

**APPROVED**

**PLANNING COMMISSION SUBCOMMITTEE MINUTES**

**April 22, 2009**

**I. ROLL CALL**

Present: Alex Galang and Gurdev Sandhu  
Staff: Andrade and Brown

**1. MINOR SITE  
DEVELOPMENT  
PERMIT NO.  
MS09-0007**

Tiffany Brown, Junior Planner, presented a request to add a new entry to an existing building located at 596 Alder Drive. Ms. Brown recommended approving Minor Site Development Permit No. MS09-0007 subject to the conditions of approval.

**Motion** to approve Minor Site Development Permit No. MS09-0007 subject to the conditions of approval.

M/S: Galang, Sandhu

AYES: 2

NOES: 0

**II. ADJOURNMENT**

This meeting was adjourned at 7:05 p.m.

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- I. PLEDGE OF ALLEGIANCE** Chair Williams called the meeting to order at 7:58 P.M. and led the Pledge of Allegiance.
- II. ROLL CALL/SEATING OF ALTERNATE** Present: Aslam Ali, Larry Ciardella, Alex Galang, Sudhir Mandal, Gurdev Sandhu, Noella Tabladillo, Mark Tiernan, and Cliff Williams  
Staff: Ah Sing, Andrade, Brown, Farmer, Lindsay, and Otake
- III. PUBLIC FORUM** Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.
- Mr. Singh, business owner, California Circle**, sign was approved for the entire plaza, but another business is using his company's sign space. He would like the City to put a "stoppage" on the sign until the owners can negotiate.
- Chair Williams recommended the Planning Director meet with Mr Singh to get more details and assist if possible.
- Mr. Sangha, business owner, 1525 McCarthy Blvd, Milpitas**, spoke on behalf of Mr. Singh's business and said they need cooperation from the City of Milpitas.
- IV. APPROVAL OF MINUTES** Chair Williams called for approval of the minutes of the Planning Commission meeting of April 8, 2009.  
April 8, 2009  
There were no changes to the minutes.  
**Motion** to approve the minutes of April 8, 2009 as submitted.  
M/S: Sandhu, Mandal  
AYES: 5  
NOES: 0  
ABSENT: 0  
ABSTAIN: 2 (Larry Ciardella and Noella Tabladillo)
- V. ANNOUNCEMENTS** Commissioner Ciardella suggested going on a tour of the finished projects in Milpitas. James Lindsay, Planning Director, said staff would agendaize the tour for a future meeting.
- VI. CONFLICT OF INTEREST** Assistant City Attorney Bryan Otake asked if any member of the Commission has any personal or financial conflict of interest related to any of the items on tonight's agenda. There were no Commissioners who identified a conflict of interest.
- VII. APPROVAL OF AGENDA** Chair Williams asked whether staff or the Commission have any changes to the agenda.

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There were no changes to the agenda.

**Motion** to approve the agenda as submitted.

M/S: Mandal, Galang

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

## VIII. CONSENT CALENDAR

Chair Williams asked whether staff, the Commission, or anyone in the audience wish to remove or add any items to the consent calendar.

Commissioner Ciardella requested a discussion on Item No. 3.

Chair Williams opened the public hearing on Item No. 2.

There were no speakers from the audience.

**Motion** to close the public hearing.

M/S: Mandal, Galang

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

**Motion** to adopt Resolution No. 09-020 approving the project, subject to the conditions of approval.

M/S: Mandal, Galang

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

**\*2 CONDITIONAL USE PERMIT NO. UP09-0005:** A request to operate a frozen yogurt shop with outdoor seating located at 489 E. Calaveras Blvd. (APN: 028-12-025), zoned Town Center with Site and Architectural Overlay (TC-S). No exterior changes to the site or building are proposed. Applicant: Cynthia Abad. Staff Contact: Judie Gilli (408) 586-3280. PJ # 2576. *(Recommendation: Adopt Resolution No. 09-020 approving the proposed project, subject to conditions of approval.)*

**Motion** to remove Item No. 3 from the consent calendar.

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M/S: Williams, Mandal

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

## IX. PRESENTATION

### 1. SERRA CENTER NOVATION

**Kirk Ellis, Director of Design Administration/Associate, Perkowitz & Ruth Architects, Long Beach, CA**, gave a presentation on the Serra Center Renovation. Mr. Ellis stated this is a preliminary application for a proposed mixed-use development totaling 813,468 square feet on an approximately 16 acre site located at 200 Serra Way. The project would include retail, restaurants, a market, offices, hotels, and residential units. The project will orient to the street, showing all of the activity, lighting and display of the shops and restaurants.

