

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

**March 14, 2005**

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., March 14, 2005 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Chairman Garlich, followed by the Pledge of Allegiance to the Flag.

**ROLL CALL:**

Commissioners Present:

Chairman Bruce Garlich  
Vice Chair Bill Perkins  
Eleanor Egan, James Fisler, and Donn Hall

Also Present: R. Michael Robinson, Secretary  
Costa Mesa Planning Commission  
Tom Duarte, Deputy City Attorney  
Ernesto Munoz, City Engineer  
Mel Lee, Senior Planner  
Wendy Shih, Associate Planner

**ELECTION/APPOINTMENT OF  
OFFICERS:**

Planning Commission Secretary R. Michael Robinson opened the nominations for Chair. Eleanor Egan nominated Bruce Garlich and Jim Fisler nominated Bill Perkins. The vote for Bruce Garlich failed 2-3 (Fisler, Perkins and Hall voted no). On a vote of 3-2 (Egan and Hall voted no) Bill Perkins was elected as Chair.

Before the motions were called public comment was taken. Martin Millard, 2973 Harbor Boulevard, Costa Mesa expressed his disappointment with the latest Commission. He said that Donn Hall was the most qualified among the Commission and should be elected to the office of Chair.

Chairman Perkins opened the nominations for Vice Chair. Commissioner Fisler nominated Donn Hall and the motion carried 5-0.

Secretary Robinson appointed Principal Planners Kimberly Brandt and Willa Bouwens-Killeen as Assistant Secretaries.

**COMMITTEE  
APPOINTMENTS:**

Chairman Perkins opened the nominations for committee appointments. Commissioner Jim Fisler was appointed to the 3R Committee; Eleanor Egan was appointed to the Bristol Street Mixed-Use Overlay Zone Committee; and Bruce Garlich was appointed to the City-wide Traffic Impact Fee Ad Hoc Committee and all the above votes carried 5-0.

**MINUTES:**

The minutes for the meeting of February 28, 2005 were accepted as corrected.

**PUBLIC COMMENTS:**

Martin Millard, 2973 Harbor Boulevard, Costa Mesa, expressed his disappointment over the Planning Commission approvals of a conversion of an apartment complex to condominiums on Bernard Street and the multiple tenant home furnishings center on Hyland Drive. He felt the condominium conversion did not have adequate parking, and that the parking field for the commercial center appeared wrong to him and would need about 300 additional parking spaces. He further expressed his thoughts on parking around the City and how it has become a problem that is exacerbated by Planning Commission approvals such as the projects he just mentioned.

**PLANNING COMMISSION  
COMMENTS/SUGGESTIONS:**

The new Chair and Vice Chair thanked their fellow Commissioners for the nominations and votes. They also thanked and commended former Chair Bruce Garlich for his service as Chair to the Commission.

**CONSENT CALENDAR:**

None.

**PUBLIC HEARINGS:**

TENTATIVE TRACT MAP  
T-16820

Lu

The Chair opened the public hearing for consideration of Tentative Tract Map T-16820 for Johnny Lu, for a one-lot subdivision to facilitate a 6-unit, common interest development (project approved under PA-04-41), located at 654 W. 18<sup>th</sup> Street, in an R2-HD 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.

In response to a question from Commissioner Egan regarding whether the technical aspects of the Subdivision Map Act are satisfied by this tentative tract map, Ms. Shih stated that the Planning Division is satisfied and that a copy was also given to the Engineering Division who has also reviewed and included code requirements and conditioned the map.

Johnny Lu, applicant for the project, 1 South Fair Oaks Avenue, Pasadena, agreed to the conditions of approval.

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

MOTION:  
T-16820  
Approved

A motion was made by Vice Chair Hall, seconded by Chairman Perkins and carried 5-0 to approve by adoption of Planning Commission Resolution PC-05-17, 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.

RESIDENTIAL COMMON  
INTEREST DEVELOPMENT  
CONVERSION PA-04-18

Fiock/Burger & Associates

The Chair opened the public hearing for consideration of Residential Common Interest Development Conversion PA-04-18 for Burger & Associates, authorized agent of Richard Fiock, to convert an existing triplex to a common interest development (airspace condominiums), located at 151 Albert Place, in an R2-MD zone. Environmental determination: exempt.

