

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

May 23, 2005

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., May 23, 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, Acting Secretary

Costa Mesa Planning Commission

Kimberly Brandt, Principal Planner

Tom Duarte, Deputy City Attorney

Ernesto Munoz, City Engineer

Mel Lee, Senior Planner

Lester Gogerty, Police Lieutenant

MINUTES:

The minutes for the meeting of May 9, 2005 were accepted as corrected.

PUBLIC COMMENTS:

Martin Millard, 2973 Harbor Boulevard, Costa Mesa, said when the Planning Commission makes decisions, they need to decide if those decisions would "help" or "harm" the City.

**PLANNING COMMISSION
COMMENTS/SUGGESTIONS:**

The Commissioners commended the participants and volunteers who accomplished a very successful Safety Expo this year and encouraged everyone to join in next year's activities. Commissioner Fisler commended the City Council for taking a stand with regard to illegal aliens as expressed in a letter to President Bush. Commissioner Egan expressed her regret at being unable to attend the reception for volunteers, and she thanked all who serve on City committees and in other volunteer capacities. Commissioner Garlich said he visited with Chief of Police Hensley and discussed the ABC Licensing in the City from the Police Department's point of view. Commissioner Garlich said he would like to have a special study session to discuss ABC issues to include members of the Police Department at a Planning Commission study session. In response, the Chair requested a study session be scheduled for June 20th and the meeting was set for that date by Planning Commission Secretary R. Michael Robinson.

CONSENT CALENDAR

On a motion made by Commissioner Egan, seconded by Vice Chair Hall and carried 5-0, the following item on the Consent Calendar received the action below.

**VACATION OF EXCESS PUBLIC
RIGHT-OF-WAY**

Vacation of Excess Public Right-of-Way for 197 Magnolia Street (Orange Avenue side). Environmental determination. Exempt.

197 Magnolia Street

Adopted Planning Commission Resolution PC-05-32 finding that the vacation of excess public right-of-way is in conformity with the City of Costa Mesa 2000 General Plan, based on analysis and information in the Planning Division staff report and the description as shown on the Street Vacation Exhibit.

PUBLIC HEARINGS:

**AN ORDINANCE PROHIBITING
ESTABLISHMENT OF MEDICAL
MARIJUANA DISPENSARIES IN
THE CITY OF COSTA MESA**

The Chair opened the public hearing for consideration of an ordinance amending Title 13 of the Costa Mesa Municipal Code to prohibit the establishment of medical marijuana dispensaries in the City of Costa Mesa.

City

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. Ms. Brandt also gave the Planning Commission several alternatives that could be made in their recommendation to City Council as follows: (1) Recommend that City Council give first reading to the draft ordinance that prohibits the establishment of medical marijuana dispensaries; (2) Direct staff to prepare an ordinance that allows medical marijuana dispensaries to be established with approval of a conditional use permit, subject to conditions of approval related to location and operational standards and return to the Planning Commission for review and recommendation; and (3) Direct staff to prepare an urgency ordinance to place a moratorium on the establishment of medical marijuana dispensaries until such time as the United States Supreme Court has made a determination in Raich v. Ashcroft.

She further explained that the US Supreme Court is currently considering a Ninth Circuit Court of Appeals decision regarding the federal government's ability to prohibit cultivation and possession of marijuana for personal medical use. She said it is anticipated the Supreme Court will render a decision this summer.

In response to the Chair, Lt. Lester Gogerty of the Police Department, explained aspects of the state's program. He also explained some of the secondary effects impacting the city of Anaheim. He added that in the San Francisco Bay area, some people buy from a dispensary and resell it and as a result, it has closed businesses, and the Police Department has concerns of the secondary affects related to these dispensaries.

In response to a question from Commissioner Egan regarding fields where licensed marijuana is being cultivated for market to these dispensaries, Lt. Gogerty stated that he was unaware of where they would be located. Commissioner Egan asked if the cities that have dispensaries, are making sure it is not coming from illegal drug trade. Lt Gogerty said that because this is fairly new and in San Francisco, there were no requirements or restrictions set. However, 43 dispensaries later, there was a moratorium put into effect because they were being established everywhere (residential neighborhoods, homes, etc.) and they are now experiencing burglaries, people loitering, people smoking marijuana in the parking lots and people selling it in parking lots after they go in and obtain it legally. With only one city in Orange County currently doing this, he said there is not much to research at this time, as to how they are actually dealing with these issues.

