

**PLANNING COMMISSION MEETING**  
**COUNCIL CHAMBERS, RICHMOND CITY HALL**  
1401 Marina Way South, Richmond, CA  
December 3, 2009  
7:00 p.m.

**COMMISSION MEMBERS**

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

Vice Chair Nagarajo Rao  
Charles Duncan  
Sheryl Lane

The meeting was called to order by Chair Finlay at 7:03 p.m.

Commissioner Lee led in the Pledge of Allegiance.

**ROLL CALL**

**Present:** Chair Finlay, Vice Chair Lee, Secretary Duncan, and Commissioners Beckles, Lane, Rao and Teltschick-Fall

**Absent:** None

**INTRODUCTIONS**

**Staff Present:** Jonelyn Whales, Janet Harbin, Carlos Privat, Richard Mitchell, Lina Velasco, Kieron Slaughter, and Hector Lopez

**MINUTES**

**October 1, 2009**

**ACTION: It was M/S (Lee/Rao) to approve the minutes of October 1, 2009, with minor corrections; unanimously approved.**

**July 6, 2006**

Chair Finlay said she and Commissioner Rao were the only current Commissioners for approval of minutes of the July 6, 2006 Commission meeting. She submitted minor revisions.

**ACTION: It was M/S (Rao/Finlay) to approve the minutes of July 6, 2006, with minor corrections; unanimously approved (Beckles, Duncan, Lane, Lee and Teltschick-Fall abstained).**

**August 24, 2006**

Chair Finlay said she, Commissioner Lee, and Commissioner Rao were the only current Commissioners for approval of minutes of the August 24, 2006 Commission meeting.

**ACTION: It was M/S (Rao/Lee) to approve the minutes of August 24, 2006, as submitted; unanimously approved (Beckles, Duncan, Lane and Teltschick-Fall abstained).**

#### **April 19, 2007**

Chair Finlay said she and Commissioner Lee were the only current Commissioners for approval of minutes of the April 19, 2007 Commission meeting.

**ACTION: It was M/S (Lee/Finlay) to approve the minutes of April 19, 2007, as submitted; unanimously approved (Beckles, Duncan, Lane, Rao and Teltschick-Fall abstained).**

#### **November 2, 2006**

Chair Finlay said she and Commissioner Lee were the only current Commissioners for approval of minutes of the November 2, 2006 Commission meeting.

**ACTION: It was M/S (Lee/Finlay) to approve the minutes of November 2, 2006, as submitted; unanimously approved (Beckles, Duncan, Lane, Rao and Teltschick-Fall abstained).**

#### **CONSENT CALENDAR**

Chair Finlay provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. She stated that the Consent Calendar consisted of Items 4, 5, 6, 7 and 8. Ms. Harbin said staff had no changes to items on the Consent Calendar.

Commissioner Rao requested removing Item 8 from the Consent Calendar. Commissioner Duncan read Items 4, 5, 6 and 7 on the Consent Calendar, and noted staff recommended holding over items 4 and 5.

**ACTION: It was M/S (Duncan/Rao) to adopt the Consent Calendar consisting of Items 4, 5, 6 and 7; unanimously approved.**

#### **Items Approved:**

- 4. PLN 09-069: DO-IT FLUID U-HAUL RENTALS - 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) Zoning District. Owner: Pandal Perminder. Applicant: Bilal Malill. Planner: Hector Lopez. Tentative Recommendation: Hold Over To 1/7/2010.
- 5. PLN 09-098: SINALOENSE TACO TRUCK - PUBLIC HEARING** to consider a Conditional Use Permit to operate a new mobile restaurant at 4040 Macdonald Avenue (APN: 517-320-028). C-2 (General Commercial) Zoning District. Owner: Abboushi Mohammad Manuel. Applicant: Amadeo Gil-Recinos. Planner: Hector Lopez. Tentative Recommendation: Hold Over To 1/7/2010

6. **PLN 09-109: FLOR DE JALISCO TACO TRUCK - PUBLIC HEARING** to consider a renewal of a Conditional Use Permit to operate an existing mobile restaurant at 710 23<sup>rd</sup> Street (APN: 528-360-028). C-2 (General Commercial) Zoning District. Owner: Lu Nancy Chao Applicant: Joaquin Rodriguez. Planner: Hector Lopez. Tentative Recommendation: Conditional Approval
7. **PLN 09-110: FLOR DE JALISCO TACO TRUCK - PUBLIC HEARING** to consider a renewal of a Conditional Use Permit to operate an existing mobile restaurant at 2025 Macdonald Avenue (APN: 514-070-020). C-B (Central Business) Zoning District. Applicant: Joaquin Rodriguez. Planner: Hector Lopez. Tentative Recommendation: Conditional Approval

**Brown Act – No Speakers**

### **HOLD OVER ITEMS**

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 20<sup>th</sup> Street\_(APN: 514-120-021). MFR-3 (Multi-Family High Density Residential) Zoning District. Owner: Sharon Peng. Applicant: Richard Tapp. Planner: Hector Lopez. Tentative Recommendation: Denial.

Associate Planner Hector Lopez said the applicant is requesting a variance to reduce the side yard setback to 2 ½ feet. The variance would allow for an addition to a second dwelling located in the rear of the property. Initially the applicant intended to utilize the third unit on the property, but because it required additional parking that could not be met. The applicant revised the proposal by eliminating the third dwelling unit. The request for the side yard setback cannot be justified under the zoning ordinance since there are no special circumstances attributed to the lot such as size, shape, topography, or other characteristics. Granting the variance would constitute a special privilege, and they are recommending denying the variance.

