

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
August 20, 2009
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Jeff Lee, Secretary
Jovanka Beckles
Carol Teltschick-Fall

Vice Chair Nagarajo Rao
Charles Duncan
Sheryl Lane

The meeting was called to order by Chair Finlay at 7:05 p.m.

Chair Finlay led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Finlay, Vice Chair Lee and Commissioners Beckles, Lane and Teltschick-Fall

Absent: Secretary Duncan and Commissioner Rao

INTRODUCTIONS

Staff Present: Kieron Slaughter, Janet Harbin, Carlos Privat, and Richard Mitchell

MINUTES - None

CONSENT CALENDAR

Chair Finlay provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. She said certain items approved by the Commission may be appealed in writing to the City Clerk by Monday, August 31, 2009, by 5:00 p.m. and she read them after each affected item.

Chair Finlay stated that the Consent Calendar consisted of Items 2, 3 and 4. Ms. Harbin noted there are speakers present for Item 3, and Chair Finlay removed Item 3. Ms. Harbin said the applicant for Item 1 has requested the matter be continued to the September 3, 2009 meeting.

Chair Finlay confirmed there were no speakers for Item 1 and the matter was moved to the Consent Calendar.

Chair Finlay acknowledged receipt of a letter for Item 4 requesting an additional condition, and Item 4 was removed from the Consent Calendar.

ACTION: It was M/S (Beckles/Lee) to adopt the Consent Calendar consisting of Items 1 and 2; unanimously approved.

Items Approved:

- 1. PLN 09-014: PENG SECOND UNIT – VARIANCE TO SIDEYARD SETBACK - PUBLIC HEARING** to consider a Variance request to reduce the required 5-foot side yard setback (2.5 feet proposed) for an addition to an existing dwelling unit located in the rear of the property at 440 and 442 20th Street (APN: 514-120-021). MFR-3, Multifamily High Density Residential District. Sharon Peng, owner; Richard Tapp, applicant. Planner: Hector Lopez. Requested by applicant: Continue to September 3, 2009.
- 2. PLN 09-003: HARBOUR WAY CONVENIENCE STORE – CONDITIONAL USE PERMIT - PUBLIC HEARING** to consider tenant improvement to an existing commercial structure and establish a convenience store use without alcohol at 925 Cutting Blvd. (APN: 550-301-023). SFR-3, Single-Family Low Density Residential, C-1, Neighborhood Commercial District. Rattu Surjeet & Kuldip Singh, owners; Roberto Cortez, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval.

Brown Act – No speakers

Items Heard:

- 3. PLN 09-060: KOWALSKI PARCEL MAP – SUBDIVISION OF EXISTING LOT - PUBLIC HEARING** to consider a request for Planning Commission approval of a Parcel Map to subdivide an existing residential lot into two residential lots, and to approve a Mitigated Negative Declaration for 367 Western Dr. (APN: 558-185-003). SFR-2, Single Family: Very Low Residential District. Stephen Kowalski & Patti Kowalski, owners/applicants. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval

Mr. Slaughter described the request and background, stating that previously the applicants had applied for, and were approved, for a lot line adjustment in 2004, which created a 6,000 square foot 50 foot lot on which another single family home has been developed. Subsequently, in May 2004, the applicants received DRB approval to build a 22 foot, 1800 square foot garage and carriage house on the south end of the property (Lot 2). The permit has expired without the approved structure being built and the applicants have parked their vehicles on an unimproved parking pad since that time. With the creation of Lot 2, the applicants would need to provide 2 off street parking spaces for the residence on Lot 1. Future residential development of Lot 2 would be required to provide 2 off street parking spaces, as well.

Staff received 12 comment letters during the comment period, all of which have been in support of the project. Subsequently, staff received an email which was provided to the Commission as well as receipt of correspondence in opposition to the project. Staff also received additional information regarding the project; 2 in support and 1 opposed to the project.

Due to the fact that the slope is greater than 20%, staff conducted an Initial Study and a draft mitigated negative declaration was prepared. Potential impacts include aesthetics, geology, soils, hydrology and water quality. Those factors were reduced to a less than significant impact with mitigations as outlined in the attachment.

