



**PLANNING COMMISSION
Minutes of the Regular Meeting
Council Chambers
8200 Westminster Boulevard
Westminster, CA 92683
January 18, 2017
6:30 p.m.**

1. PLANNING COMMISSION ROLL CALL:

ANDERSON, MANZO, NGUYEN, RICE, AND VO

PRESENT: MANZO, RICE, AND VO

ABSENT: ANDERSON AND NGUYEN

STAFF PRESENT:

Steve Ratkay, Associate Planner; Amanda Acuna, Planning Technician; Braulio Moreno, Contract Assistant Planner; Shelley Dolney, Administrative Assistant.

2. SALUTE TO FLAG:

Vice Chair Manzo led the salute to the flag.

3. REPORT FROM PLANNING SECRETARY ON LATE COMMUNICATION ITEMS

Associate Planner Ratkay stated several late communication items related to item 8.2 were received, including: a letter received on January 16th, two phone calls, and a document submitted just prior to the meeting.

4. EX PARTE COMMUNICATIONS

Commissioner Vo reported visiting the sites for both items on the agenda. Commissioner Rice and Vice Chair Manzo stated they had nothing to report.

5. SPECIAL PRESENTATIONS - None

6. ORAL COMMUNICATIONS - None

7. APPROVAL OF MINUTES – October 19, 2016

Motion: It was moved by Commissioner Vo, and seconded by Commissioner Rice, to approve the Planning Commission meeting minutes of October 19, 2016. The motion carried (3-0) with the following vote:

AYES: MANZO, RICE, VO
NOES: NONE
ABSENT: ANDERSON, NGUYEN
ABSTAIN: NONE

8. PUBLIC HEARINGS

The Planning Commission moved item 8.2 ahead of item 8.1 on the agenda.

8.2 Case No. 2016-48 (Variance)

Location: 5191 Vallecito Avenue (APN # 203-022-09)

Applicant: Lee Oliver

A request for a Variance to required garage parking spaces of a single family residence.

CEQA COMPLIANCE: The proposed matter is exempt from CEQA pursuant to Section 15301 (Existing Facilities) Class 1 which consists of the minor alterations of existing structures and negligible changes to existing uses, such as the proposed parking variance associated with the interior changes to an existing residential care facility for the elderly.

RECOMMENDATION: That the Planning Commission approve the Variance subject to conditions of approval.

Amanda Acuna, Planning Technician, provided a presentation to the Commission.

Vice Chair Manzo inquired if the application for the addition stated that the location was going to be used for a senior care facility. He also stated he was concerned about ADA (Americans with Disabilities Act) compliance of the facility.

Associate Planner Steve Ratkay explained the State of California regulations were very clear prohibiting Cities from regulating residential care facilities as long as they have six residents or less; they must be viewed as a residential use. Regarding the concern about ADA requirements, he explained that the facility is required to meet state regulations, federal requirements, and building codes.

VICE CHAIR MANZO OPENED THE PUBLIC HEARING AND ASKED THOSE IN FAVOR TO SPEAK.

Lee Oliver, applicant for the project at 5191 Vallecito Avenue, stated is the CEO of the board and care facility, Princeville by the Sea, LLC. He lived in the home for 14 years before making it a care facility. He described the various upgrades he has made to the home, the permit approvals, and the licensing for the residential care facility. He stated the elderly residents do not drive so the three car garage requirement is unnecessary and the only people that park at the facility will be either the caregivers

or periodic visitors for the residents; adding the three car requirement would provide no benefit to property owner, the elderly residents, or the community at large. He stated, "The Federal Fair Housing Act requires that local governments make a reasonable accommodation, in this case an exception to the three car garage requirement, so that housing providers like Princeville by the Sea can offer equal housing opportunities. In this case, equal housing opportunities would be private bedrooms for my clients. Likewise, a municipality may not make zoning or land use decisions based on neighbor's fears that a dwelling will be occupied by members of the protected classes, described in title 8 of the Civil Rights Act of 1968." He then explained the history of Princeville by the Sea, the standards they provide clients, and community relations in their Seal Beach location. He thanked the Commission, the Building Official, and others present in the audience that support the variance request.

