



**PLANNING COMMISSION  
Minutes of the Regular Meeting  
City Council Chambers  
8200 Westminster Boulevard  
Westminster, CA 92683  
June 5, 2013  
6:30 p.m.**

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**1. ROLL CALL: NGUYEN, ANDERSON, HO, LOPEZ, MANZO**

PRESENT: NGUYEN, ANDERSON, HO, LOPEZ, MANZO

ABSENT:

**2. SALUTE TO FLAG:**

Chair Nguyen

**3. REPORT FROM PLANNING SECRETARY ON LATE COMMUNICATION ITEMS**

Senior Planner Kelvin Parker reported receiving a communication relating to Item No. 9.1.

**4. EX PARTE COMMUNICATIONS - None**

**5. SPECIAL PRESENTATIONS – None**

**6. ORAL COMMUNICATIONS - None**

**7. APPROVAL OF MINUTES – April 17, 2013**

Chair Nguyen made a correction to the minutes of the Planning Commission meeting of April 17, 2013 noting that Commissioner Ho was absent at that meeting.

With the noted corrections, the minutes of the Planning Commission regular meeting of April 17, 2013 were approved on motion of Anderson, seconded by Lopez and carried 4-0, with Commissioner Ho, abstaining.

**8. PUBLIC HEARINGS**

**8.1 Case No. 2013-47 Tentative Parcel Map & Variance**

**Location: 9851 Bolsa Avenue (APN: 098-191-01 & 098-651-01)**

**Applicant: Starpoint Ventures**

The applicant proposes to subdivide an existing 28.7 acre parcel developed with a mobile home park and an agricultural farm land into two smaller parcels. The proposed parcel No. 1 would have an area of 9.2 acres, which would correspond with the open farm land while the proposed parcel No. 2 would have an area of 19.5 acres which would encompass the existing mobile home park. The applicant is also requesting a variance from the side-yard setback requirement of 20-feet. The proposed subdivision would create a new side yard property line for the mobile-home park. There are existing mobile homes which would encroach into setbacks by default as a result of the subdivision.

RECOMMENDATION: Approve the Tentative Parcel Map and Variance.

Steve Ratkay, Associate Planner, gave a presentation on this item.

Brief discussion followed regarding the existing setbacks on the west property line.

THE CHAIR OPENED THE PUBLIC HEARING AND ASKED IF THERE WERE ANY SPEAKERS WISHING TO SPEAK ON THE SUBJECT MATTER.

Tim Strader, the applicant, thanked staff for its work on the project and reported that the application is simply for a lot split adding that there is no proposed development as part of the application. He stated that the Planning Commission will have an opportunity in the future to consider the residential project to be developed.

There were no others wishing to address the Planning Commission on this matter.

THE CHAIR CLOSED THE PUBLIC HEARING

Vice Chair Anderson asked regarding the possibility of a commercial development on the property in the future.

Mr. Ratkay reported that the current vacant portion of the property is zoned R1 and in order to accomplish a commercial use, there would need to be a General Plan and zone change amendment to allow for a commercial use. If proposed, the project would need to comply with the Code which has specific requirements for setbacks. Additional conditions could be required through the review process.

**Motion was made by Chair Nguyen**, and seconded by Commissioner Manzo to approve the Tentative Parcel Map and Variance for Case No. 2013-47 subject to conditions.

The motion carried by the following vote:

AYES: NGUYEN, ANDERSON, HO, LOPEZ, MANZO

NOES:

ABSENT:

## **RECESS AND RECONVENE**

Chair Nguyen called for a recess at 6:48 p.m. The assembly reconvened at 6:58 p.m. with all members, present.

## **9. REGULAR BUSINESS**

### **9.1 Case No. 2013-60. An appeal of the Director's denial of a Zoning Clearance application.**

**Location: 6972 Garden Grove Boulevard**

**Appellants: Andrew and Hanh Nguyen**

A request to overturn the Director's action that determined a proposed use to establish a truck maintenance and repair facility is not another nonconforming use of the same or more restricted classification in accordance with Zoning Code Section 17.610.010(D). The action of the Director meant that the proposed use could not be established by right.

RECOMMENDATION: Uphold the Director's action.