Richard Tapp, Architect/Applicant, confirmed that the Commission was given a letter in response to the staff report. He clarified that this is a legalization of an existing third residential unit on the property. His client, Ms. Peng, purchased the property a year ago from a bank as a foreclosed property. The documents from the bank and the representation from the real estate agent were for two existing residential units plus an incomplete third unit. The third unit was a residential unit. When she purchased the property with that belief, she tried to continue the building permit that was taken by the previous owner to add electrical service to the third unit. At that time she was informed the third unit was not legal and was told to go through the City to legalize it and obtain the appropriate permits. She was shocked by the denial of this application. She hired Mr. Tapp to assist in legalizing the unit. He wants to be sure the Commission understands that she did not do the alteration but that she inherited it without knowing about the legal status of the unit.

Mr. Tapp reviewed the site plan and pointed out the location of each unit. The property is large and the existing parking is sufficient. The proposal to legalize the third unit is to add a curb cut on the north side to accommodate two tandem parking spaces for the original house, and to improve the existing driveway and create two independent parking spaces for the two units in the rear. This proposal was originally submitted many months ago to Planning staff and their

original recommendation was it could not be approved as is. They revised the application based on consultation with City staff to combine the two units at the rear, eliminate the encroachment at the rear, and provide parking on both sides. They presented this proposal to the Neighborhood Council and they did not think it was a good proposal architecturally and financially. They thought the existing building was viable and it would make more economic sense as a small rental in that neighborhood. They recommended using the original proposal and legalizing the existing unit as is. He feels they satisfy the parking requirements and open space multifamily requirements. The building footprint is 37% of the property, the driveway is 20% of the property, and the landscaping/open space is 43%, and these are typical percentages for properties in this area. He said the owner has met with many neighbors and has obtained their signatures supporting the legalization of the existing unit. He said the variance could be approved based on the finding that circumstances will not deprive the property of privileges enjoyed by others in the vicinity. There are a lot of existing houses and structures that do not comply with current zoning requirements in the neighborhood because they were built before zoning was put into place. Over 50% of the structures in the neighborhood encroach on setbacks. If this project is denied, he feels they are not being given the same property rights as the majority of property owners in the area.

Commissioner Beckles asked if the Neighborhood Council was in support of the project. Mr. Tapp said yes, and a representative from the Neighborhood Council is in attendance tonight and will speak.

Commissioner Rao asked about the utilities in the existing unit. Mr. Tapp answered there are no utilities in the structure. It is a 2-bedroom facility with a kitchen, bathroom, and closets. It is basically finished and ready for a final inspection. The reason this issue was triggered is the original owner had submitted for a building permit for electrical service to the unit. That permit was left open, and when Ms. Peng purchased the property she reapplied for the permit to activate the electrical. The building inspector said there were no records of the unit as legal.

Commissioner Duncan asked how they obtained a building permit to begin with. Mr. Tapp said he does not know, and he has not been able to speak to the owner prior to the bank. He does not know if there was a building permit issued. There were electrical and plumbing permits, some activated and some expired. Commissioner Duncan asked if the original owner or the bank applied for the electrical permit, and Mr. Tapp clarified it was the original owner. The structure has been there for 2-3 years. Ms. Peng has owned the building for over a year and has not received any complaints about the structure. Commissioner Duncan asked if he saw any disclosure documents from the bank as part of the sale. Mr. Tapp said he received several items including an appraisal, the original sales slip, and closing documents.

Chair Finlay said typically there will not be disclosure at all from a bank because they do not have any records or a document search. They are exempt from doing so because they know nothing about the property. Mr. Tapp noted the sale was as is. Chair Finlay said that is why it is important for the agents involved to go to City Hall and run a records check to protect the client.

Commissioner Rao asked if the other houses in the neighborhood that are not in compliance include electrical. Mr. Tapp answered that he assumes they do because they are occupied. He clarified that they are not incompliant, but rather existing structures that were built before the zoning requirements went into effect. Chair Finlay noted many of these properties were also built out during World War II because there was such an incredible need for housing.

Mr. Tapp said the properties on either side of the applicant's property are zero lot line. If the two setbacks are averaged it ends up at 7 or 8 feet. The average is larger than the 5 feet required. Many of these properties are half the size of the applicant's property, and they have three or four units.

Commissioner Duncan said the Staff Report suggests this would not be an issue if the building were turned back into a garage. He asked if the owner wants to do that, or if she wants to garner the income from the third unit. Mr. Tapp said the issue is she does not need the garage, but she needs the income from the unit to support expenses. If the Commission denies the application, it is likely that the owner will convert the building into a storage workshop and make it an accessory structure. If it is an accessory structure that is non-inhabitable, it can stay as is, but there would be lack of income for his client.

Commissioner Teltschick-Fall asked where the landscaping is located on the drawings. Mr. Tapp went over the landscape plan and noted the gravel area that was previously parking would become two parking spaces and paving/landscaping improvements. The second curb cut in the rear will also include landscaping.

Commissioner Lee clarified that the garage conversion may not be new to the applicant, but it is new construction. He commended the applicant for going through the correct process to legalize the unit.

Commissioner Duncan asked if the footprint of the third unit is larger now than when it was a garage. Mr. Tapp said the garage was approximately half or two-thirds the size of the third unit now. Commissioner Teltschick-Fall said if the applicant turned that into a workshop space, they would still have the larger footprint than the original garage. Mr. Tapp said they do not know how long it has been in its existing situation, but he thinks about three years.

