

**REGULAR MEETING OF THE CITY OF
COSTA MESA PLANNING COMMISSION**

May 9, 2005

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., May 9, 2005 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Chairman Perkins, followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

Commissioners Present:

Chairman Bill Perkins

Vice Chair Donn Hall

Eleanor Egan, James Fisler, and Bruce Garlich

Also Present: R. Michael Robinson, Secretary

Costa Mesa Planning Commission

Tom Duarte, Deputy City Attorney

Ernesto Munoz, City Engineer

Crime Prevention Specialist Sue Hupp, CMPD

Lt. Dale Birney, CMPD

Mel Lee, Senior Planner

Wendy Shih, Associate Planner

MINUTES:

The minutes for the meeting of April 25, 2005 were accepted as distributed.

PUBLIC COMMENTS:

None.

**PLANNING COMMISSION
COMMENTS/SUGGESTIONS:**

Commissioner Fisler announced the Fourth Annual Paws Around the Park to be held on Saturday, May 7th beginning at 8 a.m. He said this a fundraiser for Pet Prolife (sponsors adoptions, foster homes, low-cost spay and neutering clinics) and Fairview Park. For further information he gave the website number of www.cm.fairviewpark.org.

Commissioner Garlich said he attended the recent dedication of the newest training facility at Station #4; a 2-story facility adjacent to the 5-story tower. He said this Sunday, May 15th from 11 a.m. to 3 p.m., citizens will be able to see the Public Safety Expo being held at Station #4 on Placentia Avenue across from Estancia High School. He said demonstrations would be given by both the Fire and Police Departments; the new training facility can also be used by the SWAT team for training. He encouraged everyone to attend the expo.

Commissioner Egan said she attended the Bristol Street Mixed Use Overlay Zone Committee meeting and received a copy of a draft ordinance that is being considered. She felt the ordinance would soon be coming to the Planning Commission and she encouraged the public to visit the Planning Division at City Hall to obtain a copy. She said there are two additional meetings before the committee will be ready to turn in its final report.

Chair Perkins reiterated Commissioner Garlich's comments and announcement of the Public Safety Expo.

PUBLIC HEARINGS:

**CONDITIONAL USE PERMIT
PA-04-26**

Bauer/Frost

Conditional Use Permit PA-04-26 for Steven Frost, authorized agent for Patricia Bauer, to allow off-street parking space on First Church of Christ Scientist parking lot, located at 2880 Mesa Verde Drive East in an I & R zone for use by students of the Paul Mitchell Schools, located at 1500 and 1534 Adams Avenue in a C1 zone. Environmental determination: exempt.

Staff recommended this item be continued to the Planning Commission meeting of July 11, 2005.

MOTION:

A motion was made by Vice Chair Hall, seconded by Commis-

PA-04-26

Continued

PLANNING APPLICATION

PA-05-04

Bartholomew

sioner Garlich and carried 5-0, to continue this item to the Planning Commission meeting of July 11, 2005.

The Chair opened the public hearing for consideration of Planning Application PA-05-04 for Dr. Kenneth T. Kim/West Coast Clinical Trials, to allow a portion of the building to be used for overnight stays by test subjects participating in medical research, located at 3545 Howard Way, in an MP zone. Environmental determination: exempt.

Senior Planner Mel Lee reviewed the information in the staff report and made a presentation. He said that staff is recommending approval by adoption of Planning Commission resolution, subject to conditions.

Bryan Montoya, 2062 Business Center Drive, Irvine, agreed to the conditions of approval. He stated for the record, that the project planner, Mel Lee did a good job.

No one else wished to speak and the Chair closed the public hearing.

MOTION

PA-05-04

Approved

A motion was made by Commissioner Garlich, seconded by Commissioner Egan and carried 5-0, to approve by adoption of Planning Commission Resolution PC-05-29, based on information and analysis contained in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B."

The Chair explained the appeal process.

PLANNING APPLICATION

PA-05-09

St. Clair/Pierce

The Chair opened the public hearing for consideration of Planning Application PA-05-09 for John D. Pierce, authorized agent for William Dennis St. Clair, for a conditional use permit to allow a physical fitness facility in an existing industrial building, with a minor conditional use permit to deviate from shared parking requirements based on unusual operating characteristics, located at 738 W. 17th Street, in an MG zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. She said staff is recommending approval by adoption of Planning Commission resolution, subject to conditions.

