

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
April 6, 2006
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Ludmyrna Lopez, Secretary
Nagaraja Rao
Vacant

Vice Chair Stephen A. Williams
Zachary Harris
Vicki L. Winston
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 Williams, Secretary Lopez and Commissioners, Coleman, Harris, Rao, and Winston

Absent: None

INTRODUCTIONS

Staff Present: Tanya Boyce, Associate Planner; Janet Harbin, Principal Planner, Mary Renfrow, Assistant City Attorney, David Barbary, Associate Planner

Chair Finlay gave an overview of the procedures for speaker registration and public hearing functions and procedures. She said any decision approved may be appealed in writing to the City Clerk by Monday, April 17, 2006 by 5:00 p.m.

MINUTES – There were no minutes for approval.

CONSENT CALENDAR

Chair Finlay noted the Consent Calendar consisted of Items 4, 5, 6, 8 and 9.

Items for removal from the Consent Calendar were items 8 (public) and 5 (Harris). **Commissioner Harris** requested moving Item 1 to the Consent Calendar.

ACTION: It was **M/S (Harris/Rao)** to move Item 1 to the Consent Calendar; unanimously approved.

ACTION: It was **M/S (Rao/Williams)** to approve the Consent Calendar consisting of Items 1, 4, 6 and 9; unanimously approved.

Consent Items Approved:

1. **CU/V 1102322 – Wireless Communications** - PUBLIC HEARING to consider a Conditional Use Permit and a Variance from the 1000' spacing requirement to allow the installation of a new ±40' high steel pole with 3 panel antennas, 2 equipment cabinets, electrical and telco panels on a concrete pad on Caltrans property at I-80 and Solano Ave. (No APN) No Zoning district. Caltrans, owner; Misako Hill, applicant. Tentative Recommendation: Hold Over To 5/11/2006

4. **EID/TM/GPA/RZ 1101112 – Point Richmond Shores** - PUBLIC HEARING to consider the Point Richmond Shores project, also known as Terminal One, proposed by Toll Brothers. The project consists of an Environmental Impact Report (EIR) with Mitigation Monitoring and Reporting Program, a General Plan Amendment, Rezoning to Planned Area, Vesting Tentative Map, and Design Review. The project site is located at Dornan Drive and Brickyard Cove Road and is proposed to have the following: a) approximately 330 residential condominium units contained within two-5 story buildings constructed over a parking podium; and, b) an approximately 1.9-acre public park. Coastline Commercial District. Redevelopment Agency, owner; Toll Brothers, applicant. Tentative Recommendation: Hold Over To 5/11/2006.

6. **CU 1102783 – Convert a Commercial Building into Live Work Unit** - PUBLIC HEARING to consider a Conditional Use Permit to convert a commercial building into a live work unit and change the building's façade to accommodate the proposed use at 614 S. 33rd St. (APN 549-221-001). Knox Cutting Specific Plan Area (Land Use Designation R&D/Business) and Industrial Office Flex Districts. Albert Strane, owner; Jeanne Chiang, applicant. Tentative Recommendation: Conditional Approval.

9. **ST 1102764 – Street Vacation** - PUBLIC HEARING to consider the vacation of a portion of South 13th St. located between parcels 560-371-002 and 560-372-001 (No APN) and south of Wright Ave. Research & Development/Business (Knox Cutting Specific Plan) Zoning District. City of Richmond, owner; Jose Perera Da Silva, applicant. Tentative Recommendation: Recommend Conditional Approval to City Council.

Brown Act – No speakers

Items Discussed:

2. **CU 1102590 – Temporary Truck Parking** - PUBLIC HEARING to consider a Temporary Conditional Use Permit for a ±84,060 SF parking lot area for the parking of trucks and containers at 1414 – 1422 Harbour Way (APNs 560-181-103 and 104) in Mixed Use/Port Maritime districts of the Knox/Cutting Specific Plan Area. Eddie Orton, owner; Judith Rodier, applicant. Tentative Recommendation: Conditional Approval.

Ms. Harbin described the proposal, said the building was being rehabilitated for adaptive re-use, a Master Conditional Use Permit was approved in August 2004 which allowed for mixed uses, and during the interim period the applicant was requesting for formal approval to park containers in the parking lot for interim storage use, and would be allowed through December 31, 2006.

The public hearing was opened.