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

Tom Burger, authorized agent for the applicant, Burger & Associates Architecture, 20331 Irvine Avenue, Santa Ana Heights, agreed to the conditions of approval.

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

MOTION:  
PA-04-18  
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-05-18, 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-04-45

Javid/Raffone

*This item was trailed at 6:57 PM  
and resumed at 7:57 PM*

The Chair opened the public hearing for consideration of Planning Application PA-04-45 for Joseph Raffone, authorized agent for Kevin Javid, for variances from driveway landscape parkway requirements (10 ft. required; 2 ft. existing), and open space requirements (40% required; 32% proposed); and a minor modification to allow reduced driveway width (16 feet required; 10 feet existing); in conjunction with a minor design review to construct a two-story, 1,469 sq. ft. apartment unit behind an existing single-family residence, located at 161 Merrill Place, in an R2-MD zone. Environmental determination: exempt.

There was discussion among the Commission regarding the applicant's absence. The Commission decided to hear the item.

Senior Planner Mel Lee reviewed the information in the staff report

and gave a presentation and recommend denial by adoption of Planning Commission resolution

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

MOTION:  
PA-04-45  
Denied

A motion was made by Commissioner Garlich, seconded by Commissioner Fidler and carried 5-0 to deny by adoption of Planning Commission Resolution PC-05-20.

During discussion on the motion, Commissioner Garlich stated that he supported staff's recommendation to deny this application. He said the fact that we have a 40% open space requirement is for good reasons, and the fact that this application falls some 20% below the threshold of that 40% is significant. He said earlier in discussions regarding possible alternatives, Mr. Lee responded to questions that there are design alternatives to place a second unit on this property to generate income and still meet the 40% open space requirements.

Chair Perkins agreed and added that there was a letter received from the applicant regarding his reasons for the request and he did not believe it contained sufficient justification to make a finding to overturn staff's recommendation.

Commissioner Egan said she was somewhat reluctant to deny an application when the owner is not present, however, in this case he has had ample notice that the Commission is hearing the matter; that it is scheduled for this hearing; and that staff is recommending denial. She supported the motion.

Chair Perkins said he agreed and it was evident to him that the applicant knew of the hearing. Commissioner Garlich felt that the Commission had gone the extra mile by trailing the item. He said he would not want to encourage any other applicants with recommended denials not to show up for hearing.

The Chair explained the appeal process.

CONDITIONAL USE PERMIT  
PA-04-49

Faulkner/Dias

The Chair opened the public hearing for consideration of Conditional Use Permit PA-04-49 for Norman Dias, authorized agent for Michael D. Faulkner, to allow a general contractor business with outdoor storage, located at 814 W. 19<sup>th</sup> Street, in a C1 zone. Environmental determination: exempt.

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

In response to a question from Vice Chair Hall regarding granting the CUP and whether it was necessary to obtain a CUP for this use, Mr. Lee stated that if this use was an office use only and there was no storage (either outside or inside of the building), the use would be a permitted use in this particular zoning district which is C1. Because there is a component for storage related to this use, it triggers the requirement for a CUP in the C1 zone.

In response to a question from Commissioner Garlich regarding other permitted uses, Mr. Lee explained that an office use with no storage would not require a CUP and only requires obtaining a business license from the City. If the application was denied, the applicant would not be able to store any equipment related to his business at this facility, but he could have an office use without coming through the Planning Commission. Commissioner Garlich referring to the standards that allow outdoor storage, said although this is not incidental to the business, but rather principle or central to the business, he asked whether this storage is appropriate in terms of the code. Mr. Lee said code does stipulate that if there is outdoor storage incidental to a main use, and it's meets the criteria

that code stipulates for screening, and does not interfere with circulation and parking, it can be approved through what's called a "minor" CUP. In this instance, the storage would not be considered "incidental" to this use because it is actually a primary component and necessitates a full CUP before Planning Commission. As requested by Commissioner Garlich, Mr. Lee confirmed that the land use matrix for this type of use makes it conditional for the C1 zone for which it is applying, and is also permitted in the C2 and the two industrial zones, MG and MP.