Commissioner Garlich stated that condition of approval #4 limits the number of occupants prior to 6 p.m. to 2 students and 2 instructors. He said in discussions at the study sessions, the limiting factor prior to 6 p.m. was parking, and since it is not a problem and 6 parking places are available to this tenant, he confirmed with Ms. Shih that it could be changed to "3" students and "3" instructors.

Commissioner Egan said she was concerned by the fact that code requires that a commercial use in an industrially zoned area, be not only compatible, but also complementary to the industrial use, meaning that the uses actually support one another. Planning Commission Secretary Michael Robinson explained that the findings as set forth in the Municipal Code for approval of planning applications are as written in the recommended findings of approval. He said complementary can mean symbiotic in that the uses rely upon and support each other, or it could be in terms of hours of operation when they operate during the off peak hours when other industrial uses do not operate. He said it is up to the Planning Commission to determine. He said if staff in their review of the application felt the use was not complementary, they would point that out.

William Dennis St. Clair, 351 Walnut, Costa Mesa, agreed to the conditions of approval. Mr. St. Clair said he visited the businesses in his complex and informed them of the new hours he wanted to operate his business. He brought a signed statement from those businesses agreeing to his new hours of operation beginning at 5:30

a.m. for those who want to exercise before they go to work.

In response to the Chair about the change of hours in operation at this site, Ms. Shih said this additional time would not affect parking or staff's analysis because the nighttime sessions will not occur prior to 6 p.m.

In response to Commissioner Egan's previous inquiry regarding the use as being "complementary", Mr. St. Clair noted that he has a definite symbiotic relationship with other businesses in the complex. He said "Tint Masters" is next to his business and his students get their cars attended by this business; Quality Automotive, 2 doors down from his business, also fixes his students' cars; he is also doing some things with Max Muscle Nutrition that is next door to Quality Automotive. He said he has become a contributing member to the business community there and he will continue to do so.

Commissioner Garlich asked Mr. St. Clair if he had objection to increasing the number of students and instructors in condition of approval #4 from 2 to 3. He had no objections.

No one else wished to speak and the Chair closed the public hearing.

MOTION
PA-05-09
Approved

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0, to approve by adoption of Planning Commission Resolution PC-05-30, based on information and analysis contained in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B" with the following modification:

Condition of Approval

- 4. ...one-on-one sessions prior to 6:00 p.m. and no more than ~~2~~ 3 students and ~~2~~ 3 instructors at any given time until after 6:00 p.m. Any change in the operational....

The Chair explained the appeal process.

PLANNING APPLICATION
PA-05-10

Skillman/McLaren

The Chair opened the public hearing for consideration of Planning Application PA-05-10 for Steve McLaren, authorized agent for the Teachers Retirement System of Illinois/John W. Skillman, for a specialty retailer (Beverages & More), selling alcoholic beverages, gourmet food items, and related accessories, and for Planning Commission to make the required public convenience or necessity finding for the proposed ABC licenses, located at 1835 Newport Blvd, Suite B129 in a PDC zone. Environmental determination: exempt.

Senior Planner Mel Lee reviewed the information in the staff report and gave a visual presentation. He stated that staff was recommending approval by adoption of Planning Commission resolution, subject to conditions, and further recommended that the Planning Commission make a finding for public necessity and convenience. Mr. Lee further stated that if the Planning Commission should approve this application, staff has already made the finding and included it in the resolution this evening.

Mr. Lee referenced a memo letter prepared by the Los Angeles Police Department, which outlined the Department's proposed conditions for the "Beverages & More" located in Van Nuys, California.

Mr. Lee also discussed several alternatives the Planning Commission might wish to consider.

Lt. Dale Birney of the Costa Mesa Police Department said this establishment is located in an area that is traditionally and historically, one of the City's highest areas for "calls for service." Many of these calls are related to transient and homeless issues and also

deal with alcohol, fighting, sleeping on properties, etc. He said he understands that this is not a Type 20 license that is being requested, but he felt it was very similar. In addition, he said the City of Costa Mesa has ranked in the top 3 for the number of DUI offenders arrested per year; has ranked in the top 7 for the number of DUI related collisions compared to comparably populated cities of between 100,000 and 250,000. Based on the information the department has gathered, he said it is their position that the City of Costa Mesa is, if not at capacity, is certainly very near capacity to the number of ABC licenses that should be issued. Specific to the geographic location of this establishment (Beverages & More), he did not believe it would be a good fit at this time.

