



Oakland City Planning Commission

Minutes

Chris Pattillo, Chair
Jim Moore, Vice Chair
Jahaziel Bonilla
Michael Coleman
Adhi Nagraj
Emily Weinstein

January 15, 2014
Regular Meeting

ROLL CALL

Present: Pattillo, Moore, Coleman, Nagraj, Weinstein.

Excused: Bonilla.

Staff: Rachel Flynn, Scott Miller, Aubrey Rose, Celena Chen, Cheryl Dunaway.

WELCOME BY THE CHAIR

Director's Report

Director Flynn reported that a West Oakland Specific Plan Community Workshop is scheduled for February 6, 2014 at the West Oakland Senior Center.

Chair Pattillo asked if there will be a conflict if more than 2 Planning Commissioners attend.

Mr. Miller explained, if at least 4 Planning Commissioners attend the workshop, it would be advertised as a Special Planning Commission Meeting. Planning Commissioners should indicate who will be attending the workshop so it can be included in the notice.

Director Flynn announced there will be a Special Planning Commission Meeting on the Draft Environmental Impact Report (DEIR) for the West Oakland Specific Plan scheduled for February 24, 2014 due to Wednesday, February 26, 2014 being the Mayor's State of the City Address.

For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.

♿ This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the **Planning Department at 510-238-3941** or **TDD 510-238-3254** at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who may experience chemical sensitivities may attend. Thank you.



There will be a meeting on the final plan and Environmental Impact Report (EIR) for the Broadway Valdez Specific Plan scheduled for March 19, 2014.

A future Lake Merritt Specific Plan Meeting will be held sometime in June 2014.

The upcoming Coliseum project meeting schedule to be determined.

Director Flynn asked the Planning Commissioners to provide some available dates and times soon to attend a 3 or 4 hour training retreat for the Planning Commission. There will be a City Attorney assigned to attend the retreat to address legal issues or concerns.

Chair Pattillo asked if a reminder email will be sent to the Planning Commissioners informing them of the training retreat on the Planning Commission training manuals.

Mr. Miller agreed to send the reminder email to the Planning Commissioners.

Director Flynn suggested that the Planning Commissioners join the American Planning Association (APA) at no cost to them. All of the Planning Commissioners agreed to join.

Commissioner Nagraj asked about the State of the City Address invitation process. He understands that the Planning Commissioners are all invited.

Mr. Miller explained that all of the Planning Commissioners are usually invited, and there is usually a list of invitees and seating arrangements by name in the City Council Chambers.

Committee Reports

Chair Pattillo informed Mr. Miller that public speaker Steve Lowe at today's Zoning Update Committee Meeting would like a report on the status of a Transportation Sub-Committee.

Director Flynn suggested that they discuss Mr. Lowe's request at the training retreat. She explained that a separate committee may not be necessary. She would like for Mr. Lowe to submit his request in writing explaining what he wants this committee to decide, discuss, have authority over, etc.



Chair Pattillo stated that Mr. Lowe may've wanted to simply have the name of the committee changed to the Land Use and Transportation Committee.

Mr. Miller stated that there is no such committee, but there is the Zoning Update and Design Review Committees and Special Projects. He explained to Mr. Lowe at the Zoning Update Committee Meeting that he needed to know exactly what he was requesting. He will follow up with Mr. Lowe and request that he submit his request in writing.

Director Flynn asked which item Mr. Lowe made the request under at the today's Zoning Update Committee Meeting.

Mr. Miller responded stating that Mr. Lowe made his request during open forum.

Commissioner Weinstein gave a report on the Zoning Update Committee Meeting on the Jack London Square Development Agreement and Planned Unit Development, including General Plan Amendments held earlier today.

Mr. Miller announced the upcoming Zoning Update Committee Meeting on January 22, 2014.

City Attorney's Report

City Attorney Celena Chen gave a report on a lawsuit filed against the City of Oakland on the City's approval of the AMG's mixed use project on High Street and MacArthur Boulevard. The Planning Commission approved this project in July of 2013 which was appealed to the City Council. In November of 2013, the City Council upheld the Planning Commission's decision for approval.

Director Flynn also reported the dismissal of a lawsuit filed against the City of Oakland on the Safeway project due to the untimely filing of an appeal of the Planning Commission's approval to the City Council.

Mr. Miller reported that the full building permit for the College and Claremont Avenue Safeway project was issued earlier today.



CONSENT CALENDAR

Item #1 moved on consent of the Planning Commission.

Commissioner Nagraj made a motion to approve, seconded by Vice Chair Moore.

Action on the matter: Approved 5 ayes, 0 noes.

