

**PLANNING COMMISSION REGULAR MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL**

450 Civic Center Drive, Richmond, CA

May 19, 2016

6:30 p.m.

COMMISSION MEMBERS

Sheryl Lane, Chair
Nancy Baer
Ben Choi, Secretary
Jen Loy

Marilyn Langlois, Vice Chair
Andrew Butt
Jeffrey Kilbreth

The regular meeting was called to order by Chair Lane at 6:32 p.m.

Chair Lane led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Sheryl Lane; Vice Chair Marilyn Langlois; Secretary Ben Choi; Commissioners Nancy Baer, Andrew Butt, Jeffrey Kilbreth and Jen Loy

Absent: None

INTRODUCTIONS

Staff Present: Planning Staff: Senior Planner Lina Velasco; Planner II Roberto Feliciano, and Assistant City Attorney Rachel Sommovilla

MINUTES - None

AGENDA

Chair Lane provided an overview of meeting procedures for speaker registration, public comment and public hearing functions. She said items approved by the Commission may be appealed in writing to the City Clerk by Tuesday, May 31, 2016, (due to Monday holiday) by 5:00 p.m. and as needed, announced the appeal process after each affected item.

CONSENT CALENDAR

Chair Lane stated currently the Consent Calendar consists of Item 1. She asked if Commissioners, public or staff wished to remove that item.

ACTION: It was M/S/C (Kilbreth/Butt) to approve the Consent Calendar consisting of Item 1; which carried unanimously by the following vote: 7-0 (Ayes: Baer, Butt, Choi, Kilbreth, Langlois, Loy and Lane; Noes: None).

Item Approved on the Consent Calendar:

NEW ITEM

1. **PLN16-128: Smith Second Dwelling Unit Variance** - PUBLIC HEARING to consider a variance for minimum lot size and design review permit to construct a 640 square foot second dwelling unit above an existing accessory structure at 525 5th Street (APN: 534-291-017). MFR-1, Multi-Family Residential District. Hattie Ruth Smith, owner; Maurice Dawson, applicant; Planner: Roberta Feliciano; Tentative Recommendation: Conditional Approval.

BROWN ACT – PUBLIC FORUM - No speakers

STUDY SESSION

2. **PLN16-038: Draft Amendments To Subdivision Ordinance, Nonconforming Provisions And Procedures For Permits And Approvals For Zoning And Subdivision Update** - STUDY SESSION to receive comments on the Draft Amendments to the Subdivision Ordinance (RMC 15.06–new 15.04.700), Nonconforming Provisions (RMC section 15.04.940 –new 15.04.606), and Administration and Permits (RMC 15.04.900–new 15.04.800) being considered as part of the Zoning and Subdivision Update to bring these regulations into conformance with the City’s General Plan 2030. Various, owner; City of Richmond, applicant; Planner: Lina Velasco; Tentative Recommendation: Receive Comments.

Senior Planner Lina Velasco introduced Michael Dyett, Dyett and Bhatia, consultant leading the zoning update and said this evening they would present Module 1 which consists of the Subdivision ordinance, non-conforming provisions and procedures for permits and approvals. Tonight is a study session and staff is seeking feedback which will be integrated into a revised version of the Issues and Options Paper.

Michael Dyett, Dyett and Bhatia, gave a brief background of the continued outreach process and said tonight he would discuss non-conforming provisions and procedures and take public comment. He discussed the Subdivision Map Act, technical review of the existing Act, review of State-approved changes since the last ordinance was adopted 10 years ago, best practices, work with the school districts to obtain joint use agreements and sharing provisions for sharing of recreational space, and refinement of streets to meet Complete Streets standards for sharing of all modes of transportation. New provisions have been added to Tentative Parcel and Vesting Parcel Maps, development plan revisions and improvements, new provisions for condo and condo conversions, parcel mergers, lot line adjustments, certificates of compliance and penalties, and all sections follow the Subdivision Map Act.

Mr. Dyett suggested that after public input, the Commission may want to consider any adjustments, determine whether the flexibility is appropriate, determination whether they are going in the right direction with energy and solar and the condo standards.

He then discussed the non-conforming provisions with the preface that if a use or structure became non-conforming or did not meet the new standards in the ordinance, the ordinance addresses abandonment, changes or revisions by the owner, and they are building what is in place recognizing there may be non-conformities created under the Richmond Bay Specific Plan while not impeding the ultimate vision. They added an amortization process for the Council to consider such that people need time to recoup their full investment and also a reasonable time

to create certainty on a termination process. He underscored that this is an optional set of procedures which can be refined to take into account input received. They also recognize rights for sites that have hazardous materials, provide more clarity and definitions on substantial expansion and extension of a building's useful life.