Staff recommends adopting the final mitigated negative declaration and mitigated monitoring and reporting program and adopt Parcel Map findings 1-7 and Resolution 09-14.

Vice Chair Lee confirmed with Mr. Slaughter the approval of an 1800 square foot garage and carriage house (with three parking spaces below it which serves as the garage). Chair Finlay confirmed the garage and carriage house is intended to serve the original home and proposed to be located on the lot now being proposed to be subdivided at the south end of the property. Vice Chair Lee questioned the ability to put an 1800 square foot second unit on a single lot, and Mr. Slaughter said the 1800 square foot unit was in combination with the 3-car garage and carriage house. The maximum second unit dwelling is 640 square feet, so the garage square footage would not count against the second dwelling unit. Vice Chair Lee did not agree there was still excess square footage, which he did not believe was allowed.

Ms. Harbin said she assumed that the carriage house was originally on the property first created which was split off to create one parcel. The applicants were allowed to replace in kind on the other property that they had not subdivided and it was going to be demolished so that another house could be built there.

Chair Finlay suggested the applicant make their presentation and allow for questions.

Stephen Kowalski, Owner/Applicant, Pt. Richmond, said in 2003/04 they sold a piece of property on the north side of their 24,000 square foot property and a home was subsequently built there. When the home was built, the one-car garage was demolished and they had to create off-street parking on the remainder of the lot which is the lot they are now hoping to subdivide to sell. They had an architect design a three-car garage with a living unit above it which was limited to 640 square feet. This was approved and they took out a permit to build the structure. They never did build it, but they knew they needed to create off-street parking. He visited the City in 2004 to determine the minimum required off-street parking, which staff indicated was a two-car parking strip with a hard or gravel surface, which was created. The parking strip was inspected and thereafter, they heard nothing else from the City, but then later learned it was not in compliance.

Mr. Kowalski said in April of 2008, he and his wife investigated the possibility of creating a 6,000 square foot lot for sale at the south end of their property. They went to the City and met with Mr. Slaughter, were made aware that they would need to have the property surveyed and file an application and obtain permits, which they did. They created a lot 50 feet wide at the street, narrowing to 40 feet at center which they learned would require a lot width variance. They put up a for sale sign on November 24, 2008 and indicated that the sale of the lot would be contingent upon City approval. They also notified all neighbors within 300 feet of their intentions, included their phone number and asked that any neighbors with questions or concerns to call them. They received one call regarding the variance.

Their project was agendaized for the January 2009 PRNC meeting, wherein several Pt. Richmond residents spoke in support of their project and their project received overwhelming approval from PRNC providing they alter one of the lot lines. Subsequent to this, he and his wife determined it would be in the better interest of the community and their project if they were able to eliminate the need for a lot width variance. The surveyor reconfigured the lot so that no variance would be required and the lot is now conforming and has absolutely no variances required. They completed all geotechnical reports, and the remaining property after the lot split becomes almost 11,000 square feet and also conforms to both lot, width and area requirements.

They understand that before the new lot can be recorded, they will need to complete the required off-street parking for the remaining lot.

Commissioner Teltschick-Fall questioned where the applicants were currently parking their vehicles and where they would park in the future. Mr. Kowalski said they are parking currently on the two car strip on Lot 2; they have already applied for new off-street parking which would be a single, 40-45 foot long strip with the rear portion of it covered on Lot 1 in the northeast corner.

Vice Chair Lee said he noticed there is an extensive initial geology and soils analysis study and he confirmed this was required of the applicant by the City. Ms. Harbin said the reason for requiring this at this point is to determine any constraints, ensure the lot was buildable, as there is a steep slope on a portion of the lot that goes down to the water, and on other projects in the area staff has required geotechnical, soils, visual and other types of analysis and studies while doing the environmental study and assessment.

Chair Finlay questioned where the applicant was in BCDC's process, and Mr. Kowalski said they will likely make an application to BCDC once findings are made, and Mr. Slaughter noted this is a condition of approval.