Vice Chair Manzo inquired if Mr. Oliver instructed staff to utilize the driveway and garage for parking. Mr. Oliver responded that the driveway is typically reserved for the clients, the caregivers utilize the two on-street spaces in front of the residence and the administrator uses the garage space.

Rebecca Richter, Huntington Beach resident representing her father who is a resident at the residential care facility. She stated she was fortunate to find a care facility for her father so close to home. She then read a letter written by her sister who still lives in the Vista Del Sol neighborhood where the Princeville residential care facility is located.

VICE CHAIR MANZO ASKED THOSE IN OPPOSITION TO SPEAK.

Charles Ponti, Westminster resident living on Berkeley Avenue, stated he was opposed to the variance request. He felt it was misleading for the applicant to come in for a room addition that didn't require the variance initially, then convert it into bedrooms and ask for an after-the-fact variance; adding that if the variance is approved, a document should be recorded with the County requiring the additional bedrooms removed if the residence is no longer used for a care facility or if the property is ever sold.

Liz Garvey, Westminster resident living on Vallecito Avenue, inquired why she received a public hearing notice about the variance but had not received one for the addition that was built. Vice Chair Manzo responded by stating that a variance request requires notification while some building alterations do not. She stated that although this is a residential neighborhood, she views the home as a business. She added that she has witnessed people, including nurses in scrubs, parking across the street as well as in front of the home.

Robert Young, Westminster resident living on Vallecito Avenue, described the area traffic which is increased due to the local elementary school and added that traffic could only be increased by this type of facility. He provided examples of facility needs

for storage, office space, and parking for staff and maintenance. He concluded that if the variance was granted for this business, it would then have to be granted for others.

Patricia Adams, Westminster resident living on Vallecito Avenue, stated she was against granting the variance, although she understood State law and the City being powerless to deny the right of the owner to have an elder board and care facility. However, the granting of the variance will go against the character of the Sol Vista neighborhood, if the variance is granted it will encourage overexpansion of the resident capacity of the homes. She felt it would set a precedence and allow a creeping commercialization into family neighborhoods. She felt the additional parking necessary for this type of business would be detrimental to adjacent property owners and degrade property values. She urged the Commission to deny the variance. She concluded by stating a covenant would be hard to enforce.

Ruth Piker, Westminster resident living on Vallecito Avenue (also representing Carol Harrington and Mitch Evans); the Commission granted Ms. Piker 12 minutes to speak as a spokesperson for a group. Ms. Piker stated she wrote the letter of opposition that was included as an attachment in the staff report. She would like to respond to the Planning Commission Resolution section number two and she wants to focus that the variance is specific to the three car garage and not that the facility cares for the elderly.

Ms. Piker's comments (Continued)
Planning Commission Resolution, Section 2:

A- In regards to Finding A: *(There are special circumstances applicable to the property (e.g., location, shape, size, surroundings, topography) or to the intended use of the property, so that the strict application of this Title denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts)* She stated that the elderly residents not having cars is not a valid special circumstance as there are employees that will need to park there. There is already two cars, one parks in front of the home and the other parks across the street. Additionally, the other document provided to the Commission this evening came from the California Department of Social Services Community Care Licensing which states that the owners have applied for a waiver for hospice care and will apply for permits to care for elderly with dementia. These particular patients required 24/7 care and additional employees required to care for the residents will require cars and additional parking.

She asked how parking restrictions would be enforced and questioned whether it was the neighbor's responsibility or the City to enforce said restrictions. She also stated that she spoke to Soroosh Rahbari and Steve Ratkay who informed her that the applicant needed to get the variance approved before they can make any changes to the home. She added it is clear that the owner has already build the bedrooms and is already violating City Code.