The Chair stated that if you grow marijuana and you sell it for a higher price, it's like a drug deal and asked how that issue could be addressed. Lt. Gogerty said that one of the larger marijuana medical dispensaries in Los Angeles was raided just a few weeks ago. He discussed some of the details and said the IRS is also investigating it because of its nonprofit organization status. There was discussion between the Chair and Lt. Gogerty regarding the THC levels of marijuana, which determine its potency, how it is sold, and it's cost.

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

Commissioner Garlich said he was not in favor of allowing a medical marijuana dispensary in the City of Costa Mesa. He asked if there is a benefit, then the Commission should make a recommendation to City Council for a moratorium as opposed to recommending first reading of the ordinance.

Deputy City Attorney Tom Duarte explained that staff is waiting for a Supreme Court decision to come down. He said many cities

throughout the state as pointed out by Lt. Gogerty, have taken one of several actions: some have entered into moratoriums; some have decided to regulate it; some have prohibited it, and some are just sitting back and waiting to see what happens with the Supreme Court decision. As to any benefits involved, if an ordinance is created and a decision comes down, the City will not defend the ordinance, but will amend that ordinance and make it a constitutional ordinance.

Planning Commission Secretary R. Michael Robinson added that the decision on whether the Commission does a moratorium or an ordinance is not mutually exclusive; you can forward a recommendation for both to the Council.

MOTION:

ORD.-Marijuana Dispensaries
Substitute Motion was introduced

A motion was made by Commissioner Garlich, and seconded by Chair Perkins (the motion was not called due to a substitute motion), to recommend to City Council that the draft ordinance be given first reading.

During discussion on the motion, Commissioner Garlich said there is no question there are people who benefit from this use. He said he would hope in the longer term that the benefits from this drug for beneficial medical use, would find its way into pharmacies and onto prescription pads for physicians to write prescriptions as they do now for narcotics such as codeine and morphine. He believed it appropriate to prohibit it in this City.

In response to a request from Chair Perkins to amend the motion to include a moratorium, Commissioner Garlich felt it was unnecessary since the recommended ordinance already takes care of it. Deputy City Attorney Tom Duarte explained that if someone should request to open a dispensary, they would have to go through the CUP process and it is within City Council's authority to approve a moratorium.

Chairman Perkins commented he believes medical marijuana dispensaries should be prohibited in the City. He said to open up a place like that would be inherently wrong and would invite a wrong situation. He said some people feel it's necessary for their health, but he did not agree. He felt this could open the City up to much more crime, violence, and other problems unnecessarily. He said Costa Mesa needs to stay "drug free" and legalizing it would be taking a step backwards.

Commissioner Egan stated that during the past week, she has given this matter a great deal of thought and she was not inclined to rush forward after this initiative statute has been on the books for ten (10) years in order to get some law on the books just weeks before the Supreme Court will hand down their decision; probably to rule the initiative statute invalid, or at least the portion of it dealing with dispensaries. She did not believe that Costa Mesa is "drug free", and said the Police Department Gang/Drug-free Task Force will tell you that we have a lot of illegal marijuana in this City.

Commissioner Egan also said she has several concerns, but primarily she questioned whether it is possible for the City to permit a medical marijuana dispensary and apply conditions to it and regulate it such that we can avoid involvement with illegal drug traffic. She said she is not prepared to say that because some cities have failed to regulate it, or failed to regulate it adequately, that it can't be done. One of the conditions that she would suggest is a detailed paper trail showing that the marijuana was properly and legally grown, where it was grown and by whom, when it was planted, when and by whom it was harvested, by whom, when, and how it was transported to the dispensary; to whom and in what quantity it was dispensed (including the date) with every gram of marijuana accounted for; further, a record should be made of how much was

left over each day from each shipment; and all information kept under lock and key as is done at pharmacies.