Planning Commission Secretary Art Bashmakian introduced the aforementioned item and gave a presentation of same. He addressed staff's determination and the basis of its findings noting that the proposed use is different from the existing use but must meet set standards within the Code. He presented details of the appeal relative to other non-conforming uses and highlighted the draft resolution included in the staff report.

Chair Nguyen inquired regarding clarification of "more restricted" classifications.

Mr. Bashmakian reported that the particular Code section has been in existence since the City's incorporation and was adapted from the County code. The current County code has the same language but an added element with "restriction" being defined as a numerical parking requirement; with the other use not requiring additional parking.

Commissioner Lopez commented on the ability of customers to fix their trucks and Mr. Bashmakian reported that the matter is unclear. He added that staff's recommendation is to uphold the Director's decision, that the applicant will have an opportunity to speak on the matter and that the Planning Commission could decide that the applicant's proposal is consistent with the Code. The decision will need to be based on the findings and the law.

Vice Chair Anderson stated that he has read the nonconforming use section of the Code and felt that is what should be the focus of the Commission. Based on the Code, if any other non-conforming use should be placed on the property, the Code would restrict any building activity to limited modifications to the existing structure and not allow additional buildings to be constructed on the site.

Mr. Bashmakian affirmed it so and limits the amount of structures that could be constructed on a property. If a new building were to be constructed, it would be contrary to the intent of the non-conforming provision.

Chair Nguyen invited the applicant to address the Commission on this matter.

David Lampert, property owner, reported that his property is in a very impacted area with tough zoning. He reported that restrictions have impacted the sale of his property and noted restrictions are defined based on parking standards. He provided a brief history of the business and addressed his request to change a non-conforming use to another non-conforming use of the same or more restrictive classification. He stated disagreement with staff's interpretation of "same or more restrictive classification of another non-conforming use". Mr. Lampert referenced Sections 17.700.010 and 17.610 of the Westminster Municipal Code as providing the definition for a non-conforming use and information regarding non-conforming uses, structures and parcels as well as Ordinance 8200.22 establishing his right to transfer his legal, non-conforming property to another use. He stated that land use codes from 1959 when the ordinance was established, are missing and indicated that they would provide uses in the General Commercial Zone that would have required a City Use Permit and that by applying the City definition of what a non-conforming use is, would've provided a list of the classifications that would have been referenced in this matter.

Mr. Lampert reported conducting research at the County of Orange Planning Department, finding an ordinance dating back to 1948 and noted that since then, there have been no less than four revisions that have generated lists of land uses requiring a use permit. He referenced Ordinance 2678 Section 78.0236.5 noting that it is the most likely to have been in force at the time of annexation of the property and that both proposed uses appear on that classification. He provided examples from the county explaining that auto wrecking and truck repair is in the same classification. He explained the process used in assembling a list of uses that would be included in the current classification and noted that used truck maintenance and repair has been included in all of the classifications. He took exception to staff's assumptions regarding the existence or misidentification of uses in the code as other non-conforming uses. He stated that there is no legal basis for the denial to change his non-conforming use to truck maintenance and repair business. He felt that the use has been part of the same or less impactful uses since at least 1948 in both City and County ordinances. He stated his request that the Planning Commission confirm his legal right to sell the property and the new owners' ability to use the property as truck maintenance and repair business.

Commissioner Lopez wondered why the proposed new owners did not address the Commission

and Mr. Lampert reported that he is the one that asked for a zoning clearance. He stated that the Nguyens feel intimidated by the process and complained that staff has treated him with adversity.

Commissioner Lopez asked who will be performing the repairs.

Andrew Nguyen, one of the appellants, responded that he will be performing repairs.

Vice Chair Anderson inquired and it was confirmed that all repairs will be performed outdoors.

Discussion followed regarding proposed hours of operation and liability regarding vehicles left overnight for repairs.

Mr. Nguyen reported that they will have appropriate insurance covering liability for vehicles left overnight.

In response to an inquiry from Commissioner Manzo regarding the hours of operation for the current business, Mr. Lampert stated that they are opened 8:00 a.m. to 5:00 p.m. He added that the entire property is paved with cement and reported there is no ground contamination and that currently there is little acetylene being used. He stated that he has all appropriate permits for hazardous liquids.

