



City of Santa Barbara Planning Division

PLANNING COMMISSION MINUTES

September 10, 2009

CALL TO ORDER:

Chair Larson called the meeting to order at 1:03 P.M.

ROLL CALL:

Present:

Chair Stella Larson

Vice-Chair Addison S. Thompson

Commissioners Bruce Bartlett, Charmaine Jacobs, John Jostes, Sheila Lodge, and Harwood A. White, Jr.

Absent:

Commissioner Bruce Bartlett arrived at 1:06 P.M.

STAFF PRESENT:

Paul Casey, Community Development Director

Danny Kato, Senior Planner

Jaime Limón, Senior Planner

N. Scott Vincent, Assistant City Attorney

Steve Foley, Supervising Transportation Planner

Michael Berman, Project Planner/Environmental Analyst

Debra Andaloro, Senior Planner

Allison De Busk, Project Planner

Kathleen Kennedy, Associate Planner

Chelsey Swanson, Associate Transportation Planner

Julie Rodriguez, Planning Commission Secretary

I. ROLL CALL

II. PRELIMINARY MATTERS:

- A. Requests for continuances, withdrawals, postponements, or addition of ex-agenda items.
1. Senior Planner Danny Kato announced that a request had been received to continue Item IV. 631 Olive Street. The Commission agreed to make a decision at the time the item was scheduled to be heard.
 2. Mr. Kato reviewed the Commission's prior request to move the order of Item IV, 631 Garden Street with Item V, 920 Summit Road.

MOTION: White/Jostes

Switch the agenda order of item IV. with item V.

This motion carried by the following vote:

Ayes: 5 Noes: 1 (Jacobs) Abstain: 0 Absent: 1 (Bartlett)

- B. Comments from members of the public pertaining to items not on this agenda.

Chair Larson opened the public hearing at 1:06 P.M. and, with no one wishing to speak, closed the hearing.

III. POST CITY COUNCIL APPEAL:

ACTUAL TIME: 1:07 P.M.

EX PARTE COMMUNICATION:

Commissioners White, Bartlett, and Lodge disclosed an ex parte communication with representatives of the Orient Express Hotel.

APPLICATION OF TRISH ALLEN, SUZANNE ELLEDGE PLANNING & PERMITTING SERVICES, AGENT FOR ORIENT EXPRESS HOTELS, TRAINS & CRUISES, EL ENCANTO HOTEL AND GARDEN VILLAS, 1900 LASUEN ROAD, APN 019-170-022, R-2/4.0/R-H: TWO FAMILY RESIDENTIAL/ 4 UNITS PER ACRE/ RESORT-RESIDENTIAL HOTEL ZONES, GENERAL PLAN DESIGNATION: RESIDENTIAL, 3 UNITS/ACRE (MST2007-00140)

The proposal is a project revision to the approved El Encanto Hotel Revised Master Plan. The proposed project consists primarily of revisions to the design of the northwest corner of the project site. The proposal consists of three, one-story cottages (#37, 38 & 39) above an underground, 42-space, valet parking garage. The operations/back of house facilities would be located in the three cottages. Components of the utility distribution facility would be located in cottage 39, in the underground parking garage, and underneath cottage 29. As a result of relocating the parking underground, one parking space would be relocated to the Mission Village underground valet parking garage located in the northeast corner.

The proposal also includes 900 square feet of additional underground mechanical space that was not previously proposed in the Mission Village underground valet parking garage.

All other components of the Revised Master Plan remain as approved on February 12, 2009.

The discretionary applications required for this project revision are:

1. Modification to allow the above-ground portion of the underground parking structure to encroach into the front setback along Alvarado Place (SBMC§28.27.050);
2. Modifications to provide less than the required distance between buildings in the northwest corner (SBMC§28.27.050.2); and
3. Transfer of Existing Development Rights of 6,000 square feet (instead of 10,000 square feet as previously approved) of non-residential floor area to the project site (SBMC§28.95).