Commissioner Egan also asked if the City could regulate it in such a way that there is no involvement with illegal drug trafficking. She said the paper trail should be made available to the Police Department on demand, as well as financial records. She felt with this kind of record keeping, it could be accomplished.

She said no applications have been received in more than 10 years, and it will be processed as a conditional use permit and come before this body and will either be denied outright, or be granted with what seems to the Commission, sufficient conditions to control it. She felt that a hastily thrown together ordinance is not a good idea; a moratorium is unnecessary, but it would be a lesser evil.

Commissioner Garlich said the reason that staff brought this ordinance before the Commission this evening, is because they have begun to receive inquiries from people interested in opening these kinds of businesses in the City.

Commissioner Fisler said he agreed with Commissioner Garlich that there is evidence that there are people with glaucoma, and cancer that could benefit from marijuana prescriptions. The term "prescription" means "not over the counter." If we sell drugs not over the counter, then we have pharmacies, and, he believed that if someone can benefit from this, and the federal government makes it legal, he would support in the future, allowing a pharmacy to distribute this drug with a prescription, but he did not see this drug being handed out other than through pharmacies. He also commented that there are directors that make money under "nonprofit" businesses.

Vice Chair Hall said he has heard comments about prohibiting marijuana dispensaries, and if we do approve it, it was said that it should be prescribed through pharmacies, and/or have various other conditions/restrictions, etc. He pointed out that the people of the State of California voted to permit "medical marijuana." He said the State of California Senate has argued about how it can be done and he was sure these kinds of discussions have been going on since before the days of alcohol prohibition. He also pointed out that there are 11 other states that allow for medical marijuana. He felt we were yielding to the federal government. He said the constitution says, "it is the sovereignty of the states." Vice Chair Hall felt the Commission needed to proceed with an ordinance to permit it, let's wait until something comes along and then we'll look at a conditional use permit and put some conditions on it. Those conditions we would put on a conditional use permit could be the beginning of an ordinance, or could be an ordinance. To just say we will prohibit it, or implement a moratorium, or say "no way", or, adopt the ordinance that says no, he did not support. He felt we must recognize the fact that medical marijuana is going to be used; it is being used and we are forcing people who may need it, to obtain it illegally.

**SUBSTITUTE MOTION:
Ordinance-Marijuana Dispensaries
Recommended to City Council**

A motion was made by Vice Chair Hall, seconded by Commissioner Egan, and carried 3-2 (Garlich and Perkins voted no), to recommend to City Council, adoption of a moratorium on the establishment of medical marijuana dispensaries for the period of time required to prepare and adopt an ordinance that requires approval of a conditional use permit for the dispensing of medical marijuana, subject to conditions of approval related to location and operational standards

During the motion, there was discussion between Vice Chair Hall and Commissioner Egan regarding the content of the ordinance.

Vice Chair Hall chose staff alternative recommendation #2: “Direct staff to prepare an ordinance that allows medical marijuana dispensaries to be established with approval of a conditional use permit, subject to conditions of approval related to location and operational standards and return to the Planning Commission for review and recommendation.” He modified the motion to recommend to City Council, adoption of a moratorium to permit staff to prepare an ordinance permitting the use of medical marijuana.

Vice Chair Hall said he could modify his motion to adopt a moratorium to permit staff to prepare an ordinance permitting the use. In response to Deputy City Attorney Tom Duarte asking if this was a recommendation, Vice Chair Hall said yes, it is a recommendation that City Council adopt the moratorium for that period of time required to prepare an ordinance permitting the use of medical marijuana. The second concurred.

Deputy City Attorney said just for the record, the recommended draft ordinance prohibits the medical marijuana dispensaries. It is consistent with the state’s statute that the voters approved and we are not prohibiting the use.

Chair Perkins said he would not support the substitute motion because he disagreed with the dispensing of marijuana in any form.

There was further discussion between the Chair and Vice Chair regarding the pros and cons of medical marijuana dispensaries.