Vice Chair Mandal asked they provide wide vehicular entrances and asked if there were plans to utilize solar power. Mr. Ellis responded that the City has recently adopted the LEED Silver as the Commercial baseline standards and they are planning to utilize glazing, canopies and other features, but they have not worked out all of the details.

Vice Chair Mandal asked if the parking structure is sufficient for the capacity of the center. Mr. Ellis stated they used the newly adopted parking ratios/standards and is providing 385 parking stalls between the structure and "street" parking.

Vice Chair Mandal asked that appropriate spacing and greenery be used to make it a nicer center from the moment you enter.

Chair Williams asked if they considered if the Serra St "exit" from Calaveras is closed how someone who misses the Abbott entrance could enter the center without causing a major traffic jam. Mr. Ellis stated that the main entrance is on Abbott, but there are two additional entrances, one off of Serra St and one off of Abel St.

Commissioner Ciardella asked how many levels the parking structure has. Mr. Ellis stated the parking structure is eight levels, all above grade. He stated that to keep the street walkable they didn't try to tuck parking into the buildings and chose a central structure.

Commissioner Ciardella asked how the people in the three-story condominiums behind the parking structure would be shielded from the people parking. Mr. Ellis stated that they are still working on it, there is about 45 feet between the structure and the condominiums that they will be putting greenery in, but they are being conservative to address the Fire Marshall's concerns. He said they plan on using green screen and they will be adding screens to the outside of the parking structure.

Commissioner Ciardella asked how wide the sidewalk is going to be between buildings D, E, and F. Mr. Ellis stated the sidewalk is 14 feet wide with a variety of canopies and street furniture.

Commissioner Ciardella asked about putting a stop light at the entrance from Able. Mr. Ellis stated that he has not spoken with staff and is not prepared to answer this question. Mr. Lindsay stated that these issues will be worked out in the technical studies portion of the project.

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Commissioner Tabladillo asked about the common area near the fountain and if this is an area for family gatherings, bands to play, etc. Mr. Ellis stated that the common area or Paseo that is on Calaveras and that it will not be a quiet gathering place due to the traffic on Calaveras; the family gathering place is located between the parking structure and the other buildings, but they have not worked out the specific details of the area.

Commissioner Tabladillo asked that this really be looked at and the area have an eclectic feel.

Commissioner Tabladillo asked how traffic is controlled on the main corridor between the entrance on Abbott and the parking structure. Mr. Ellis stated that the design with a clearly marked entrance has a majority of the traffic driving behind the Days Inn and not between the buildings, but since there is “teaser” parking spaces on the street, stop signs will be used.

Commissioner Tabladillo asked how they will make an eight story parking garage aesthetically pleasing.

Commissioner Tabladillo asked if the area between buildings C & D and D & E are common areas for gatherings. Mr. Ellis stated that the area between C & D will probably be an indoor conditioned area whereas the area between D & E will be open air.

Commissioner Tabladillo knows that LEED certification is costly and asked how they are incorporating the LEED guidelines while still being able to provide usable space for families. Mr. Ellis stated that LEED is a great roadmap, and it’s not as costly to start a project with LEED as it is to upgrade a site. He stated that they have begun collecting the data and working on the sustainability aspects. Mr. Ellis stated that they are still working on the details and their full submittal will include the details of people spaces.

Chair Williams asked if there were residential units on top of the parking garage. Mr. Ellis stated they are not on the garage, they are to the South of the garage and are on the ground.

Chair Williams asked that there be considerable outreach to the neighboring residents and that the plans be clearly explained to the residents. Mr. Ellis stated that he has been working with Planning Staff and a neighborhood meeting has been scheduled for May 18<sup>th</sup>.