Troy Peterson, San Francisco, representing the owner, said they were attempting to redevelop the project into a mixed use, said the lease they entered into with SSA and the Port was short term ending December 31, 2006, said they both need a space for their relationship with Matsen and without it, and they would not be able to fulfill their obligation with Matsen. A revised map of the area was done moving the containers closer off the street and building to address aesthetics. When the building is fully occupied the storage will be removed and he requested approval of the temporary use.

There were no speakers. **Ms. Harbin** noted staff's recommendation was to make conditional use findings 1-4 as required by the zoning ordinance and as identified in the staff report, and approve CU 1102590 subject to 2 conditions of approval.

The public hearing was closed.

ACTION: It was M/S (Winston/Rao) to approve **CU 1102590** subject to conditional use permit findings 1-4 and subject to conditions 1 and 2; unanimously approved.

3. CU 1102626 – Wireless Facility - PUBLIC HEARING to consider a Conditional Use Permit that would allow the installation and operation of a telecommunication facility at 740 National Court (APN 550-020-038). The proposal is for the installation of three roof mounted antennas and supporting ground level utilities. M-2 District. BBT-Northbay Properties, owner; Keith Forrest, applicant. Tentative Recommendation: Conditional Approval.

Ms. Harbin described the request, said the item was continued from March 2, 2006 by the Planning Commission in order to consider whether a recent decision of the 9th U.S. Circuit Court of Appeals would have any effect on the item. The ruling did not affect the City's procedures per the Attorney's office and granting the conditional use permit for a wireless facility. The conditional use permit would allow the placement of two antennas on the building's rooftop, said each antenna was 9 feet above the parapet of the roof and painted the same color as the building. Staff felt it would not impose visual impacts and was in compliance with the zoning ordinance that allows up to a 15 foot height.

Javier De La Garza, Alcoa Wireless for T-Mobile, clarified that the original proposal was for placement of 3 antennas within 2 structures, said the antennas were concealed within those two structures, as shown in the photographs provided. He confirmed with the Planning Commission that there was no length of the duration period, and if not used, the facilities must be removed within 3 months.

Ms. Harbin noted staff's recommendation would for the Planning Commission to make the required findings 1-5 as well as 5 conditions of approval.

There were no public speakers, and the public hearing was closed.

ACTION: It was M/S (Winston/Rao) to approve **CU 1102626** subject to conditional use permit findings 1-5 and conditions 1-5; unanimously approved.

Chair Finlay recited the appeal process and noted the conditional use permit was valid for two years from the date of final approval.

5. **MS/V 1102796 – Three Lot Subdivision and Variance** - PUBLIC HEARING to consider a minor subdivision with exceptions for minimum lot size for the purpose of subdividing the lot located identified as APN 550-251-018 (eastside of 7th St. near Virginia Ave.) into three lots, ranging from 3,677.46 SF to 9,008.82 SF., for single-family residential development : Residential Low Density (Knox Cutting Specific Plan) Zoning District. Project site is currently vacant. Richmond Neighborhood Housing Services, owner; Jai Jennifer, applicant. Tentative Recommendation: Conditional Approval.

Chair Finlay noted that on April 3, 2006 the Development Review Committee met and asked for a report. **Commissioner Harris** reported relative to the items, a question arose regarding the Caltrans' easement affecting two lots. He requested clarification from staff as to whether the portion of the easement was to be considered as part of the two build able lots. If not, it would bring up other issues relative to setback issues for the two lots.

Ms. Harbin gave the staff report, described the project site and its location, zoning, said the three parcels proposed measure 9,008.82; 8,939.40; and 3,677.46 square feet, said the areas include the area contained in the Caltrans' easement areas, said they were old easements and per the applicant, would be removed or cause them to be abandoned at the time of creating the three properties. She noted the shape of the original lot does not lend itself to a standard parcelization for a 5,000 minimum square foot lot and the applicant has divided the property into three lots; 2 are greater than the 5,000 minimum and the other one is 3,677+ square feet, which was slightly substandard.

The applicant is requesting an exception to the standard lot size, a variance is required, and the zoning ordinance allows variations in lot standards in Section 15.04.920. The Subdivision Map Act findings were attached in the resolution for the Commission's review and minimum requirements for a tentative parcel map have been met by the parcel map, which is in the FR-3 single family low density residential zoning district.

