

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
April 1, 2010
7:00 p.m.

COMMISSION MEMBERS

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

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 Secretary Duncan, and Commissioners Beckles, Lane, Rao and Teltschick-Fall

Absent: Vice Chair Lee

INTRODUCTIONS

Staff Present: Lamont Thompson, Richard Mitchell, Jonelyn Whales and Carlos Privat

Brown Act – Public Forum – No speakers

MINUTES - None

CONSENT CALENDAR

Chair Finlay noted Consent Calendar items included Items 1, 2, 3 and 4 on the agenda. Chair Finlay requested removal of Items 3 and 4.

Chair Finlay provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. She said items approved by the Commission may be appealed in writing to the City Clerk by Monday, April 12, 2010, by 5:00 p.m. and announced the appeal process after each affected item.

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

Consent Calendar Items Approved:

- 1. PLN 09-069: Do-IT Fluid U-Haul Rentals – Conditional Use Permit - PUBLIC HEARING** to consider a Conditional Use Permit to establish a U-Haul Rental Service at an existing

gasoline service station at 1825 Cutting Boulevard (APN: 544-212-013), MFR-1, Multifamily Residential District. Pandal Perminder, owner; Bilal Malill, applicant. Planner: Hector Rojas. Tentative Recommendation: Withdrawn

- 2. PLN 09-169: Ahmad Tire Shop** - PUBLIC HEARING to consider a Conditional Use Permit to operate a tire sales and service business at 12637 San Pablo Ave. (APN: 524-220-021). C-2, General Commercial District. Joe Petkovich, owner; Manzoor Ahmad, applicant. Planner: Hector Lopez. Tentative Recommendation: Withdrawn

Items Removed from the Consent Calendar:

- 3. PLN 10-020: Red Taste Wine Shop/Tasting Room** - PUBLIC HEARING to consider a Conditional Use Permit to operate a retail wine shop and tasting area with a Type-20 Off-Sale Beer and Wine License at 3254 Pierce St. #C113/M108 (APN: 510-060-006). C-3, Regional Commercial District. 3254 Pierce Street Associates, owner; Jacky Chou Bin Liang, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval

Lamont Thompson gave the staff report and a summary of the request by the applicant, on behalf of Kieron Slaughter. He said staff found no zoning issues regarding the item, the hours proposed are 11:00 a.m. to 10:00 p.m. Sunday through Thursday, and 11:00 a.m. to midnight on Fridays and Saturdays, and the application would have an ABC Type 20 off-sale beer and wine license. The tenant space is small; it is located in the interior portion of the mall and security exists for the building.

Chair Finlay said she asked for the item to be removed, voicing concerns relating to Page 4, "Criteria for Approving On-Sale/Off-Sale Alcoholic Beverage Establishments". The last paragraph under "undue concentration" states that according to the ABC, a total of 3 off-sale-only licenses are allowed in Tract 3830. Currently, the tract has 2 on-sale-only licenses, and therefore, the tract is not over-concentrated with off-sale only licenses.

However, on the ABC form that is located 4 pages from the back of the report, entitled, "Information and Instructions", Item 8 states, "The number of licenses allowed in the census tract is 5 on-sale licenses and 3 off-sale licenses." Item 10 states, "The number of licenses existing in Census Tract 3830 is 11 on-sale and 2 off-sale." She said Item 11 is clearly over the limit for the tract. In addition, "yes" nor "no" are checked for Item 11 or 19 of the ABC form. In looking at the bottom of the form, it appears to come directly from the ABC Office in Oakland, and she voiced concern over the conflicting information.

Assistant City Attorney Privat suggested that if there is a concern and the Commission cannot proceed until the concern has been addressed, the Commission could continue the item. Chair Finlay confirmed with staff that there were speakers signed up on the item.

Public Comment:

Corkey Booze, Richmond, noted that the wine dispensary is in the Pacific East Mall which is a premier mall having just recently received an award from the City of Richmond. He explained that the applicant is importing special wines from China for people to purchase, the footprint of the establishment is very small, he acknowledged the flaw in the form but asked to move the approval forward and not hold the applicants hostage due to discrepancies on ABC's part.

Commissioner Rao agreed that the ABC form needs correction and agreed there should be no discrepancies between the staff report and the form.

Commissioner Teltschick-Fall clarified that the form is an ABC Form; that it technically should be completed by ABC and wondered if it could be corrected and the item moved given the condition that ABC approves it.