Chair Finlay questioned if the City was putting the cart before the horse by approving the project when BCDC approval is needed. Mr. Privat said the Commission is being asked to approve the subdivision and not developing either of the two lots and could move forward without BCDC approval. In the future, BCDC may indicate that one of the parcels cannot be developed.

Commissioner Teltschick-Fall referred to the timing of the approval and questioned the need for the subdivision approval if the property cannot be developed at a later date. Ms. Harbin said generally, BCDC at times requires an access easement or view easement, or there may be 5 to 10 feet wide and are not always large enough to wipe out the possibility for developing the property, but this could be a possibility.

Mr. Kowalski said the project they are proposing does not reach down to the bay and it is possible it is far enough away from the shoreline to not require any BCDC involvement; however, he was not certain of this. He said the lot sold last year to the Blonski family does go all the way down to the water and they had no BCDC issues at that time.

Chair Finlay said in looking at the site map, she confirmed with Mr. Kowalski that the lot wraps around about 1/3 of the home. She said this makes no sense to her as there is almost 28 feet along the wall and she questioned what was present by the wall. Mr. Kowalski said there is a staircase and a room with two small windows at the top, closet space and a small room which was turned from a bathroom to a child's room.

Chair Finlay questioned if this was the reason they were able to get the 6,000 square feet, and Mr. Kowalski said they were able to get 6,000 square feet from the earlier approved drawing which was for a lot 50 feet wide, did not wrap around the structure, but it did not conform because of the definition of lot width. They reconfigured the lot so it would not require the variance and it is now 69 feet wide and has the correct square footage. Chair Finlay said she was very concerned and cited the applicant's past condition for a garage issue and the alteration of the plans.

Mr. Kowalski said in 2004, they did intend to build a garage on the site but they decided it would be in their best interest to design something more ambitious so that if they ever decided to build something simpler, they may have a better chance of having it approved. As it turned out, they designed a fairly ambitious 3-car garage with a unit above it and at the time, they could not afford to build the garage. He spoke to the City and part of the requirement when they sold the lot to the Blonski's was that they at least improve the upper portion where the garage would be in order to have adequate off-street parking. He received from staff the requirement for off-street parking as a single strip long enough for two cars. They were given so many days to do this and a representative of the City would come out and inspect it. If it was not found in compliance, they would be notified. Someone did come out and inspect it, they never received any notification from the City that their parking strip was not in compliance and they presumed it was okay.

Mr. Slaughter noted additional speaker cards were received while the staff report was being read, and Chair Finlay did not allow the three additional speaker requests due to the Commission's rules. She asked to hear the proponents.

Winthrop Steven Hurst, Pt. Richmond, said he attended the neighborhood council meeting several months ago and said neighbors complained about things that might occur involving views, he said when they received an explanation they understood and agreed that the Kowalski's should be able to develop the property. He believed the project should be allowed to move forward since all requirements are met. Neighbors opposed cannot prove their points about views being obstructed of something that is not built yet.

Ken Blonski, Pt. Richmond, said the situation has been polarizing and negative for the neighborhood. The Kowalski's satisfied every requirement of the City and it seems some of the requirements had been modified in the middle of the project such as geotechnical studies. He said the Kowalski's are good citizens, and if there is an issue with off street parking, he believed they would satisfy any requirement the City has.

Allison Lehman, Pt. Richmond, apologized for sending the packets to the Commission so late, pointed out the following three issues and asked the Commission to refer to Document A. She said since November 2008, the parcel has been offered for sale without being an approved lot. When a prospective buyer looks seriously at the parcel, they were given a parcel map with a highlighting of an approximate 19 foot easement running east/west on the northern side for the length of the wide part of the lot, reducing the girth of the lot to 48 feet. This map was given to her by a prospective buyer who decided the property was riddled with too many problems. By approving Lot 2, it leaves the street frontage of Lot 1 at only 50 feet wide. The square footage on the backside of Lot 1 makes the total square footage a conforming lot, but a large chunk of it is steep hillside bordered by the water. This makes the footprint of the home appear significantly larger in proportion to the land. The applicants have proposed tandem parking to accommodate the narrow street frontage. In the staff report, it states that the view to the water is less impaired with the tandem parking. She asked the Commission to look at the proposed garage relative to the home, as there is no view from the proposed garage location to the bay because it is blocked by their home. She said tandem parking is used by planning when the need arises and she quoted the zoning code 15.04.850.040. She said the need for this is self-imposed and the precedence in California has been set by the City of Atherton vs. Templeton where "self-induced hardship does not qualify for consideration". Further, she said the initial mitigated negative declaration is flawed, as it represents a girth prior to any easement being taken into consideration. In looking at the map, the middle point of the parcel appears to be on the narrow point of the parcel and not the wide part. The easement, if it were allowed, would create a