The Planning Commission will consider approval of the Addendum to the Mitigated Negative Declaration prepared for the project pursuant to the California Environmental Quality Act Guidelines Section 15164.

Case Planner: Kathleen Kennedy, Associate Planner
Email: KKennedy@SantaBarbaraCA.gov

Kathleen Kennedy, Associate Planner, gave the Staff presentation.

Trish Allen, Suzanne Elledge Planning and Permitting, briefly explained the utility distribution facility plans and stated that a landscape plan was not required at this time because it would later be reviewed by the Historic Landmarks Committee.

Jim Lefever, Gensler Architects, answered the Planning Commission's questions stating that less grading would be required with the proposed project revisions and that efforts have been made to save the Eucalyptus trees.

Chair Larson opened the public hearing at 1:19 P.M.

The following people spoke in support of the project:

1. Greg Parker
2. Bruce Love
3. Bill Beckers (had to leave early)
4. Jeannine Daniel
5. Charles Croninger
6. Trevor J. Martinson (supported the project, but raised some concerns)
7. Edward Cooper
8. Mary Moore
9. Geoff Rutkowski
10. Sandra Hotchkiss

11. Richard Potter
12. David Hughes
13. Gloria Hendley
14. Farrokh Nazerian
15. Sally Nazerian
16. Collette Phillippi
17. Jim Knight, President, Riviera Association
18. Tim Angelo
19. Joanna Von Yurt
20. Jan Von Yurt
21. Delia Smith
22. Steve and Nancy Petchan

Ms. Kennedy added that a voice message had been received from Mariam Hanlon in support of the project. Chair Larson read the names of public correspondence recorded into the resolution. With no one else wishing to speak, the public hearing was closed at 1:39 P.M.

Joe Poire, Santa Barbara City Fire Batalian Chief, stated that while the Eucalyptus trees have never been conditioned for removal and are combustibile, there are ways that they can be made reasonably fire-safe. Anne Marx, Wildlife Fire Specialist, stated that the trees would be evaluated for health and stability in order to determine which trees would be removed, if any.

Staff added that the five historically designated eucalyptus trees could only be removed if an arborist report states that they need to be removed. Scott Vincent, Assistant City Attorney, reminded the Commission that the conditions of approval did address removal of the Eucalyptus trees based on an arborist recommendation.

Staff answered additional Planning Commission's questions in response to Trevor Martinson's concerns, stating that the height of the main building was approved to be 2' taller than the original building, and that building inspectors have confirmed that the building is being constructed per the approved plans; stated that the only changes being considered were the project revisions for the northwest corner and the additional underground square footage in the northeast corner, and explained that city Staff refers to city records to determine square footage amounts, not County records.

The Commissioners made the following comments:

1. The Planning Commission acknowledged the collaboration and cooperation of the applicant, city Staff, and the neighbors to reach a recommendation that would address the concerns of each and made for a better project. This is a model example of mediation between an applicant and neighbors and should serve other applicants.
2. Commissioner Jacobs hoped that the Historic Landmark Commission would work with the applicant to create a welcoming pedestrian entry way with connectivity to the crosswalk by Alvarado Place.

3. Commissioner Lodge commented on the beauty of the Eucalyptus trees and felt that a good plan for maintenance would make them reasonably safe.

MOTION: Jostes/Thompson

Assigned Resolution No. 034-09

Approved the Addendum to the Final Mitigated Negative Declaration; and approved the project revisions, making the findings for the two Modifications and the Transfer or Existing Development Rights, as outlined in the Staff Report, subject to the same conditions of approval as the February 12, 2009 approval (Planning Commission Resolution 004-09).

This motion carried by the following vote:

Ayes: 7 Noes: 0 Abstain: 0 Absent: 0

Chair Larson announced the ten calendar day appeal period.

Chair Larson called for a break at 2:11 P.M and reconvened the meeting at 2:18 P.M. Commissioners Bartlett and Jacobs recused themselves from Item V, and Commissioner Jacobs announced that she was unable to attend Item IV because of a scheduling conflict. They both left the dais at 2:29 P.M.