Commissioner Kilbreth questioned the process of deciding what the useful economic life of an asset and its creation. Mr. Dyett stated there are real estate economists and appraisers who undertake this and they would provide this to the City as experts.

Mr. Dyett continued, stating he came before the Commission with the Issues and Options Report, received feedback and now the information is returning. He said important is to set up one common set of procedures for pre-application meetings, noticing and conduct of hearings so they are not duplicated and everybody knows what the process is and a number of things can be handled at the staff level, with the focus being on the big picture and the Zoning Administrator would determine the complete application. Temporary use permits are a separate process and while waivers complement the standard variance procedures, they would be limited. They tightened the Planned Development Areas' provisions with the General Plan and conformity with density intensity limits and major amendments would have to return to the Council, but the Zoning Administrator could approve minor ones. A process has been added for development agreements. They developed legislative procedures for General Plan and zoning amendments, and he asked for feedback from the Commission.

Chair Lane opened the public comment period.

Public Comments:

LINDA KLEIN, Cox Kappel Nicholson, speaking on behalf of Steve and Susan Chamberlin, owners of two properties on Hilltop Mall Road, referred to their letter submitted yesterday requesting deletion or revision of two proposed provisions which were the non-conforming use termination provision and the zoning compliance certificate provision which she briefly described.

GARLAND ELLIS, Richmond Annex Neighborhood Council and the RNCC, suggested revising sections where certain actions are done by staff over the counter and cited previous problems with signage, the notification process, the proposed reduced radius for noticing, notice to adjoining cities, and to expand the types of notification provided.

PAUL MINAULT, Counsel for Allied Propane, referred to the termination provision and the non-conforming use portion of the ordinance as proposed to be applied by the Planning Commission and asked the Commission to give it a lot of thought as to how it will work. He suggested consideration of time flexibility and provision for certainty to businesses, noting they provided some suggestions on page 13 of their redlined copy of the ordinance.

GARRETT COLLI, attorney at Perkins Coie, San Francisco, representing Safeway Stores, said Safeway is highly concerned about the termination provision. He referred to his letter and said Ms. Klein did a tremendous job in laying out the legal and business concerns with such a provision. He asked the Commission to give equal consideration to the alternative to a termination order which is what most cities and counties use which is to allow market forces to drive out non-conforming uses. He spoke about the number of employees, length of their employment and if the property is desirable for another use, developers will come to Safeway to

purchase the property and if conditions warrant it, it will be redeveloped. He has represented transitioning developers in the past and these plans have worked out.

Commissioner Butt asked Mr. Colli to provide an example of a city which did implement the termination order and had problems.

Mr. Colli said Mr. Dyett used the Mission Bay Master Development and he thinks there are areas in San Francisco that were in former redevelopment areas where the RDA plans and implementing procedures of the City/County of San Francisco were changed to not authorize industrial uses going forward and make those existing and former uses to be non-conforming. Investment was chilled in those areas as well as areas like Bayview, Hunter's Point and other areas in Mission Bay with under-served areas, such as Visitation Valley. The area is now undergoing revitalization because of private monies coming in, but had been blighted.

CORDELL HINDLER, Richmore Village, suggested more businesses that generate money for Richmond which is moving forward and suggested the Terminal One project be reduced so as not to block views.

Chair Lane returned discussion to the Commission and asked Mr. Dyett to display the questions asked of the Commission.

Commissioner Butt cited ambiguities he has relative to the DRB and the Planning Commission. In terms of the sequence of review, he asked that applicants know the process and reasons why a unique situation may occur. He referred to the language for neighborhood council review which reads, "Applicants are strongly encouraged to work with their neighborhood council prior to submitting an application for design review" and he asked that this be better clarified.

Mr. Dyett said he sought to strike a balance with "requiring" versus "encouraging" applicants and said he could revise or tighten the wording at the request of the Planning Commission if it is ambiguous.

Chair Lane agreed and suggested adding "While not a requirement, applicants are strongly encouraged..."

Commissioner Kilbreth said sometimes applications go to the DRB and sometimes the Planning Commission first and no one understands why. He suggested having default rules that provide an explanation for circumstances. Mr. Dyett agreed to amend the sequence.