#### Public Comment:

David Cong, Richmond, said he bought his house last year and his agent told him it was legal to have three units. After buying the house, they went to the City and found out the third unit was not legal. He spent \$30,000 to upgrade. He said he is present tonight to ask the Commission to help. Commissioner Duncan asked if he would agree to turn that unit into a garage, workshop, or non-habitable space. Mr. Gong said no because they need the income to service his mortgage.

A. J. Jelani, Richmond, President of Belding Woods Neighborhood Council, said Belding Woods extends from San Pablo to 23<sup>rd</sup> Street. When the applicant came to the Neighborhood Council they shared an updated version of the project. That version put a deck in the back of the third unit, with a 100-foot tree above the deck. He suggested scrapping the deck, cutting two feet of the back and they would be in compliance. It is a mother in law cottage, and is not set up for a big family. It does not look like a garage. It looks like it is inhabited. It is up off the ground and if it is turned back into a garage then that would be a waste of money and time. On the south side it is not butted against the neighbor but is 5-7 feet away. The property line may not even be correct since it was done so long ago. His concern was off-site parking, since there is not a lot of parking on the street, but Mr. Tapp had explained there would be parking to the sides of the unit.

Commissioner Rao asked if he is aware of units being used and rented in the neighborhood. Mr. Jelani said this is not unusual at all in his neighborhood. The mother in law type of unit is fairly

common. He said he interviewed the neighbors and he could not find anyone against the project. Their only concerns were parking.

Chair Finlay asked about the foundation of the former garage and asked Mr. Tapp for information about it. Mr. Tapp answered the garage has been raised and the porch includes four steps. He does not know if there were foundation upgrades, but that would be addressed with the Building Department after working with the Planning Commission. Chair Finlay stated if they do not approve this application, the only use for this property will be an accessories structure. It will not revert back to parking unless something is done to lower it. Mr. Tapp said converting it back to a garage would cost a lot more than making it a third residential unit. Chair Finlay said accessory structure would be doable.

Commissioner Duncan asked if the garage has a perimeter foundation around it. Mr. Tapp said it does have a foundation, but the quality of it is questionable.

Commissioner Teltschick-Fall questioned why the idea of joining the two residences in the back into one did not go through. Mr. Tapp said his main goal was to prevent demolishing the structure. When they received negative feedback from City staff, they worked on this proposal with them, and they thought this was a better solution. It made sense because they were able to salvage half the building. Also the cost to join the two is significant and it would not provide as much income as the two separate units.

Mr. Lopez said staff is recommending denial based on the fact that they cannot make the findings for approval. The zoning code is very strict regarding setbacks, and they need to adhere to that unless they are going to make changes to the zoning code.

Commissioner Lee asked if three units are allowed on that lot if appropriate setbacks were met, under current zoning. Mr. Lopez answered three units are allowed. The problem is the location of the structure on the property. In order to add more parking spaces the lot will be reconfigured in a very awkward way. Commissioner Lee commented it is really a matter of setback variance and awkward parking. Mr. Lopez said there will be no path for pedestrian access, and the parking spaces will be located in areas accessible to the unit.

Commissioner Rao said they are finding out about the illegal unit because the applicant came through the correct process. They are also finding out that 60% of the properties are being rented out. It is a quandary because they want to encourage people to be honest and come to the City, yet when that is done the City denies projects based on zoning code. Mr. Lopez said there are a number of nonconforming structures throughout the City. Some of the structures are in precarious condition and do not provide the setback. Sometimes they are very compatible with areas and sometimes they are not.

Commissioner Rao said a state law went into effect in which zoning rules are relaxed when putting in second units. Richard Mitchell, Planning Director, said there was a law but that was for a first and second unit. The question is whether there are three adequate units in the current application. The parking issue is also important because of the placement of the primary unit in the middle of the site. If the areas in between are turned into parking, it is unclear how to govern and control whether tenants are going to comply and drive to the back. It is true that it is doable and there are people doing it now, but that is not a justification for continuing to do it. He thinks the Commission should decide whether this configuration can work.

Janet Harbin pointed out another issue is the amount of usable open space that is required for each individual residence. A lot of this area is paved for parking and there is not a lot of usable open space for three residences.

Commissioner Duncan said there is a prescription for the amount of open space required per dwelling unit and he asked whether subtracting the parking continues to meet that quantity. Attorney Carlos Privat answered that it does meet the open space required.

Commissioner Beckles asked if this would be an exception to the rule if they approved the project, and Mr. Privat said they can make a special circumstance finding in this case that they might not make in another neighborhood.

Chair Finlay said the ordinances are very clear about what is required, but the applicants did not create the adverse condition. However, when one purchases property, one has the responsibility to research what one is buying and what is legal and permitted. The contract is very clear about the obligations of the buyer and that is to investigate the conditions of the property. Other owners in that area enjoy this particular usage but they were done in World War II before setbacks were recorded. Staff does not feel comfortable making the findings and brought it to the Planning Commission to decide whether they want to create a variance. When the Planning Commission creates a variance for this type of situation, they also create a precedent. She is more concerned by the precedent that by what is given to an individual landowner. She is concerned about the financial viability of the project, but that is not the purpose of the Planning Commission. The purpose of the Planning Commission is to look at the project and decide whether they can make the findings.