- B- In regards to Finding B: *(The strict application of the applicable development standard creates an unnecessary, involuntary created hardship or unreasonable regulation that makes it obviously impractical to require compliance with the development standards)* She added that the owner could keep the four bedroom house they could care for four individuals or six individuals if they share a room. This is not a hardship on them other than hurting their financial bottom line.
- C- In regards to Finding C: *(The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the same vicinity and zoning district and denied to the property owner for which the variance is sought)* She added that the owners are not denied anything since they don't even live there, they rent it out as a residential care facility. And, there are many tracts with a 15 foot setback, including my own property. She believed this set a precedence.

Ms. Piker referred to a comment made by Mr. Oliver about the Federal Fair Housing Act. She commented that granting the Mr. Oliver's variance request would possibly open the door to future lawsuits regarding the Federal Fair Housing Act reasonable accommodations.

- D- In regards to Finding D: *(The project is consistent with the General Plan and complies with all other applicable provisions of this Title)* She stated that adding or not adding a third car garage does not interfere with meeting the housing need for the elderly. The owners can still have six elderly members live at the address, they would just have to share a room.
- E- In regards to Finding E: *(Approval of the variance would not be detrimental to the public health, interest, safety, or general welfare and would not be detrimental or injurious to property or improvements in the vicinity and in the same zoning district)* She stated according to the report not adding a third car garage is not a detriment to the public health, interest, safety because the elderly no longer have cars. Again addition to the employees having cars there is a condition in the City report that the owners must convert the house back if they are ever sold. But, how is that going to be enforced? The owners do not have to report back to the City that they are selling their house and the new owner will most likely be punished for the variance not being disclosed at sale.

Ms. Piker stated there was no way to enforce many of the conditions, she stated that even telling the owner that he has to have employees park in front of the house is unenforceable since it is a public street. In terms of the owners claim that this won't affect property values, Vallecito is a major drive through to get to and from the tract, adding more cars will only create more traffic and it will affect property values further. Ms. Piker concluded, referring to Condition No. 2 in the resolution, this variance must be approved before work must begin. She directed the Commission back to the late communication document from the California Department of Social Services

documented that six bedrooms being currently used. She asked that the Commission deny the variance request.

Joel Bantle, Westminster Resident living on Vallecito Avenue, stated he was a general contractor and had lost jobs over the years due to the 3rd garage space requirement. He felt the applicant should keep it a four bedroom home if they were not allowed to have six bedrooms. He added that if the variance was granted, the City would face a lot of litigation in the future.

Julia Hardeman, Westminster Resident living on Cornell Avenue, stated she was faced with a similar situation as a recovery center with five bedrooms opened across the street from her residence; adding there were often one to three cars from the facility parked in front of her house. She felt that enforcement of parking is the challenge and that the residents of the area shouldn't have to police the parking issues. She added, if the variance is approved, it would set a precedence.

VICE CHAIR MANZO ASKED THOSE IN FAVOR TO SPEAK IN REBUTTAL.

Lee Oliver stated he felt the neighbors don't like the facility being in the neighborhood; adding that he would still have six clients regardless if he receives the variance or not. Denial of the variance would only deny his clients a private room and everything else will remain the same including any issues with parking. He stated this is not a humongous operation, there is only two caregivers and the administrator that care for the six residents. He stated that the business needs to have six clients for the facility to be financially viable and restated the denying the variance would deprive his clients a private room.

Rebecca Richter stated her parents owned the home in the same tract for 53 years; adding it was a 2,400 square-foot home with seven bedrooms and a two car garage. She then commented that her father receives excellent care at Princeville and it is a place where you would want your parents to reside as well.

VICE CHAIR MANZO CLOSED THE PUBLIC HEARING.

Commissioner Vo thanked everyone for coming to the meeting and sharing their concerns and touching stories. He stated he visited the location many times and he sees the area as congested. With respect to the facility owner, he believed that the business must comply with the regulations and respect neighbor's concerns. He stated he serves the people of Westminster and for that reason he would deny the variance.