substandard lot. Secondly, the Kowalski's letter states that they intend to make the application complete with design and construction of their future garage, she discussed a document which refers to the garage being demolished and a new garage constructed and she knows the parcel was sold for a significant amount of money and it was their responsibility at that time to build a garage which was not completed. She referred to Document 4; the design review approval, which states "please have all conditions satisfied at the time of further applications". Also, she pointed out that the sentiment of immediate impacted neighbors and referred to a map of black dots where opposition exists and signatures of immediate neighbors who are opposed.

Vice Chair Lee questioned if Ms. Lehman would rather have a two car garage than tandem parking. Ms. Lehman said she believed the applicant should have played by the rules like others must do, which requires a two-car garage unless staff can justify giving the applicant an administrative decision for tandem parking.

Commissioner Teltschick-Fall questioned the reference made to the easement on Lot 2. Ms. Lehman said she met someone interested in purchasing Lot 2. They were shown the property and they were given a map showing a highlighted area of an easement of about 19 feet which will be required back.

Chair Finlay clarified that the potential purchaser would then have to give the seller an easement to have access to the property. Commissioner Teltschick-Fall questioned and confirmed with Mr. Privat that the purchaser can require an easement from a buyer as a condition to purchasing the property.

Commissioner Beckles questioned if the two-car garage requirement was contained in the code, and was a condition for the garage part of the project's original approval. Mr. Privat said the section identified by Ms. Lehman has to do with loading standards and not parking spaces. The second question has to do with the 2004 lot line adjustment and he said it is impermissible to condition a lot line adjustment, so to the extent the City did this in 2004 it would be unenforceable. Therefore, staff could have never required a garage as a condition of the lot line adjustment.

Chair Finlay said therefore, any time the Commission approves a lot line adjustment, she questioned how to achieve the parking standards of zoning. Mr. Slaughter said the Planning Commission does not usually oversee lot line adjustments as it is done at the Zoning Administrator level. Chair Finlay questioned how staff ensures zoning for parking is achieved. Mr. Slaughter said staff cannot condition it but what was done was an agreement that the applicant would sufficiently provide off street parking on their portion of the lot, and they applied for and were granted approval for it. That permit has since lapsed and part of the project today is to consider new off street parking which would satisfy those requirements.

Chair Finlay said she thought then the Zoning Administrator should not approve lot line adjustments. Mr. Slaughter said normally lot line adjustments are not the means by which parcels are created. Ms. Harbin agreed and said normally a lot line adjustment is not done to create a parcel but move a lot line slightly and/or if a neighbor needed more property, they would buy a portion for an easement. At the Zoning Administrator level, they would ask that the applicant show on their map where parking would be and this would be approved and indicate that the property is to be developed in accordance with that particular map. Chair Finlay said this sounds similar to a condition and felt the only way to solve the problem is that a contract to perform might be created. Mr. Privat agreed and said a contract could be enforceable. He said the Commission is being asked to approve a subdivision map and not a development or project.

Commissioner Beckles confirmed that the Commission was being asked to approve the subdivision map which is Exhibit A, as well as the mitigated negative declaration and the mitigation monitoring and reporting program.