In response to a question from the Chair regarding using some of the proposed conditions in the previously mentioned letter from the LA Police Department to alleviate concerns of the City of Costa Mesa Police Department (particularly #7, #14, and #16), Lt. Birney said that in terms of this specific business, it would. However, he pointed out that their concern lies with not only the location of this establishment, but how it relates to the surrounding area and the problems experienced with that.

There was discussion between the Chair, staff, and Lt. Birney regarding a video security system for which the Chair expressed he felt very strongly about because of the location of the project.

Steve McLaren, authorized agent, 76 Lynwood Place, Moraga, California agreed to the conditions of approval with the exception of condition of approval #6 in "Exhibit B" of the staff report. Mr. McLaren explained this is because he is happy to tell the Planning Commission that they have been able to find a license within the City since the last study session. He said it is on Harbor Boulevard with a Type 21 license. He pointed out that this transaction would remove an over concentrated license from that census tract.

Mr. McLaren also wished to address the comments by the Commission and Lt. Dale Birney. He said he is the cofounder of Beverages & More (1994). He said there are currently 46 stores in the State of California with 8 under construction and they are the 2nd largest specialty retailer selling alcoholic beverages in the United States; they are first on the website and #3 in the world. He briefly described the stores' product lines. With respect to the Commission concerns and the Police Department, Mr. McLaren stated the following facts about his business: (1) The store hours are unique in the industry; they are 10 a.m. to 7 p.m. on Sunday, 10 a.m. to 9 p.m. Monday through Friday, and 9 a.m. to 9 p.m. on Saturday. On Holidays (approximately that last 8 weeks of the year), they open at 9 a.m. and close at 10 p.m., 7 days a week. He commented that licensees in this census tract are open to at least 10 p.m., but most are open until 2 a.m. (2) He said most of the abusive behavior in the communities that they operate in throughout the state comes between 10 p.m. and 2 a.m. at which time they are closed. (3) They do not carry pints and half pints as in liquor stores; they do not carry the screw-top, low-end fortified wines, and they do not carry 40 oz. malt liquor bottles. (4) They do not sell any pornographic material. (5) There are no newspaper stands inside or outside the store because it deters littering. (6) There are no pay phones to create loitering inside or outside the store. (7) No one under the age of 21 is allowed into the store, unless accompanied by an adult (clearly stated on the front door of all stores). He said they have a "Vi-age machine" at the check stand; an electronic small slider machine which when a license is swiped, it will immediately give the age of the person buying the liquor and will card people under the age of 35. (8) According to state law, alcohol can be sold at age 18, but no one is hired in his stores under the age of

21. He felt it removes a good deal of peer pressure from the high schools and colleges by preventing the sales to underage persons and minors. (9) They have a training program recognized across the state in lieu of the Star Program and the Lead Program through local police departments. (10) They have a simple dress code in all their stores; they have "green" shirts that are neat and tidy, lending credence to the image of their stores. (11) Fifty percent (50%) of their business are female shoppers. The regular liquor stores average 90% men and 10% women shoppers. The reason this is so is because their stores have wide aisles, they are clean, well lighted, and they are safe. (12) The wine tasting area requires a Type 42 license (purchased over the counter through ABC), and the scheduled times for tasting are Friday from 4 p.m. to 7 p.m. and on Saturday from noon until 6 p.m.; wine makers come in at those times and talk about their products; it is a "product knowledge session" normally held at those times. Mr. McLaren also described different events during the year such as festivals, and holidays that pop up over each calendar year and may necessitate other wine-tasting session, i.e., champagne and caviar for St. Valentine's Day. (13) He said in their "Kegs and Food" sections, they sell 5-gallon kegs of root beer that comes out of the state of Oregon (Thomas Kemper Root beer) and everyone smiles about it, but it is useful for the youth groups who like to purchase it for all kinds of special events. (14) The parking lot is well managed and there will be no shortage of parking because of the type of business this is. (15) There are video cameras in 2 stores in the company; the one in Van Nuys is at the check stands because the police asked for it to be there; the other is Jack London Square in downtown Oakland. There are security guards in 3 stores: Jack London Square; downtown Oakland; and Bayshore, just outside of San Francisco. There is also a security guard at the Van Nuys store that the landlord provides. (16) There have been 3 robberies in these stores over the years and no one has ever been hurt.