Secretary Duncan questioned the turn-around time for ABC and questioned whether it was possible for the applicant to redo the form and have it reviewed by ABC within a week. Mr. Thompson felt this was possible and he could also contact ABC. Secretary Duncan suggested approving the application with the condition that the CUP takes effect upon correction and submission of the form to Planning. Mr. Privat confirmed with the Commission that this was possible.

Chair Finlay voiced her concerns on the poor quality of the form, said she did not understand the answer to Item 20.b., and was not comfortable moving forward. She recommended continuing the matter and confirmed with Mr. Thompson it could be returned on the Consent Calendar at the first meeting in May.

The public hearing was closed.

Commissioner Beckles said it is unfortunate that the item could not be approved. She agreed there should be clarity and added that according to the staff report, there is reportedly no undue concentration of establishments that would adversely impact neighborhood concerns nor issues with the neighborhood council. She also believes the business would be a wonderful addition to the area.

ACTION: It was M/S (Rao/Duncan) to continue PLN 10-020 to the May 6, 2010 Planning Commission meeting; unanimously approved.

4. PLN 10-028: Modifications to Conditional Use Permit regarding Hours of Operation for the Eating Establishment - PUBLIC HEARING to consider a modification to the Conditional Use Permit for the Up and Under Pub and Grill at 2 W. Richmond Avenue, which would allow the business to operate daily from 7:00 a.m. to 2:00 a.m. (APN: 558-122-020). C-1, Neighborhood Commercial District. Richard Lompa, owner; Nathan Trivers, applicant. Planner: Jonelyn Whales. Tentative Recommendation: Conditional Approval

Recusal

Secretary Duncan recused himself from participating on the matter due to his residential proximity to the site.

Jonelyn Whales gave the staff report, noting that the CUP was approved by the Planning Commission on February 5, 2009 for an eating establishment to sell wine and beer. The hours of operation granted at that time were 11:00 a.m. to 10:00 p.m. Sunday through Thursday and 11:00 a.m. to midnight on Fridays and Saturdays. Since opening, the operator has received requests and inquiries to hold breakfast gatherings/meetings earlier in the day rather than later in the evening, and is requesting modification of established hours. The applicant is requesting hours be extended from 7:00 a.m. to 2:00 a.m. seven days a week.

Ms. Whales requested the Commission approve allowing the establishment to be open from 7:00 a.m. to 2:00 a.m., stating support from many individuals and a signed petition attached to the staff report of support. She noted the restaurant has been open since January 22nd and pointed out that if the request is approved for the amended hours, the applicant could request modification directly with ABC for the revised hours. She also noted that the staff report refers to Government Code Section 8303, which is in error, as she just was notified of ABC's policy.

Chair Finlay said she thought the crux of the issue was how the staff report was written and questioned how the Commission could waive the policy contained in the Business and Professions Code. Mr. Privat said the citation in the staff report for the one-year waiting period is incorrect; the authority does not limit a modification to a one-year period.

Chair Finlay asked that in the future, staff provide an amendment to the staff report for clarification. Ms. Whales noted that ABC did provide clarification; however, it was not received until late.

Commissioner Teltschick-Fall questioned whether the matter was discussed with the neighborhood council who was meeting the night before.

The public hearing was opened.

Public Comments:

Nathan Trivers, applicant/owner of Up and Under Pub and Grill, Pt. Richmond, said he is returning to the Commission to report that he has created a fabulous pub and grill which employs 23 Richmond residents, and that his request is consistent with other bars and restaurants in the area; Pt. Richmond establishments are allowed to be open until 2:00 a.m. Some operators choose not to stay open late and some shut down early due to limited patronage. He said Hotel Mac patrons are usually done at 9:00 p.m., the Spot stays open later, and he was happy about the clarification of ABC's policy. He asked to open up early because his goals are to feed the firefighter, paramedic, police officers who work all night and want to eat early in the morning. He noted that Fire Station No. 1 is also directly behind him and safety representatives visit him regularly, hence the need to open early. He said he does not have live music, lives three blocks from the business, and does not want to upset the neighborhood. Also, people still want to come in after 9:00 p.m. and eat and drink and he wants to be able to offer this to his customers who work off hours.