Commissioner Harris questioned whether there should be some note as to the abandonment of the easement as part of the map filing and confirmed with **Ms. Harbin** that it would be incorporated as a condition.

Commissioner Rao confirmed the property was owned by the Richmond Neighborhood Housing Services (and not Council) as stated in the agenda. **Chair Finlay** also confirmed with staff that the resolution would need to be changed to reflect the recordation of the vacation of the Caltrans' easement.

Jai Jennifer, Oakland, Project Manager and Development Director for Richmond Neighborhood Housing Services, said he was available for questions, discussed the proposal briefly, said the lot sizes shown were the ones proposed for the three lots when they sell to the homebuyers. The owners will be able to purchase the land, but not be able to build on the portion of the Caltrans' easement. However, if the easement were vacated, it would be in their interest to do so.

Alicia Kline, Richmond Community Redevelopment Agency, supported the application and said she was available for questions.

Chair Finlay questioned the easement issue and asked **Ms. Renfrow** to comment. **Ms. Renfrow** concurred with the applicant, said she was not aware that Caltrans was amenable to removing the easement and it was her understanding that they would remain but would be conveyed to the ultimate buyers. She discussed the nature of the easement and Mr. Jennifer noted the easement was for access to the highway, said he could clarify this and provide a preliminary report as a condition so they could proceed further.

Chair Finlay suggested continuing the item in order for Mr. Jennifer to secure information and return for further Commission review.

ACTION: It was M/S (Winston/Coleman) to continue **MS/V 1102796** to May 11, 2006 in order to obtain additional information; unanimously approved.

7. V 1102721 – Variance on a Substandard Lot - PUBLIC HEARING to consider a proposal to construct a new single family residence on a substandard lot of 2,500 SF located at 1603 Garvin Ave. (APN 529-140-013). SFR-3 Zoning District. Robert Sutherland, owner/applicant. Tentative Recommendation: Denial.

Tanya Boyce gave the staff report, briefly described the project, said the proposal has been deemed out of scale and incompatible with the surrounding neighborhood because most development was on standard or larger lots, 1) 60% of the lots were 5,000 square feet with 9% larger than 5,000, and an additional 20% were larger than 3,000 square feet; 2) there is a clear pattern in the block of a mixture of standard and substandard size lots and the way they are spaced from each other, and the other substandard sized lot was next door to the side yard which was built in the 1950's and is single story, so the two-story request is incompatible; and 3) there is concern with the landscaping buffer, pressure on storm water infrastructure by creating additional non-permeable spaces, and concern with parking in the area.

Ms. Boyce noted that a similar proposal on the same site was denied by the Planning Commission in December of 2003, which was appealed and upheld by the City Council, and therefore, staff recommended denial.

Leslie Levy, real estate attorney representing the applicant, said the applicant performed his own fieldwork and distributed a map of the neighborhood. Staff in the planning department assured the applicant that the lot was build able, said the applicant's architect has designed several homes for 2500 square foot parcels, described the proposal as 3 bedroom and 2.5 bath, said the living area was only 1285 square feet, the plan provides for a front yard that is as deep as most in the vicinity and would incorporate quality landscaping all around the house.

She presented a photo of 1650 Burbeck Avenue recently approved and constructed with only 1.5 foot side yard setback, the plan proposed in 2003 was much larger, felt there was no particular pattern of any size home in the neighborhood, said of the 119 homes in the vicinity, 20 were multi-family and the percentage of small lots was actually greater, questioned whether there was a clear or ideal pattern of a certain type of home in the neighborhood, felt that the proposal fit in well and would raise the value of surrounding homes and would provide an affordable family home. She said 40 of the properties were developed with oversized buildings with virtually no landscaping, submitted photographs, did not agree there was substantiation for comments of staff regarding storm water infrastructure pressure, and felt the applicant would not be granted a special privilege.

Commissioner Harris questioned the 50x100 square foot lot split and its size, and Ms. Levy noted she had addressed the fact that it was a two-story home which left a small lot.

Public Comments:

Carmine Frank Giuliano, architect/engineer, said over the years he has designed several structures on 25 foot lots in Richmond city, county and San Francisco, felt they were very prevalent in the area, felt single story homes typically convert to two-story homes due to population increases, would work with the City regarding concerns about landscaping, described his experience, and said he was available for questions.