Commissioner Lee asked when the garage was originally built, and when it became more than a garage. Mr. Tapp said they assume the garage was built at the same time as the main house in the late 1930s. He guessed the recent construction he has seen is approximately three years old, but that is a professional guess. It could have been extended a long time ago and just updated within the last three years. Commissioner Lee asked if the foundation work looks like it was done in the last five years. Mr. Tapp said there is some but not all. There is some old foundation work there as well.

Commissioner Duncan suggested this would be resolved if they removed two feet from the back end of the building so that it meets the five foot setback. Mr. Lopez said it is possible.

Commissioner Beckles said she is having a hard time coming up with reasons to deny the project because the applicant did not create the problem and the bank was not forthcoming with this information. Chair Finlay noted the bank has no obligation to disclose. Commissioner Beckles said as a buyer she would expect to hear there are some issues with the property. The neighbors are all supporting the project, and the Neighborhood Council supports it. She thinks this is a special circumstance.

Chair Finlay asked if the applicant would consider implementing Commissioner Duncan's suggestion to reduce the rear of the structure by 2 feet to comply with the 5-foot rear setback. Mr. Tapp said they had originally considered doing more demolition than that on the revised proposal, and he thinks the owners would be willing to accept that.

Mr. Lopez said a variance would still be needed for the side yard. Commissioner Duncan said that the wall in that location is probably original and has probably been that way since World War II. If the new building footprint is brought in to within the allowable setbacks and assume

the original side yard setback is an existing nonconforming condition, then they are consistent with the neighborhood where 60% are in that nonconforming condition. Mr. Lopez said the setback requirement in the rear is 20 feet. Commissioner Duncan said they have a drawing that shows it is 5 feet. Mr. Tapp said the 5 foot setback is for a second unit. Mr. Mitchell said the setback for a third unit is 20 feet.

Chair Finlay suggested reviewing the project to see if there is another way to approach this project. She is not sure there is a way to salvage it since 20 feet is a large amount of space. Mr. Tapp said the 20 feet is under the multi-family dwelling requirement when there are 3 or more units. That is a condition for an apartment building and not for the current property. The property right next door has 3 units and many of the properties in the area have 3 units in this configuration. The regulations were created 50 years after the buildings were constructed and were put in place for standard conditions. This is a very un-standard condition. The Planning Commission has approved 4 of the 6 requests for previous variances.

Commissioner Lee said he would like to see if the Commission could make a motion to approve and the applicant is given an opportunity to come back with another attempt to meet the rules. Chair Finlay said if they do that, they also need to change the findings so that the approval can be justified. The other alternative would be to ask for a continuance and ask staff to change the findings. Given the situation, she does not think staff can justify changing the findings.

The public hearing was closed.

Commissioner Lee said he would like to make a motion to approve the project as a special circumstance. He does not agree with staff's statement in Condition #1 that the criteria are not satisfied. Because this building exists, is not an uncommon situation in the neighborhood, and there is neighborhood support, he feels they can accept this project.

Chair Finlay asked Mr. Privat for guidance as to whether this qualifies as special circumstance. Mr. Privat said a special circumstance may include disparities in the application of a regulation to the property as compared to neighboring properties.

**MOTION: It was M/S (Lee/Rao) to approve PLN 09-014 as a special circumstance by changing the findings in Condition #1. Vote: 3-2 (Lane and Teltschick-Fall abstained). The motion was failed because 4 votes are needed to carry the motion.**

Commissioner Duncan said one of the reasons he would like to carry this over is to make an air tight finding. He asked staff if they could research the variance requests that were approved by the Planning Commission and to find out what the findings were so they could craft findings that would hold water as a precedent. Chair Finlay said if that is an acceptable alternative then they would need to reopen the public hearing so they could continue it. Commissioner Rao asked why the public hearing must be opened to make a new motion. Mr. Privat said they do not need to open the public hearing to continue the item.

**ACTION: It was M/S (Duncan/Beckles) to continue the application for PLN 09-014 to January 7, 2010; unanimously approved.**

- 2. PLN 09-097: RICHMOND CHECK CASHING FACILITY – PUBLIC HEARING** to consider a proposal for a Conditional Use Permit to establish a Check Cashing Facility in tenant space at the building located at 12800 San Pablo Avenue (APN: 523-021-019). C-2 (General

Commercial) Zoning District. Owner: Satake 1 LLC. Applicant: Maxwell Beaumont. Planner: Jonelyn Whales. Tentative Recommendation: Denial.

Assistant Planner Jonelyn Whales said the recommendation for this project is denial. It is approximately 1,300 feet from the existing San Pablo border. San Pablo recently passed an urgent ordinance prohibiting all check cashing businesses because there are so many along San Pablo Avenue. Staff conducted their own survey of the San Pablo Avenue corridor from San Pablo to Albany, and staff found there were approximately nine of these facilities along that corridor. Most of them were not designated as check cashing facilities, but in liquor stores or food stores. Staff reviewed the application with the applicant and explained the situation. Staff found it was hard to make the findings to grant a conditional use permit for a check cashing facility at that location. Based on the municipal code within the C-2 zoning district, it is a conditionally permitted use.

Maxwell Beaumont, Emeryville, Architect/Applicant, said the owner currently has a mobile phone facility near the proposed facility. Currently the mobile business is used to pay bills and also check cashing for the business located in the same complex. He reported the results of a study that 25.6% of American households do not have a bank account, and he thinks it is important for checking cashing facilities to remain alive in these communities. He understands the issues that the City is having with some of these facilities, but that can be dealt with through regulation and conditional approvals to guard against crime.

