

**PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL**
1401 Marina Way South, Richmond, CA
September 4, 2008
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Stephen A. Williams
Charles Duncan

Vice Chair Nagarajo Rao
Jeff Lee, Secretary
Vacant

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 Rao, Secretary Lee and Commissioner Duncan

Absent: Commissioner Williams

INTRODUCTIONS

Staff Present: Jonelyn Whales, Kieron Slaughter, Janet Harbin, Everett Jenkins

MINUTES

February 7, 2008

Chair Finlay noted she had a small correction to the minutes which will be reflected in the final minutes.

ACTION: It was M/S (Lee/Duncan) to accept the minutes of February 7, 2008; unanimously approved (Rao and Duncan abstained).

March 20, 2008

Chair Finlay said the minutes were in narrative form and she submitted minor corrections. Mr. Jenkins suggested substantive corrections be made, provided by staff, and the minutes returned to a future meeting for final approval.

Chair Finlay provided three sets of corrected minutes to staff, asked that copies be made and provided at the end of the meeting for review by Commissioners.

April 3, 2008

Chair Finlay said she will abstain from the minutes, as she was not able to review them.

ACTION: It was M/S (Rao/Lee) to accept the minutes of April 3, 2008; unanimously approved (Finlay abstained).

May 15, 2008

Chair Finlay said she will abstain from the minutes, as she was not able to review them. Commissioner Duncan said he did not have copies of the May 15th minutes in his packet. Chair Finlay asked that these be held over until next month; however, Secretary Lee suggested they be approved with abstaining members.

ACTION: It was M/S (Lee/Rao) to accept the minutes of May 15, 2008; unanimously approved (Finlay and Duncan abstained).

July 3, 2008

ACTION: It was M/S (Rao/Lee) to accept the minutes of July 3, 2008; unanimously approved (Finlay abstained).

August 7, 2008

Commissioner Duncan noted he was not present at the August 7, 2008 meeting and would abstain from the meeting.

ACTION: It was M/S (Rao/Lee) to accept the minutes of August 7, 2008; unanimously approved (Duncan and Finlay abstained).

Chair Finlay deferred the remainder of the minutes to the end of the meeting.

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, September 15, 2008, by 5:00 p.m. and announced the appeal process after each affected item.

CONSENT CALENDAR

Ms. Harbin suggested Item 1 and 3 be put on the Consent Calendar, as they are to be held over to future meetings, and Commissioners agreed. Chair Finlay confirmed there were no public speakers on either Items 1 or 3.

Chair Finlay noted the Consent Calendar now consisted of Items 1, 3, 4, 5 and 6.

Item 6 was requested for removal by a member of the audience.

ACTION: It was M/S (Duncan/Rao) to adopt the Consent Calendar consisting of Items 1, 3, 4 and 5; unanimously approved

Items Approved:

- 1. ZTC 08-02 – Zoning Text Change to the City’s Zoning Ordinance for Eating Establishments (Various Sections) - PUBLIC HEARING** to consider amendments to

Definitions, Commercial, Industrial, and Parking Sections of the Zoning Ordinance (Sections 15.04.020, 15.04.200, 15.04.300, and 15.04.850 of the Richmond Municipal Code) to amend the definition of “eating establishment (fast food)”; add a definition for “eating establishment (fast food with drive-in, drive-through, or curb service)”; moving the “eating establishment” and “eating establishment (fast food)”, as newly defined, to the lists of permitted uses in commercial and industrial districts; adding “eating establishments (fast food with drive-in, drive-through, or curb service)” to the lists of conditional uses in commercial and industrial districts; and, to amend the parking regulations relative to “eating establishments”. City of Richmond-Planning & Building Services, applicant. Planner: Hector Rojas. Tentative Recommendation: Hold Over To A Date Uncertain

