

REGULAR MEETING OF THE CITY OF COSTA MESA PLANNING COMMISSION

October 14, 2013

These meeting minutes represent an "action minute" format with a concise summary of the meeting. A video of the meeting may be viewed on the City's website at www.costamesaca.gov or purchased on DVD upon request.

Chair Fitzpatrick led in the Pledge of Allegiance.

ROLL CALL:

Present: Chair Jim Fitzpatrick
Vice-Chair Robert Dickson
Commissioner Colin McCarthy
Commissioner Jeff Mathews
Commissioner Tim Sesler

PUBLIC COMMENTS

Beth Refakes, East Side resident announced that October 29th was the last day to donate Halloween candy for the children of the 1st Battalion 5th Marine Infantry that the City adopted. A collection box was located in the Lobby of City Hall and the treats would be handed out to the children on October 30th at a Camp Pendleton trick or treat event. She also encouraged the public to attend an I-405 Town Hall Forum on October 29th at the Westminster Community Services Building to discuss the toll lane project.

PLANNING COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Sesler reported the City was still looking into a better 311 application and referred the public to the City's website for reporting neighborhood or code enforcement complaints.

Commissioner McCarthy congratulated Ms. Fariba Fazeli on her promotion to City Engineer and thanked staff for their devotion in coordinating the General Plan workshops. He also congratulated Coach Wally Grant and his team from Costa Mesa High for a great game.

Chair Fitzpatrick also congratulated Ms. Fazeli on her recent promotion. He spoke about his attendance at the Sea House live/work units and Vivante on the Coast Grand Openings and announced that discussions regarding the Costa Mesa Motor Inn, the Sandpiper Motel and Illumination Foundation would be heard at the October 28th Planning Commission meeting.

CONSENT CALENDAR:

Chair Fitzpatrick pulled Consent Calendar Items No. 2 and 3 for discussion.

1. Minutes for the meeting of September 23, 2013

MOTION: Approve September 23, 2013 Minutes. Moved by Chair Fitzpatrick, second by Commissioner McCarthy.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

2. Code Enforcement Update

Chair Fitzpatrick thanked staff for generating the Code Enforcement Update and inclusion of before and after pictures. He provided a brief summary of said update.

MOTION: Approve to receive and file the Code Enforcement Update. Moved by Chair Fitzpatrick, second by Vice Chair Dickson.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

3. I-405 Update

Commissioner McCarthy gave a brief overview of the I-405 project

Transportation Services Manager Raja Sethuraman summarized the staff report and provided a Power Point presentation regarding the I-405 project. The public was invited to attend a Town Hall Forum scheduled for October 29th in the City of Westminster. Mr. Sethuraman responded to questions from the Commission and gave an additional Caltrans update pertaining to freeway underpasses.

PUBLIC COMMENTS – None

MOTION: Approve to receive and file the I-405 Update. Moved by Commissioner McCarthy, second by Vice Chair Dickson.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

Chair Fitzpatrick announced administrative changes to the Agenda - New Business Item No. 1 would be heard first then Public Hearing No. 3 followed by Public Hearings Nos. 1, 2 and 4.

NEW BUSINESS

1. Residential Neighborhood Enhancement Program Number Four

Chief of Code Enforcement Willa Bouwens-Killeen summarized the staff report regarding the initiation of Residential Neighborhood Program No. 4 that covered 150-160 multiple family properties. She responded to questions from the Commissioners regarding parking enforcement, an accelerated timeline, conducting a parking permit survey to alleviate parking issues, complexity of mini-sweeps, etc.

Commissioner Fitzpatrick requested staff provide interim updates and that correspondence pertaining to New Business No. 1 become part of the public record.

MOTION: Direct staff to move forward with the Residential Neighborhood Program Number Four. Moved by Chair Fitzpatrick, second by Commissioner Mathews.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

PUBLIC HEARINGS

3. An Ordinance of the City Council of the City of Costa Mesa Amending Title 13 of the Costa Mesa Municipal Code Related to Residential Facilities

Senior Planner Mel Lee presented the staff report and explained that the proposed code amendment would change the current Zoning Code definition of "single housekeeping unit" and allow the City to more effectively enforce the maximum limit of six persons per residential care or residential service facility in an R1 zone and withstand legal scrutiny. If approved the revision would go to the November 5, 2013 City Council meeting for approval. Mr. Lee advised that City Attorney Elena Gerli was available for questions.