He said the main thing this facility will do is help residents in the neighborhood to pay their bills. The owner has approval from PG & E, water department, and bill-payment agencies to bring their payments to the office. It is not just a check-cashing facility. There will be no payday loans made at this facility. Check cashing will be done at a flat rate, typically \$3 per check, unlimited. If you go into Bank of America without an account to cash a check it costs \$6. There is definitely a need for this in the community. If it is not located there, they will not be in business very long. The goal is to create something up and beyond the standard that is currently in the neighborhood. Many people have to go to liquor stores to cash checks. They want to create a clean, well-lit environment for people to come in and cash their checks and pay their bills and leave safely. They will install security cameras, there will be an armed security guard on duty, and there will be no loitering signs and no loitering laws enforced. The hours will be from 9:00am to 6:00pm, and it will not be open at night when people are susceptible to crime. There will be trash pickup and the shopping center will be cleaned by the tenant on a daily basis. The shopping center is in need of foot traffic. This particular space has been vacant for two years.

Commissioner Duncan asked the location of the nearest check-cashing business currently. Mr. Beaumont said the next dedicated checking cashing business is approximately a mile up the street. There are some stores with an impromptu window for check cashing. They want to put in a business that is dedicated to check cashing and bill payment.

Commissioner Lee asked if the sole income for this business will come from charging \$3 fees for people to cash checks. Mr. Beaumont answered yes, and bill paying is free of charge to customers. Commissioner Lee commented that is a lot of checks. Mr. Beaumont said there is a job agency within the same shopping center, and they are processing their checks through this business. The owner has a state license for check cashing but he wants a dedicated business to deal with the check cashing and bill paying.

Commissioner Teltschick-Fall asked about the successful business the owner is currently running. Mr. Beaumont said it is in the adjoining space and is a Metro PCS business. The proposed business is to the right of that on the diagram.

Public Comment:

Rita Barouch, Richmond, said she lives around the corner from the proposed business. She is speaking for herself and neighbors along her street who are all concerned about this proposal. They are concerned about bringing in good healthy businesses that offer services that will support the well-being of the neighborhood. They know that check cashing services have created problems such as being targets for crime and creating debt when percentages are paid. She is concerned about the proximity to the casino. She does not see the need for another check cashing facility when others are available. They have the opportunity to attract businesses that can better serve the neighborhood, such as food, cultural activities, etc, that would be more desirable to the residents living in that area. She also complained about the enormous balloon erected on top of the Metro PCS building next door. It is lit all night long and is a complete eyesore to the neighborhood. She said she is mentioning that because it is the same applicant. Since that choice was made, she questioned what other decisions might be made regarding the new business.

Chair Finlay asked Ms. Whales if she has visited the site and if she noticed the balloon on top of the property next door. Ms. Whales answered yes, and pointed to the balloon in Attachment 4. Chair Finlay asked Ms. Whales to check whether that balloon is violating the sign ordinance and send it to abatement if it is not appropriately placed.

*Rebuttal – Applicant*

Mr. Beaumont said the balloon in question will be taken down tomorrow. It was put up the day after Thanksgiving for a one-day promotion. He thinks check cashing is important because there are many people in the community who do not have bank accounts. A lot of the places along San Pablo in Richmond are grocery and liquor stores, and he thinks those are more susceptible to crime. The current application includes several steps to limit crime in the area.

Ms. Barouch declined the opportunity for rebuttal.

Mr. Lopez pointed out there are several available check cashing facilities in the area, and Ms. Whales confirmed that is the case. Chair Finlay pointed out the testimony said the nearest check cashing facility was a mile away, but looking at the report prepared by Ms. Whales there are closer facilities. Ms. Whales said the applicant was in error, and there is a check cashing facility one block away in San Pablo.

Commissioner Duncan asked if the check cashing facility one block away is dedicated in the same way as the current project. Ms. Whales answered yes.

The public hearing was closed.

Commissioner Duncan said if these were evenly spaced along San Pablo Avenue he would not have difficult approving it. But there is already a check cashing facility a few feet away from the proposed site. He thinks that suggests an overconcentration in a very small area. He has reservations about the proposal and concurs with staff's opinion.

Commissioner Teltschick-Fall said she thinks the staff recommendations make a lot of sense.

Chair Finlay said she finds it particularly troubling that a check cashing facility needs a conditional use permit and yet the applicant is stating the owner is already running a check-cashing facility out of the Metro PCS store as a service. She asked staff to research this issue and follow up.

**ACTION: It was M/S (Lane/Beckles) to deny the application for PLN 09-097; unanimously approved.**

### **NEW ITEMS**

Item 8 from the agenda was moved up to the current location.

- 8. PLN 09-127: SUSHI SHO RESTAURANT WITH BEER AND WINE SERVICE – PUBLIC HEARING** to consider a Conditional Use Permit for an eating and drinking establishment at 10749 San Pablo Avenue (APN: 508-291-008). C-2 (General Commercial) Zoning District. Applicant: Akitoshi Kawata. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval.

Assistant Planner Kieron Slaughter said this application is for a conditional use permit to operate and eating and drinking establishment. The applicant has operated a previous Japanese restaurant on Solano Avenue in Berkeley for 26 years. The project is located on the west side of San Pablo Avenue next to Big O Tires. The applicant is applying for an ABC license, and because there is a concentration of ABC licenses the applicant was required to make a statement. Staff reviewed that statement and agreed that he has satisfied findings 2 and 3, the public convenience and necessity requirements.