Mr. Trivers stated he attended the neighborhood council meeting the night before, and the President, Peter Minkwitz, could further elaborate on the meeting. He has heard from and worked with both customers and neighbors and he agreed to continue running a first-class operation. He will not allow drunkenness inside the business or in the nearby neighborhood and said the operation is a place for enjoyment.

Commissioner Rao acknowledged Mr. Trivers' need for people to be able to eat and drink at earlier hours. He questioned the instance of people coming and going from the business at 2:00 a.m. and its impact to neighbors who live 100 feet away. Mr. Trivers said he does not want to stay open until 2:00 a.m., will not run a late night operation, and as an owner he does not want to have people out on the street at that time. If there is a nuisance, he will address it with customers and neighbors. He noted that most of the parking for his business is further down along Railroad Avenue and away from the residential neighborhood. He hears a lot from

residents across the street and stated that noise does not only come from his business; however, he agreed to immediately address any problems as they occur.

Commissioner Beckles confirmed that Railroad Avenue runs along side the railroad and there are no other buildings across from it. Mr. Trivers said on the north there are business offices on the south there are about 100 parking spots and the railroad property.

Commissioner Beckles said she thinks it is wonderful that Mr. Trivers lives in the neighborhood, acknowledged the need to open at 7:00 a.m., and questioned the applicant's request to stay open until 2:00 a.m. if he does not plan to operate until then. Mr. Trivers said he requests this because this is what every other establishment has. He noted that State law limits serving alcohol after 2:00 a.m. and before 6:00 a.m. There might be one night out of the year, such as New Year's Eve or St. Patrick's Day where he may want to accommodate a private party, but he does not foresee any other times and reiterated his own need for sleep and rest.

Commissioner Beckles questioned the average hour at which businesses close in the neighborhood. Mr. Trivers said he was not sure, but his average would be 1:00 a.m., except for holidays. He noted that on St. Patrick's Day he closed at 10:00 p.m. and lost an estimated \$3,000 in sales.

Peter Minkwitz, President of the Pt. Richmond Neighborhood Council, Pt. Richmond, said the night before the neighborhood council took a vote which does not match what is before the Commission tonight. He stated that Mr. Trivers, on three or four occasions, asked for hours from Sunday through Thursday; 12:00 midnight, and Friday and Saturday; 1:00 a.m. and this was what the neighborhood council considered, which was nearly unanimous. He said the pub had a bad reputation in the past but this has not been their experience with the current operator. He said the food is good, it is a good meeting place, and given their experience to date he would support the hours the neighborhood council voted on. Given the discussion and consideration for the longer operating hours of 7:00 a.m. to 2:00 a.m. everyday, most of the neighborhood council and neighbors were present, but 25% of those present indicated they would be opposed to a 2:00 a.m. closing. Mr. Minkwitz also acknowledged that other bars do close when business fades out.

Chair Finlay confirmed with Mr. Minkwitz that the neighborhood council did not discuss opening hours at all; that the request from Mr. Trivers was the extension of the closing only, and this was what was voted on.

Commissioner Beckles confirmed that 2 people among 41 were opposed to the extension of hours to 12:00 midnight and 1:00 a.m. Chair Finlay questioned if there was anecdotal information as to why they were opposed, and Mr. Minkwitz said they gave a detailed explanation for their opposition. One said anyone there after 2:00 a.m. was not there for eating but for drinking and voiced concerns with the likelihood for drunkenness.

Commissioner Teltschick-Fall confirmed with Mr. Minkwitz that there was a strong majority in favor of extended hours of 12:00 midnight Sunday through Thursday, and 1:00 a.m. Friday and Saturday.

Margaret Morkowski, President of the Pt. Richmond Business Association, Richmond, voiced support for the request for extension of hours until 2:00 a.m. and for opening at 7:00 a.m. There are other restaurants across the street that is also open at 7:00 a.m. for breakfast and it would be an asset to the community. She attended the neighborhood council meeting and concurred

that only two people were opposed to the 2:00 a.m. closing. She said Mr. Trivers has been a wonderful asset to the association. He attends meetings, is nominated for a seat on their board, has become good friends with other restaurant owners, and recommended acceptance of the request.

Richard Lompa, Richmond, building owner, said the building was previously boarded up for years. It was one of the most derelict buildings in Richmond and he purchased it with the intent of improving it and putting something back into the community. He discussed his and Mr. Trivers' work in upgrading the building, said he visited the dump 75 times with garbage, said he spent hundreds of thousands of dollars in improving it and supported approval.

