

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

September 26, 2005

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., September 26, 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

Fariba Fazeli, City Engineer

Raja Sethuraman, Associate Engineer

Kimberly Brandt, Principal Planner

Claire Flynn, Senior Planner

Mel Lee, Senior Planner

Wendy Shih, Associate Planner

MINUTES:

The minutes for the meeting of September 12, 2005 were continued to the Planning Commission meeting of October 10, 2005.

PUBLIC COMMENTS:

Martin Millard, 2973 Harbor Boulevard, Costa Mesa, stated his disappointment with the Daily Pilot's recent school statistics placing Costa Mesa with 8 failing schools, which he said is now 3 more than the last time they were published. He felt this was not a school issue but rather begins at bodies like this Commission and at various committee levels. He said that a lot of little decisions are made wrong because people are not thinking these things out. He felt the cumulative effect of all these decisions added up and that's why the City has failing schools. He said the City and community should think about improving it.

Mike Berry, 2064 Meadow View Lane, Costa mesa, felt the City should have an accounting of all CUP's and what type each is because his understanding is that a CUP is an exception and should only be a small portion of the City's business. He wanted to know who is assigned the task of following up to make sure that the business using the CUP is conforming to those conditions. He maintained that the Planning Division would not cooperate when he attempted to get a copy of a business license.

The Chair asked Mr. Robinson if it was possible to create such a report and get in the hands of Mr. Berry. Mr. Robinson explained it would be very costly in order to determine the number of existing businesses that have CUP's. He suggested that Mr. Berry look at the City's "Land Use Matrix" where the uses are differentiated between uses that are permitted and those that are conditionally permitted.

Mr. Robinson said that information for existing CUP's are public record and should be readily available; he was not sure why Mr. Berry was denied that information. He said business licenses are different and there is some confidential information that cannot be released. Further, he said the City does have a process of monitoring CUP's on a regular basis and it is not made available because it's normally an in-house process used to evaluate and review conditional use permits on a regular basis.

**PLANNING COMMISSION
COMMENTS/SUGGESTIONS:**

There was discussion between Commissioner Garlich and Mr. Robinson regarding the CUP's being posted in places of business.

Commissioner Fislser felt that if conditional use permits were not issued then there would be many areas in the community affected "by right" only and some very negative things could occur without that control – with conditions added it helps enhance the quality of life for all citizens. He did not believe CUP's are a "bad" thing.

Commissioner Garlich stated that the Costa Mesa Newport Harbor Lions Club sold hamburgers and hotdogs at the train station in Fairview Park. He said it was a very busy, successful weekend, and they cleared about \$1,500, which will be sent to the Hurricane Relief Fund in the gulf area. He said this morning he participated along with other fellow Lions in the "Gulf Tournament" that the Newport Beach Country Club and the Daily Pilot co-sponsored for the Hurricane Relief Fund with checks made out to the Red Cross; they raised about \$35,000 for that fund.

The Chair thanked Commissioner Garlich for being a participant in those fund raising events. He announced that the Costa mesa Estancia High School football game is this Friday night (September 30th) beginning at 7 p.m. at Orange Coast College.

CONSENT CALENDAR:

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

DEVELOPMENT AGREEMENT
DA-05-02 (DA-94-01)

Auto Club

Development Agreement DA-05-02 for an annual review of the Automobile Club of Southern California Development Agreement (DA-94-01), for Jeffery Prokop, authorized agent for Interinsurance Exchange of the Automobile Club, located at 3333 Fairview Road. Environmental determination: exempt.

Based on the evidence in the record, Planning Commission determined that the applicant and City have demonstrated good faith compliance with the terms and conditions of Development Agreements (DA-94-01, and they directed staff to limit future reviews to outstanding obligations and recommence periodic reviews with the final phase of building construction.

DEVELOPMENT AGREEMENT
DA-05-03 (DA-00-02)

Segerstrom Town Center

Development Agreement DA-05-03 for an annual review of Segerstrom Town Center Development Agreement (DA-00-02), for David Wilson, authorized agent for South Coast Plaza, located east of Bristol Street, south of Sunflower Avenue, west of the Avenue of the Arts and north of Anton Boulevard, excluding the Segerstrom Center for the Arts. Environments determination: exempt.