Michael Bepler, acts as a consultant for small developers, questioned how one would identify the lot had been defined as open space prior to its acquisition, felt the lot was legally created after the subdivision map act which does not conflict with the City's ordinance, and asked that the applicant be afforded the same rights of others.

Ms. Boyce noted the parcel was described as open space in the staff report because it was developed as a side yard of the home next door. **Ms. Harbin** said the zoning ordinance requires that single family homes have a certain amount of open space in the lot area and this was what was referred to, as well as a setback in the side yard.

Michael Bepler questioned and received definition of a tandem garage.

Ms. Harbin gave the staff summation, said staff was recommending denial on the item, and the variance findings were read into the record.

Commissioner Harris felt the proposal was similar to the previously submitted application and confirmed with Ms. Boyce that the applicant was notified of the similarity, but wished to move forward regardless.

Commissioner Lopez noted that currently the open space was being used as part of the home, was fenced, and did not impose a blighted situation.

Commissioner Winston referred to purchasing an available lot in the neighborhood and confirmed with **Ms. Harbin** that the variance requested was for the lot size. **Ms. Boyce** noted the lot was purchased separately by the current owner, but it was held in common with the adjacent owner at some point, and this was the reason for the need for the variance.

Commissioner Winston questioned whether the owner of the property disclose that there had been attempts in the past to develop the property, and Ms. Levy said she did not know; however, their approach was that if the Commission did not like the current plan, could they indicate what would be acceptable.

The public hearing was closed.

ACTION: It was M/S (Rao/Coleman) that the Planning Commission concurs with variance findings 1-5 and deny **V1102721**; Vote: 5-2 (Winston and Williams voted no).

Chair Finlay said any decision approved may be appealed in writing to the City Clerk by Monday, April 17, 2006 by 5:00 p.m.

8. **CU 1102744 – Mobile Vendor Operation** – PUBLIC HEARING to consider granting a temporary Conditional Use Permit for a fast-food mobile vendor at 812 Market St. (APN 409-313-005). M-2, Light Industrial District. Ramparka Sh Vohra, owner; Rosalva Orozco, applicant. Tentative Recommendation: Conditional Approval.

Janet Harbin gave the staff report, briefly described the request, said the applicant has operated without a conditional use permit for some time, and conditions for use were included in the staff report.

Commissioner Winston questioned and confirmed with **Ms. Harbin** that there were no complaints from the police department on the operation.

Commissioner Rao referred to Condition 11, regarding temporary use and confirmed the agreement had been done in writing.

Rosalva Orozco, applicant, said they had never operated the business at the location in the past and noted it was another vendor operation. She said they have permission from the owner, Ms. Sh Vohra to operate the mobile vendor and once they receive approval, the vendor must move. She noted they would be conducting business inside of the property and the agreement has been signed by the owner.

Chair Finlay referred to the letter from Watson, Hoffe and Hass, confirmed Ms. Orozco did not receive a copy of it, and said that although they were not against the applicant holding a license, they were concerned about customers from the other truck parking in the lot. Ms. Orozco noted that the parking lot was large, and customers would be parking inside the lot and not at the adjacent business' lot.

Chair Finlay referred to the need for restroom facilities, and confirmed there was agreement given for the use of restrooms from the owners of 1015 Market Avenue for employees and customers. Ms. Orozco discussed the Contra Costa County standards. **Chair Finlay** requested that amendment be made to page 4, item 4, "...shall remain open for employees and customers." **Commissioner Winston** noted that the county standards did not impose such specificity and disagreed with the proposed amendment, and **Commissioner Winston** agreed.

Commissioner Lopez felt the vendor should ensure nuisances do not occur, and s. Orozco said they have a vendor operation on 23rd Avenue and they did not have any problems at that location.

Chair Finlay felt item 3 in the Watson, Hoffe and Hass letter was already incorporated into the staff conditions.

She said any decision approved may be appealed in writing to the City Clerk by Monday, April 17, 2006 by 5:00 p.m.

Commissioner Harris said he visited the site and confirmed with Ms. Orozco that the truck in the parking lot of the supermarket was not her truck. She said her truck was at 636 23rd Street, and the one at the supermarket was not her vehicle.

Public Comments:

Armando Gomez, said he also has a mobile vending business, said he only parks the truck 3 hours per day during lunch, and the owner never discussed the mobile vending operation with Ms. Orozco. He presented pictures of the lot, said the site was contaminated and unfit to operate a mobile vending operation, said he talked to the owners across the street and felt the applicant lied about the restroom usage and agreement.