The following two items were heard out of order, as noted by the actual time.

IV. STAFF HEARING OFFICER APPEAL:

ACTUAL TIME: 3:52 P.M.

RECUSAL: To avoid any actual or perceived conflict of interest, Commissioner Bartlett recused himself due to working with the Housing Authority as a client and left the dais at 2:29 P.M.

APPEAL BY HOUSING AUTHORITY OF THE CITY OF SANTA BARBARA OF THE STAFF HEARING OFFICER'S APPROVAL OF THE APPLICATION OF SEFTON GRAHAM FOR THE GREEN LIGHT DISPENSARY, 631 OLIVE STREET, 031-160-005 C-M ZONE, GENERAL PLAN DESIGNATION: RESIDENTIAL, 12 UNITS PER ACRE (MST2008-00577)

The project consists of a change of use for approximately 629 square feet of an existing 1,091 square foot single-family residence in order to establish a medical cannabis dispensary at 631 Olive Street. The remaining 462 square feet of the building would be a residential unit. The discretionary application required for this project are a Medical Cannabis Dispensary Permit (SBMC §28.80.030).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15303, New Construction or Conversion of Small Structures.

Case Planner: Allison De Busk, Project Planner
Email: ADebusk@SantaBarbaraCA.gov

Allison De Busk, Project Planner, gave the Staff presentation and corrected the statement in the mailed notice, that the item could be appealed to the City Council, by stating that the Planning Commission decision is final.

Rob Pearson, Santa Barbara Housing Authority, gave the Appellant's presentation, joined by Skip Szymanski, Barbara Allen and David K. Hughes

Sefton Graham, for Green Light Dispensary, gave the applicant presentation.

Scott Vincent, Assistant City Attorney, gave the Commission clarification of the California Educational Code's definition of 'educational institution' to provide the clarification of where the dispensaries could exist and suggested a narrow interpretation of the definition. He further suggested that the Commission look to findings B.7 and B.10. in the Staff Report.

Mr. Kato added that the Ordinance was written using language from other jurisdictions, but in retrospect is broader than intended. The Ordinance Committee and City Council will be reviewing the Medical Cannabis Dispensary Permit Ordinance and revisions to the ordinance will be considered.

Chair Larson opened the public hearing at 4:19 P.M.

The following people spoke in support of the appeal:

1. Gloria Hebert
2. Rosanne Crawford
3. Britta Bartels, Eastside Neighborhood Association
4. Bonnie Raisin, also asked for continuance for revised ordinance

Sharon Byrne did not state a position, but requested a continuance of the Commission's decision due to the Marijuana Dispensary Ordinance being reviewed by the Ordinance Committee on September 15, 2009.

With no one else wishing to speak, the public hearing was closed at 4:27 P.M.

Mr. Vincent responded to the Planning Commission questions about potential revisions to the Medical Marijuana Ordinance on September 15, 2009 by stating that this will be an initial meeting before the Ordinance Committee and it is unlikely that they will come to any conclusions in the initial meeting. Once any revisions are agreed to by the Committee, then State Law requires that the Planning Commission review any revisions before the zoning ordinance can be presented to the City Council for adoption. However, if the City Council finds that there are problematic issues in the community, they can put in place an interim ordinance or moratorium for a period of time. Absent a stipulated continuance by the

applicant and appellant, there is no reason to continue the item. Suggested the Commission apply the ordinance as it stands today.

Jaime Limón, acting as the Staff Hearing Officer, gave the reasoning for his decision to approve the Dispensary. Stated that we do not have history to guide us, but we do have security measures, he did not believe there was evidence that the dispensary would create a significant nuisance, therefore he could not deny the application.

Mr. Pearson acknowledged that while agreement could not be reached on the definition of educational facilities, he asked that consideration be given to finding B.10, since the Housing Authority had been adversely impacted by marijuana dispensaries and cited examples. Mr. Hughes added that under B.10, it could be found that marijuana dispensaries adversely affect the health, peace, or safety of individuals living or working within a surrounding area.