Chair Williams recalls there is an agreement between the Catholic Church across the street and the current owners of the Serra Center to allow the worshippers to use the parking of the center during services and special events and he asked they outreach to the Church as well.

Chair Williams is also concerned that residents will bring shopping carts from the supermarket across the street to and leaving them on this project site.

Chair Williams asked if there were still plans to open Abbott as a connection to the car dealerships. Mr. James Lindsay stated that it was studied to connect Abbott to Thompson as part of a project for the redevelopment of a School District property; if a third car dealership submits an application it would not cause the streets to be connected; the street connection requires the redevelopment of the School District’s property.

Chair Williams asked if a third dealership was opened would they provide a connection. Mr. James Lindsay stated that the property line touches the Abbott cul-de-sac and they could have an entrance to their dealership on that side of the property as well.

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Commissioner Galang asked if there would be a new hotel built to accommodate the addition of the 168 rooms. Mr. Ellis stated that the current Days Inn will remain; the current concept is to provide a full service hotel on the western parcel in building A, but they were asked to consider something other than a hotel.

Commissioner Galang asked if the current Chili's restaurant will remain. Mr. Ellis said they are working with the current tenants, but they are not to the point of "assigning" space.

Commissioner Galang asked if there was an entrance from Junipero. Mr. Ellis stated there was not; the limited parking is strictly for the residents and they want the residents of the condominiums to feel more apart of the neighborhood than the center; the only foreseen access from the South is for Emergency vehicles.

Commissioner Galang asked if the tallest building would be retail or office. Mr. Ellis stated that the tallest building would be building E with 6 levels and it's mixed use, with retail on the bottom levels and offices on the top.

Commissioner Galang suggested a fine dining restaurant on the top level of the tallest building. Mr. Ellis stated the plan is flexible enough to accommodate this, but they are still determining the individual tenants.

Commissioner Sandhu asked if he understood correctly, that the Chili's restaurant will not be replaced. Mr. Ellis stated that he is not in a position to answer questions about tenancy, but the ownership group is currently looking at the tenancy mix and existing leases.

Chair Williams is aware of a cell tower in the area and asked if the tallest building will work with the existing tower and if it will accommodate inconspicuous towers on the roof. Mr. Ellis stated the tower has been in consideration since the beginning of the project and the tower may need to be moved, but it will not be demolished.

Commissioner Ali expressed concern about closing the "exit" to Serra St from Calaveras.

Commissioner Ali asked if the parking garage will be visible from the neighboring residents' yard. Mr. Ellis stated that the parking garage will be visible and they are currently working on ways to make it aesthetically pleasing.

Vice Chair Mandal asked if there is a planned start date for this project or is it too early to ask the question. Mr. Ellis stated he is not the person to answer this question, but that he is aware the process with the City will take most of this calendar year.

Commissioner Galang asked if the plans indicate that the tallest building was going to have a flat screen on the side of the building. Mr. Ellis stated that it is currently in the plans.

**C.C. Chen, developer**, briefly mentioned the Milpitas demographics and how it provides for great retail and commercial opportunities. They have changed Architecture firms to ensure that the design is a better fit to the area and the vision of the City. They are looking at the whole picture to make the project beneficial for all stakeholders. They are striving for LEED certification, but are not promising to use particular methods (solar panels) until they are positive it is feasible. They understand the key issues: traffic, parking, environmental, etc. and that is why they have chosen this process to present the conceptual idea to the stakeholders to get feedback early on to make the project mutually beneficial. They'd like to continue with the renovation plans and improve the City.

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Chair Williams mentioned that a Theatre was recently approved to be in the old Serra Theatres and asked if the concept for a Theatre was going to continue into this project, if so, was that considered in the parking calculations. Mr. Chen stated that it has been discussed, theatre on top of the market or a dinner theatre, but they are still working it out.

Commissioner Tiernan would like to make sure the project creates something memorable, not just a cookie-cutter design, that the City can be proud of.

Vice Chair Mandal asked staff if there is recycled water access in this area. Mr. James Lindsay does not think that there is access in this area, but if there is access the City will utilize it for landscaping.