David Vincent, Richmond, said the Plunge is across from the Up and Under which will be opening this summer, and he believed that Mr. Trivers' request for a 2:00 a.m. closing is reasonable. He lives within 500 feet of the property, said there were never police calls when the building operated as The Pt. Restaurant, said that other establishments have the same 2:00 a.m. option and the building has always operated as a bar and restaurant since the 1940's.

Andrea Glerum supported the request of the applicant to extend hours. She has enticed residents of other cities such as Oakland and Marin County to come to Richmond for food and drink and her friends had previously never been inclined to spend time or dollars in Richmond. She said it is important to allow the establishment to set its own hours in order to increase its revenues and the likelihood to succeed. She said the applicant has begun to demonstrate his commitment to the community and this will increase if he is able to operate with hours that make sense to him and which are similar to other establishments. She asked the Commission to support the request.

Ms. Whales gave staff summation, stating that staff recommends the Commission grant the stated hours of operation as requested by the applicant.

The public hearing was closed.

Commissioner Rao noted that Mr. Trivers spoke of State law that gives him the right to allow the restaurant to remain open until 2:00 a.m. and questioned if this was the law. Mr. Privat said the applicant indicated that he has a right under the Type 47 license to apply for the right to sell alcohol up to 2:00 a.m., which is between the applicant and ABC who will either grant this right or condition or modify the right in some way.

Chair Finlay confirmed with Mr. Privat that this does not preclude the City in the CUP process to require alternative hours of operation.

Commissioner Rao noted the neighborhood's support, but questioned what would occur should ownership and conditions change. Ms. Whales said the new owner would be allowed to run the establishment with the current CUP, and Mr. Privat added that the CUP runs with the land.

Commissioner Teltschick-Fall said if the operation was to change ownership and neighbors had a complaint, she confirmed with Mr. Privat that a revocation action could be commenced if there was a continuing nuisance and/or the operator was not following conditions under the CUP.

Commissioner Beckles made a motion to approve staff recommendation for condition approval and grant the extended hours as requested by the applicant, 7:00 a.m. to 2:00 a.m.

Commissioner Rao asked for a substitute motion to recommend the establishment operate 7:00 a.m. until 1:00 a.m. seven days a week. There was no second and the motion died.

ACTION: It was M/S (Beckles/Lane) to approve staff recommendation for condition approval and grant the extended hours as requested by the applicant, 7:00 a.m. to 2:00 a.m. seven days a week. Vote: Ayes: Beckles, Lane, Teltschick-Fall, and Finlay. Noes: Rao.

Chair Finlay announced the appeal process.

Secretary Duncan returned to the dais to participate further in the meeting.

COMMISSION BUSINESS

4. Reports of Officers, Commissioners and Staff

Commissioner Rao stated he just had met just prior to the meeting in Martinez with Congressman John Garamendi and George Miller on the topic of health care.

Secretary Duncan said staff questioned the Commission's availability for May meetings regarding the General Plan and Pt. Molate project, and asked for an update.

Mr. Mitchell said a significant amount of public comment is being carefully evaluated and incorporated into the General Plan. Once completed, another draft will be available for review. There is a possibility that this may return in May, but it is more likely to return in June. He said the City Council has asked staff to return to them to re-present the Pt. Molate Re-Use Plan which they would like to consider for the area, and staff will notify the Commission regarding the future agenda item.

Chair Finlay confirmed with Mr. Mitchell that the City Council would like to incorporate the Pt. Molate Re-Use Plan into the General Plan.

Commissioner Teltschick-Fall reported meeting with Mr. Alan Wolken on Monday to discuss questions she had regarding the Redevelopment Agency's EIR document used to apply for financing, which the Commission approved in its last session. She had concerns about the site for remediation and the fact that the categories for information were not equivalent and difficult to prioritize. She said they discussed the possibility of upgrading some of the descriptions for the sites in the future, even though the document is approved.

Chair Finlay clarified that in terms of disclosure Commissioners are not required necessarily to disclose meetings with staff; however, Commissioners could for informational purposes and thanked Commissioner Teltschick-Fall for her report.

Chair Finlay voiced interest in attending and paying for her registration to the ABAG General Assembly where SB 375 will be discussed.

Adjournment

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