Mr. Kato responded to the Commission's questions regarding the provisions for annulling a decision by stating that revocation of an approved dispensary is addressed in the Ordinance. If conditions were not being met, the Planning Commission could have a revocation hearing.

The Commissioners made the following comments:

1. Commissioners Jostes and Larson acknowledged the valid concerns of the Appellant, as well as the fact that medical cannabis has been abused by some patients. Commissioner Jostes supported the Staff Hearing Officer's decision given that there is a remedial process in place.
2. Commissioners Jostes and White remained concerned that the Ordinance does not have an appeal process beyond the Planning Commission.
3. Commissioner White would support the withdrawal of permits if the applicant does not meet the conditions of the Ordinance.
4. Commissioner Larson was concerned with the distance to Girls Inc and Transition House and was sympathetic to the 500' circumference. She remained concerned with the level of enforcement priority given by the City. Commissioners Larson and Lodge supported the appeal.

MOTION: Jostes/White

Deny the appeal based on the discussion and findings presented.

This motion carried by the following vote:

Ayes: 2 Noes: 2 (Larson, Lodge) Abstain: 0 Absent: 3 (Bartlett, Jacobs, Thompson)
The motion failed for lack of a majority.

Mr. Vincent advised the Commission to make a decision based on substantial information before them: the Staff Report, the application materials, and the hearing. Substantial

evidence should not be conjecture. He reminded the Commission that suspension and revocation procedures are in place.

Mr. Graham felt that situations where Cannabis users are reselling have not been documented and are hypothetical.

Commissioner Jostes acknowledged the impasse and was informed by Mr. Vincent what the lack of a motion would hold for the applicant by stating that a tie vote has no action. The Commission continued to deliberate and even considered the recommendation that it could continue a decision to when a greater number of Commissioners were present.

MOTION: Jostes/Lodge

Assigned Resolution No. 036-09

Denied the appeal of the Housing Authority of the City of Santa Barbara, based on the discussion, and upheld the decision of the Staff Hearing Officer to approve the Medical Cannabis Dispensary Permit making the findings, and subject to the Conditions of Approval, contained in Staff Hearing Officer Resolution No. 065-09 (Exhibit B) with the added condition that the Applicant make verbal contact with the Housing Authority, Transition House, and Girls Inc., quarterly, to ascertain if there are nuisance issues raised by the Applicant's operation. A written update would be given to City Staff and reported to the Planning Commission at six months and at one year following issuance of the site's certificate of occupancy.

Discussion was held on the possibility for creating a list of Cannabis abuse and sharing it with other dispensaries and the potential conflict with the Health Insurance Portability and Accountability Act (HIPPA).

Additional discussion was held regarding the encouragement of having the applicant and neighborhood work together to resolve differences.

This motion carried by the following vote:

Ayes: 3 Noes: 1 (Larson) Abstain: 0 Absent: 3 (Bartlett, Jacobs, Thompson)

Mr. Pearson thanked the Commission and stated he is looking forward to working with the Applicant.

V. **NEW ITEM:**

ACTUAL TIME: 2:18 P.M.

RECUSALS: To avoid any actual or perceived conflict of interest, the following Commissioners recused themselves from hearing this item:

Commissioner Bartlett recused himself due to living adjacent to the project and left the dais at 2:29 P.M.

Commissioner Jacobs recused herself due to family members being members of the Montecito Country Club. She also announced that she would not be returning to the dais and left at 2:29 P.M.

EX PARTE COMMUNICATION:

Commissioner Jostes disclosed an ex parte communication with the applicant regarding a site visit since he was unable to make the designated site visit.