Commissioner McCarthy provided background information regarding the Van Buren complaint that generated the staff report as a result of the City losing a lawsuit due to the current definition of the single housekeeping unit.

Vice-Chair Dickson asked if the proposed language had ever been challenged. Ms. Gerli stated the language had been precisely crafted so as not to be challenged.

PUBLIC COMMENTS:

Patricia Bintliff stated she was the resident of the Van Buren residence. She requested for the record, that Page 2 of the staff report be corrected to reflect that at the time of the inspection she had 14 beds and 11 residents, not 11 beds and 13 residents. It was important to distinguish the difference between facilities because her home had never been used as a facility of any kind. She asked under what license did the City classify homes as "residential service facilities" and if the City was going to inspect every household in R1 zones; otherwise it would be discrimination.

Beth Refakes, East Side resident, expressed concern with how the City would be treating families in R1 zones as she felt it would be an imposition of constitutional rights.

Paul Dumont, Housing Rights advocate and volunteer, explained the problems with the City's redefinition of single housekeeping unit.

Barron Hurlbut, East Side resident, suggested citing complaints that arise as a solution to arbitrarily inspecting residences. He supported the ordinance and stated that having an ordinance would be in the best interest of Costa Mesa citizens.

Grant McNiff, Costa Mesa resident, Chair of the Coalition for Sober Living of Orange County and President of Sober Living for Southern California, asked what the City's plan was when inquiring about ownership and household arrangements of all R1 households, under what City license did "residential service facilities" fall under and what steps were being taken to ensure Fair Housing opportunities were increased and barriers to disabled housing were being eliminated.

Andy Boeey, resident, mentioned that said facilities/homes were businesses and it was difficult for citizens to understand how businesses were being operated from R1 facilities. Given the situation at hand, he did not think residents would object to the City conducting a survey.

Chair Fitzpatrick closed the public comments session.

MOTION: Direct staff to relook at how the ordinance is being proposed, broaden its focus on residential service facilities as well as how it will be enforced, taking into account citizens' questions and concerns and return at the earliest possible date.. Moved by Chair Fitzpatrick, second by Commissioner Mathews.

Commissioner Dickson stated he would not be supporting the motion because the proposed ordinance was a necessary administrative redefinition of a Municipal Code section that significantly broadened and clarified the definition of a single housekeeping unit and did not unduly discriminate.

SUBSTITUTE MOTION: Recommend that the City Council approve and give first reading to Code Amendment CO-12-02 (*Single Housekeeping unit means that the occupants of a dwelling unit have established ties and familiarity with each other, jointly use common areas, interact with each other, share meals, household activities, lease agreement or ownership of the property, expenses and responsibilities; membership in the single housekeeping unit is fairly stable as opposed to transient and members have some control over who becomes a member of the single housekeeping unit.*) Moved by Vice-Chair Dickson, second by Commissioner McCarthy with comment.

Commissioner McCarthy did not understand why this issue was delving into something it was not. Citizens deserved relief and the issue needed to be looked at for what it was – tools for the City to protect residents. The matter did not need to be delayed any further.

Commissioner Mathews raised the question as to why these types of businesses could not operate in other parts of the City outside of R1 zones.

The motion carried by the following roll call vote:

Ayes: Dickson, McCarthy, Mathews
Noes: Fitzpatrick, Sesler
Absent: None
Abstained: None

- Application No.** PA-13-25
Applicant: Cody Bean
Site Address: 1520 Nutmeg Place
Zone: C1
Project Planner: Antonio Gardea
Environmental Determination: Exempt
Description:

Minor Conditional Use Permit to legalize the free on-site valet parking service for an existing medical use (Southland Spine and Rehab) from 8am to 5pm, Monday through Friday.

Senior Planner Antonio Gardea presented the staff report. He stated no public comments were received for this item and responded to questions from the

Commission regarding conditional use permits, the conditions of approval and reserved, stacked and valet parking.

Rich Wray, General Partner and owner of the property management company was in agreement with the conditions of approval. He explained there were two tenants in the building and the coned off parking spaces were to secure parking for the patients of a dentist who was a separate tenant. Despite being a busy place, he did not think there was a parking problem because both tenants were in agreement with the parking arrangement. Most of the time they did not have valet parking but sometimes the spaces were used to accommodate and provide a convenient service to people with physical disabilities.