Commissioner Butt stated there are important issues regarding amending the General Plan and Planned Development Areas and he asked for an explanation of why and when these tools are utilized. Mr. Dyett said the State recognizes that General Plans can be amended and updated every 5-10 years, and at times the City recognizes this as well. If there is a public interest to be served, something that furthers citywide goals and findings are able to be met, the City should be able to amend its General Plan which then drives zoning. Regarding the Planned Development Areas, it is an implementation tool for what Richmond wants. Zoning cannot always envision all design potential and the PDA process allows for a creative solution for a specific site or proposal. Findings must be made as well as consistency with the General Plan, and it must fit in with intensity, densities and FARs.

Commissioner Butt stated there was concern voiced regarding the termination provisions and he asked for Mr. Dyett's response to comments. Mr. Dyett said they can certainly amend the draft to be much clearer about having longer term amortization periods and align it more clearly with some of the examples given. He suggested the Council; however, consider it in its new and improved form as a tool. He shares many observations, thinks it provides some certainty if it is set up for a full amortization process. The Council of Industries has recognized it as a valuable tool option, and he suggested having the chance to improve the wording without removing it. Additionally, he could make adjustments and address Mr. Colli's comments regarding the zoning compliance permit process.

Commissioner Baer referred to the termination provisions and asked to understand when that would come into play and what types of circumstances are envisioned. Mr. Dyett provided a hypothetical example, such as the campus has someone coming forward, they have land in place and need some supportive office and campus housing and are concerned about an industrial use that would be right next to the entry. The long-term plan or vision is for residential at that location and the market forces are there, but the property owner needs help or time to relocate or sell, a conversation might be initiated through this process but it would be when there is a compelling public interest to realize a long-term plan.

Chair Lane said in this example, she asked about timing. Mr. Dyett said the intent is always to have a reasonable 10 to 15 year time horizon for the realization of the investment-backed expectations that property owners have. The concept of amortization is expressed clearly, and the 1 to 5 year was only intended for those particular nuisance activities.

Chair Lane said one letter indicated how the City of Oakland codified this issue with non-conforming uses running with the land, and she asked Mr. Dyett to add to this. Mr. Dyett said he likes the suggestion to call it out as its own subparagraph and follow Oakland's example is an amendment he would recommend be made to add clearly the "right to continue" as a clause.

Vice Chair Langlois referred to Commissioner Butt's comments on the neighborhood councils and said she thinks it is working well now, as those which are active get involved in the process; however, she did not see any harm in making it a requirement for applicants to contact the neighborhood council presidents in writing within a certain timeframe prior to decision-making. Regarding the termination provisions, she can see why having some mechanism could be useful, but asked for Mr. Dyett's thoughts regarding the suggestion made by Mr. Minault in his letter on page 13. He suggests there be specified findings made so that matters not be used arbitrarily or capriciously. Mr. Dyett said these are excellent suggestions and he thinks all 14 points need to be included in some form and agreed with added findings.

Commissioner Kilbreth agreed with comments regarding termination provisions and thinks the City should be very specific in its processes. He referred to notifications and said he strongly agrees with Mr. Garland about setting up a higher standard than has been the case. He also believes in the idea of informing the public via an improved City website, electronic messaging or other means, as what exists today is not adequate. He also thinks 300 feet is inadequate and suggested 500 to 1000 feet given Richmond's more dense residential neighborhoods. He thinks if there are multiple ways to notify people, the City should indicate what it uses and thinks the entire notification process needs to be improved as well as including notification to adjacent cities.

Commissioner Kilbreth referred to the conduct of public hearings on page 34 and said Mr. Dyett thought that the Planning Commission's recommendation should be presented to the City Council. It seems like the Planning Commission should have the right to decide itself if it wants to present rather than having staff present for it.

He then referred to public testimony and said similarly, the public should be able to join forces and be allowed to have one person speak for them on behalf of a group. The testimony of one knowledgeable, prepared person for 30 minutes is more valuable than hearing the same thing from 30 people at 2 minutes each. Mr. Dyett agreed.

Commissioner Kilbreth said when Mr. Dyett referred to page 35; "the project to develop affordable housing for which an EIR is prepared, it must meet criteria as set forth in California Government Code 6590..." He was not sure what this means and suggested it be identified in writing.

Mr. Dyett said this relates to an obligation to act in a streamlined period of time and not allow it to be extended out if it is an affordable housing project. He agreed to explain the essence or spirit of the Government Code and will add this meaning to the clause.

Commissioner Kilbreth referred to the Planned Area Developments and San Francisco Board of Supervisors, and said his understanding is that San Francisco is having an on-going debate and serious work around the question of what limits are placed on planned areas, or whether the City Council can do whatever it wants. This should be clear here, as it might be that Richmond needs this but he was not sure. He would like to explicitly look at this and gave the example of big projects such as Terminal One, UCSF and Mission Bay, and affordable housing. San Francisco is desperate for affordable housing and they are still talking about putting two-story limits on how much higher a building can be in the Mission even if it is a density bonus or affordable housing. He said he was looking for more thought and guidelines about what are the boundaries, if any.