Based on the evidence in the record, Planning commission determined that the applicant and City have demonstrated good faith compliance with the terms and conditions of Development Agreement DA-00-02.

DEVELOPMENT AGREEMENT
DA-05-04 (DA-00-01)

Segerstrom Home Ranch

Development Agreement DA-05-04 for an annual review of Home Ranch Development Agreement (DA-00-01) for David Wilson, authorized agent for C.J. Segerstrom and Sons, located at 1201 South Coast Drive. Environmental determination: exempt.

Based on the evidence in the record, Planning Commission recommended to City Council that they determine the applicant and City have demonstrated good faith compliance with the terms and conditions of Development Agreement (DA-00-01).

PUBLIC HEARINGS:

AN ORDINANCE CONTAINING
AMENDMENTS REGARDING
PLACES OF RELIGIOUS
ASSEMBLY IN COMMERCIAL
ZONES, INCIDENTAL RETAIL
SALES IN INDUSTRIAL

An ordinance of the City Council of the City of Costa Mesa, California, amending Title 13 of the Costa Mesa Municipal Code regarding churches/places of religious assembly in commercial zones, incidental retail sales in industrial zones, the master plan review process in planned development zones, and chain link fencing in non-residential zones. Environmental determination: exempt.

ZONES, MASTER PLAN REVIEW PROCESS IN PLANNED DEVELOPMENT ZONES AND CHAIN LINK FENCING IN NONRESIDENTIAL ZONES

City

MOTION:

Places of Religious Assembly in commercial zones, Incidental Retail Sales in industrial zones, Master Plan Review Process in planned development zones and Chain Link Fencing in nonresidential zones.

Withdrawn

ORDINANCE REGARDING CHURCHES/PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES

City

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. She said staff was recommending that this ordinance be withdrawn.

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

A motion was made by Commissioner Egan, seconded by Chair Perkins and carried 5-0 to withdraw the ordinance.

The Chair opened the public hearing for consideration of an ordinance regarding Churches/Places of Religious Assembly in Commercial Zones for the City Council of the City of Costa Mesa California, amending Title 13 of the Costa Mesa Municipal Code. Environmental determination: exempt.

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. She said staff was recommending that Planning Commission recommend to City Council to give ordinance first reading.

There was discussion between Vice Chair Hall and Ms. Brandt regarding hours of operation.

In response to a question from Commissioner Fisler regarding a definition for a church or religious use, Ms. Brandt explained that there is no proposal for a definition of church or places of religious assembly as part of this zoning code amendment, nor does one currently exist in the zoning code. Commissioner Fisler asked how someone would prove they are a church in order to open a church in a commercial zone if it's permitted by right, without definition. Deputy City Attorney Tom Duarte explained that in the absence of a local ordinance, the State statute or federal law would be utilized. Commissioner Fisler said if a church is one with religious beliefs that included the use of "peyote", would it be legal? Mr. Duarte said he believed there are federal and state statutes prohibiting that. There was also discussion between Commissioner Fisler and Mr. Duarte regarding illegal aliens sanctioned in the church and possible consequences.

In response to a question from the Chair regarding the need for a CUP by churches in relation to the current code, Mr. Brandt explained that in the Land Use Matrix within the zoning code, a church or place of religious assembly requires a conditional use permit in all zoning districts with the exception of the I&R zone (Institutional and Recreational). In that zone they are required to have a master plan approval that goes to the Planning Commission. In response to the Chair's question regarding adding conditions stating that the church may not allow people seeking refuge to stay overnight, Mr. Duarte explained that anytime there is a legislative body deciding on conditions for a conditional use permit it is legal to place conditions on the applicant for the use of that property. The Chair discussed Trinity Broadcasting and asked again about restraints. Mr. Duarte said the Commission has the authority to place conditions, but nothing contrary to what the state and federal law allows.

In response to a question from Commissioner Egan regarding clarification of conditional uses where the Commission adds conditions, however, if the use is permitted, Commission would not have that opportunity. Mr. Duarte stated that her statement was correct and they are per-

mitted in the I&R zone as a matter of right. If there is a CUP, they can be conditioned in accordance with state and federal law.

Commissioner Garlich wished he could accomplish due diligence on this matter in a study session and/or perhaps a closed study session with staff.