Chairman Perkins said he visited the Beverages & More store in Irvine and praised the store and employees, however, he felt it was a different community than the Westside of Costa Mesa. He asked Mr. McLaren if he would be willing to put up some "no loitering" signs; he said he wasn't so worried about having a security guard, but his primary concern was whether Mr. McLaren would be willing to put in a video security system into this store. The Chair also asked that he consider a condition for no cigarettes, no pornographic magazines or videos.

Mr. McLaren agreed to the conditions, however, he felt the video security system was a big expense and stated that he had a different opinion than the police did about this based on his 40 years of retailing experience. The biggest deterrent in these stores is that there is only one entrance and exit. He said he can accept the condition regarding the cigarettes and pornographic materials, but his growth pattern is to be literally one of the largest retailers in lifestyle stores and he does not foresee any problems with it. The Chair said his intention is to limit that now before it becomes a market desire.

In response to a question from Commissioner Fisler regarding expected new hires for the Costa Mesa store and the impact on the sales tax revenue for the City, Mr. McLaren explained that other than the exception of two management employees over the years, the entire Southern California 20 stores have opened with new hires locally and all are trained locally. In this community, the average hire is between 12 and 15 new hires.

Commissioner Garlich said he was stating for the record that he also visited the Irvine store and met with some of the management

and clerical personnel there. In response to a question he had regarding the enforceability of all the provisions of condition of approval #16, Deputy City Attorney Tom Duarte stated that yes, because there a reasonable nexus attached to this, any condition that relates to the use of the property, if the Commission sees it as having a detrimental affect on the welfare at large, absolutely.

Commissioner Egan thanked Mr. McLaren for volunteering these conditions from the Los Angeles Police Department. She said she believed they have been helpful for the Commission in analyzing the application. She said she was particularly interested in conditions 6, 7 and 16. She said she visited the Huntington Beach store and as far as she could tell, none of these conditions would change operations at all. She asked if he had any objection to the Commission's desire to add conditions 6, 7, and 16 from the Los Angeles Police Department, Beverages & More in Van Nuys. Mr. McLaren agreed to those conditions.

Vice Chair Hall and Mr. McLaren discussed condition of approval #6 in the Planning Division report under "Exhibit B" relating to the applicant transferring a license from inside the City so there is no increase in the number of citywide ABC licenses.

Beth Refakas, 320 Magnolia Street, Costa Mesa, listed several concerns previously discussed by staff and Lt. Birney of the Costa Mesa Police Department. She said that it shouldn't be approved because she felt it was being built in the wrong location.

Commissioner Garlich said he was sympathetic with the intent of Vice Chair Hall's suggestion on condition of approval # 6 in Exhibit "B" of the staff report, however, he felt the wording he used would be a disincentive to make any effort to get a license within the City and asked Deputy City Attorney Tom Duarte to address the intent of Vice Chair Hall's suggestion. Mr. Duarte stated that if it is stated as Vice Chair Hall suggested, you could add the language "in good faith", however, Mr. McLaren's commitment to the sale or the purchase of that license, isn't required other than the language stated in the original condition, and he would not have a requirement to purchase a license within the City.

Commissioner Garlich confirmed that if the Commission were to leave condition of approval #6 as it is, the entitlement would be good for a year and would be a burden on the applicant to shorten that time as much as possible with regard to his lease from his leaseholder. Mr. Duarte said if he should discover a lien and it falls through, and he can't comply with this condition, then he cannot receive the Conditional Use Permit. Mr. Duarte said he could not think of any other mandatory way to state this condition any differently than it already is.

Commissioner Egan stated that a previous speaker raised questions about the ounces of wine that would be served during wine tasting sessions and requested that the applicant address this point.