There was discussion between Vice Chair Hall and Mr. Lee concerning the necessity of a CUP if all storage is contained inside the building.

There was discussion between Commission Fislser and Mr. Lee concerning the immediate businesses surrounding that operated under conditional use permits.

The applicant, Norman Dias, 203 Susannah Place, Costa Mesa, agreed to the conditions of approval. He said in response to concerns about the storage, the exterior storage is completely minor (21' aluminum plank that will not fit in the building). He said there is no desire on his part to store anything outside unless necessary. In response to a question from Commissioner Garlich, Mr. Dias stated that the only other place he could store construction equipment material was at his home where it is currently.

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

Vice Chair Hall said he was in a bit of a quandary over this item because a CUP is required for storage for a business for a usage that has minimal outdoor storage. He said the problem is that tomorrow evening, City Council will embark on their implementation of the improvement of the Westside and may include this area. However, because this is a construction business, the City would not be able to go ahead with their plans because the construction business would have every right to stay there with a conditional use permit because the zone has been changed. He maintained that the storage by the applicant is relatively minor (wheel borrows, ladders).

There was discussion between Commissioner Hall, Mr. Lee and Commissioner Garlich regarding the City's Land Use Matrix and CUP's and Minor Conditional Use Permits.

A motion was made by Commission Egan, and was seconded by Commissioner Fislser to deny the project with the following findings:

Findings

- A. The proposed project does not comply with Costa Mesa Municipal Code Section 13-29(e) because:
  - 1. This project is not compatible and harmonious with the location and zone (commercial uses in the 19<sup>th</sup> Street Commercial Corridor) because it is an "industrial use" intruding into a C1 zone and involves more than just an office.
  - 2. There is a parking deficiency and one of the spaces is being counted towards the requirement, is in the front setback which, while this is a legal nonconforming use, conversion to a CUP would not be appropriate.
  - 3. While the planning application is for a project-specific case and does not establish a precedent for future development, the conditional use permit does run with the land and it is inappropriate to permanently install an industrial use in this C1 commercial corridor.

MOTION:  
PA-04-49

This motion was not called because a substitute motion was later made and the item was continued.

- B. The information presented does not substantially comply with Costa Mesa Municipal Code section 13-29(g)(2) in that the proposed use is not substantially compatible with developments in the same general area. Granting the conditional use permit would be detrimental to the safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the proposed use will not be compatible with the surrounding area, which are commercial uses.

During discussion on the motion, Commission Egan stated that the staff report recommendation came as a surprise to her because of the hundreds of hours that have been devoted to the upgrading of the 19<sup>th</sup> Street Commercial Corridor by committees and citizens, as well as a great deal of money expended by the City for infrastructure improvements. As Vice Chair Hall indicated, several years ago, this would not have been a problem and would have fit in with the deteriorating condition of 19<sup>th</sup> Street as it was. Improvement has now begun with not only investments in infrastructure that the City has put in; the amount of litter has decreased by at least 80%; and new businesses have come in that fit in with the commercial nature of the street, etc. Commissioner Egan said she would hate to see an industrial use encroach on this plan and impede the progress of upgrading. She pointed out that there are tens of thousands of square feet of vacant industrial space in other areas and this site is the wrong place for this type of business.

Chair Perkins said he understood Commissioner Egan's concerns and said he attended several of the meetings as mentioned by Commissioner Egan and has had the opportunity to participate at a distance. He said he also sees this as a permitted use without a CUP, according to what Mr. Lee has said, "if there is no outside storage."

Commissioner Egan said it is not just the outdoor storage, but also the storage inside. She said what makes this an industrial use is that it is a contracting business which has more than just an office, and is therefore, an industrial use intruding into a C1 zone.

