

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

June 13, 2005

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., June 13, 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: Kimberly Brandt, Acting Secretary

Costa Mesa Planning Commission

Christian Bettenhausen, Deputy City Attorney

Ernesto Munoz, City Engineer

Wendy Shih, Associate Planner

MINUTES:

The minutes for the meeting of May 23, 2005 were accepted as corrected.

PUBLIC COMMENTS:

Linda Busch, 2238 Miner Street; Craig Hendershot, 2238 Miner Street; Rene Zeeva, 2242 Miner Street; Jaqueune Jimenez, 2242 Miner Street; Fred Davis; 2222 Miner Street; are neighbors in proximity to the residence located at 543 West Wilson Street (B-3) and all expressed the same complaint about a recently installed second-story window. Each neighbor discussed privacy issues from the installation of the newly installed window (the window faces bedrooms, bathrooms, and back yards of the adjacent units).

The Chair requested that Acting Secretary Kimberly Brandt explain what the next course of action would be where this issue is concerned.

Ms. Brandt said she would like to see the survey that was prepared for the property and any other information that some of the adjoining residents wish to submit to the Planning Division. She said as Mr. Davis indicated, they are requiring that a permanent screen be affixed to the exterior of the window such as a shutter, or some sort of louvered device that is angled in such a way that it would be set permanently in an upward position so that the light and air would come from an upward motion. She said it would look much like that of an exterior attic screen vent with stationary louvers. In addition, for other units in that condominium project, she said there is a "red flag or an alert" that any future second-story window on that elevation would require Planning Division review and approval. She said Planning is considering the needs of the adjacent property owners, and the homeowner who is seeking to increase ventilation in a unit.

In further response to the Chair, Ms. Brandt stated that the neighbors could contact her directly.

Vice Chair Hall said he was happy that the residents on Miner Street brought this issue to the attention of the Commission. He pointed out that more people are remodeling now because homes are not necessarily affordable. He believes strongly in property rights and that people should be able to do what they want with their property, so long as it does not infringe on someone else's rights. In this case, a property owner has infringed on the right to privacy of many of the adjacent residents.

In response to Commissioner Garlich regarding how this happened, Ms. Brandt explained that plans came in for an interior remodel. The new second-story window was missed in the initial review by the Planning Division. She expressed that the Planning Division has a keen sensitivity for the addition of windows and they have been emphasizing this in the last few years within the Development Services Department. Since this incident, there will be more communication between the plan checkers and the planners on these types of windows. She confirmed with Commissioner Garlich that had it been

recognized for what it was at the time Planning reviewed the plans, some of these other modifications now being applied would have addressed the privacy issues at that time.

Deputy City Attorney Bettenhausen said that as he advised previously, if there is going to be any further or future discussion regarding this issue, it should be agendaized because there is limited ability to discuss issues that are not itemized on the agenda.

**PLANNING COMMISSION
COMMENTS/SUGGESTIONS:**

Commissioner Garlich commented that he is involved in the Costa Mesa United Activity Memorial Day fundraiser that was held this past weekend. The event raises money for the multi-use athletic stadium of Estancia High school and the Olympic Swimming Facility at Costa Mesa High school. He said the final event was held at the Annual Fish Fry at Lion’s Park that sold out at 5:45 p.m., Sunday evening.

Commissioner Garlich also conveyed that another year is about to be completed for the “Reading by Nine Program” at the Wilson School. He said the program recognizes that students learn to read through the end of the third grade; from that point forward they are expected to be able to read to learn. He said this program encourages volunteers to participate at Wilson School, Whittier, and Pomona Schools. It is sponsored by the Los Angeles Times and locally, by the Daily Pilot and the Rotary Clubs of the area, who in addition to sponsoring the program, raised money and distributed 2,400 books to those three schools so that every student in those 3 grades have a book they can call their own and take home. He thanked and congratulated the 5 students at Wilson School that he worked with this past year: Samantha, Zulema; Alejandro, Juan, and Leo for the hard work they have put in and he congratulated Ms. Duffy’s 3rd-grade class.

Commissioner Fisler extend his congratulations to his friend, Steve Devey who is an active local realtor in Costa Mesa. On June 2nd, he became a grandparent with the birth of “John Riley Isham” born to his daughter, Amy and son-in-law, US Sergeant Craig Isham. He thanked Sergeant Isham and all the men and women who protect and serve our country.

Vice Chair Hall felt that Commissioner Fisler’s comments regarding our service men and women were very appropriate. He said his comments this evening were included in “second-story” windows previously, and he again wanted to thank Fred Davis and friends for bringing it to the attention of the Commission.

MOTION:
Second-story windows
Failed to carry for lack of a second

Vice Chair Hall made a motion to agendaize second-story windows but the motion failed to carry for lack of a second. Chairman Garlich commented that he did not mind if we do that, but the reason he inquired of Ms. Brandt, was to find out if the process was okay and could handle this. He felt in this case, it was just a “pilot” error in the system and is convinced that is what it was and he did not feel the need to pursue it any further.