In response to a question from Commissioner Fisler, Vice Chair Hall stated that because there are so many alternatives, questions about the proper method of dispensing needs to be studied thoroughly. He said there really aren’t any specifics to discuss this evening and that the decision to be made this evening should be on implementing a moratorium, and starting the work of creating an ordinance that will come back to the Commission for review.

Commissioner Fisler felt that at least there would be opportunity for discussion of dispensing by pharmacies as the ordinance is fashioned for recommendation to City Council, and therefore, he supported the motion.

Commissioner Garlich said that the substitute motion was to create an ordinance that “allowed” medical marijuana dispensaries and Chair Perkins and Vice Chair Hall confirmed that was what was said. Commissioner Egan said it was “as a Conditional Use Permit.” Commissioner Garlich wished to clarify the word “allowed” was used. *The Chair then called for a vote on the motion as shown above.*

Ms. Brandt stated these recommendations would go forward to the City Council agenda of June 21st.

The Chair asked if Lt. Gogerty would also be at that meeting, and he confirmed that he would.

CONDITIONAL USE PERMIT
PA-05-01

Cook/Cook

The Chair opened the public hearing to review the possible revocation of Conditional Use Permit PA-05-01 for Elsie S. Cook, for review, modification, or possible revocation of a conditional use permit to allow an open storage rental yard on the property, located at 2025 Placentia Avenue in an MG 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 a denial of Conditional Use Permit PA-05-01 and revocation of Conditional Use Permits ZE-71-16 and ZE-71-16A by adoption of Planning Commission resolution.

Chair Perkins referenced the original CUP (1971) and stated that within 50 feet of Placentia, there could be no visible storage and

compared before and after photographs (approximately 8 months apart) that still showed the tops of storage containers. Mr. Lee confirmed that the property is still in violation.

Commissioner Garlich asked Mr. Lee if he spoke with the applicant, to find out if they were interested in coming into compliance. Mr. Lee said yes, he spoke with Mr. Vince Cook who is the son of the property owner, Elsie Cook, and he has indicated that if the Commission were to allow the CUP to continue to operate at the property, he would immediately remove the non-permitted structures on the property and proceed to comply with the remaining conditions of approval.

In response to a question from the Chair regarding the applicant's unwillingness to comply with the CUP over the years, Mr. Lee said what initiated his contact with the applicant, was a citizen complaint that was received by the Code Enforcement Division.

Vince Cook, 1692 Pegasus, Santa Ana, said he was in agreement with the recommended conditions of approval. In regard to the front portion of the property that faces Placentia, he would be willing to make that parking, and would allow a 50-foot setback from Placentia for the first storage stall; it would give a lot less visibility from Placentia. Mr. Cook said the reason there was no remedial action taken was that they didn't want to do anything until they found out whether it was possible to get a CUP again, and if not, they would go a different route.

The Chair said the Commission received a letter for Mr. Cook's mother, the property owner. Mr. Cook said he manages the property for his mother. The Chair, referencing the photographs of the property, asked Mr. Cook to explain how that much storage got on the property. Mr. Cook responded that the tenant in the front has a ministry and it was a mistake putting him in there because he gets used materials and then distributes it to the poor and helps build homes and other things and he just got carried away. He said he was out of town at the time and when he got back that's what it looked like. Mr. Cook said as far as the structures go, that's been over a period of time and is something that just happened.

In response to a question from Commissioner Garlich regarding his willingness to clear the front of the property up to the 50 feet and use it for parking, Mr. Cook agreed and said it would be parking for tenant vehicles with no cranes, storage containers, vans, etc.

In response to a question from Commissioner Fisler regarding the cars, boats, water vending machines, and colored canopies, Mr. Cook said that the canopies would come down; as far as the cars and vending machines, if they are under the 6-foot fence, he felt they were legal. Commissioner Fisler stated that this started with the CUP, which stated the site was for storage of construction and minor building materials, and now Mr. Cook wanted to make it storage only. He said the original CUP was "misworded" in the initial intent saying that it was adjacent to the engineering company's business. In response to a question from Commissioner Fisler as to whether there were people living there, Mr. Cook said there were some, but they have been removed. Commissioner Fisler also asked about the CUP ZE-71-16A (1973), requesting a block wall along the front and landscaping and then the Commission action was to delete the block wall and landscaping. He said a block wall would suffice because it would provide a buffer between the landscaping that they have tried before, it just didn't work.