APPLICATION OF STEVE WELTON, SUZANNE ELLEDGE PLANNING AND PERMITTING SERVICES FOR MONTECITO COUNTRY CLUB, 920 SUMMIT ROAD, APN 009-091-014, 009-091-020, 009-151-006, 009-151-007, 015-211-009, 015-211-010, 015-280-014, 015-300-001, 015-300-002, 015-300-003, A-2/S-D-3 AND E-2 ZONES, GENERAL PLAN DESIGNATION: OPEN SPACE AND RESIDENTIAL – TWO UNITS PER ACRE (MST2005-00831)

The project consists of changes to the existing site plan of the Montecito Country Club and Golf Course. The project site is comprised of ten parcels totaling 114.35 acres, and is situated at the northwest corner of Old Coast Highway and Hot Springs Road. The project includes a redesign of the existing golf course, including grading, removal of trees, and a habitat restoration and revegetation plan; improvements to the exterior and perimeter of the existing clubhouse; demolition of the existing maintenance buildings, cart barn, tennis pro shop and flammable materials building; and construction of a new maintenance building, new golf pro shop, new tennis pro shop, new tennis courts and new cart barn. The project also includes construction of a new 400 square foot residential unit located above the proposed maintenance building, to be occupied by a Club employee. Net new non-residential square footage resulting from the project is approximately 1,320 square feet. The project's grading would involve approximately 106,000 cubic yards of cut and 86,000 cubic yards of fill. It is anticipated that grading associated with the project will be balanced on site. The project involves removal of 361 trees and other landscaping, including all golf course turf.

The project does not propose any substantial changes to existing operational parameters as outlined in the Club's existing Conditional Use Permit (CUP). Membership is limited to 680 members. The Club is used by members for golf, tennis and dining on a year-round basis. The Club is open 7 days a week from 7:00 am to 9:30 pm (closed Christmas and New Year's Day). The Club also includes meeting rooms, lounges, locker rooms and a golf shop, and on site functions include dinners, dances, parties, meeting and tournaments for member and guests. Additionally, the Clubhouse dining room and meeting rooms are occasionally rented to outside groups for special events such as weddings, parties, banquets and meetings. These events typically occur in the afternoon or evening hours.

The discretionary applications required for this project are:

1. A Modification to allow fencing to exceed 3-½ feet in height along the front lot lines (SBMC §28.92.110.A.3);

2. A Coastal Development Permit (CDP2008-00021) for the portion of the project (grading and vegetation removal) that is within the Appealable and Non-Appealable Jurisdiction of the City's Coastal Zone (SBMC §28.44.060);
3. A Development Plan to allow the construction of 7,771 square feet of nonresidential development on APN 009-091-020 (SBMC §28.87.300); and
4. A Conditional Use Permit Amendment to permit the proposed changes to the site plan for the Montecito Country Club (SBMC 28.94).

The Planning Commission will consider approval of the Mitigated Negative Declaration prepared for the project pursuant to the California Environmental Quality Act Guidelines Section 15074.

Case Planner: Allison De Busk, Project Planner
Email: ADebusk@SantaBarbaraCA.gov

Allison De Busk, Project Planner, gave the Staff presentation.

Bill Medel, Ty Warner Resorts, gave the applicant presentation, joined by David Van Hoy, Architect.

Chair Larson opened the public hearing at 2:45 P.M.

The following people spoke in support of the project:

1. Michael Ditmore
2. Terry Tyler, Eucalyptus Hill Improvement Association
3. Daniel Signore
4. Paul Ugesaka
5. Garrison Bieleu
6. John Wiemann
7. Mary Wiemann
8. Hiro Tsuzuki
9. Debbie Dalee
10. Ryan Nomura
11. Roxanne Nomura
12. Butch Breeden
13. Judy Hatfield
14. Tom Orlando
15. Ed Edick

The following people spoke in opposition to the project or with concerns:

1. Denice Adams expressed concern about the loss of cultural and recreational amenities, and asked for consideration of club reciprocity for members for use of other clubs during the project's construction.

Chair Larson read the names of public comment letters received regarding the project. With no one else wishing to speak, the public hearing was closed at 3:00 P.M.