3. **CU 1101606 – Alvarado Bar & Grill Revocation of Conditional Use Permit, 12889 San Pablo Avenue** - PUBLIC HEARING to determine whether grounds may exist to revoke Conditional Use Permit 1101606 for a restaurant with Alcoholic Beverage Sales located at 12889 San Pablo Avenue (APNs# 524-010-002, -028, -029, -030, and -001), in the C-2 General Commercial District. If the Commission finds that grounds may exist, it shall direct staff to schedule a permit revocation hearing. Ray Smith, owner. Planner: Janet Harbin. Tentative Recommendation: Hold Over To 10/2/2008.
4. **EID/V/DR 1102707 – New Warehouse and Office Building, 2785 Goodrick Avenue** - PUBLIC HEARING to consider a Mitigated Negative Declaration with a Mitigation and Monitoring Reporting Program, a Variance, and a Design Review Permit to construct a two-story, 58,000 square foot warehouse and office building at 2785 Goodrick Avenue (APN: 408-220-047). M-3, Heavy Industrial (North Richmond Shoreline Specific Plan) Zoning District. Goodrick Parkway Properties, LLC, owner; David Popelka, applicant. Planner: Jonelyn Whales. Tentative Recommendation: Conditional Approval.
5. **PLN08-029 – Eating Establishment with Alcoholic Beverage, 3288 Pierce Street, Suite A-103** - PUBLIC HEARING consider a Conditional Use Permit to allow on-sale beer and wine sales at Koreana Kitchen II, an existing restaurant located at 3288 Pierce Street, Suite A-103 (APN: 510-060-006). C-3, General Commercial District. Pacific Infinity Co. Inc, owner; Young J. Bae, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval.

Brown Act – Public Forum – None

Items Discussed:

2. **DR/V 1103830 – New Residential and Commercial Mixed-Use Development, San Joaquin Street between Colusa and Modoc Avenues** - PUBLIC HEARING to consider Variances and a Design Review Permit to construct a mixed-use development consisting of a church and 23 multi-family residential apartment units on a vacant lot located on San Joaquin Street between Colusa and Modoc Avenues (APNs: 507-262-010, -011, -012, -013, 014 and 507-262-030). Mixed-Use (Knox Freeway/Cutting Boulevard Corridor Specific Plan) Zoning District. Tom Vaughn, owner; Jeffrey Supran, applicant. Planner: Jonelyn Whales. Tentative Recommendation: Conditional Approval.

Ms. Whales gave the staff report, gave a brief description of the request, said the variance is for vehicles to back into the public’s right-of-way from a 90 degree parking stall, and staff believes that based upon the previous traffic studies of the area, that there will never be a stacking problem along Kings Place, Colusa, and Modoc from approval of the requested variance. She

said on April 23, 2008, the DRB unanimously recommended approval of the project and the project has also been reviewed by the Richmond Annex Neighborhood Council at their regular meeting. That body would like to add a condition; "Selected tree species shall not exceed 35 feet in height at maturity." She said this is a typical condition for projects along the San Joaquin corridor due to it being a major view corridor.

Chair Finlay confirmed with Ms. Whales that the condition would therefore be viewed as Condition 11.

The public hearing was opened.

Jeffrey Supran, Applicant/Architect, believes the staff report is correct and they agree with all conditions as well as the new condition.

There were no public comments.

Secretary Lee questioned and confirmed that the applicant owned the parking area off of Modoc Avenue.

The public hearing was closed.

ACTION: It was M/S (Duncan/Lee) to approve DR/V 1103830 subject to design review findings 1 through 4 and variance findings 1 through 5 including the conditions 1 through 10, with the additional condition 11, stating that "selected tree species shall not exceed 35 feet in height at maturity;" unanimously approved.

6. PLN08-035 – Given & Halpern Gift Distribution, 1099 Essex Avenue - PUBLIC HEARING to consider a Conditional Use Permit for processing catalog and internet sales of gift baskets including wine, gift basket assembly, and a small retail alcoholic beverage store in an existing industrial warehouse tenant space at 1099 Essex Avenue (APN: 561-130-014). M-2, Light Industrial Zoning District. American Standard Properties/Jones Development Company, owner; Givens & Halpern, Inc., applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval.

Kieran Slaughter, Assistant Planner, gave the staff report, described the request for a conditional use permit, and said staff recommends conditional approval.

Vice Chair Rao said because the company is selling wine and retail products, he questioned if one conditional use permit was required for the total request. Mr. Slaughter said the permit would be a Type 20 ABC license and would require a conditional use permit. He said about 10% of their business consists of on-site retail, but the majority of their sales were through catalog and internet and shipping.

Chair Finlay noted the license is clearly a Type 20 license; however, the word spirits was being used which usually refers to hard liquor as opposed to beer and wine. Mr. Slaughter apologized and verified that the request was for only beer and wine.

Chair Finlay also voiced concern that the conditions did not contain wording that the business would extend operations during the holiday periods past 10:00 a.m. to 4:00 p.m. and Mr. Slaughter said in the staff report, he did account for longer hours, and he believed a condition

could be changed from the operation of the retail outlet as opposed to the operation of the actual business.

The public hearing was opened.