The applicant met with the Richmond Annex Neighborhood Council and they were in unanimous support of the project. They suggested several conditions that staff incorporated into the conditional use permit, and he spoke with Ms. Silva who apologized for not being in attendance tonight. As shown in Attachment 7, she supports the project. The location sits on a heavily retail corridor of San Pablo Avenue, and staff feels that is an adequate location for a proposed restaurant.

Commissioner Rao said he wants to be sure all of the rules are met for a conditional use permit for an eating and drinking establishment. Mr. Slaughter said the rules for an eating and drinking establishment are included.

Akitoshi Kawata, Applicant, said he has lived in Richmond for the last 20 years. His lease ended in September and he closed the restaurant after serving sushi and sashimi for 26 years. He has many regular customers waiting for him to reopen. His previous restaurant was on Solano Avenue 2 ½ miles away, and most of his customers are from this area. He used to be in Berkeley and many of his customers came from other parts of the world. He bought the place on San Pablo Avenue, which is his dream property to reopen. He would like to retire, but he cannot because he still has house payments and his son is in graduate school. He appreciates the Commission's support to reopen his restaurant on San Pablo Avenue.

### **Public Comment:**

Garland Ellis, Richmond, Vice-President of Richmond Annex Neighborhood Council, said he lives within 150 feet of the proposed restaurant. The Richmond Annex Neighborhood Council has no problems at all with the restaurant and would like it to come into the neighborhood. They found some errors in the City report which they feel will set a precedent with upcoming businesses they may come into the area. On page 2, Discussion, they have downplayed the significance of Gregory's Lounge, which is a bar and is next door to the proposed business. They also state there are no conflicting time issues with any of the existing businesses and the new business, but the bar is open the same hours and beyond. There are no parking requirements for Gregory's Lounge; there is only one spot in front of the business. People park up the block and across the street in the Marshalls parking lot every Saturday night. They would like a requirement for parking for this business. The City stated there is no parking requirement for this business. They are grateful the owner volunteered to supply parking at the Big L parking lot next door.

Chair Finlay said there will be no rebuttal since Mr. Ellis' position was officially neutral on the proposed application.

The public hearing was closed.

**ACTION: It was M/S (Teltschick-Fall/Beckles) to adopt resolution in Attachment 1 to approve the conditional use permit for PLN 09-127 subject to the conditions therein; unanimously approved (Rao abstained).**

### **HOLD OVER ITEMS, CONTINUED**

- 3. PLN 09-026: MIRAFLORES HOUSING DEVELOPMENT PROJECT – PUBLIC HEARING** to consider recommending approval of a General Plan Amendment to change the land use designation from 917 & 917/941 to 918; a Rezoning from SFR-3 & SFR-3/EA to PA zoning district; and the adequacy and certification of the project Environmental Impact Report (including draft and final EIR, with associated Technical appendices) to the City Council for the construction of a 230-unit housing development, including 80 units of affordable senior housing and 150 market-rate units, at the site generally bounded by South 45<sup>th</sup> Street to the west and Wall Avenue to the south, Interstate 80 to the east, and the BART tracks to the north (APNs: 513-321-001 through-003, 513-322-023 through -025, -037, -038, 513-330-001 through -003, -005 through -007, and -012 through -014. SFR-3 (Low Density Residential) & SFR-3/EA (Low Density Residential/Exclusive Agriculture) Zoning Districts. General Plan designation 917 & 917/941. Applicant: Richmond Community Redevelopment Agency. Planner: Lina Velasco. Tentative Recommendation: Recommend the City Council Certify the Final EIR, Adopt a Statement of Overriding Considerations, Adopt a MMRP and Approve a GPA and Rezoning Subject to Conditions.

Assistant Planner Lina Velasco said the proposal is a request for a General Plan amendment and rezoning for the proposed Miraflores Housing Development Project. It consists of 80 units of affordable senior housing and 150 market rate dwellings. The application also includes a request to demolish and rehabilitate certain identified historic structures, the implementation of a remedial action plan, daylighting over a portion of Baxter Creek, creation of a greenbelt area for recreation and agricultural uses, and landscaping and site improvements. The site is currently zoned SFR-3 and SFR-3EA, which is low density residential exclusive agriculture. They are requesting the site be rezoned to PA, which is a planned area district. The General Plan designation for the site is 917 and 917/941.

As part of the planned area district the applicant is also requesting a reduction in off-street parking requirements. They are proposing to provide 281 spaces, which is less than the 320 required for the project. However, they will be providing an additional 125 on-street spaces to meet that additional demand. They are also requesting a decrease in setbacks, as shown in Table A of the staff report. There is also a decrease in the open space requirement since there will be a large greenbelt proposed to be used for recreation and agricultural uses, and it will serve both this development and the surrounding community. The lots will vary between 900 square feet and 3,000 square feet. For the project they also did an environmental review. They have prepared a draft of that and an EIR that analyzes the environmental effects associated with the project. The applicant will return to the Planning Commission for review and approval of the tentative map, in addition to going to the Design Review Board. The building heights will not exceed the 35-foot maximum. The senior housing development building is proposed to be two stories, and the for sale component will vary between two and three stories in height.

Chair Finlay noted Ms. Natalia Lawrence, from the Redevelopment Agency, was in attendance.

