeal process after each affected item, as needed.

**CONSENT CALENDAR –**

Vice Chair Butt gave a brief overview of the Consent Calendar's policies and procedures.

- 1. PLN18-356: Halushka Single Family Residence PUBLIC HEARING** to consider a variance for minimum lot size and a design review permit to construct a two-story single

family dwelling on a 2,500 square-foot Unaddressed Parcel on Florida Avenue, between 3200 Florida Ave & 3130 Florida Ave. (APN:513-036-019).RL-2, Single Family Very Low-Density Residential District. Hassun Halushka, owner/applicant Planner: Emily Carroll Tentative Recommendation: Conditional Approval

- 2. PLN18-010: Barm Bridge of Hope CUP PUBLIC HEARING** to consider adoption of an Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) and approval of a Conditional Use Permit, Parcel Merger, and Design Review permit to expand an existing emergency shelter facility by constructing a 9,553 square-foot shelter for women and children at 257 3rd Street (APN: 538-190-007 and-006). Documents are available online at <http://www.ci.richmond.ca.us/bridgeofhope> RL-2, Single Family Very Low Density Residential and IS-1 Form Based Code Overlay District. Bay Area Rescue Mission, owner/applicant Planner: Roberta Feliciano Tentative Recommendation: Conditional Approval

Commissioner Baer voiced that she wished to remove Item Number Two from the Consent Calendar.

- 3. PLN18-040: Making Waves Academy Hilltop Sports Facility PUBLIC HEARING** to consider a recommendation to the City Council of a General Plan Amendment and Rezoning for development of a sports facility at 2600 Hilltop Drive (APN:405-050-052) to serve the Making Waves Academy middle school and high school located on Lakeside Drive. The project would also be subject to design review and a conditional use permit. IL, Industrial Light District. 2600 Hilltop Drive LLC, owner; Doug Giffin, applicant Planner: Hector Lopez Tentative Recommendation: Hold Over to 9/19/2019

Vice Chair Butt announced that this item was to be held over until the September 19<sup>th</sup>, 2019 meeting.

**ACTION: It was M/S/C (Loy, Tucker) to approve the Consent Calendar with Item Number Two removed; which carried by the following vote: 6-0 (Ayes: Butt, Baer, Huang, Loy, Tucker, Evans; Noes: None).**

**BROWN ACT – Public Forum** – None.

## **NEW BUSINESS**

Vice Chair Butt explained the public hearing procedures.

- 2. PLN18-010: Barm Bridge of Hope CUP PUBLIC HEARING** to consider adoption of an Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) and approval of a Conditional Use Permit, Parcel Merger, and Design Review permit to expand an existing emergency shelter facility by constructing a 9,553 square-foot shelter for women and children at 257 3rd Street (APN: 538-190-007 and-006). Documents are available online at <http://www.ci.richmond.ca.us/bridgeofhope> RL-2, Single Family Very Low Density Residential and IS-1 Form Based Code Overlay District. Bay Area Rescue Mission, owner/applicant Planner: Roberta Feliciano Tentative Recommendation: Conditional Approval

Ms. Velasco gave a brief background of the project. She stated that there was an existing single-family structure on the site which was to be demolished before the new facility could be constructed.

In terms of CEQA, the documented Mitigated Negative Declaration had been circulated, public comment had been received and mitigations measures were set in place. The applicant was in support of carrying out all mitigation measures.

Staff's recommended action was to hold a public hearing, then adopt Resolution Number 19-33 and approve the Conditional Use Permit, Parcel Merger, and Design Review Permit.

Mr. John Anderson, President and CEO of the Bay Area Rescue Mission, articulated that the main driver for constructing such a project was that many requests for shelter from women and children were denied due to space constraints.

Commissioner Baer declared that she was in support of the project but wanted to know how residents staying at the facility accessed the cafeteria. Mr. Anderson answered that there was access through the west side of the building and there was a breezeway that connected the two buildings.

Public Comment:

Cheryl Mar, a resident of Richmond, announced that the neighborhood council was in full support of the project but that the Iron Triangle neighborhood was having a crisis in terms of dealing with homeless persons.