The Chair agreed with Commissioner Garlich, and did not mind reviewing this again, however, he did not feel it would need to become a “Citywide” affair. Vice Chair Hall clarified that his request was not for this one specific neighborhood, that it was for the “general subject” for advisement of the Uniform Building Code, the legalities, what eventually will go on in that space, and how the issues were resolved. The Chair said if there was a serious concern, staff would bring it forward to Commission.

The Chair thanked Commissioner Egan for dedication of the Pledge-of-Allegiance this evening to Commander Lou Nockold, United States Navy, Pearl Harbor survivor, and Secretary of the

Freedom Committee of Orange County whose funeral was today. He also thanked Commissioner Fisler for his comments regarding US Sergeant Craig Isham.

Commissioner Egan asked if the Commission could request a report of resolution on the matter of the second-story windows/privacy issues.

The Chair and Mr. Bettenhausen conferred that a motion would be appropriate for this request.

MOTION:

Second-story window issues/resolution

Approved

A motion was made by Commissioner Egan, seconded by Vice Chair Hall to request that staff report on the resolution of the matter of second-story windows/privacy issues as relates to 543 Wilson Street, #B3, Costa Mesa.

CONSENT CALENDAR:

None.

PUBLIC HEARINGS:

APPEAL OF MINOR
CONDITIONAL USE PERMIT
ZA-05-15

Tri Harmony/Shen

The Chair opened the public hearing for consideration of Conditional Use Permit ZA-05-15 for Yijie Shen, authorized agent for Tri Harmony LLC, to deviate from shared parking requirements to allow a massage establishment to occupy a 1,100 square-foot suite, located at 2790 Harbor Boulevard, Suite 103, in a C1 zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. She said staff was recommending denial of this application, by adoption of Planning Commission Resolution.

In response to the Chair, Ms. Shih explained according to the parking study conducted by the applicant, Wednesday has a 72% parking occupied which is more than any other day of the week, which could be the ballet classes. Commissioner Egan felt the higher occupancy occurs during the "time of day", rather than the "day of the week." In response to a question from Commissioner Egan concerning occupancy information during peak hours as stated in the staff report from 4 to 6 p.m., Ms. Shih said there is no additional information concerning the parking lot. Commissioner Egan and Ms. Shih discussed the property line according to the plan, and Ms. Shih confirmed that all properties of the commercial have non-conforming parking.

Commissioner Garlich had concerns about the 2 parking spaces as the reason for denying this use and yet having Paul Mitchell's open without a hearing, and having inadequate parking at the site. He asked how this could happen. Ms. Brandt explained that when the Planning Division looks at new uses, whether it is Paul Mitchell, a massage establishment, or a doctor's office in a commercial zone, they are always evaluating the use to determine if there is adequate parking. In some instances, even if all the parking rates are complied with, there may be centers, that because of the success of all the uses in combination where a parking shortage does occur even though, in theory, the parking rates have all been complied with. Ms. Brandt said there are also instances where there is an apparent abundance of parking is available but not when the code's rates are applied. She said a method to deviate from the shared parking exists. In this instance, it is because the proposed business hours are the same as the other businesses so no offset in hours of operation will occur, and that is what staff was struggling with.

Commissioner Garlich commented that Ms. Brandt's explanation, confirms his own thinking on these things and that he is very sensitive to parking issues in this City. He said the key point he took from her discussion was that there is "theory" and there is "reality" and he believes it can work both ways on the high and low side.

In response to a question from the Chair regarding the occupied rate for this structure, Ms. Shih explained that according to the applicant, the building is fully occupied.

Commissioner Fisler mentioned the letter from John Parkyn representing SRS College Center who opposes this application. In response to his question concerning receipt of letters or complaints from tenants, Ms. Shih said she was unaware of any letters or complaints from the tenants. In further response she said anyone needing more than 4 spaces would require a minor conditional use permit. The only reason this application is before the Commission this evening is because the applicant appealed the Zoning Administrator's decision. She explained that these are looked at on a cases-by-case basis.

Applicants Rick Lane and his daughter, Yijie Shen of 2151 Pioneer Avenue, Fullerton, California, assured the Commission that they were not opening a massage parlor. He said his wife has 25 years of experience in "Reflexology." He said Jacuzzis and hot waxing (feet) would also be available. Mr. Lane described the floor plan and the business in detail. He said they have also studied the parking lot at least 15-20 times and have never seen the parking lot even "half" full. He said the hours of operation would run from about 10:30 a.m. to 8 p.m. He did not believe the business would generate any more traffic than the former tenant (Tattoo Parlor).

Ms. Shen discussed the results of their 12-day parking study from April 18-27, and 3 additional days in May, between the hours of 9 a.m. and 5 p.m. which is included in the staff report.

In response to Ms. Shen's calculations and question, Ms. Shih explained that even though, according to her survey there are additional or excess parking spaces available, they are already accounted for, for other uses that are parked at 4 per thousand, or other tenants that are there. She said as Ms. Brandt previously stated, the mix of uses out there now may not require as many parking spaces, but the "4 per thousand" has already been accounted for in the 71 spaces. In response to a question from Commissioner Garlich, Mr. Lane stated that there are 8 tenants in the building he will be renting space in.