Commissioner Kilbreth referred to page 65 under the required findings for a planned area, the height issue is the most contentious and he does not think it should be adjusted by talking about density and intensity limitations when actually the real issue is height.

Mr. Dyett said he could add that the General Plan height also cannot be modified, which is a constraint the City could impose.

Commissioner Kilbreth referred to page 64, sub-bullet E, the maps and diagrams portions or the way the City defines a planned area, and said he did not find the engineering drawings to be up to the standard he would expect for a large project where an enormous amount of private and municipal capital is involved, with a high degree of scrutiny and design review. He noted the Central Avenue project was nowhere near the shoreline but is in fact in a 100 year flood zone, so the whole issue about getting much better at the engineering associated with projects that have sea level rise risk. As they are seeing in the Terminal One project, he questioned whether it was a 3, 5, or 6 foot rise and in what timeframe. It is impossible to perfectly define what has to be done in every situation, but at the same time they need to set high standards around the engineering work that is done for significant projects.

Commissioner Kilbreth referred to page 65, under “a finding for adequate transportation facilities and public services exist”, and he asked what the definition is of “adequate.” Mr. Dyett said he can define this further and thanked him for his comment.

Commissioner Kilbreth stated the same is true for page 65 under Item D; the definition of “compatible.” He said these are all subjective nature of the words and he asked to be more explicit. Mr. Dyett concurred.

Chair Lane referred to temporary use permits and its length of time, and she confirmed it is the same discussion the Commission held about non-conforming uses.

Chair Lane said in terms of processes and procedures, there was a comment relating to the Zoning Administrator conducting design review for small projects below the current threshold. She asked and confirmed this was current practice.

Chair Lane referred to infill and the option to add flexibility so if a project is not compatible with certain park standards that use agreements and other things could be an option for shared use. She asked for an example of how this works, stating schools are locked up and no public access.

Mr. Dyett said an example would be a neighborhood park which exists in a residential area but there was a school and land nearby which could be expanded for more recreational area. Instead of paying the full in-lieu fee the applicant might propose adding to the existing recreational space for an off-site park facility, which still provides the land for recreation and receive credit for the shared use agreement.

Chair Lane said in terms of the neighborhood council being notified, she supports the way it currently is written. If it is changed and mandated for applicants to notify the neighborhood council, there should be a process for what happens if they do not contact them. Mr. Dyett said normally failure to give or to receive notice does not invalidate the process if they make a good faith effort, and the Commission can act on the application. If it is mandated, he will work with staff on the wording for the process.

Chair Lane echoed comments made regarding notification of 500 to 1000 feet and better means of notification other than just the newspaper. She suggested people also be able to sign up to receive notices from the City via email, given current technology.

Vice Chair Langlois referred to the tentative schedule, and she asked and confirmed that the City Council hearing would be on June 7th and not June 6th. She also concurs regarding the notification issue and thanked Mr. Ellis for his comments regarding the entire radius being notified in adjacent cities along with Richmond.

Chair Lane concluded the study session and asked Mr. Dyett about next steps. Mr. Dyett said they will continue with two more packages; one coming in June and another in July. Everyone in the community will have until July 25th to provide their input and he will put it altogether and provide a public discussion draft which will have another review cycle in August and September. If the Commission is comfortable and acts in October, more public comment will be held, and the final approval should be accomplished before the end of the year.

COMMISSION BUSINESS

3. Reports of Officers, Commissioners and Staff

Ms. Velasco reminded the Commission that next Wednesday, HPAC will be hosting the Preservation Awards held at the Chambers at 5:30 p.m. followed by a reception in the Arts Center.

Vice Chair Langlois referred to the interim zoning ordinance and said she recalls that the Pt. Molate area was to be designated as a Special Study District. A question arose at the Pt. Molate Community Advisory Committee last night referring to the direction given at the time the General Plan was adopted by the City Council for a public process to determine what the actual zoning land uses will be, specifically whether or not to allow for residential. The committee expressed some desire to have this resolved and she asked if staff had an update to conduct the public process.

Ms. Velasco said staff does not at this time. Staffing resources are challenging as well as resources to conduct that type of outreach and analysis. It would most likely be a specific plan and a General Plan Amendment associated with it. As the City discusses its budget and cuts to departments, she will know more about timing.

4. Adjournment - The meeting was adjourned at 8:04 p.m. to the regular meeting on June 2, 2016.