Mark Zerta, Pt. Richmond, said he lives directly opposite the property in question, thinks there is a lack of transparency in the process and the work done to create the project is meant to confuse and detract from what the real intent is. He said Mr. Kowalski failed to mention that prior to the meeting there was a land use committee meeting which head locked 2-2 and many speakers spoke out against the project. He also indicated he and his wife regularly park in the lot now, but for the past 5 years, their regular cars are almost always parked on the street. Since the property has been up for sale have they started using the driveway they restored. Prior to this, there was a camper trailer parked there. Neighbors in the area were originally in favor of the lot line adjustment and construction of the garage with little opposition, but all of a sudden the garage was never built, no provision was made for parking and they started moving around lot lines to try to create a conforming lot which he still does not believe is adequate. The lot does not meet the width and if they are going to require an easement back, this is a perversion of the City map, substandard and would set a dangerous precedent.

Commissioner Teltschick-Fall questioned the impact on neighbors. Mr. Zerta said there is a view corridor through the lot, there are several homes on the uphill side that look across and by creating a substandard lot, the developer will want to apply for variances to the setbacks to create a buildable lot and then they will build up, blocking views. He confirmed other impacts include parking, additional traffic, narrowness and dangerousness due to a blind intersection.

Rebuttal – Applicant

Steven Kowalski, applicant, said there were many strangely-shaped lots in Richmond, particularly on Western, Casey Drive, and Bishop and not all are 50x120 feet. He said Ms. Lehman's house is surrounding on three sides by another piece of property, Mr. Zerta's lot is 41 feet wide and his contention that they do not park in the parking strip is not true. The travel trailer was not in the parking strip but beyond the strip. He regularly parks his truck and a second truck there. He said sometimes they use the 200 feet of street frontage in front of their house which is convenient, and many people on Western Drive also park in front of their house even if they have a garage. Regarding the view corridor, he presented photographs stating that the lot has been empty and vacant since 1903. There is vegetation that has been there for many years and if a house is built there, many of the trees will have to come down and in fact improve some of the view corridors. He said the one neighbor that may be most affected is not in opposition.

Rebuttal - Opponents

Allison Lehman said the lot should not meet yesterday's standards of what is appropriate. Today's standards are 60 feet wide. Regarding parking, the Kowalski's have always had many vehicles and to date, she regularly sees Mr. Kowalski's red Volkswagen and VW SUV parked in front of the house every morning. The only vehicle in the driveway is a truck which is not his everyday vehicle. She welcomed someone to measure the map as she is not convinced that the girth is at the wide point of the map and asked that this be confirmed. Regarding the neighbor who is not opposed, she has been at her home since 1953, she visits her regularly and the only reason she has not spoken out is because she does not want to upset the neighbors and she will be disappointed if she loses her view.

Mr. Slaughter gave staff summary, stating the map before the Commission does not contain any easements and none are proposed at this time. According to the definition of lot width in the zoning ordinance, it does meet the minimum lot width and it exceeds the minimum lot square footage, and this was done by a professional land surveyor. Regarding girth, this is not a term in the zoning ordinance in terms of measuring the width of a lot. Staff recommends the Commission adopt Resolution 09-14 granting approval of the parcel map MS-75608 subject to the conditions of approval contained in the resolution and the finding that the mitigated negative declaration in Exhibit C is adequate for the project.

Vice Chair Lee felt clarification was needed to define there is 60 feet at the midpoint. It appears to him that the midpoint falls below the leg of where it goes around the house and the Commission should confirm this first. Mr. Slaughter said staff discussed this, they looked at the definition of lot width and he read it into the record: "The lot width means the horizontal distance between the side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines." He said this is not suitable for all situations, at times it gets complicated, but in this situation, staff is comfortable that it does meet the zoning ordinance and General Plan designation.

Chair Finlay said she has seen this occur before in Pt. Richmond. Because of the contour of the land, she questioned where the measurement begins. Starting from the lot lines, it may not be halfway, but due to the contour of the land and water and where measurement is taken on the water's side, this in fact does influence where the midpoint in a lot is because it changes where the measurement starts. This is what she remembers from other discussions. Mr. Slaughter said this was also discussed, they looked at numerous other city ordinances to determine how they define lot depth and said they use building envelope and the setbacks; if there is a slope at the rear of the lot, you measure 20 feet from the rear lot line. So if there are situations where there are extreme contours, those would be negated by the fact that you're measuring within the building envelope.