Judy Berry, 2064 Meadow View Lane, Costa Mesa, felt more definition should be made in order to be a religious organization. She felt some of these organizations were just a front for charities. She detailed her reasons for not wanting churches and/or places of religious assembly in commercial zones. She also felt the Commission should not be using the City Attorney's documents to make decisions if those documents aren't available to the public. She said the City has the right to waive the privilege of confidential documents. The Chair explained to Mrs. Berry that the Commission has had no closed sessions, but had their normal dinner session this evening that is open to the public. Mr. Duarte said with regard to the waiving of privilege, there is case law and statutory law and offered to discuss it with her later. He added that the legislative body could waive (depending on who the holder of the privilege is) that privilege.

Martin Millard, 2973 Harbor Boulevard, Costa Mesa, said he was concerned that the City Attorney is relying upon the confidential memorandum. He said he studied religion and first amendment issues, and he is hearing from the dais that one religion has to be treated exactly the same as all other religions. Mr. Millard felt if this were allowed to happen, it would create storefront churches and chase away businesses in the commercial area, including a decline in the tax roll. He believed the City should retain the current CUP process so that churches/places of religious assembly cannot become storefront businesses. He felt the City Attorney's office is getting involved in a political decision and not a legal one.

Mike Berry, 2064 Meadow View Lane, Costa Mesa, also felt that commercial zoning is for commercial businesses. He said he hoped the Commission would reject this ordinance.

Beth Refakas, 320 Magnolia Street, Costa Mesa, reiterated previous testimony and added that churches create a lot of noise, loitering, and actually have people staying there overnight. She said there is also a lot of excess trash, overflow parking into residential neighborhoods, etc., and the CUP is a way to mitigate those things. She also felt the onset of putting churches into commercial zones has something to do with the City Attorney's Office and would also like to see the report referred to by previous speakers.

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

Commissioner Egan said this item needs more discussion as to whether the Commission should act in the first place, and whether C1 and C2 are the appropriate locations. She said the Commission was not in a position to discuss the confidential legal advice that was received, nor is the Planning Commission empowered to waive the attorney/client privilege.

A motion was made by Commissioner Egan, and seconded by Commissioner Garlich, to table the matter until such time as the City Council gives the Commission direction to move forward.

During discussion on the motion, Commissioner Garlich asked, suppose the Council doesn't do that, what happens next? Ms. Brandt requested more information from Commissioner Egan such as a time frame and whether there is direction to staff to bring this information to City Council. Commissioner Egan said her motion to "table" is to set the matter aside indefinitely; any member of this body can call it forward again, and by on a majority vote, remove the matter from the table and replace it on the agenda. What she would envision

MOTION:
Churches/Places of Religious
Assembly
No vote was taken

would be that either the Council would give the Commission direction to move forward, with some understanding as to whether the legal advice can be discussed and what the options are. She said she would then be ready to move forward, but until then she did not see how that could be done. She said there is no opportunity here for a proper open public discussion; nor, can the Commission explain why this item is before them.

**SUBSTITUTE MOTION:
Church/Places of Religious Assembly
in Commercial Zones
Recommended retaining existing
zoning provisions**

A substitute motion was made by Vice Chair Hall, seconded by Commissioner Fisler, and carried 3-2 (Garlich and Egan voted no) to recommend to City Council that the City's existing zoning provisions be retained.

During discussion on the motion, Vice Chair Hall said that Commissioner Egan asked about churches in industrial zones. He noted that Commission has already granted CUP's for churches in industrial zones. He noted staff's comments on Commissioner Egan's question where the issue of incompatibility was pointed out for industrial zones and he asked if we could imagine the incompatibility on adjacent business activities in commercial zones. He said storefront churches are normally "nonprofit" operations that will probably receive grant funds and could easily become a "defacto job center", therefore, he saw no reason to give them permitted use status.

Commissioner Fisler stated he seconded this motion, and as he previously stated, he is not against CUP's as a whole, because they do condition the use and in this case, a CUP is definitely called for. He said the land use issues are best addressed through the discretionary review process.

Commissioner Garlich stated that he did not support the motion, but he may get to that point where he will. At this time, however, he did not have enough information, nor has he had the opportunity to gather the information either in a public, or closed session fashion. He felt that in order to make an informed decision; he had to have one or the other, and could not support the motion at this time.