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| 1. | Location: | 1601-1621 6th Avenue |
| | Assessor's Parcel Number: | 020 -0186-012-01 |
| | Proposal: | To modify a wireless telecommunications facility located at a church. The facility is located within a screened tower cupola and the project features increasing the antenna count within the tower. |
| | Applicant/ | Christian Hill (for AT&T) |
| | Phone Number: | (707) 342-2096 |
| | Owner: | The Salvation Army/The Universal Church |
| | Case File Number: | CMD13324 |
| | Planning Permits Required: | Major Conditional Use Permit and Regular Design Review to modify a Macro Telecommunications Facility located in a Residential Zone |
| | General Plan: | Mixed Housing Type Residential |
| | Zoning: | RM-4 Mixed Housing Type Residential Zone |
| | Environmental Determination: | Exempt, Section 15301(e) of the State CEQA Guidelines: Existing Facilities (Additions to existing structures); Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning |
| | Historic Status: | Non-historic property; Clinton Park Area of Secondary Importance |
| | Service Delivery District: | 3 |
| | City Council District: | 2 |
| | Date Filed: | November 14, 2013 |
| | Action to be Taken: | Decision based on staff report |
| | Finality of Decision: | Appealable to City Council within 10 days |
| | For Further Information: | Contact case planner Aubrey Rose, AICP, Planner II at (510) 238-2071 or arose@oaklandnet.com |

Commissioner Nagraj made a motion to approve, seconded by Vice Chair Moore.

Action on the matter: Approved 5 ayes, 0 noes.



APPEALS

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| 2. | Location: 1854 Church Street (APN: 039 -3314-011-00) |
| | Proposal: To Appeal the Zoning Manager's Administrative Determination letter dated August 29, 2013 that indicated the Deemed Approved (legal non-conforming) status for an Alcoholic Beverage Sales Commercial Activity location ("Church Street Market" former or "Benny's Market") had lapsed due to discontinuation of active operation for more than 90 days, pursuant to OMC Sec. 17.114.050(B) for Nonconforming Uses (April 18, 2013). <i>On November 6, 2013, the Planning Commission continued this item to this date certain due to owner illness.</i> |
| | Appellant/ Mr. Matthew Webb |
| | Phone Number: (510) 444-4224 |
| | Owner: Mr. Amir Sharaf Mohamed |
| | Case File Number: A13255 |
| | General Plan: Detached Unit Residential |
| | Zoning: RD-2 Detached Unit Residential Zone |
| Environmental Determination: | Exempt, Section 15270 of the State CEQA Guidelines: Projects Which Are Disapproved; Exempt, Section 15321 of the State CEQA Guidelines: Enforcement Actions by Regulatory Agencies |
| | Historic Status: Non-Historic Property |
| Service Delivery District: | 5 |
| City Council District: | 6 |
| | Date Filed: September 10, 2013 |
| | Action to be Taken: Uphold the Zoning Manager's Administrative Determination and Deny the Appeal |
| | Finality of Decision: <i>Final (Not Appealable pursuant to OMC Sec. 17.132.030)</i> |
| For Further Information: | Contact case planner Aubrey Rose, AICP, Planner II at (510) 238-2071 or arose@oaklandnet.com |

Staff Member Aubrey Rose gave a presentation.

Appellant: Matthew Webb gave an argument on behalf of the appellant, Sharaf Mohammed.

Chair Pattillo asked how long has Mr. Webb represented the appellant and why didn't they inform the City of Oakland of this matter?

Mr. Webb responded stating that he has represented the appellant since July 2013. He stated that he may've had a conversation with Alcoholic Beverage Control (ABC) regarding the issue in July 2013.

Commissioner Weinstein asked staff about the statement in the staff report stating that the Building Services Division had not been contacted for regarding any repairs. If they were contacted about the repairs, would this affect the appellant's current status?



Mr. Rose responded stating, that statement is correct. If they contacted the Building Services Division about the repairs, it wouldn't change their current status, because the Planning code sets out the bright line rule of 90 days, which is information for the Planning Commission.

Vice Chair Moore clarified that the appellant has the right to operate a retail store without going through the conditional use process as long as it's not dark for one year. His experience with this type of situation is that it's based on the date of actual sales that can be demonstrated by the property owner or the appellant. That date is coming up fairly soon and would like to make the appellant aware of that.

Mr. Rose responded, yes, all of the above is correct.

Commissioner Nagraj asked Mr. Webb if this appeal is unsuccessful, will the appellant apply for a major conditional use permit (CUP) and a variance?

Mr. Webb responded stating, yes. It is their intention to continue to operate at this location, and they will do what is necessary to comply in order to stay in operation. Understanding there are other impediments to acquiring a conditional use permit (CUP).