Commissioner Egan stated that this legal nonconforming use does not have adequate parking and said that employees of the businesses on the north side of that block (where the site for this project is located), frequently park in the Vista Center and cross the street at mid-block creating a traffic hazard which is an existing problem at this time.

The applicant, Mr. Dias returned to the podium to address Commissioner Egan's concerns. He assured the Commission that the storage would be contained within a chain-linked fence and would be screened. He said the current business on site has more employees and has far more noise and traffic than his business will have. He said they do meet the parking requirements; there is no parking in the front – the map shows 4 parking spaces in the rear with no parking shown in the front. Mr. Dias said that in terms of what the City may envision in the future, in turning that whole area into kind of work/living environment, he would fully embrace that and would love to participate and see it happen. He said he also planned to redo the minor amount of planting space in the front of that building to make it more attractive recalling that in the past, there have been issues with that area and he would help to keep it maintained. He said he understood what the City is trying to accomplish and did not feel he would be impeding that progress. He said he has been looking for property in this area for 3 years. If you have a lot of money and can afford 10 or 20 thousand square feet or better, then that comment would be correct, but for small

businesses, that kind of space does not exist in this City, or in surrounding cities unless you want to go to Santa Ana. Mr. Dias says he lives in Costa Mesa and wants to work here. Further, he said there would be a total of 2 employees present during the day.

Commissioner Egan said she did not wish to engage in a debate with the applicant, and she does not enjoy turning people down when they are trying to run a business. She said she understands how important one's livelihood is to a person—the fact is, the Municipal Code makes this an industrial use and the Commission is here to implement the Municipal Code. The fact is also, that the City has devoted a tremendous amount of time, effort and money to this commercial corridor. To allow an industrial business which the proposed is, as classified in the Municipal Code; it is a permitted use in an industrial zone and is a conditional use in the C1 zone. This would be detrimental to the upgrading of the commercial corridor on 19<sup>th</sup> Street. As to the parking, she stated that the photograph displayed in staff's presentation, shows a truck parked directly in front of the building. Because she goes through that area on a daily basis, she has observed cars frequently parked in front of the building and staff does count that towards the parking requirement. Staff has counted 4 spaces in the rear; a fifth space in the front of the building and 6 spaces are required.

Commissioner Fisler said he agrees with Commissioner Egan in that the 19<sup>th</sup> Street Commercial Corridor is undergoing a process at this time of renovation and revitalization. He felt the CUP was a move in the wrong direction.

Commissioner Garlich agreed that this is a tough call but he supported the motion because it is a conditional use in the C1 zone for this type of business; it will run with the land. He said the applicant strikes him as someone who would do his very best to run the kind of business that would be the least intrusive, but it doesn't mean he'll always be the owner/operator of that business and someone else could come in there and do this same thing by right, if the Commission approves the CUP. He said he is not convinced that other users would have the same intent as to how they would be planning the incidental storage that would be done outside and for all those reasons, he supported the points already made about what the City is trying to do on 19<sup>th</sup> Street.

Vice Chair Hall asked Deputy City Attorney Tom Duarte if the CUP could contain an agreement signed by the applicant that if redevelopment or renovation of an entire block were to take place in this location, the applicant would agree to abandon his CUP. Mr. Duarte stated that generally, there are no terminating clauses added to CUP's, however, it can be looked into and it may be something that could be carefully crafted to meet the Commission's needs, if necessary.

The Chair reopened the public hearing to entertain a motion for continuance.

SUBSTITUTE MOTION:  
PA-04-49  
Continued

A motion was made by Vice Chair Hall, seconded by Chair Perkins and carried 3-2 (Egan and Fisler voted no), to continue the item to the Planning Commission meeting of April 11, 2005 for an approximate 30-day period to give the City Attorney's Office time to research the question of a terminating clause as an attachment to the applicant's CUP.

Chair Perkins stated this business is proposed in an area of town that is just difficult. He summarized the Commissioners' remarks and felt that they needed some time to determine, what their "wiggle room" is to serve the applicant and the community, and avoid that which would be contrary to the Westside improvement efforts.