Vice Chair Hall asked how many requests for CUP's for "religious activities" (churches/places of religious assembly) have been applied for in the past year? Ms. Brandt said she did not believe there have been any applications in this past year; the most recent was for the Crossings Church located at 2115 Newport Boulevard in a commercial zone. He asked how many CUP's in the last 5 years have not been granted? Ms. Brandt stated there were none denied for a church or place of religious activity. He asked about the past 50 years? Planning Commission Secretary R. Michael Robinson stated that from his own recollection, he does not believe the City has ever denied a CUP, but may have modified some over the years to suit the neighborhood. Vice Chair Hall confirmed with Mr. Robinson, that this in no way has ever been an undue burden on anyone requesting a CUP for legitimate religious activity. Further, he said he could not see how any "secret memo" could tell him anything that would change his mind because he is totally against the idea of permitting this in C1 and C2 zones. He said CUP's have worked admirably in the past and he saw no reason they would not work in the future and there has been no undue burden placed on these activities.

Commissioner Fisler asked if neighboring cities permit by right, churches in commercial zones. Ms. Brandt said she did not have that information. Commissioner Fisler asked if everyone in a commercial zone were required to have a conditional use permit, what would that encompass for the City. Ms. Brandt stated that there are a variety of uses called out in the zoning code; approximately 155-160 different types of uses with a variety of ways of processing them: either as permitted by right; a minor conditional use permit, which is through the Zoning Administrator; and a conditional use permit which comes before Planning Commission. She said there are some

uses that are prohibited outright. It would be a substantial departure from the current Land Use Matrix, but it is certainly something the Planning Commission could recommend to City Council. She believed it would have implications on the Planning Commission, as well as the staffing.

Vice Chair Hall said he had no difficulty in making this motion and making this decision without considering any of the City Attorney's comments in their memo. He said having read those, it does not change his mind.

The Chair said he was troubled with both motions. He is pretty passionate when it comes to religious things and he did not think they should be charities, or that one should be able to walk in and be fed a meal. He said they cook food at his church, but there is not someone there 24 hours a day.

The Chair also discussed both sides of the motion on the floor. He said he did not believe more discussion was needed and believed that churches can hide themselves under the name of "churches" and could become problems if left unchecked. He agreed with Vice Chair Hall's statements and supported his motion.

Ms. Brandt stated that this would be forwarded to City Council on their agenda of Tuesday, October 18, 2005.

In response to the Chair, Mr. Duarte confirmed that the Council could overturn the Commission's decision and/or send it back. He said this was a recommendation to City Council.

ORDINANCE REGARDING THE
MASTER PLAN REVIEW
PROCESS IN PLANNED
DEVELOPMENT ZONES

City

The Chair opened the public hearing for consideration of an ordinance regarding the Master Plan Review Process in Planned Development Zones for the City Council of the City of Costa Mesa, California, amending Title 13 of the Costa Mesa Municipal Code. Environmental determination: exempt.

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. She said staff was recommending that Planning Commission recommend to City Council to give ordinance first reading.

Commissioner Garlich said for the record, Planning Commission and City Council have already taken action on master plans to give the Planning Commission the final authority on master plans, and the Zoning Administrator as final authority on modifications or revisions to master plans. Ms. Brandt added that these amended additional code sections need to be consistent with that previous action.

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

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0 to recommend to City Council that the ordinance be given first reading.

MOTION:
Master Plan Review Process In
Planned Development Zones
Recommended to City Council

ORDINANCE REGARDING
INCIDENTAL RETAIL SALES IN
INDUSTRIAL ZONES

City

The Chair opened the public hearing for consideration of an ordinance regarding Incidental Retail Sales in Industrial Zones for the City Council of the City of Costa Mesa, California, amending Title 13 of the Costa Mesa Municipal Code. Environmental determination: exempt.

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. She said staff was recommending that Planning Commission recommend to City Council to give ordinance first reading.

In response to Commissioner Garlich, Ms. Brandt confirmed that there have been inquiries in the past for this type of use.

In response to the Chair, Ms. Brandt confirmed that incidental meant that it would have to be a component of that industrial business.

MOTION:
Incidental Retail Sales
In Industrial Zones
Recommended to City Council

No one else wished to speak and the Chair closed the public hearing.
A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0 to recommend to City Council that the ordinance be given first reading.