Commissioner Egan commented that that when you walk along the sidewalk, you see all the way to the back and it looks pretty junky. She said every time she has gone by there, at least in the daytime,

the gate has been open. She asked how he would feel about a condition that would require a gate with an opaque surface that would be closed when its not being used for entry or exit. Mr. Cook said there is a 22-foot common easement there that serves the two properties so it cannot be gated since it would cut off the other businesses on the adjacent property.

Mike Berry, Meadow View Lane, Costa Mesa, said this has been going on for 30 years. The original complaint was made in August of 2004 and this is May 2005 and the problem is still there. He said the Commission should not keep granting CUP's without any ability to follow up.

Martin Millard, 2397 Harbor Boulevard, Costa Mesa, said he would also like to see the Westside begin to improve and requested that the Commission follow staff's recommendation and revoke the CUP's and begin working to help improve the Westside.

Beth Refakas, 320 Magnolia Street, Costa Mesa, agreed with the previous speakers in that the Commission should follow staff's recommendation.

Mr. Cook returned to the podium and commented that he would do what he said, and that the property would be sold when his mother dies. He also requested, should the Commission decide to revoke the CUP's, it would take 90 days to remove the tenants and another 30 days for cleanup of the property and he would need a total of 120 days total to take care of that.

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

MOTION:
PA-05-01
Denied PA-05-01 and
Revoked CUP ZE-71-16/16A

A motion was made by Chair Perkins, seconded by Commissioner Egan and carried 5-0 to deny Conditional Use Permit PA-05-01 and revoke Conditional Use Permits ZE-71-16 and ZE-71-16A, by adoption of Planning Commission Resolution PC-05-33; and provided that the owner/applicant shall have no more than 120 days from the date of the Commission's decision, to cease the use and clean up the premises, based on analysis and information contained in the staff report, the findings contained in exhibit "A" and public testimony, with the following modifications:

Resolution: (Last paragraph)

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that the applicant shall remove all storage and cease the use no later than ~~90~~ 120 days from the date of the Commission's decision.

Findings:

B. ~~Delete the last sentence as follows: Finally, approval of the request would allow the continuation of a marginal use inconsistent with City Council direction on the Westside Revitalization Plan.~~

During discussion on the motion, the Chair said he felt it was appropriate to give the applicant 120 days as he requested.

There was discussion between Commissioner Egan, the Chair, and Planning Commission Secretary R. Michael Robinson regarding the reasons for the 120 days and the necessity for the resolution to be amended for additional time. Deputy City Attorney Tom Duarte confirmed Mr. Robinson's statement and added that if it were not cleaned up, Code Enforcement would be called to the site.

Commissioner Garlich asked that the last sentence in Finding "B" be deleted from that paragraph (as shown above in the motion). There was further discussion from Commissioner Garlich and Commission Egan regarding this deletion and the Westside Revitalization Plan.

BREAK:

PLANNING APPLICATION
PA-05-11

Wilson

The Chair explained the appeal process.

The Chair called a recess and the meeting resumed at 8:13 p.m.

The Chair opened the public hearing for consideration of Planning Application PA-05-11 for Greg and Lori Wilson, for a variance to allow a 6-foot high block wall on the front property line (a 10-foot front setback required); a minor design review to construct a new, 3,023 square foot, two-story, single-family residence; a development review to legalize a 952 sq. ft. detached, granny unit; and a minor modification to allow a 2' encroachment into the required 20' front setback, located at 2196 Orange Avenue in an R1 zone. Environmental determination: exempt.

Senior Planner Mel Lee reviewed the information in the staff report and gave a presentation. He said staff is recommending denial of the block wall and minor modification; approval of the minor design review, and development review, by adoption of Planning Commission resolution, subject to conditions.

In response to a question from Commissioner Garlich regarding the wall and whether it poses a traffic/safety problem, Mr. Lee confirmed that it did not. He added that the wall incorporates a corner cutoff at the intersection of Orange Avenue and 22nd Street per the City's Traffic Design Standards and poses no hazards as it currently exists.