Commissioner Coleman asked the following questions:

For staff: How difficult is it to obtain a major conditional use permit and a major variance, and what is the process the appellant would be required to go through?

Has the Alcoholic Beverage Control (ABC) license lapsed or is this a City of Oakland issue?

This situation seems to have been caused by an under aged driver in a stolen vehicle. Will they be held financially responsible for the damages?

Staff and the Appellant made the following responses to Commissioner Coleman's questions:

Mr. Rose responded stating that the appellant would have to file an application and pay all related fees with a recommendation before the Planning Commission.

Mr. Miller further explained that the process may involve distance from civic uses and they've clarified that there doesn't appear to be a distance separation issue from another liquor establishment. There is a provision in the code that requires liquor sales to be at least 1,000 feet from various civic uses. This will be assessed and thoroughly evaluated if an application is submitted.

Mr. Rose responded stating that once Alcoholic Beverage Control (ABC) realized the City of Oakland determined that the non-conformity lapsed, they placed the license in some sort of "lapsed" status.

Mr. Webb further explained that the Alcoholic Beverage Control (ABC) license is in an involuntary hold. The fees are current, but due to no beer and wine sales taking place during that period, they placed a hold on the license.



Mr. Webb responded stating that given that the driver of the stolen vehicle is a juvenile, they are unable to obtain any information on him/her from the Oakland Police Department (OPD) unless a lawsuit is filed.

Commissioner Nagraj asked if an application of a conditional use permit (CUP) and variance is filed, will it take into account that the appellant has been in business for 30 years or will it be viewed as a new business.

Mr. Miller responded stating that it will be viewed as a new business and will have lost all grandfathering rights. However, since there is a history of this business operating at this location, the Planning Commission may take into consideration if they are inclined to support the concept of reopening. The Planning Commission will make the findings and staff will provide direction in terms of what findings are needed to be made. He cannot validate if Mr. Webb's previous statement is accurate that there has been no problems at the site. Staff would thoroughly review this and report to the Planning Commission of their findings.

Vice Chair Moore asked if the appellant was able to reopen the business to whatever degree before the year lapse, would this enhance his ability to reestablish a beer and wine license.

Mr. Miller responded stating that it is possible and wise that they consider not losing that one year lapse as well because it will be a second lapse issue they would have to deal with. Any operation there will probably speak well to whatever application they choose to submit in the future. The alcoholic beverage non-conforming provisions are the strictest in the code. It's a bright line rule which states a 90 day lapse. In his 7 to 8 years as Zoning Manager, staff has presented 8 to 10 cases such as this one to the Planning Commission, and in all of those instances the Planning Commission has upheld the bright line rule in the code.

Planning Commission Comments, Questions and Concerns:

Commissioner Coleman stated that he is very sympathetic to the appellant's situation and is torn on what direction to go with. He thought this would be an easy decision to make, but now he is not so sure.

Commissioner Weinstein concurs with Commissioner Coleman and finds this situation to be heartbreaking. It's obvious to her that the appellant is a great business owner, and this is not a situation they expected to be in through no fault of their own, but she feels the code is very clear and should be upheld. She recommends the appellant apply for a major conditional use permit and major variance as a part of the process.

Commissioner Nagraj concurs with his fellow Planning Commissioners. He appreciates that the appellant wants to continue to do business in a tough neighborhood and suggested that they reapply for a major variance and Conditional Use Permit. If a public hearing is necessary, bring supporters with him so that the Planning Commission may hear from them as well.

Vice Chair Moore stated that this neighborhood is underserved, the business serves an important role in the community and would like to see the appellant back in business soon. He agrees that the planning code is very clear and must be upheld and commends the appellant for running a good business.



Commissioner Coleman remembers an issue that came before the Planning Commission about a month or so ago where there was a marijuana distribution center on Broadway. They were very sympathetic to the applicant's issues, but the code was very clear on what was required. He feels the Planning Commission should do the same in this case and uphold the Zoning Manager's determination and recommends the appellant apply for a major conditional use permit and a major variance.

Commissioner Coleman made a motion to deny, seconded by Commissioner Weinstein.

Action on the matter: Denied 5 ayes, 0 noes.

Approval of Minutes

Approval of the November 20, 2013 meeting minutes.

Vice Chair Moore made a motion to approve, seconded by Commissioner Coleman.

Action on the matter: Approved 5 ayes, 0 noes.

Approval of the December 4, 2013 meeting minutes.

Vice Chair Moore made a motion to approve, seconded by Commissioner Coleman.

Action on the matter: Approved 5 ayes, 0 noes.

ADJOURNMENT

Meeting adjourned at approximately 6:45 P.M.

SCOTT MILLER
Zoning Manager
Planning and Zoning Division

NEXT MEETING: January 29, 2014