ORDINANCE REGARDING THE
USE OF TEMPORARY FENCING
ON VACANT PROPERTIES

City

The Chair opened the public hearing for consideration of an ordinance regarding the Use of Temporary Fencing on Vacant Properties for the City Council of the City of Costa Mesa, California, amending Title 20 of the Costa Mesa Municipal Code. Environmental determination: exempt.

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. She said staff was recommending that Planning Commission recommend to City Council to give ordinance first reading.

There was discussion between the Chair and staff regarding staff's review of the chain link fencing, and making sure that it has adequate support and does not fall over.

Commissioner Egan made some wording changes and additions that staff was in agreement with.

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

MOTION:
Temporary Fencing on
Vacant Properties
Recommended to City Council

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0 to modify the ordinance as shown below and recommended to City Council that the ordinance be given first reading:

Section 1. Title 20 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Section 20-9(b)(2) as follows:

(2) "Fencing. If determined by the Fire Chief or Building Official, the property shall be fenced on all sides with a chain link fence or other type of secure fencing at a minimum height of 6 feet from grade, or greater. The Planning Division shall review and approve the temporary fence location and material(s). The property owner shall maintain the fence in good repair and condition. If the fence is not maintained properly, the Fire Chief or Building Official may order its removal and replacement. The fence shall be properly posted with no trespassing signs, and kept clear of all other signs, except lawfully installed real estate signs for the lease or sale of property and signs identifying ownership of the property or fencing."

Mr. Robinson advised that these ordinances (as shown above) would be going to the City Council on their agenda of October 18th.

GENERAL PLAN AMENDMENT
GP-05-05 THAT AMENDS THE
MASTER PLAN OF HIGHWAYS

City

The Chair opened the public hearing for consideration of General Plan Amendment GP-05-05 that amends the Master Plan of Highways contained in the City of Costa Mesa 2000 General Plan to downgrade Arlington Drive from a primary arterial to a collector street; and to downgrade Red Hill Avenue from a major arterial to a primary arterial. Environmental determination: Final EIR #1049 for the Costa Mesa General Plan.

Associate Engineer Raja Sethuraman with the Transportation Services Division reviewed the information in the staff report and made a presentation. He said staff was recommending that Planning Commission recommend to City Council, approval of the resolution.

In response to a question from Commissioner Egan regarding any physical changes to the existing configurations in the downgrade classifications, Mr. Sethuraman confirmed there would be none.

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

MOTION:

A motion was made by Commissioner Garlich, seconded by Vice

GP-05-05
Recommended adoption

Chair Hall, and carried 5-0 to recommend adoption of General Plan Amendment GP-05-05 to City Council, amending the Master Plan of Highways contained in the City of Costa Mesa 2000 General Plan, based on the information and analysis contained in the Planning Commission Agenda Report/Transportation Services Division.

Mr. Sethuraman stated that this item would go forward to the City Council meeting of October 18th.

PLANNING COMMISSION REVIEW OF PLANNING APPLICATIONS PA-03-39 AND PA-95-10

Allensworth/Strauss

Review of Planning Applications PA-03-39 and PA-95-10 for Eric Strauss, authorized agent for Barbara & Roger Allensworth, for possible revocation and/or modification to the conditions of approval for an existing sports bar/restaurant (Corner Office Sports Bar & Grill), located at 580 Anton Boulevard, Suite 201, in an PDR-HD zone. Environmental determination: exempt.

Senior Planer Mel Lee said staff was recommending that the Planning Commission continue this item to the Planning Commission meeting of October 10, 2005.

MOTION:
PA-03-39/PA-95-10
Continued

A motion was made by Chair Perkins, seconded by Vice Chair Hall and carried 5-0 to continue this item to the Planning Commission meeting of October 10, 2005.

PLANNING APPLICATION PA-05-19/VESTING TENTATIVE TRACT MAP VT-16883 & MINOR MODIFICATION MM-05-34

Newport 2436, LLC/Pearson

The Chair opened the public hearing for consideration of Planning Application PA-05-19/Vesting Tentative Tract Map VT-16883 and Minor Modification MM-05-34 for Pacific Newport 2436, LLC, for a design review to construct 9, two-story, single-family, detached units for a common interest development; a vesting tentative tract map to accommodate the project; and a minor modification for an 8-foot perimeter block wall, located at 2436 Newport Boulevard in an R2-MD zone. Environmental determination: previously adopted Mitigated Negative Declaration (July 2005).