Steve Nowak, Principal from Design Community and Environment, presented the findings from the Final EIR. He introduced Sophie Matier, project manager on the EIR, and James Rife who will answer questions regarding the air quality analysis. In developing the EIR they looked at the full gamut of environmental issues. They found that, with mitigation measures, air quality, biological resources, geology, seismicity in soils, hydrology, water quality, and noise could all be lessened to insignificant levels. In the area of cultural resource, there were a number of potential impacts that could be mitigated to less than significant impacts, including archeological resources, paleontological resources, and some of the historic resources. However, the impact to historic resources was found to be significant and unavoidable due to the change in configuration of the project. There are numerous mitigation measures within the final EIR document, and there are numerous initiatives on behalf of the Redevelopment Agency to mitigate impacts to the greatest extent possible. However, the impact is significant and unavoidable and would require a statement of overriding considerations from the Planning Commission in recommending approval of the EIR.

Mr. Nowak also responded to both public comments and the Commission's comments in the final EIR document. One of the public comments was the project's consistency with the memorandum of agreement from the state historic preservation office. The project satisfies all of the requirements of that memorandum. The public preference for the preservation of the greenhouse is addressed by calling for the preservation of greenhouse 9 on the site. All of the other greenhouses would be available for salvage prior to initiating demolition on the project site. The public also asked for protection of historic resources prior to occupancy, and they have added significant protective measures to the project, including work from a preservation architect to ensure the structures are preserved during construction. In situ preservation of historic resources was found to be financial infeasible, but the structures that are being preserved will be kept in their present configuration. The public also expressed concern about the lack of an asthma risk analysis. This is a new requirement of the Bay Area Air Quality management District that is pending. They did the additional air quality modeling and found the concentrations are below the thresholds. The Planning Commission had expressed concerns about the safety of the daylighted creek, and they have added design features that would create a safer habitat around the creek area. They changed the parking ratio so it more closely matches the City's requirements. They have improved the labeling of figures in the document. They have included the trip generation rates that were not included in the text of the draft document. They have provided information on the quantity of the units, broken down by

bedroom count. Other Planning Commission concerns such as control of rodents during demolition and adequacy of noise mitigation measures have been addressed in the final EIR.

Commissioner Rao questioned the types of mitigations made regarding rodent control. Mr. Nowak answered vector control would eradicate any rodents prior to the remediation activities occurring on site.

Commissioner Teltschick-Fall asked how the additional 125 parking spaces on the street would work. Ms. Matier said they will create new streets and therefore new on-street parking spaces. Throughout the site most of the driveways will provide access for one vehicle, and in-between those one-car driveways there will be spaces available. The majority of spaces will be available at the senior housing area and along the Greenbelt.

Chair Finlay commented on the impressiveness of the revised document. She felt the document addressed the comments of the Planning Commission very well, and she thanked the project team for their efforts. Mr. Nowak responded that City staff contributed to the team effort.

Commissioner Duncan concurred with Chair Finlay's comment. He asked if a small commercial area could be included on the site for a small grocery, convenience store, or coffee shop, but he has been told that developments of this size do not have the population to support a business. He thinks this is an opportunity for that in this case, however, because it is contiguous with an existing neighborhood and could be shared with the neighborhood. He also said housing types 1, 2, 15, and 17 are contrary to the principles the City has adopted. These principles include building designs that take the community's eyes off the street and bring the front doors closer to the street instead of garage doors. He asked if future designs could be considered for 1, 2, 15, and 17, and suggested that will have an impact on parking. He suggested changing Condition #8 to include "site plan, housing plans, and landscape plans" after "final" so the DRB will have some oversight on those items.

Commissioner Lane also complimented the project team on the final EIR. She said it is excellent to see a project incorporating affordable housing for seniors. She asked about the longevity of the affordability of the housing. She questioned what will happen after 15 years. Ms. Velasco said the final agreement with the developer of the affordable housing component is actually 55 years. After that time it would be looked at again to see if it should be extended.

Commissioner Lee said he talked to Ms. Velasco previously about increasing the use of the greenhouses in the project. He would like to incorporate her responses into the project. He read her comments as follows: "The applicant shall explore the inclusion of urban agriculture as an amenity and feature of the project. Collaboration with urban agricultural organizations may facilitate rehabilitation and sustainable reuse of preserved greenhouses to be located in the green zone area." He also requested adding bicycle racks at the top lot greenbelt in senior development and one parking space for car-share of similar use reserved at the Rose Court cul de sac. He requested the applicant explore incorporating a retail component to any agricultural use proposed within the greenbelt to include basic food necessities for residents.

Commissioner Teltschick-Fall offered her support for including the components requested by Commissioner Lee. She thinks they are very good ideas and having groceries available in that location would make it a better community. Urban agriculture could really make the site special.

Chair Finlay asked how to add these items to the document when it is fairly complete. Ms. Velasco said the comments could be included into the conditions of approval and passed on to the Design Review Board. Chair Finlay asked Commissioner Lee to read each of his conditions.

Commissioner Lee read the following conditions:

“The applicant shall explore the inclusion of urban agriculture as an amenity and feature of the project. Collaboration with urban agricultural organizations may facilitate rehabilitation and sustainable reuse of preserved greenhouses to be located in the green zone area.

Bicycle racks shall be provided at the top lot greenbelt in senior development to maximize the use of bicycles. One parking space for car share or similar use shall be reserved at the Rose Court cul de sac.

The applicant shall explore incorporating a retail component to include basic food necessities for residents within the project.”

Chair Finlay asked if any of the Commissioners disagreed with these statements, and all of the Commissioners said they were in agreement.

Ms. Velasco said if the retail component is added they will need to change the use to accommodate it because currently they are asking for residential zoning. Commissioner Teltschick-Fall questioned whether exploring urban agricultural also requires another use designation besides residential. She would like to leave it open for any kind of urban agriculture, and not simply for community gardens. Chair Finlay asked if they added retail under commercial uses, if it would also cover agricultural retail. Ms. Velasco answered yes, and suggested “urban agriculture” instead of “community agriculture” for the wording in the document.