Ms. Harbin agreed, said staff went through the exercise as well as discussions with the City Attorney's office in how the measurement should be taken. She said the lot meets the requirement of being a particular width, depth and square footage for a standard lot in the zoning district. Mr. Mitchell agreed, as well, and said staff worked on the issue a lot, reviewed a similar issue and the lot meets the legal minimum. Whoever acquires the property will face a number of constraints, but it is possible to subdivide it.

Vice Chair Lee questioned if the measurement was done as to the surface of the land or based on horizontal measurements. Mr. Slaughter said staff does not measure the contour of the surface, which would add more length; it is measured per the City's ordinance and by a certified surveyor.

Commissioner Teltschick-Fall commented that she feels bad that neighbors are arguing over this and she wished they could arrive at a compromise.

The public hearing was closed.

Vice Chair Lee said he was not clear on who gets to decide what kind of parking the applicant should have, and Mr. Slaughter said the Commission can impose conditions and staff has made recommendations based on knowledge of the site.

Chair Finlay said the Commission is subdividing the lot into two lots and the Commission will not make any decisions on Lot 2 due to not having a proposal. Mr. Slaughter said; however, staff is recommending mitigations as a result of the geotechnical report which are conditions of approval and the new owner would need to address those conditions, but these have to do with lot conditions as opposed to what is developed on the lot. Therefore, parking would not be considered for Lot 2. She questioned and confirmed that the Commission can condition Lot 1 with parking requirements, but questioned whether the Commission could bar any future easements or agreements that might contractually be involved with the buyer and the seller. Mr. Privat said the Commission can condition this, but it must be based upon substantial evidence in the record, there would have to be some basis to impose such a condition, and a nexus must be justified.

Commissioner Beckles questioned and confirmed that the tandem parking is located on the map for Lot 1. Chair Finlay questioned and confirmed that tandem parking is appropriate on the lot and she said the ordinance section referring to parking, landscaping and tandem parking in residential districts, it states that tandem parking can be allowed if there are certain things having to do with the specific site like sloping, curbing or narrow streets, hillside development or narrow lot conditions. There is 25% slope, Western Drive is curving and narrow and the lot does satisfy such conditions for tandem parking.

Commissioner Lane said it seems like parking is limited on the street and it may not be safe to have additional cars parked on the street. Chair Finlay noted other homeowners enjoy off street parking on Western and therefore, the applicants should be allowed to enjoy the same right.

Vice Chair Lee felt one question is whether the applicant can sell a lot and grant himself an easement back so, in effect, he still has some of the land he sold somebody else. Chair Finlay said legally this can be done. Vice Chair Lee said if we determine that in fact that the dog leg in the middle of the property does not preclude it from qualifying it as 60 feet wide because of the jog in the middle which staff agrees is acceptable, then he does not see there are any issues left.

Commissioner Beckles confirmed with staff that the request meets all legal obligations and Mr. Slaughter briefly outlined staff's recommendations and request for approval.

Commissioner Beckles said there were 12 letters in favor of the project moving forward, a petition signed by 21 people in opposition, and according to the information Ms. Lehman presented, the majority of those signatures would be directly impacted. Mr. Slaughter said he believes that the letters of support received referred to the mitigated negative declaration which is the overriding document which was circulated and he wondered if the petition's timing involved when the proposal proposed a variance and did not meet the minimum lot width.

Chair Finlay said while the Planning Commission takes concerns of residents into consideration, the reality is that the Commission still looks at what it can do legally, the rights of every homeowner to enjoy the same privileges as others do, to make decisions based on information provided, and the importance of public comment, the Commission still must make its decision on the application, it has a prescribed responsibility, and does not have the same prerogative as the City Council does.

Mr. Privat said if findings can be made, the Commission should approve the request with conditions and he briefly reviewed those findings addressed in the staff report with the Commission.

Commissioner Lane made a motion; Vice Chair Lee seconded, and said given the situation he does not believe there are grounds to deny the application, but it is sad that in chasing the rules, the applicant has backed the lot line adjustment into a less desirable potential build site than it had to begin with.