PUBLIC COMMENTS

Beth Refakes, East Side resident did not see in the conditions of approval that the valet parking would be of no cost to the medical office clients.

MOTION: Based on the findings in Exhibit A and the conditions in Exhibit B, approve the free valet service for medical use at 1520 Nutmeg; delete “including, but not limited to, providing free on-site valet service.” from Condition No. 6; add Condition No. 8 stating that employees will park as far away from the existing building and stacking will take place to the North of the property; that cones be allowed only if other parking spaces are available and all medical uses have the free valet available. Moved by Chair Fitzpatrick, second by Commissioner McCarthy.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

2. **Application No.** PA-13-16, TTM-17640
Applicant: MDM Inv. Group Holdings LLC
Site Address: 522 and 526 Bernard Street
Zone: R2-HD
Project Planner: Mino Ashabi

Environmental Determination: Exempt
Description:

The proposed project involves:

1) Master Plan to construct a 10-unit, three-story attached residential development in the Mesa West Residential Ownership Urban Plan area with the following deviations:

- Lot size (one acre required, 0.53-acre proposed);
 - Garage size standard (20' x 20' required; 19'- 4" x 19' proposed);
 - Open space requirement (40 percent required, 22.4 percent proposed);
 - Front setback requirement (20 feet required, 10'- 5" proposed);
 - Side yard setback for corner lots (10 feet required, 8' - 3"proposed);
 - Interior side setback (10 feet required abutting residential, 6 feet proposed);
 - Minimum distance between buildings (10 feet required, 7 feet proposed);
 - Privacy wall setback on Charle Street (5 feet required, 3 feet proposed);
- and,

- Deviation from Residential Design Guidelines requested for second floor to first floor ratio (80 percent recommended, 100 percent proposed).
- 2) A tentative tract map to subdivide a 0.53-acre parcel for condominium purposes.

Principal Planner Mino Ashabi presented the staff report. She reported that the Supplemental Memo included revisions to the Conditions of Approval (delete No. 27 in its entirety and the second sentence in No. 18 was not applicable) as well as the addition of Exhibit C (extensive conditions for the subdivision provided by Public Services Department). Ms. Ashabi responded to questions from the Commission.

Bryan Avilla, with MDM Investment Group, stated he had read and accepted the conditions of approval and added that their Design Team was available to answer questions. Chair Fitzpatrick requested an update on the project. Mr. Avilla turned the floor over to their Design Architect.

Greg Bucilla, Design Architect with BGA, gave an extensive overview that included design elements, frontage and quality of construction and provided the Commission with a copy of their design booklet.

PUBLIC COMMENTS

Thomas Dobrzeniecki, resident at 526 Bernard, stated he would be kicked out of Costa Mesa if the project was approved. He did not think the project was consistent with General Plan Goal HOU-3 (variety of types of housing and design). He submitted petitions to the Commission and requested that they deny the project.

Nancy Hayward, Costa Mesa business owner, spoke in opposition of the project and stated it was not consistent with the City's density program.

Perri Peairs, former 544 Bernard Street resident, was opposed to the project and said she was an advocate for the trees. She asked that the pink orchid tree at the corner of Bernard and Charle remain and become a possible focal element to the project.

Jane Reifer, Costa Mesa business owner, asked the Commission to deny the application. She expressed concern with noticing of Planning Commission documents, loss of affordable housing, high density and width of the sidewalks.

Dr. Thomas Ehrlich Reifer, Associate Professor at the University of San Diego, spoke in opposition of the project and said he was there to support his friend, Thomas Dobrzeniecki. He encouraged the Commission to deny the project.

Dana Reed, representing 1974 Charle - a family-owned garage, requested clarification regarding for the width of the alley which was already too narrow, accessibility and duration of construction.

Mr. Avilla appreciated the public's comments and stated MDM had reached out to the tenant to discuss his concerns. Construction was anticipated to begin in mid 2014 and the duration to be approximately 6-8 months. Sidewalks would be maintained according to City's standards and the alley width would be increased by 8 feet. In an attempt to revitalize the neighborhood, the corner appeal would be spruced up by removing 3 existing trees and adding 13 trees. Mr. Avilla was not aware of the petitions and stated they would be willing to work and cooperate with the tenant if the project was approved.