Commissioner Lane asked if the 15 year span for affordable housing should be changed to 55 years. Natalia Lawrence, Senior Project Manager, Redevelopment Agency, explained affordability depends on the funding source. Funding using Redevelopment Funds will have a 55 year minimum time frame. There may be other funding associated with this development with a 15 year timeline. She would like the final EIR to keep the language as is. There is a minimum and there is no funding less than that. If they use a minimum of 15 years then that allows them at the EIR level to cover all sources of funding.

Ms. Lawrence thanked the Commission for the work they have put into this project. They have listened and have responded to all of the comments in the report.

#### Public Comment:

Debbie McIntyre, Richmond, said she lives one block from the site. She asked the Commission to recommend to the Richmond City Council that they certify the final EIR, adopt a statement of overriding considerations, adopt an MMRP, and approve a GPA in rezoning subject to conditions. Meetings with the Park Plaza Neighborhood Council and the Advisory Committee began in 2004 and they have discussed, reviewed, and changed design, density, historic preservation, restoration, daylighting the creek, security, traffic management, parking, environmental impacts, and have met with potential developers and architects. They have discussed new city streets including possible names of those streets, vector control, green building practices, local hiring. They are mitigating urban blight with 80 units of affordable senior housing and 130 market rate single family homes. She implored them to recommend approval

of the General Plan amendment and to change the land use designations outlined within the item, and certification of the project EIR to the City Council. She thanked Ms. Lawrence and the City of Richmond for keeping the committees and the Neighborhood Council informed. She also thanked Katie Lamont of Eden Housing for her stance in developing the neighboring community. She felt the possible retail component of the site is something the immediate community does not want. They are trying to remove urban blight and they see this as a negative aspect.

Katie Lamont, Hayward, Eden Housing, agreed with everything said by Ms. Lawrence. She said she appreciates the work she has been able to do with the community over the last several years, as well as the work of Planning staff. She looks forward to being able to move forward with the development.

The public hearing was closed.

**ACTION: It was M/S (Duncan/Teltschick-Fall) to recommend the application for PLN 09-026 to City Council to certify the Miraflores Housing Development Plan Environmental Impact Report, to adopt a statement of overriding considerations, to adopt a mitigation and monitoring program, approve a General Plan amendment, and approve a zoning amendment subject to the following findings and conclusions: 1) General findings, 2) CEQUA findings, 3) Environmental impact findings, mitigation measures and alternatives, 4) Statement of overriding considerations, 5) Findings with respect to adoption of mitigation monitoring and reporting plan, 6) General Plan amendment findings, 7) Zoning amendment and rezoning findings, and all of the conditions to be added on an Errata page as discussed above. These include the condition concerning urban agriculture, the addition of bicycle racks, incorporation of a retail component, and 8) DRB will review the site plan; unanimously approved.**

## **COMMISSION BUSINESS**

### **9. Reports of Officers, Commissioners and Staff**

Ms. Harbin stated this will be her last meeting since she was laid off as of December 15<sup>th</sup>. She has appreciated all of the work of the Commission.

Mr. Mitchell said staff will return to next week's meeting to re-introduce the revised General Plan. They are extending the comment period over the holidays and into January. This meeting will be an opportunity to summarize the changes that have been made based on the guidance provided by the Commission and based on public comment. It will be a study session and there will be no action. Commissioner Lane said it would be helpful to send an automatic email alert that the draft has been changed so that if people come to the meeting to comment they will be commenting on the most recent draft. Commissioner Lee asked for a Cliff's notes version or abstract of the 1,000 page document so they can review what has changed. Mr. Mitchell said that is the purpose of the meeting next week. He thinks people will be satisfied with the approach they have taken.

Chair Finlay noted the meeting on the 9<sup>th</sup> is a Wednesday evening. They will meet at 7:00pm after the 6:00pm DRB meeting. Mr. Privat said he would not be able to attend either meeting next week.

Commissioner Lee reported former Commissioner Williams is doing very well.

Commissioner Rao said he was sorry to hear Ms. Harbin will be leaving. It was wonderful to work with her and he felt she contributed a lot to Development and Planning. He wished her luck. Commissioner Lane also wished Ms. Harbin the best of luck.

Chair Finlay said it has been a pleasure working with Ms. Harbin and thanked her for the wisdom and good nature she brought to a difficult job. She announced she attended a daylong seminar in Oakland entitled "The ABCs of Form Base Code" and it was very beneficial. She thanked Mr. Mitchell for her attendance and stated she learned a great deal.

Chair Finlay announced that one of the items on the agenda for a hearing that did not take place last month was a redevelopment plan for the Richmond merged project area. She asked Mr. Mitchell to tell the public what has happened to that.

Mr. Mitchell stated he is not sure and needs to research it. Ms. Harbin said from her understanding the comment period is over and it has been determined it should go on to City Council without the Planning Commission's recommendation. Chair Finlay said she reviewed the document in preparation for that meeting and she was fine with it. She wanted the public to know what was happening with it.

Chair Finlay said in their packages they received a copy of the Richmond Memorial Civic Center Revitalization Public Art Program. She was very impressed with that book and was delighted to have a guide. She thought they should sell it and make it available to the public.

Chair Finlay said they also received a calendar of a small component of the public art, and she would like to give it to staff.

## **Adjournment**

The meeting was adjourned at 10:09 p.m.