Ms. Boyce discussed the differences between a mobile vendor and those with a peddler's license and Commissioners questioned the speaker on his statements regarding his operation.

Janet Harbin gave the staff summary, recommended the Commission concur with staff statements regarding findings 1-4 and read them into the record, as well as 19 conditions of approval.

Chair Finlay confirmed with staff that a site visit was performed several times, discussed the permit with the applicant, and said staff would confirm agreement of the restroom use.

Commissioner Winston felt there was nothing in the conditions that mentions clean-up of the site, other than clean-up of daily operations. **Ms. Harbin** noted there were stipulations in the zoning ordinance that condition 1 refers to that would require a clean site and maintenance of operations, and the use permit could be revoked if not adhered to.

Chair Finlay confirmed there were no restroom facilities available at 812 Market Avenue, as it was a vacant lot.

Rebuttal

Ms. Orozco said the owner of the property was present and indicated agreement, and a letter of agreement for use of the restrooms had been provided to Hector Rojas, and **Ms. Harbin** located the letter of agreement for use of restrooms at 1015 Market Avenue in the record.

Armando Gomez, said the Pick N' Pull manager wrote him a letter which indicated no one had discussed the operations with him.

Chair Finlay noted that if the City later determined there was no agreement for restroom facilities, the applicant would be in violation of the conditional use permit and revocation proceedings would occur, and Ms. Orozco acknowledged this understanding.

The public hearing was closed.

Commissioner Winston requested Condition 4 wording be changed to, "Restroom facilities identified in this conditional use permit and located at 1015 Market Avenue shall remain open during all operating hours in compliance with Contra Costa County health requirements."

Commissioner Harris said he was not in favor of the conditional use permit, citing the fact that the mobile vending operator would not transition to permanent establishment at its current location. He also cited the fact there was another mobile vending operator 500 feet away, as well as a fast-food restaurant and food market in the vicinity.

Chair Finlay questioned whether the peddler's location preclude the mobile vendors operating on site, and **Ms. Boyce** said it did not as the peddler must move every 45 minutes and their location was not stationary.

ACTION: It was M/S (Rao/Winston) to approve **CU 1102744** based on findings 1-4 and conditions 1-19, with amendment to condition 4 as recommended by Commissioner Winston to read, "Restroom facilities identified in this conditional use permit and located at 1015 Market Avenue shall remain open during all operating hours in compliance with Contra Costa County health requirements." Vote: 6-1 (Harris voted no).

Chair Finlay said any decision approved may be appealed in writing to the City Clerk by Monday, April 17, 2006 by 5:00 p.m. Approval by the Planning Commission was valid for two years from the date of final approval.

10. Reports of Officers, Commissioners and Staff

Mary Renfrow noted an applicant has asked whether or not the Chair would grant more than the usual speaker time of 10 minutes during the next meeting, and she read the procedures noting it was at the Chair's discretion. She felt if 20 minutes were granted to the applicants, the same would need to be granted for all applicants.

Chair Finlay noted she would be absent at the next meeting, and **Commissioner Winston** said the item would be reviewed and presented at the Development Review Committee meeting and there was opportunity for a more extensive presentation. **Commissioner Harris** suggested noticing the speakers to attend the DRC meeting, and **Ms. Renfrow** said this could be done as a courtesy, as notice was not typically provided for review meetings. She said the agenda should be forwarded to those receiving the Planning Commission agenda.

Chair Finlay and **Commissioner Rao** voiced concern about setting a precedent and the Commission agreed with maintaining the 10-minute rule. **Ms. Renfrow** agreed to notify the applicant that the 10-minute time limit would remain in force.

Commissioner Winston said she, Commissioners Harris, Williams, Finlay, Rao and Coleman thanked the City for allowing them to attend the Planner's Institute Conference in Monterey, and all Commissioners voiced how extremely valuable it was.

Commissioner Rao discussed differences of city commission structures, questioned the requirement for councils to submit annual reports to the Office of Planning and Research and requested staff follow-up on when the last report was sent. He also said project managers contact individual commissioner members and requested this disclosure be announced at the start of the item. **Mary Renfrow** said this was not a violation of the Brown Act provided that after each meeting, the Commissioners do not then speak to each other in series about what their discussions were.

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