Staff responded to the Planning Commission's questions about the Mitigated Negative Declaration (MND) and noted that it was amended to reflect the comments made by Mr. Martin Potter, California Department of Fish and Game and the Air Pollution Control District's asbestos conditions. In response to the use of recycled water on the greens, Staff stated that the tees and greens will not use recycled water, but the remainder of the course will.

Steve Welton, Suzanne Elledge Planning and Permitting, assured the Commission that permitting options have been explored with the Army Corp, the State Water Resources Board, and the Department of Fish and Game to keep the project moving forward. He also stated the bioswales would use recycled water year-round.

In response to future development potential on the site, Staff stated that there would still be some development potential since there are multiple parcels at the project site, but they are designated under the General Plan as open space which limits potential development. Any remaining non-residential square footage that is transferred to or from the property would require review by the Planning Commission.

Staff also provided clarification of the parcel lines as related to the conditional use permit, which does cover all the parcels and does not require that they be held in the same ownership.

Mr. Medel said that the number of club employees changes with the number of members, but has been consistent for the last five years. Mr. Medel stated that the club does offer bus passes and carpooling options.

Mr. Van Hoy explained that the emergency gate is a metal green gate. The pedestrian gate will remain unlocked; the auto gate will remain locked except for emergencies with mandatory evacuation. He added that there is a provision for bicycle parking, including covered bike parking.

Steve Foley, Supervising Transportation Planner, commented on the MTD bus transit service available.

Scott Vincent, Assistant City Attorney provided clarification to the Commission on how Measure E and the Conditional Use Permit (CUP) applied to this project; both are separate.

Doug Fell, Attorney for the applicant, elaborated on a parcel of land that is not a part of the golf course and is not intended to be a part of the CUP, nor will it be used by the golf course. If at anytime it was later desired to be used by the golf course, it would have to go through rezoning and a longer process.

The Commissioners made the following comments:

1. Commissioners White and Larson appreciated the addition of the workforce unit to the project. Appreciated the benefit of having a resident employee that would safeguard the property. Asked that the full length of the pedestrian path be reviewed by the Architectural Board of Review (ABR) for pedestrian safety.
2. The Planning Commission was appreciative of the applicant's efforts to work with the neighborhood for a better project.
3. Commissioner Thompson felt that the proposed changes will not only benefit the golf community, but will have a benefit to the community at large aesthetically and environmentally. Supports the modification for the higher fence since it serves as a safety feature for the public.
4. Commissioner Jostes appreciates the water quality elements that have been added to the project. Suggested caution of Transfer of Existing Development Rights (TEDR) in the future given the open space designation.

MOTION: Thompson/Lodge

Assigned Resolution No. 035-09

Adopted the Mitigated Negative Declaration and approved the project, making the findings for the modification, Coastal Development Permit, Development Plan, and Conditional Use Permit Amendment as outlined in the Staff Report, subject to the Conditions of Approval in Exhibit A of the Staff Report, as revised by Staff at the hearing and with the following revision: 1) Architectural Board of Approval to study the pedestrian path to Hot Springs Road for maximizing aesthetics and public safety.

This motion carried by the following vote:

Ayes: 5 Noes: 0 Abstain: 0 Absent: 2 (Bartlett, Jacobs)

Chair Larson announced the ten calendar day appeal period.

Chair Larson called a recess at 3:43 P.M and reconvened the meeting at 3:52 P.M. Commissioner Thompson did not return to the dais.

VI. ADMINISTRATIVE AGENDA

ACTUAL TIME: 5:22 P.M.

A. Committee and Liaison Reports.

1. Staff Hearing Officer

Commissioner Larson reported on the Staff Hearing Officer's meeting of September 9, 2009.

2. Officer Liaison Reports

MOTION: Jostes/White

Continue administrative agenda to September 17, 2009.

This motion carried by the following vote:

Ayes: 4 Noes: 0 Abstain: 0 Absent: 2 (Bartlett, Jacobs, Thompson)

VII. ADJOURNMENT

Chair Larson adjourned the meeting at 5:22 P.M.

Submitted by,



Julie Rodriguez, Planning Commission Secretary