**ACTION: It was M/S/C (Butt, Tucker) to adopt Resolution 19-33 in Attachment One adopting an Initial Study Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and approving a Conditional Use Permit, Parcel Merger, and Design Review Permit to expand an existing emergency shelter facility by constructing a 9,553-square-foot shelter for women and children subject to conditions which; carried by the following vote: 6-0 (Ayes: Loy, Baer, Butt, Tucker, Huang, Evans; Noes: None).**

[The Commission took a short break]

- 4. PLN19-222: Auto Sales Appeal of ZA Determination PUBLIC HEARING** to consider an appeal of the Zoning Administrator's decision that 1) auto sales is not an allowed use in the CM-3 zoning districts and 2) the nonconforming auto sales use has been abandoned for more than a year and cannot be reestablished at 1084 23<sup>rd</sup> Street (APN: 527-190-001). CM-3, Commercial Mixed-Use, Commercial Emphasis District. Prime Builders, owner; Majid Kolahdooz, applicant Planner: Roberta Feliciano Tentative Recommendation: Deny Appeal & Affirm Zoning Administrator's Determination.

Ms. Velasco explained to the Commission what happened when the property owner came to the Planning Counter to obtain a Business License for a new operator but was told that the new use was no longer allowed. Staff had concluded, based on an investigation, that the auto sales had ceased from operating on the site and that triggered the non-conforming provisions to no longer allow a non-conforming use. She continued on to give the Commission an overview of the project.

Some of the argument raise through the appeal was that the operator did have a seller's license from the DMV and information filed with the Secretary of State. The Staff did not disregard that the operator had permits but concluded that the operator did not exercise the rights under those licenses in the sense that they were not having auto sales occur on the site. Staff had confirmed with records that there was a lapse in the Business License of approximately 18-months but recently the license had been renewed and was now in effect. No information regarding tax reporting was provided to Staff showing that sales did occur within the City and that the City did receive a 1 percent tax.

Staff recommended that the Planning Commission affirm the Zoning Administrator's determination and that the use not be allowed to be re-established.

Ms. Joan Armstrong, a resident of Oakland and representing attorney of the applicant, clarified that the argument that the applicant had was that the use of auto sales had never been abandoned and had never ceased. Per cited criterion in the Municipal Code, she argued that the use could be reestablished based on those criteria. She requested that any motion that discussed reestablishment be postponed until the applicant could provide proper evidence.

In terms of auto sales being abandoned on the site, she argued that photos of the parking lot did not determine that sales never took place on the site. She noted that there had been no yearlong lapse of the Business License. The only objection that had been received by the community was that there were already a lot of used car lots on the street which showed that having an auto dealership on the site was compatible with the surrounding neighborhood.

She concluded that the Resolution language should strike the word reestablishment. Staff agreed with that recommendation.

Ms. Velasco disclosed that Staff did speak with the owner and advised him to be a vehicle broker which would fall within the zoning compliance. The owner expressed that he was looking to lease the property and vehicles would be displayed with the new tenant. Ms. Armstrong argued that the display of vehicles was not mentioned in the definition of the Municipal Code.

Mr. Andrew Bremer, an attorney for the applicant, reiterated that the Grandfathered Use Code Section did not use language stating that cars needed to be displayed in order to have auto sales on the site.

Mr. Majid Kolahdooz, the owner, affirmed the timeline of how he came to be the owner of the site in question and its history. He explained that the site in question was the primary location but the branch site located in San Pablo was where vehicles were on display and sold.

Commissioner Loy questioned why there was no paper trail showing that tax dollars were received by the City. Mr. Kolahdooz noted that his main location was located in San Pablo and that the City of San Pablo received the sale tax.

Commissioner Tucker announced he was confused on what went on at the Richmond site and after hearing Mr. Kolahdooz's explanation, Commissioner Tucker concluded that Mr. Kolahdooz didn't abandon the site but the site was not being used at the current time.

Commissioner Evans wanted to see the proof from Staff showing the lapse in the Business License. Ms. Armstrong explained that the City never sent out the renewal form for 2018 but the owner has since righted the wrong of any lapse in the Business License.

Upon hearing Commissioner Tucker's confusion Ms. Velasco reaffirmed that the appellant's arguments were that the property was not abandoned and thus did not need to go through the reestablishment process.

Commissioner Huang articulated that if a business did not have a Business License, that business could not operate. Ms. Moore confirmed that was correct.