Commissioner Mathews asked to see the petitions - the Commission took a few minutes to review the petitions. Chair Fitzpatrick asked staff to provide the applicant with copies of a set of the petitions.

MOTION: Based on the findings in Exhibit A and subject to the conditions in Planning Commission Supplemental Memo dated October 10, 2013, which deletes the last sentence in Condition No. 18 and deletes Condition No. 27 in its entirety, approve PA-13-16, TTM-17640 for at 10-unit condo at 522 and 526 Bernard. Moved by Commissioner McCarthy, second by Commissioner Mathews.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

The Chair explained the Appeal process.

4. An Ordinance of the City Council of the City of Costa Mesa Amending Title 13 of the Costa Mesa Municipal Code Related to Hookah Parlors

Associate Planner Aaron Hollister summarized the staff report. He responded to questions from the Commission regarding the number of Hookah Parlors, number of service calls at the various Hookah parlor locations, current code cases,

Commissioner McCarthy inquired about contacting the Chamber of Commerce. Director Armstrong confirmed discussions with the Chamber of Commerce, who was not in favor of promoting this type of a business and although they had not submitted public comments, they were not supporting it.

PUBLIC COMMENTS

Mary Dunham, resident, American Cancer Society volunteer and Relay for Life Event Chair, spoke in favor of enacting an ordinance that would prohibit Hookah parlors due to health effects

Maria Luis Flores, resident and member of the American Cancer Society Action Network and Relay for Life expressed concern with second-hand smoke. She stated the American Cancer Society Action Network encouraged the passing of strong smoke-free laws to protect people from the harms of second-hand smoke and said Hookah parlors should not be exempt from the smoke-free laws that prohibit smoking in public places.

Amanda Knitter, representing the American Lung Association, reported that hookah smoking contained the same cancer causing chemicals as cigarette second-hand smoke. Per the World Health Organization, smoking hookah for 45 minutes could be equivalent to smoking over 100 cigarettes. She commended the Commission for taking steps to protect the youth and residents from the harmful effects of hookah and reduce access to hookah parlors.

Anahid Arakelian, advocate for hookah lounges, reported hookah was a long-standing tradition of her culture (Indo-Europeans). She made the distinction between alcohol and the concept of hookah that Americans were adopting. When she heard of Costa Mesa's prohibition on hookah lounges she took her business to Anaheim because Anaheim had a smoking lounge regulatory permit process. While she felt it was necessary to regulate hookah, she did not believe that banning it completely was the answer. She asked the Commission not to approve the ordinance because it was drastic.

Moheb Fonog, 440 Fair Drive hookah lounge owner, presented proof that his lounge had not received any complaints or service calls since for two years since opening in 2011. His business was not a dispensary and he did not feel he should be paying the price for

what other hookah lounges were doing. He requested the Commission reconsider his application that had been denied.

Seyed Mehd Hassani, Bristol and Paularino hookah lounge owner, gave an overview on hookah lounges and said that hookah smokers were aware of the health hazards and choose to smoke hookah. As a business owner, he requested extending the business hours for hookah lounges (from 12:30 a.m. or 2:30 a.m.) because keeping the current hours (close at 11 p.m.) did not generate money.

The Commission had a lengthy discussion on hookah lounges and felt staff needed to examine hookah lounges further.

MOTION: Approve and recommend that the City Council approve and give first reading to Code Amendment CO-12-07, an amendment to Title 13, Chapter, Section 13-6 and Title 13, Chapter, Section 13-30 of the Costa Mesa Municipal Code related to Hookah Parlors. Moved by Commissioner McCarthy.

Motion failed due to lack of a second.

MOTION: Reject staff's recommendation and recommend that the City Council place a moratorium and allow staff and the Commission to consider existing uses and better understand regulation before considering a ban. Moved by Vice-Chair Dickson, second by Commissioner Mathews.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, Mathews, Sesler
Noes: McCarthy
Absent: None
Abstained: None

Commissioner McCarthy asked that the staff report reflect that his "no" vote was because he was in support of the ban.

Chair Fitzpatrick asked when the matter would go to Council. Mr. Hollister reported the matter would go before the City Council on November 5, 2013.

ADJOURNMENT: NEXT PLANNING COMMISSION MEETING AT 6:00 P.M. ON MONDAY, OCTOBER 28, 2013.

Submitted by: 
CLAIRE FLYNN, SECRETARY
COSTA MESA PLANNING COMMISSION