Eric Seeder, Applicant, said they have been in Marin County for four years, last year they shipped about 50,000 gift baskets and had 5 people come in during the previous 12 months. He said 99% of their business is operated via internet and catalog and expect the trend to continue. Their store is only open from 10:00 a.m. to 4:00 p.m. and it is rare that people come in. The five people who did visit the retail store visited during the month of December.

Chair Finlay questioned and confirmed that the ABC did require a retail outlet be in existence with the ABC license. Mr. Seeder said they also have a 400,000 square foot warehouse and only 400 square feet of it is devoted to the retail store. He confirmed there were no alcoholic beverages served on the premises. And, if someone were to purchase wine, it would have to be purchased as part of a gift basket.

Mr. Seeder continued by stating they are needing to move to a larger facility due to the growth of their business and they look forward to becoming part of the Richmond community and serve the East Bay and they employ 25 full-time people and over 100 part-time people.

Chair Finlay said the use permit states that hours of service shall be limited to Monday through Friday, from 10:00 a.m. to 5:00 p.m. She confirmed with Mr. Seeder that customers are able to visit during those hours; however, during their busy season, they will operate in the warehouse into the evening and loading boxes onto FedEx who will deliver their products during 9:00 a.m. to 5:00 p.m. and he was amenable to clarifying this within the permit conditions.

Secretary Lee questioned why the requirement for retail sale is part of the Type 20 license. Mr. Seeder said the ABC has very few licenses and they have yet to carve out a distinction for internet businesses operating within the ABC world. He clarified that a Type 21 license would include spirits but not a Type 20 license.

Public Comments:

Anthony Allen, spoke on behalf of Mildred Carlton who is ill, requested the item be continued until a new staff report is issued, as it is flawed. He said the Police Department did not receive a staff report, the zoning ordinance on alcohol sales provide conditions to control alcohol content by volume, and in the staff report, there are no conditions relating to such content limitations, and based upon Section 23958 of the ABC Code, the issuance of the license will constitute undue concentration in the area, and this is based upon Section 23598.4(3) which states, "If the ratio of sales of retail alcohol licenses in the census tract divided by the population in the census tract is greater than the ratio for the County, then the limit is exceeded and the license cannot be granted." He said the section also states that they are only calling for a Type 20 license when the Code states that the CUP applies to Type 20 and 21, which was omitted from the report. Also, Mr. Slaughter only cites two Type 20 stores in the report when in actuality; there is also a Type 21 store in the area. He noted there were a couple of other terminology errors relating to what the code requires and he requested the item be continued upon such time that a new staff report can be issued.

Secretary Lee said given these technicalities, he questioned whether there were concerns with the business operating at the location. Mr. Allen said the business is in an area known for

crime, the business can be turned into a liquor store given the license request, and he believed the applicant is not in compliance and wanted the staff report re-written in order to be in compliance.

Secretary Lee questioned that if they were in compliance, would he have any problem with the use. Mr. Allen said they cannot be in compliance because they are over the ratio of Type 20 licenses in the area.

Chair Finlay questioned and confirmed that the area includes 4,076 residents and the applicant is over by one liquor license per the number of residents in the area and would be in violation of the ordinance.

Chair Finlay believed that if the maximum exceeded the number of liquor licenses for the area, the ABC will not issue the license. She noted that in the attachments of the staff report, the ABC lists Contra Costa Type 20 licenses which indicate there are two within the census tract, and Attachment 7 clearly states that this is a license Type 20 off-sale beer and wine license. Mr. Allen believed there was also a 21 and 20 license in the area which is not included in the staff report; however, Chair Finlay noted the information came directly from ABC.

Rebuttal – Applicant

Eric Seeder, Applicant, said he spoke with ABC himself and they told him there were enough Type 20 licenses left for the application to be approved and they indicated that Contra Costa County can have as many Type 21 licenses and there is a lottery in December to obtain a Type 21. She noted that if the City approved the CUP, he would be in compliance for a Type 21 license because he was not over the concentration. He acknowledged that he would need to come before the Planning Commission for a Type 21 license, as well as the ABC, and then go through the lottery process. He confirmed, however, that he did not foresee the need to apply for a Type 21 license.

Chair Finlay confirmed Condition 1 indicates that the applicant is limited to a Type 20 license, and Mr. Seeder agreed with this understanding, and they have no interest in ever going into the retail alcohol business.

Rebuttal – Opponent

Anthony Allen again requested the item be continued until further clarifications are provided in the staff report. He said the Police Department did not receive a copy and wanted all necessary parties to review it.

Mr. Slaughter recommended that the Planning Commission conditionally approve PLN 08-035 with the four statements of fact and conditions 1 through 11.