ACTION: It was M/S (Lane/Lee) to adopt Resolution 09-14 granting approval of the Parcel Map MS-75608 subject to the conditions of approval contained in the Resolution and the finding that the Mitigated Negative Declaration in Exhibit C is adequate for the project; unanimously approved (Beckles abstained).

4. PLN 09-081: NEW HOPE CHURCH - CONDITIONAL USE PERMIT - PUBLIC HEARING to consider a request for a Conditional Use Permit to establish a religious facility at the former Franks Market at 381 South 36th Street. (APN: 513-153-033). SFR-3, Single-Family Low Density Residential District. Mohamad Dabwan & Fakeha Dabwan, owners; Claudia Falconer Architects, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval

Mr. Slaughter gave the staff report, history of the use of the building, and application for a religious facility. Staff met with the applicant, made a site visit and recommended that the second building remain in place on site for reasons identified in the staff report. The site is located in the Pullman Neighborhood Council area and a response was received this date from Naomi Williams, President, who made some recommendations. Staff requests approval of the CUP with findings and attached resolution.

Chair Finlay questioned noise abatement and Ms. Williams' concern about noise coming from the church. Mr. Slaughter said this was discussed with the applicant and conducted a site visit. The applicant indicated their worship would not many involve bands, amplified music or drums, and service would basically be on Sunday. The location of the hall used for the facility is situated in the middle of the property, as shown on Exhibit A.

Chair Finlay questioned the amount of noise from the church's organ music, singing, a play area for children and the older duplex building that will be used for various functions. She suggested staff arrive at noise abatement language, discuss this with the church, and return it to the Commission.

Samuel Lopez, Applicant, El Sobrante, briefly described the request, said their church helps the community's youth and family in worship.

Commissioner Teltschick-Fall questioned what the condition is of the market building, and Mr. Slaughter said it is vacant and in need of interior repair. Mr. Lopez said they are aware of the poor condition of the building, he is a licensed general contractor and he felt the building could be improved for use as a church.

Chair Finlay confirmed that 60 seats would be added and the church is expecting a congregation of approximately 50 people. She noted carpools and/or van pools would be used to alleviate the parking situation and she questioned where members would park to be brought to the church from off site. Mr. Lopez said there is a lot of space on the side and near the entrance of the two buildings for handicapped access. He said they have two 16 passenger vans and they would be used to transport members back and forth from their homes. The

parking area at the church would provide enough parking also for members. Chair Finlay confirmed the vans would pick up people from their homes only.

Vice Chair Lee questioned where the vans would be stored, and Mr. Lopez said currently they are parked at the pastor's house but once the facility is renovated, they will most likely park at the church off the street. Vice Chair Lee questioned if there is an existing congregation, and Mr. Lopez said the existing congregation is located at 2959 Cutting Boulevard, they are registered with the State of California, and they have permission with the City to stay in that building temporarily until they can find a place to move to or to the requested location.

Commissioner Beckles said she is concerned with the abundance of cars in the area on the street already, and questioned if there is a parking lot for the property right now. Mr. Lopez said the property has parking in the rear and around the main building which is not visible from the street of about 28-30 spaces.

Chair Finlay said once ADA approved, she questioned the number of spaces on site. Mr. Slaughter said currently without the ADA spaces, there will be 16 off street parking spaces for a congregation of approximately 50 members. There are also a number of parking spots used but not up to standard currently. He noted that originally proposed was demolition of the duplex and 28 parking spaces; however, staff recommended maintaining the duplex. Chair Finlay said the parking is approximately a 3:1 ratio.

Chair Finlay suggested taking into consideration the possibility of a continuance so that conditions relating to noise abatement and parking.

Mr. Lopez added that there are many ways to protecting the transfer of sound to neighbors if required from the Commission. Chair Finlay noted questions also involving whether the facility will have air conditioning, open windows, a children's play area, and agreed there were many things which could be done to abate noise.

Chair Finlay noted there were no public speakers.