In response to the Chair, the applicants agreed to the conditions of approval, should their application be approved, however, there was some discussion regarding condition of approval #3 between the applicant and staff. Commissioner Egan advised the applicant that conditions #1 and #2 are tailored to his specific business and the other conditions are standard. There was also discussion between the Chair and Mr. Lane regarding the number of employees and clients on site at any one time as referenced in condition of approval #1.

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

Commissioner Garlich confirmed with Ms. Shih that the Police Department had no concerns with this use at this location.

In response to a question from Commission Fisler regarding the CUP and what exactly runs with the land for this business, Ms. Shih explained that if the minor conditional use permit for deviation from shared parking is approved for a massage establishment, then the use and the parking deviation, subject to conditions, runs with the land.

A motion was made by Vice Chair Hall, seconded by Chair Perkins and carried 5-0, to approve by adoption of Planning Commission Resolution PC-05-36, based on information and analysis contained in the staff report, public testimony, and findings contained in exhibit "A", subject to conditions in exhibit "B" with the following modification:

Findings:

1. The information presented ~~does not comply~~ complies with Section 13-29(e) and 13- 29(g)(2) of the Costa Mesa Municipal Code in that:
 - (a) The proposed use is ~~not~~ compatible and harmonious with uses on-site and those on the surrounding properties. ~~There are no special operational characteristics to justify approval~~

MOTION:
ZA-05-15
Approved

~~of the parking deviation on a property that contains a non-conforming development. Based on ...~~(to end of paragraph)

(b) Granting the minor conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

(c) Granting the minor conditional use permit will allow a use or intensity ~~which~~ that is ~~not~~ in accordance with the General Plan designation for the property.

2. and 3. *Same.*

Conditions of Approval

1. There shall be no more than ~~2~~ 3 employees and ~~2~~ 4 clients within the suite at any given time.

During discussion on the motion, Vice Chair Hall stated that he visits this center often, and he has never had any problem finding a parking space. He said to deny someone an opportunity to open a business for 2 parking spaces out a couple of hundred parking spaces (including the shared parking). He said he would not want this application denied for 2 parking spaces. Planning staff’s conclusion that this should not be approved because of the parking, he said he understood—they have to work by the numbers and by code and are not given the opportunity to say “okay” because that’s not their job. He felt the Commission has an opportunity here to look at this in the face of reality.

Commissioner Garlich agreed with Vice Chair Hall and he expressed that he also felt staff did their job right and the Commission relies on that. He said that’s why we have a Planning Commission because we get into these close calls. He said the building is full except for this use and he believed, under the circumstances it is entirely defensible to approve it.

In response to a comment by Commissioner Garlich, Vice Chair Hall amended his motion to include modification of the findings.

Commissioner Egan said the applicant indicated that he would have 3 employees, and she saw the need for that. However, since one is going to be a receptionist and two will be actual massage therapists, she asked, Why does the Commission need to allow four parking spaces for clients?” In response Vice Chair Hall stated that it would cover the two being taken care of and two waiting. Commissioner Egan agreed and said even if there are appointments; you would still need the business to have the ability to revolve.

The Chair agreed with the Commission and said he supported the motion.

Commissioner Fisler said he very sensitive to parking in this City and the fact that he does visit this center a lot, he has never had trouble getting a parking space. He said this application will not cause a negative parking impact, and it is good for Costa Mesa to encourage business.

The Chair explained the appeal process.

PLANNING APPLICATION
PA-05-17

Lee/Miller

The Chair opened the public hearing for consideration of Planning Application PA-05-17 for James Miller, authorized agent for Andrew Lee to allow entertainment, consisting of live music or karaoke from 9 p.m. to midnight, Monday through Wednesday (9 p.m. to midnight Thursday through Saturday, and 2 p.m. to midnight Sunday, already permitted under PA-02-50), for Player’s Pizza, located at 512 W. 19th Street, in a C2 zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. She said staff was recommending approval, by adoption of Planning Commission Resolution.

In response to a question from Vice Chair Hall regarding limitations on the amount of sound that would emanate from the rear of the building towards the mobile home park, Ms. Shih stated there is an existing condition of approval (under the current CUP) that states that noise shall not be audible from the residential uses.

James Miller, 1946 Sundance Lane, Costa Mesa, agreed to the conditions of approval.

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

MOTION:
PA-05-17
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-05-37, based on information and analysis contained in the Planning Division staff report and findings in exhibit "A", subject to conditions in exhibit "B."

The Chair explained the appeal process.

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT

Acting Secretary Kimberly Brandt briefly reported that the Newport Boulevard Improvements Project is scheduled for review by the City Council on Tuesday, July 5th. There is an Initial Study in it's final form and is available for review at City Hall and at the City libraries.

REPORT OF THE CITY ATTORNEY'S OFFICE:

None.

ADJOURNMENT:

There being no further business, Chairman Perkins adjourned the meeting at 8:00 p.m. to the Planning Commission study session of Monday, June 20, 2005.

Submitted by:

KIMBERLY BRANDT, ACTING SECRETARY
COSTA MESA PLANNING COMMISSION