Senior Planner Claire Flynn reviewed 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, and detailed modifications to conditions of approval #12 and #16.

Darwin Pearson, property owners of 2426 Newport Boulevard, Costa Mesa, agreed to the conditions of approval.

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

MOTION:
PA-05-19/VT-16883/MM-05-34
Approved

A motion was made by Chairman Perkins, seconded by Commissioner Fisler, and carried 5-0 to approve by adoption of Planning Commission Resolution PC-05-61, based on information and analysis in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit" with the following modifications:

Conditions of Approval:

12. Block walls shall be provided around the perimeter of the project site. The proposed 8-foot high block wall along Newport Boulevard shall conform to the City's requirements for block walls located along major arterials (e.g. slumpstone/orco la paz). All other ~~new~~ block walls, including any retention of existing block walls, shall be ~~decorative block~~ subject to approval by the Planning Division. ~~The wall(s) shall have a finished quality on both sides.~~ Where walls on adjacent properties already exist, the application shall work with the adjacent property owner(s) to prevent side-by-side walls with gaps in between them and/or provide adequate privacy screening by trees and landscaping.

16. The subdivider's engineers shall furnish to the Engineering Division, a storm runoff study which provides for by-pass of nuisance water and shall provide on-site detention for a 25 year storm event for a 24-hour period, to the satisfaction of the City Engineer, showing existing and proposed facilities and the method of draining this area and tributary areas without exceeding the capacity of any street or

drainage facility on-site or off-site. This study to be furnished with the first submittal of the Final Tract map. Cross lot drainage shall not occur.

During discussion on the motion, Commission Fisler said he was pleased to see a project come before the Commission that has not requested parking or open space variances. He said from everything he can see, including the renderings, this is an excellent project. He said he commends the applicant for something that is not going to be a burden on the City just to enhance his profits. He thanked Mr. Pearson for his project.

The Chair said he agreed with Commissioner Fisler's assessment of this project and told the applicant he also appreciated what he has done.

The Chair explained the appeal process.

PLANNING APPLICATION
PA-05-20

Blair Ballard Architects

The Chair opened the public hearing for consideration of Planning Application PA-05-20 Blair Ballard Architects, to construct a two-story, 4-bedroom rental unit (for a total of 5 units on the property); with a variance to deviate from required parking (16 spaces required; 13 proposed), located at 2884 La Salle Avenue, in an R3 zone. Environmental determination: exempt.

Senior Planner Mel Lee reviewed the information in the staff report and gave a presentation. He said staff was recommending denial by adoption of Planning Commission resolution.

Donna Olsen, Blair Ballard Architects, 1590 So. Coast Highway, Laguna Beach, agreed to the conditions of approval. She said the single issue that this project has raised is the nonconforming parking for the existing apartment building on site. She said the new unit conforms to the 5 new parking spaces required, so at the moment, they have a total of 16 parking spaces required, with 14 provided. She said they would be happy to be conditioned to remove the walkway and create the 15th parking space. She said they are only one space deficient at this point. Ms. Olsen said this project complies with all applicable residential guidelines. She felt there were special circumstances to grant this variance, in that the location of the lot has a school to the right, the Flood Channel to the rear, and has access from the adjoining residential neighborhood to this area for off-street parking. She said the parking is not as intense as other areas for that reason. She said the lot is triangular shaped, and because of that they could not add parking, and instead, added a trash enclosure to help eliminate some of the trash and dumping problems. Ms. Olsen said the owner has not found a way to enforce it through the City, and people come there in the middle of the night via the alley and dump their trash.

Commissioner Fisler stated that because parking is an issue to him, he said he was confused by Ms. Olsen's testimony regarding the number of parking spaces. Ms. Olsen reiterated her testimony and pointed out the parking spaces on the site plan to the Commission.

Commissioner Garlich confirmed with Mr. Lee that the number of parking spaces was now at 14 instead of 13. Mr. Lee said the area where the open parking space is proposed, is currently a part of the enclosed patio area for one of the units. There are actually 2 open spaces to the south of the building, one of which will be eliminated to accommodate a wider walkway, so the architect is correct in that the one space that's being eliminated here is being picked up in the proposed plan where the patio area currently is.