Vice Chair Rao said under these circumstances, is it required that the Police Department submit a report to the Commission, and Mr. Slaughter said he was not aware of any requirement. In the past for certain licenses such as Type 21, the police have commented, but not for a Type 20 license.

The public hearing was closed.

Commissioner Duncan suggested an amendment to Condition 4; "Hours of Service: The ABC mandated retail outlet for distribution of wine and alcoholic beverages shall be limited to Monday through Friday from 10:00 a.m. to 5:00 p.m. It is understood that during holiday season, warehouse operations may extend beyond the retail hours of 10:00 a.m. to 5:00 p.m. to accommodate internet and catalog demand."

Chair Finlay asked to add, "outlet" after the word, "retail." Secretary Lee suggested, "hours of service for on-site retail sales be limited to 10:00 a.m. to 5:00 p.m. and not say anything about holiday operations in the warehouse. Chair Finlay believed that on-site sales would also incorporate everything the warehouse is doing and this is her reason for adding the word "outlet."

ACTION: It was M/S (Duncan/Lee) to approve staff recommendation to approve PLN 08-035 with the CUP findings 1 through 4, with conditions 1 through 11, and amending Condition 4 as stated; unanimously approved.

Chair Finlay questioned the term; PLN 08-035, and Ms. Whales noted it was part of the City's new tracking system. It no longer has a CUP in its identity, but simply a Planning number. Ms. Harbin briefly described the intent behind the change.

BREAK

Chair Finlay distributed copies of corrections to minutes and called for a five-minute break. The regular meeting was thereafter reconvened.

COMMISSION BUSINESS

MINUTES

March 20, 2008

ACTION: It was M/S (Lee/Rao) to accept the minutes of March 20, 2008; unanimously approved (Duncan abstained).

April 10, 2008

Vice Chair Rao referred to page 13, middle of the Chair, and he asked what corrections were to be made. Chair Finlay said it states, "Chair Finlay confirmed that the Commission can also ask Ms. Garber to research and report on new conditions the Commission may choose to follow up on, and that the Commission has all of the options identified." She said she did not believe she said that and substituted the wording as follows: "...that the Commission has the ability to pick and choose from any alternate conditions and that it was not bound by the staff's conditions." She believed it was not a substantive change, but rather her opinion about a question raised.

ACTION: It was M/S (Rao/Lee) to accept the minutes of April 10, 2008; unanimously approved.

June 19, 2008

ACTION: It was M/S (Rao/Lee) to accept the minutes of June 19, 2008; unanimously approved.

7. Reports of Officers, Commissioners and Staff

Commissioner Lee asked for a future agenda item for the next meeting: Discussion of the reconfiguration of the new Design Review Board. He also said Chair Finlay shared with him information relative to the Honda Terminal and he asked if she could share that information with the Commission.

Chair Finlay confirmed with Ms. Harbin that an item can be added to the next agenda regarding reconfiguration of the Design Review Board as a recommendation to the Planning Commission. Vice Chair Rao asked that a report be provided for the public hearing.

ACTION: It was M/S (Lee/Duncan) that the DRB hold a hearing on the ordinance for reconfiguration of the Planning Commission and Design Review Board at the next meeting; unanimously approved.

Chair Finlay said she received an email from Commissioner Lee; that a draft EIR is being circulated regarding the Port Expansion Project and it appeared as if the certification was going to be done by the Design Review Board, and whether or not she had heard of this being done before. She said she had never heard an EIR being certified by a DRB and she will follow up with the City Attorney.

Ms. Harbin said staff held a meeting with the City Manager and City Attorney, and in the City's ordinance, it does allow the Design Review Board to certify an EIR. The three bodies that can certify an EIR are the Design Review Board, the Planning Commission and City Council. However, in this particular case, she did not believe they have ever had the DRB certify an EIR. Therefore, the EIR will go from the DRB as a recommendation to the City Council.

Chair Finlay said unfortunately, the DRB is not televised, there is no expectation by the public that it is done this way, she felt the public has been left out of a huge decision, and normally the City Council deals with appeals and she felt that bypassing the Planning Commission would not make the project better. Ms. Harbin noted there will be a public hearing at the City Council level, and she believed the DRB will hear the item on October 15th.

Chair Finlay reported that as a Commission, she would like to offer condolences to the families of Richard Griffith, Charles Belcher, Fairfield Councilmember Matt Garcia and she asked to adjourn the meeting in their memory.

Public Forum - None

Adjournment

The meeting was adjourned at 8:20 p.m.