Mr. Slaughter gave staff summary, stating staff recommends approval of PLN 09-081 with the appropriate findings and statement of fact and adoption of Resolution No. 09-13.

Commissioner Teltschick-Fall said she likes the idea of locating an operation in an abandoned building, feels the Commission should arrive at something more specific for parking and noise requirements, and likes the idea of the van which serves many needs.

Commissioner Beckles supported continuance of the item to address noise abatement and parking issues. She agreed the neighborhood streets are narrow, cars are parked everywhere in the area and liked the fact that the building has been purchased and utilized for the community.

Vice Chair Lee agreed with Commissioner Beckles and with contents of the letter from Ms. Williams, suggested asking the applicant go to a convening Pullman Neighborhood Council and discuss some of the issues and work them out.

Commissioner Lane echoed fellow Commissioners, believed the applicant is amenable to address noise abatement and parking, supported a presentation to the Pullman Neighborhood Council and supported continuance.

Chair Finlay suggested continuance, for staff to formulate a condition that would outline specific abatement items for noise suppression and for the architect to include a specific parking plan.

Mr. Slaughter said in discussing the application with the architect, she did contact the neighborhood council several times and it was not until today that they finally responded. He thinks the applicant is willing to accept conditions regarding noise, and he suggested the Commission consider the application tonight. Regarding parking, the correct parking plan is included in the staff report with the proposed number of spaces, contained in Exhibit A, page A-1. Due to the project, they are not required to conform to the current zoning ordinance; however, the Commission can also make their own determination as to parking conditions.

Chair Finlay said although she agrees with Mr. Slaughter, she would have wanted to discuss the project and cited the history of noise issues with churches. She asked for a date specific to continue the item. Ms. Harbin said the next meeting is September 3, 2009 and clarification can be reached on the conditions. She said also on that agenda would be the item continued from this evening; PLN 09-014 and PLN 09-054, two items for massage establishments on San Pablo Avenue, and possibly an ordinance related to Zoning Administrator items. She said the Mira Flores project has been moved to October, and agreed this item could be placed as the first item on the agenda.

ACTION: It was M/S (Beckles/Teltschick-Fall) to continue the public hearing of PLN 09-081 to September 3, 2009; unanimously approved.

COMMISSION BUSINESS

5. Reports of Officers, Commissioners and Staff

Chair Finlay questioned and confirmed that the City was still in the comment period for the General Plan Update. Mr. Mitchell said the environmental document is being prepared and it will come to the Commission in October. A draft of the Housing Element is with staff currently, changes affecting the document from State law need to be reviewed and addressed, and comments tend to focus on nuances relating to the Land Use Element, and how the Health and Wellness and Climate Change elements affect the balance of the plan. Chair Finlay confirmed that once comments are received, minor comments will be incorporated, and those comments that require input or modification of the document will be returned to the Commission for final determination. The Commission's comments that arrive should be incorporated into the next document the Commission will see. She confirmed September 16, 2009 was the deadline for comments.

Commissioner Lane said since she has been on the Commission, she noticed that when items come before the Commission and it is asked whether or not neighborhood councils were contacted, she questioned if mechanisms could be put in place to make the process smoother between City staff and the neighborhood councils. Chair Finlay felt the process could be addressed during a Retreat of the Commission.

Vice Chair Lee supported Commissioner Lane's suggestion to empower neighborhood councils further and asked staff to be more proactive in soliciting such interaction. He is very much in favor of ad hoc subcommittees generally and suggested it be utilized with the General Plan, given the amount of work. He also suggested changing the format of the agenda and asked to put the public forum at the beginning of the agenda after the Brown Act. Chair Finlay said she

has been working with staff on redoing noticing to the public and said she could address his request.

Commissioner Beckles supported working in an ad hoc committee for the General Plan.

Commissioner Teltschick-Fall supported an explanation first of the neighborhood council process and voiced support for working as an ad hoc committee to discuss the General Plan.

Chair Finlay said she and Vice Chair Lee visited former Commissioner Williams and wished him well.

Public Forum - None

Adjournment

The meeting was adjourned at 9:30 p.m.