Commissioner Egan said she would not support the motion and that the very presence of an industrial business will discourage commercial and retail businesses from locating there. She said we've seen how one kind of business can multiply in an area citing IKEA and the new furniture mart, however, should this CUP be approved, we will see many applications for industrial uses. We would detour 180 degrees from where we are trying to go.

Commission Garlich asked Deputy City Attorney Duarte, if there was a precedent for this kind of thing in his experience, and does it put the Commission in a position of considering this as something that someone would want the Commission to do over and over again for CUP's that run with the land. Mr. Duarte said they have done this in the past and based upon the limited information that Vice Chair Hall has given, it can be looked at; they can obtain the information they need, and see if an agreement can be made to make it legal. He said they have worked with applicants in the past and put in clauses that are carefully crafted that would allow them to have the CUP and have a separate agreement with the City. Mr. Duarte was not sure whether a precedent would be set in this case.

Chair Perkins expressed that in this case, it may be in everyone's best interest to have an agreement, if it's possible.

Commissioner Egan asked Mr. Duarte, if this type of agreement were entered into, and at some future date, either this applicant or a subsequent owner were to successfully challenge the legality of the termination clause, we would then have a CUP that we cannot get rid of. Mr. Duarte said if they successfully challenge it, we could not get rid of it. He believed the CUP would remain. He pointed out that as he has said, it would have to be carefully crafted and he has made no promise at this time.

Commissioner Garlich stated that based on the City Attorney's response, he reluctantly supported the substitute motion to give the City Attorney's office an opportunity to see if there is some solution to this dilemma.

Commissioner Fisler said he could not support the motion because he felt the CUP is a compromise to what the City is trying to do and the CUP is required only for the reason of storage.

CONDITIONAL USE PERMIT  
PA-05-02

Young/Dibs

The Chair opened the public hearing for consideration of Conditional Use Permit PA-05-02 for David Dibs, authorized agent for Steve Young, to allow an automotive repair business within 200 ft. of a residentially-zoned property, located at 1375 Logan Avenue, Unit F, in an MG zone. Environmental determination: exempt.

Associate Planner Wendy Shih review the information in the staff report and gave a presentation. She said staff was recommending approval by adoption of Planning Commission resolution, subject to conditions. She also said that in reference to exhibit "A", Finding "A" (page 6 of the staff report), the sentence in that paragraph containing "35-foot high block wall" is modified to read 15-foot...

David Dibs, authorized agent for the applicant, agreed to the conditions of approval.

There was discussion regarding the height of the wall between the applicant and Ms. Shih. Ms. Shih explained that the 15-foot high wall was established at the time the apartment complex was built even though the photographs the applicant submitted clearly show a significant difference. Commissioner Garlich explained that it could be 15' high on one side and 35' on the other because the grade levels were different.

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

MOTION:  
PA-05-02  
Approved

A motion was made by Commissioner Garlich, seconded by Eleanor Egan and carried 4-0 (Perkins abstained), to approve by adoption of Planning Commission Resolution PC-05-19, based on information and analysis contained in the Planning Division staff report, and findings in exhibit “A”, subject to conditions in exhibit “B” with the following modification:

Findings:

A. ...Although a residential property backs up to the subject site, there is an existing 15 ~~35~~ –foot high block wall between the two properties that provides a visual...

**REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:**

Planning Commission Secretary R. Michael Robinson announced that the Design Awards Selection(s) nominations are open for projects that have been completed within the last 6 months. He said the list was attached to the Commission packets and that nominations would need to be returned to Principal Planner Kimberly Brandt by March 31<sup>st</sup> and selections would be made at the April 11<sup>th</sup> meeting.

Secretary Robinson also mentioned that a special joint study session with the Parks and Recreation Commission has been scheduled for Monday, April 4, 2005.

**REPORT OF THE CITY ATTORNEY’S OFFICE:**

None.

**ADJOURNMENT:**

There being no further business, Chairman Garlich adjourned the meeting at 8:04 p.m. to the study session of Monday, March 21, 2005.

Submitted by:

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R. MICHAEL ROBINSON, SECRETARY  
COSTA MESA PLANNING COMMISSION