Mr. McLaren explained that the Type 42 license is actually governed by the ABC as the tasting area. Basically it is 1 to 2 oz. pours and you can limit that, so they don't usually do more than that. Each person pays a nominal fee to cover the costs of the wine and glass. For instance if you drank your wine in a ten-dollar glass, you may keep the glass. He said that in 11 years there has never been an instance of misconduct; there is always someone in charge and the Vi-age machine is also used. No children are allowed in that area. The size of this area is 10' X 9'2".

No one else wished to speak and the Chair closed the public hearing.

Commissioner Hall said he wished to make a comment regarding

whom we should thank for enticing this organization to come into our City. He said he meant it sincerely, because this operation is going to enhance the business climate of the Courtyards. There has been a problem of keeping stores occupied there and this is a high-end operation. He said as far as the wine tasting area, it should be compared to the Fair, their tasting area is huge, and it's busy all day long. Hi-Time Wine Cellars which was mentioned earlier, has a tasting area, and although he is not over there too often, he didn't believe he'd ever seen anyone tasting, and probably because it's not that big a deal; they know what they want. He said he believed this item is going to be a tremendous boost to our City.

MOTION
PA-05-10
Approved

A motion was made by Vice Chair Hall, seconded by Commissioner Egan, and carried 4-1 (Perkins voted no), based on information and analysis contained in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B" with the following additions to the conditions of approval from the Los Angeles Police Department conditions:

Conditions of Approval

13. No price or product signs may be placed in store windows and along adjacent building walls. Signs such as 5% Rewards and Club Bev Membership are permitted.
14. "No Loitering" signs shall be posted.
15. There shall be no sales of pints/half pints of spirits, 40 oz. malt liquor beers, low-price screw-top fortified wines (i.e., Ripple, MD 20-20), cigarettes and/or pornographic magazines/videos.

During discussion on the motion, there was discussion between the Chair and other Commissioners regarding a video security system condition and it was agreed to add that condition. Mr. McLaren advised the Commission they have a security system, but it is not a video security system and it is in every store. The Chair said he wanted a "video" security system and that he wanted to see where this was going.

Commissioner Garlich said he agreed with most of the observations that Vice Chair Hall made about painting all these businesses with the same brush and it's tough for the Police Department to do otherwise, and they are doing their job when they give us the numbers they do. He agreed also that it's a good business for the City and a good business for that part of town and he believed it would do a lot to help revitalize that corridor. Commissioner Garlich said he would be happy to support the motion with all of the conditions suggested *without* any video security system or any kind of call back for a future report.

Vice Chair Hall confirmed his motion without the video security system.

Commissioner Fisler and Commissioner Egan both confirmed that the staff report "Exhibit B", condition of approval remains as is.

Commissioner Egan said she agrees that this particular operation is likely to be a valuable addition to the Courtyards development and she did not see any likelihood of it presenting problems. Commissioner Garlich added that he shared Commissioner Egan's feelings about condition of approval #6 (staff report, exhibit B, condition of approval #6). Commissioner Fisler said this condition is also the key for him.

Vice Chair Hall stated that Commissioner Egan worries about them moving out of their store at this location and he believed the only reason they would move out of this location, is to find a bigger one.

Chair Perkins said he was on the losing end of a 4 to 1 vote. He said was really very impressed with the Irvine store. He said his

concern was what the Police Department mentioned regarding a video security system. He said his concern also lies in the sense that we have no security and he said this is a bad area of town that we're trying to make it a little bit better. He said he's been in retail for 13 years and those security systems don't always work, but he could guarantee that having had security systems, he has found they are a deterrent even if they are not there. He said he thinks that the Commission was going in the wrong direction this evening. He said if we had the video security system he would have been much more happy.

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT

Planning Commission Secretary R. Michael Robinson stated that as indicated in his memo of May 4th, the Commission will be having a study session next Monday evening and the two items of interest on the agenda would be an ordinance regarding medical marijuana dispensaries and revised Planning Commission study session and meeting procedures.

REPORT OF THE CITY ATTORNEY'S OFFICE:

None.

ADJOURNMENT:

There being no further business, Chairman Perkins adjourned the meeting at 8:17 p.m. to the study session of Monday, May 16, 2005.

Submitted by:

R. MICHAEL ROBINSON, SECRETARY
COSTA MESA PLANNING COMMISSION