In response to a question from Commissioner Garlich regarding the area approximately 5 feet between the wall and sidewalk, Mr. Lee stated that this property is part of the public right-of-way. Mr. Lee confirmed with Commissioner Garlich that staff is recommending the wall be moved 10 feet to the east from where it is now if it is to retain its 6-foot height. Commissioner Garlich stated that as a result of this recommendation, it would mean that the 10-foot area would become accessible to the persons at the bus stop and Mr. Lee confirmed.

In response to a question from Commissioner Fisler regarding a 2-foot encroachment into the 20-foot setback by way of an architectural feature that overhangs from the roofline on the second floor, Mr. Lee explained that this it was this feature that caused the 2-foot encroachment.

Greg and Lori Wilson, owners and applicant for the project, 20302 Magnolia Street, Huntington Beach, agreed to the conditions of approval, however, they had concerns with some of the findings.

Mrs. Wilson explained concerns she and her husband have about the project: (1) Early in the planning of improvements stage, the cantilevered section of the architecture was actually to the design at the request of the Planning Division in order to provide architectural relief along the front. This addition was added for a 12-foot section on the second story only. (2) There was never any intention at that time of moving the entire house back by 3 feet because it would jeopardize the parking access for the granny unit, and eliminate a walkway to the backyard of the new house. Moving the house back 3 feet would bring the first story of the new house right at the Granny units parking space with no room for wheelchair access if necessary. (3) They dispute the findings that constructing a wall at the 10-foot setback required by code would provide the same level of privacy and protection as currently exists. (3) The proximity of the property to both a revitalizing neighborhood and a commercially-zoned area, place special circumstances on its development. (5) The existing wall would not have to have to be removed in order to accommodate construction of the new project, and (4) only about 50% of the wall is actually located in that 10-foot setback area. The diagonal corner meets the guidelines, as well as the gate area on the south end of the property. Each of the

above concerns were then detailed. The Wilsons felt the new construction would enhance and benefit the entire neighborhood.

Commissioner Garlich said the Commission has just heard from the applicant that the overhang that is creating the need for the minor modification was created at the suggestion of staff in order to provide architectural relief to the design. Mr. Lee acknowledged that was correct; to provide the articulation on this elevation, the designer had proposed to pop out that portion of the second story to provide the relief. Unfortunately, the result was the need for the minor modification for the 2-foot encroachment into the front yard setback. Mr. Lee explained further that the articulation could be still be achieved by shifting the whole building 2 feet further to the rear of the property.

Commissioner Garlich felt the point was that this was a suggestion by staff and Finding "C" containing language disallowing the minor modification contradicts staff's conclusion. Mr. Lee reiterated that the intent of providing that additional articulation, in staff's opinion, could be met without the need for a minor modification by simply shifting the entire building back. There is enough distance between the proposed structure and the existing structure to still provide that "pop-out" without the need for encroachment into the front yard. Commissioner Garlich said he heard the applicant's reasoning for not wanting to do that, and he asked Mr. Lee to re-view it.

Mr. Lee explained the site plan and various code requirements. He said staff believes that the building could be shifted back 2 feet without compromising either the open parking stall or zoning code requirements between buildings.

The applicant, Greg Wilson, explained that the existing driveway for the granny unit is 10 feet, and if they were to put that building next to it, he did not feel there he could walk between the house and the car and get into the back yard. He said if he moves the building back, it will in fact, look like its right one top of the other one and for a brand new structure, it should not have to be that way.

In response to the Chair, Mr. Wilson stated that there have been confrontations with people primarily because the front of this property is adjacent to a "bus stop." He explained this is the reason why the house has been turned the way it is.