Commissioner Garlich asked about the additional parking space where the walkway is. Mr. Lee said there is no requirement under the zoning code to keep that walkway, and if eliminated, two open parking spaces could be accommodated in that area. Commissioner Garlich asked Mr. Lee to comment on the "rounding up" of calcula-

tions. Mr. Lee explained how the calculations are figured.

Commissioner Egan said she recalls when that “rounding up” came through, and both Planning Commission and City Council were firm about wanting to “round up” the fractional spaces so parking shortages would be less likely to occur.

William Lash, 3105 Pierce Avenue, Costa Mesa, and owner of the adjacent property, felt that the architects did not include on the plan, the storm drain on his property; an easement, and the property line which all extend from that storm drain. He said the existing structure is within 3-1/2 to 4 feet of his property line; there is nothing established on the plan showing where that property line is. Secondly, he said his property has been used as “spill over” parking for the present tenants in the existing structure. He said if they add another building, he would have to install a fence. When the City went through and reworked the curbs and sidewalks, all the markers were covered and now, there is no way to determine where that property line is unless you site the sewer line. The walkway that extends on the left side is not wide enough if the applicant installs the proposed 6-foot fence separating his property from the subject property. He also questioned where the sewer drain would be located from the new building out to the street. He said if it goes from the left side of the existing property out to the street, they would have to go over the storm drain.

In response to the Chair regarding the sewer Mr. Lash referred to, Mr. Lee stated that one of the code requirements states that the Sanitary District is required to review the plans if the project is approved. The working drawing would have to show how the new units would tie into the existing sewer system and would have to be approved by the Sanitary District.

Beth Refakas, 320 Magnolia Street, Costa Mesa, stated that the Commission should be very concerned about granting a variance for the 2 parking spaces because there is a shortage of parking in the City.

Commissioner Garlich stated for the record, Planning Commission doesn't give variances to allow substandard parking; they would have to make findings and meet certain criteria such as lot shape, topography, and privileges enjoyed by other properties in the area, etc. If the finding can be made, it results in someone being able to solve a parking problem. The Commission does not give variances based on their sympathy with the need to help the applicant who is having a parking problem. Mr. Lee clarified Commissioner Garlich's statements.

In response to a question from Vice Chair Hall as to whether the present project is legal nonconforming as far as parking is concerned, Mr. Lee confirmed that this site is legal nonconforming and that this additional project meets the parking standards. Vice Chair Hall asked if staff is asking that the whole project be upgraded because of this addition and Mr. Lee confirmed that was correct.

In response to a question from Commissioner Egan regarding who would be responsible for enforcing condition of approval #14, Mr. Lee explained it would be either the property owner or the manager. Commissioner Egan asked if they would go inside the garages to inspect. Mr. Lee stated that because there is a specific condition of approval for this project, it would allow the City to enforce this condition if the garages are used for anything other than parking.

Donna Olsen, authorized agent for the applicant returned to the podium and stated that she wished to point out that providing 5 parking spaces enclosed in a garage for less than 2,000 square feet of living space, is beyond the requirements of the City for any size single-

family home. She did not believe this project intensifies a parking problem, but rather provides more than would be typically provided in residential neighborhoods. If the existing building stands alone and this project is not done, they are not changing anything regarding that building either way and pointed out that they have added a lot of parking for this one unit.

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

MOTION:
PA-05-20
Failed for lack of a second

A motion was made by Vice Chair Hall to approve the project by adoption of Planning Commission resolution, based on analysis and information in the Planning Division staff report and findings contained in exhibit "A", finding that the project complies with Costa mesa Municipal Code and is compatible and harmonious with uses within the general neighborhood and those other findings which would justify the approval of this project; and condition of approval #14 shall be modified to allow for storage shelving that does not impact or interfere with parking of vehicles inside the garage. This motion failed for lack of a second.

MOTION:
PA-05-20
Denied

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 4-1 (Hall voted no) to deny by adoption of Planning Commission Resolution PC-05-62.

During discussion on the motion, Commissioner Garlich said sometimes the code works in a way that when we get into some of these older properties, where by modifying an older property, the Commission is then able to bring into play, the more current requirements for parking as the Commission tries to deal with the problem. If the Commission doesn't take advantage of that, no headway will ever be made. He said it's a difficult situation, and he can appreciate that the applicant is adding parking, but in total, the number of parking spaces required, reflects the best effort to accommodate what they think is going to be needed there and some argue that even that is insufficient. He said he could not make findings to support a variance.