Discussion followed regarding typical activities during the day and the hours of operation for the proposed new use.

Mr. Nguyen affirmed that no covers or structures would be allowed unless he would get the appropriate permits from the City.

Ensuing discussion followed regarding future uses for the property and the possibility of establishing another non-conforming use.

Commissioner Manzo noted that by performing services outdoors, the property owner would not be in compliance with the City's Code regarding performing services in a fully-enclosed work space and that a structure would need to be built to perform the proposed maintenance and repair functions. The business owner would therefore, need to apply for a Conditional Use Permit.

Chair Nguyen clarified that if any form of structure is proposed in the future, the property owner would need to apply for a Conditional Use Permit from the City.

In reply to Vice Chair Anderson's inquiry, Mr. Lampert reported that electric and air lines are brought in every night and are not secured. He reported that he has been operating for thirty-two years.

Vice Chair Anderson noted that there are land-use issues as well as environmental issues to consider.

In response to an inquiry from Commissioner Lopez, Mr. Lampert explained that Mr. Nguyen has a group of truck drivers for which he provides dispatch services and would like to provide safety-inspection and maintenance and repair services. He added that he already has the customer base and is looking for simple add-on sales.

In reply to an inquiry from Commissioner Manzo, Mr. Bashmakian explained that the use, if established, would be contrary to the Code provision that requires repairs to be conducted indoors. However, the applicant is requesting to be allowed to do so without being inside structures. If the Commission determines that the proposed use is the same classification, as proposed, repairs could be conducted outdoors.

Chair Nguyen noted the need to make a determination whether the current and proposed uses are the same, more or less impactful to the community. He felt the impacts are not the same but rather less and stated that he is leaning towards the proposed use. He stated that once the wrecking yard is gone, he would not want to see it return.

Mr. Bashmakian reported that if the Planning Commission includes a finding that the proposed use would be more restrictive or the same classification, that finding will be taken into consideration for future requests for change.

Vice Chair Anderson agreed that the proposed use would be less impactful than the current use but stressed that the applicant will be working outside, without the benefit of any cover. He suggested adding a condition that prior to constructing any new improvements to the property, the applicant will have to submit plans to the City for review and consideration. There would be no guarantee that it would be approved. Also, he recommended adding a condition that any additional permits needed on the property by the applicant regarding the business operation (i.e. Fire Authority, air/water pollution, etc.), would need to be obtained by the applicant. The applicant will need to ensure that the proposed activity is in conformance with all applicable codes.

Commissioner Ho agreed with Chair Nguyen's and Vice Chair Anderson's comments, likened the operation to Pep Boys and agreed that the applicant must abide by all regulatory requirements. She felt that the proposed use is different from the current use as well as less impactful but that all necessary permits will be obtained.

Mr. Bashmakian stated that compliance with other State, Federal and applicable regulations is mandatory and that triggers exist through the Building, Planning and Fire Codes.

**Motion was made by Commissioner Lopez**, and seconded by Commissioner Ho that in Case No. 2013-60, the Planning Commission reverse Director's denial of a Zoning Clearance application with added conditions of approval that prior to constructing any new improvements to the property, the applicant will submit plans to the City for review and consideration.

Discussion followed regarding the need for a resolution. It was noted that staff will prepare a resolution and reviewed and signed by the Chair reflecting the Commission's action in reversing the Director's denial of the Zoning Clearance.

The motion carried by the following vote:

AYES: NGUYEN, ANDERSON, HO, LOPEZ, MANZO

NOES:

ABSENT:

Mr. Bashmakian clarified that the motion overturns the Director's denial and grants the requested use on this case. He noted that there is a fifteen-day appeal period and any decision of the Planning Commission may be appealed to the City Council.

**10. REPORTS – None**

**11. MATTERS FROM THE PLANNING COMMISSION - None**

**11.1 AB 1234 Reports - None**

**12. ADJOURNMENT:** At 7:53 p.m., Chair Nguyen adjourned the meeting to regular meeting on Wednesday, June 19, 2013 at 6:30 p.m. in the Council Chambers.

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NGUYEN  
Chairman

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Art Bashmakian  
Planning Commission Secretary

Prepared by:

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Art Bashmakian  
Planning Commission Secretary