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

MOTION
PA-05-11
Approved

A motion was made by Commissioner Garlich, seconded by Vice Chair Hall, and carried 5-0 to approve the variance for the block wall, the minor design review, development review, and minor modification, by adoption of Planning Commission Resolution PC-05-34, 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 modifications:

Findings:

- C. The information presented ~~does not comply~~ complies with Costa Mesa Municipal Code Section 13-29(g)(6) with regard to the minor modification because the encroachment will not be materially detrimental to the health, safety, and general welfare of persons residing within the immediate vicinity of the project or to property and improvements with the neighborhood. Specifically, the proposed encroachment ~~does not enhance~~ enhances the architecture and design of the portion of their residence visible from the street. *Delete remainder of "C."*
- D. The information presented ~~does not comply~~ complies with sec-

tion 13-29(g)(1) of the Costa Mesa Municipal Code, with regard to the variance, in that special circumstances applicable to the property ~~do not~~ exist to justify granting of the variance from wall height requirements due to the presence of the bus stop, the orientation of the house on the site toward 22d Street, and Orange Avenue frontage functioning as the side yard. Strict application of the zoning ordinance would ~~not~~ deprive the property owner of privileges enjoyed by owners of other property in the vicinity under identical zoning classification. *Delete remainder of "D."*

During discussion on the motion, there was discussion between Commissioner Egan, Vice Chair Hall, and Commissioner Garlich regarding the merits of approving the block wall especially at bus stops. It was concluded that the bus stop is at the property's side yard and not the front yard of the property. The findings were then made as shown in the above motion.

The Chair explained the appeal process.

PLANNING APPLICATION
PA-05-12

Zarokian/Meredith

The Chair opened the public hearing for consideration of Planning Application PA-05-12 for Chad Meredith, authorized agent for Pierre Zarokian, to allow a tattoo and body piercing shop, located at 2428 Newport Blvd, Suites 5 & 6, in a C1 zone. Environmental determination: exempt.

Senior Planner Mel Lee reviewed the information in the staff report and gave a visual presentation. He said there are no existing complaints recorded by the Police Department about the existing tattoo establishments within the City. He also said staff was recommending a condition of approval that the fence and slats in the rear of the property, be repaired or replaced to properly screen the storage yard from Newport Boulevard. Mr. Lee stated that staff was recommending approval by adoption of Planning Commission resolution, subject to conditions.

The Chair asked that although the Police Department has said there are no complaints, are there any security concerns or policing concerns for this application in this area? Mr. Lee responded that the Police Department reviewed the proposed request and did not recommend any additional security requirements for this particular use permit.

In response to a question from Commissioner Egan regarding the storage area and whether the materials stored there are for the use of the on-site businesses, Mr. Lee said he believed that is the case. The storage area is designated for one of the businesses within the property.

Chad Meredith, 2428 Newport Boulevard, Suite 5 and 6, Costa Mesa, agreed to the conditions of approval with exception to conditional of approval #1 regarding the repair or replacement of fence slats as necessary to properly screen the storage area. He said the storage area in the back is not related to his business. He said he could not instruct the property owner to repair or replace the fence, the property owner may not do it in a timely fashion and that puts him at a disadvantage in obtaining his conditional use permit to operate his business.

In response to a question from Commissioner Garlich, Mr. Lee stated that the way in which the condition is currently worded, this condition is required to be completed before the City can issue a business license for the use and his concern may be, depending upon how long it takes the property owner to provide those repairs, may delay his opening. He suggested a way to revise the condition without delaying the applicant's business license.

There was another suggestion by Commissioner Garlich, to delete

that condition and allow Code Enforcement to deal with the matter. Mr. Lee agreed that option was also viable.

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

MOTION
PA-05-12
Approved

A motion was made by Commissioner Garlich, seconded by Chairman Perkins, and carried 5-0 to approve by adoption of Planning Commission Resolution PC-05-35, 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 deletion of condition of approval #1 (*renumber conditions as appropriate*).

During discussion on the motion, the Chair requested that Mr. Lee contact the property owner in advance.

The Chair explained the appeal process.

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT

None.

REPORT OF THE CITY ATTORNEY'S OFFICE:

None.

ADJOURNMENT:

There being no further business, Chairman Perkins adjourned the meeting at 8:58 p.m. to the meeting of Monday, June 13, 2005.

Submitted by:

R. MICHAEL ROBINSON, SECRETARY
COSTA MESA PLANNING COMMISSION