The Chair said his concern with this project is also the parking and was concerned about enforcement of parking vehicles in the garages.

Commissioner Egan added that when she visited the site, it was in the middle of a weekday afternoon, and while there were some parking spaces on LaSalle Street, the adjoining side streets were severely impacted by parking. She believed there is an existing parking shortage in this neighborhood and it is unrealistic to expect condition of approval #14 to be enforceable, unless you had a "stickler" for an on-site manager.

The Chair explained the appeal process.

PLANNING APPLICATION
PA-05-21
Bear & Baker, Ltd./Okura

The Chair opened the public hearing for consideration of Planning Application PA-05-21 for Tojiro Okuro, authorized agent for Bear and Baker Limited, for a conditional use permit to allow a restaurant to serve alcoholic beverages until midnight within 200 feet of residentially-zoned property; in conjunction with a minor conditional use permit to deviate from shared parking requirements due to off-set hours of operation, located at 891 Baker Street, #A-2, in a CL 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, subject to conditions.

In response to questions from the Chair, Ms. Shih confirmed that no correspondence was received for this project.

Tojiro Okuro, 2161 West 182nd Street, Torrance, agreed to the conditions of approval.

Saeed Ghazimir Hojat, owner of the Firewood Oven Pizza at the same shopping center, stated that he has been at this location for 10 years and has experienced a lot of parking problems; he said the plan is wrong and the report is wrong. Ms. Shih said the plan was submitted by the applicant along with other information, in his "Letter of Justification." Mr. Hojat felt the information submitted by the applicant was inaccurate and that there is no available parking in the shopping center for his business.

There was further discussion between members of the Commission, Ms. Shih, and Mr. Hojat regarding his conclusions about parking, tenants, and hours of operation.

The applicant, Mr. Okuro returned to the podium and confirmed that because he may not have ample parking, he has already contracted for 9 additional parking spaces from the Marriott Hotel.

There was discussion between Commissioner Egan, Ms. Shih, the Chair, and Mr. Okuro concerning the need for a CUP for valet parking, however, it was noted that the Marriott is next door to Mr. Okuro's restaurant and valet parking is not proposed.

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

A motion was made by Commissioner Garlich, seconded by Vice Chair Hall, and carried 5-0 to approve by adoption of Planning Commission Resolution PC-05-63, based on information and analysis in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B."

The Chair explained the appeal process.

The Chair opened the public hearing for consideration of Planning Application PA-05-33 for Jeff Mayes, authorized agent for Steve & Lynn Schultz, for a conditional use permit to operate a tattoo parlor, located at 2156 Newport Boulevard, 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 approval by adoption of Planning Commission resolution, subject to conditions.

Jeff Mayes, 31501 Marbeth Road, Yucaipa, agreed to the conditions of approval.

Commissioner Egan said she observed 5 cars on the property under car covers and a trailer. Mr. Mayes said the people who own the property are removing the vehicles.

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

A motion was made by Commissioner Fisler, seconded by Commissioner Egan, and carried 5-0 to approve by adoption of Planning Commission Resolution PC-05-64, based on information and analysis in the Planning Division staff report, and findings in exhibit "A", subject to conditions in exhibit "B."

The chair explained the appeal process.

Planning Commission Secretary R. Michael Robinson advised the Commission that the schedule has been finalized for the Joint Planning Commission/City Council Study session on the four urban plans: 1 for Bristol Street and 3 for the Westside area. It will be held on Tuesday, October 11th beginning at 4:30 p.m. in Conference Room 1A. This meeting is an orientation to the plans and will primarily provide an introduction to the plans for both Commission and Council. He said it would also identify a tentative public hearing schedule, and that there would be more detailed study sessions with both Plan-

MOTION
PA-05-21
Approved

PLANNING APPLICATION
PA-05-33

Schultz/Mayes

MOTION:
PA-05-33
Approved

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:

ning Commission and Council when the environmental documentation is complete.

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

None.

ADJOURNMENT:

There being no further business, Chairman Perkins adjourned the meeting at 8:42 p.m. to the Planning Commission meeting of Monday, October 10, 2005.

Submitted by:

R. MICHAEL ROBINSON, SECRETARY
COSTA MESA PLANNING COMMISSION