Commissioner Rice thanked everyone for coming to the meeting and concurred with Commissioner Vo's comments. She stated she was in favor of the board and care facility, but was not in favor of the parking variance since it was a violation of City codes. She stated she would deny the variance.

Vice Chair Manzo stated that there is a process for upgrading homes and this variance request came after the fact by changing the addition into a bedroom. He didn't feel the hardship existed. He stated the structure is not built in the way to have six rooms and felt that four bedrooms was appropriate for the area. He felt the surrounding residents were negatively impacted by the additional parking needs and planned to deny the variance request.

Motion was made by Vice Chair Manzo, and seconded by Commissioner Rice, to deny the request for Variance, stating that they found no hardship in meeting the requirements of the Westminster Municipal Code. The motion to deny carried (3-0) with the following vote:

AYES: MANZO, RICE, VO
NOES: NONE
ABSENT: ANDERSON, NGUYEN

8.1 Case No. 2016-14 (Conditional Use Permit)

Location: 8961 Bolsa Avenue (APN # 097-620-12) – 76 Gas Station Food Mart

Applicant: Kambiz Esfahani

An application for a Conditional Use Permit to allow off-sale beer and wine at an existing convenience store/gas station.

CEQA COMPLIANCE: The proposed matter is exempt from CEQA pursuant to Section 15301 (Existing Facilities) Class 1, since the project is for the operation of a commercial use within an existing structure.

RECOMMENDATION: That the Planning Commission approve the Conditional Use Permit subject to conditions of approval.

Braulio Moreno, Contract Assistant Planner, provided a presentation to the Commission. He stated the public hearing notice that went out December 31, 2016 described the proposed request for beer, wine, and distilled spirits for off-site consumption; however, the request is only for off-sale of beer and wine only.

VICE CHAIR MANZO OPENED THE PUBLIC HEARING AND ASKED THOSE IN FAVOR TO SPEAK.

King Woods, from Woods Diaz Group, representing the applicant, stated they have read the staff and police reports and they are in agreement with the conditions. He added that the area is not over concentrated with alcohol uses and the applicant receives a 100% rating from Union 76 month after month.

THERE BEING NO SPEAKERS IN OPPOSITION, VICE CHAIR MANZO CLOSED THE PUBLIC HEARING.

Vice Chair Manzo stated his decision is based off of the police report and how many active licenses are in the census tract. There is currently only two active licenses, where three licenses are allowed. Additionally, it is in a low crime area, so I believe the request is justified.

Motion was made by Commissioner Vo, and seconded by Commissioner Rice, to approve a conditional use permit for to allow off-sale beer and wine at an existing convenience store/gas station. The motion to approve carried (3-0) with the following vote:

AYES: MANZO, RICE, VO
NOES: NONE
ABSENT: ANDERSON, NGUYEN

9. REGULAR BUSINESS - None

10. REPORTS - None

10.1. MATTERS FROM THE PLANNING COMMISSION

Vice Chair Manzo inquired when the Zone Text Amendment regarding donation bin regulation would be brought back before the Commission. Administrative Assistant Shelley Dolney explained that the item is currently scheduled for the March 1st Planning Commission meeting, although the schedule may change.

10.2. AB 1234 Reports – None

10.3 MATTERS FROM STAFF

Associate Planner Steve Ratkay informed the Commission that at the February 1st meeting we will have a presentation from the City Attorney's office regarding the roll of the Planning Commission. He stated we will also have an introduction of the rest of the Planning staff.

Vice Chair Manzo also reminded the Commission about an email that went out regarding ethics training from the City Attorney's office scheduled on Thursday, February 9, 2017.

11. ADJOURNMENT – The meeting was adjourned at 8:05 p.m. to a regular meeting on Wednesday, February 1, 2017 at 6:30 p.m. in the City Council Chambers.



Carlos Manzo
Chairman



Brian Fisk
Planning Commission Secretary

Prepared by:



Shelley Dolney
Administrative Assistant