Commissioner Baer wanted to know if there was a distinction between retail and wholesale in terms of Criteria Number Five, use ceases. Ms. Velasco stated that the definitions were broad but auto sales did include onsite inventory.

Vice Chair Butt asked if there were ever cars located at the Richmond site in the past couple of years and if Mr. Kolahdooz now planned to lease it to someone who was looking to use it as a retail lot. Mr. Kolahdooz said the cars were received at the Richmond site, then shipped over to the San Pablo site for sale, and had used the site for wholesale. He confirmed that he was looking to lease it to someone who wanted to do retail auto sales on the site.

The discussion commenced between Vice Chair Butt and Ms. Velasco regarding why the City was taking a strong stand on this one applicant when there was an abundance of businesses not conforming to the City's Municipal Code. Ms. Velasco noted that code enforcement was a problem but the City was not trying to target one individual. Staff was following the code to the best of their ability.

Commissioner Tucker questioned if the applicants Business License had lapsed at another previous time. Ms. Velasco noted that Staff only looked at a 1-year time frame.

Vice Chair Butt questioned if the City's practice was to send out license renewal reminders. Ms. Velasco declared that was the practice of the City. Ms. Moore guessed that the Finance Department would have records of notices that were sent out.

Per Vice Chair Butt's question, Mr. Kolahdooz stated that the site did have a potential to fit into the vision that the City had for the street but it would require buying the structure behind the business, demolishing that structure, and then build something from scratch. He voiced he was not ready to do that type of project at the current time.

Commissioner Huang asked why 1-year was the magic timeframe for abandonment and lapses. Ms. Velasco stated that the 1-year had always been in the code and a recent update to the code included the reestablishment process.

Commissioner Loy stated that she was comfortable adopting the Resolution with its corrected language.

Commissioner Evans believed there were no arguments that moved him to support the language that was recommended.

Commissioner Tucker was conflicted with how he felt regarding the item.

Commissioner Baer believed that there was abandonment of the property and she was in support of the Staff recommendation.

Ms. Moore emphasized that the Commission needed to focus on if there was substantial evidence that showed that the decision made by the Zoning Administrator should be overturned.

**ACTION: It was M/S/C (Loy, Huang) to adopt Resolution Number 19-36 in Attachment One affirming the Zoning Administrator's determination that the auto sales use previously operating at 1084 23rd Street has been abandoned for more than a year; which carried with the following vote 3-1-2 (Ayes: Baer, Loy, Huang; Noes: Evans; Abstain: Tucker, Butt).**

Ms. Moore summarized for the Commission that the majority of the votes did not grant the appellant's appeal. Vice Chair Butt clarified that the majority, four Commissioners, would have to vote in favor of granting the appeal.

The discussion commenced with the City Attorney and the Commission on what was actually voted for, the language in the Resolution regarding the word reestablishment, and how to proceed.

Commissioner Loy restated her motion.

**ACTION: It was M/S/Community (Loy, Baer) to adopt Resolution Number 19-36 in Attachment One denying the appeal and affirming the Zoning Administrator's determination that the auto sales use previously operating at 1084 23rd Street has been abandoned for more than a year. In addition, any reference to "and cannot be reestablished" is stricken from the Resolution; which carried with the following vote 3-2-1 (Ayes: Loy, Baer, Huang; Noes: Tucker, Evans; Abstain: Butt)**

**STUDY SESSION** -None.

## **COMMISSION BUSINESS**

### **5. Reports of Officers, Commissioners and Staff –**

Vice Chair Butt announced that there were to be elections of officers. Commissioner Loy restated that the Nominating Committee had recommended that Commissioner Baer would continue as secretary, Commissioner Butt would continue as Vice Chair, and Commissioner Tucker would be Chair.

**ACTION: It was voted upon to have Commissioner Baer to continue to be the secretary, Commissioner Butt would be Vice Chair and Commissioner Tucker would be Chair; which carried with the following vote: 6-0 (Ayes: Loy, Baer, Butt, Huang, Tucker, Evans; Noes: None).**

Commissioner Tucker declared that Contra Costa County had released a Request for Proposal for consensus outreach and assistance grants. There was going to be a bidder's conference on September 11<sup>th</sup>, 2019 in Martinez from 9:30 to 11:30.

8. **Adjournment** - The meeting was adjourned at 8:42 p.m. to the next regular meeting on August 19, 2019.