## **X. PUBLIC HEARING**

### **3. SITE DEVELOPMENT PERMIT NO. SD09-0002.**

Tiffany Brown, Junior Planner, presented a request to locate an accessory structure (gazebo) on the rear portion of the property located at 461 Vista Ridge Drive. Ms. Brown said the gazebo is consistent with the General Plan and Zoning Hillside Combing District. Ms. Brown recommended adopting Resolution No. 09-019 recommending approval of the project subject to the conditions of approval to the City Council.

Commissioner Ciardella asked what material is used on the pathway between the house and gazebo. Ms. Brown stated that the walkway is asphalt.

Commissioner Ciardella asked what kind of asphalt it was. Ms. Brown stated it was black asphalt.

Commissioner Ciardella asked if this gazebo and walkway were going to be screened by any shrubbery. Ms. Brown stated that current proposal does not include plants screening the walkway, but they are screening the gazebo.

Commissioner Ciardella would like a condition to have the pathway screened with shrubbery to avoid the sight of a large patch of asphalt on the hillside.

Chair Williams asked staff what situation caused this application to be coming to the Commission after it has been built. Ms. Brown stated that the City received a complaint that a gazebo had been built without the benefit of Planning Commission approval. Staff responded to the complaint and the City has been working with the applicant to bring the gazebo into compliance. Mr. Sheldon AhSing added that if the structure is smaller than a given square footage it does not require a Building permit.

Commissioner Tiernan asked what happens when someone builds something that doesn't require Building permits who later finds out there was a different review required; are there penalties. Ms. Brown stated the Code Enforcement Division handles the complaint and deferred the question to Mr. Lindsay for further clarification. Mr. Lindsay stated the Code Enforcement staff makes a site visit to confirm a violation exists and then works with the property owner to bring them into compliance. He added the City has an Administrative Review process that staff has the discretion to use, and if a property owner is not taking steps towards compliance the City can impose a fine. In this case the property owner has been working with staff to get compliance and no fines have been imposed.

Commissioner Tiernan asked if there is not a permit required was the property owner was within his rights to build this structure as it is. Mr. Lindsay stated that is correct, this gazebo does not require building permits and the property owner was within their right to

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build it without a building permit. However, the property owner did not consult the Planning Department to verify the gazebo is within zoning regulations.

Commissioner Tiernan asked what recourse residents have when a project is built without the appropriate process. Mr. Lindsay stated that this Public Hearing is the recourse.

Commissioner Galang asked if he would need a site development permit to replace an existing gazebo with a taller one. Ms. Brown stated that it would depend on the property's zoning and staff recommends the individual come to the counter where a planner can look up the information for their individual property to determine the regulations.

Commissioner Galang asked what happens if there is a violation. Ms. Brown stated that Code Enforcement receives the complaint and checks with the Planning Division to see if it really is a violation. A planner looks up the property information to determine its zoning regulations and if it is a violation of the zoning ordinance.

**Javier Mercado, 461 Vista Ridge Dr**, mentioned that in 2008 he applied for and received permission to build a gazebo from the Home Owner's Association. He began construction, when a neighbor raised concerns about the gazebo. Mr. Mercado spoke with the concerned resident and attempted to work out the issues. When the City was following up on the neighbor's complaint, a City Building Inspector determined the structure was exempt from building permits, but expressed a concern with the property being on the hillside and stated it may require Planning approval. Mr. Mercado stated he has worked with planning staff and has submitted a complete packet for approval. Mr. Mercado also commented on the letters sent from his neighbors.

Chair Williams asked if there are already shrubs planted around the gazebo. Mr. Mercado stated there are shrubs planted and Ms. Brown showed pictures with the various views of the gazebo. Mr. Mercado added that the pathway is not asphalt it's actually gravel with a coat of the black oil sprayed on asphalt to keep the gravel from spreading; the pathway is not visible from neighboring homes or streets.

Chair Williams opened the Public Hearing.

**Dan Le Vasseur, 375 Vista Ridge Dr**, stated the Home Owner's Association does not post agendas to their meetings to encourage input and with Mr. Mercado being on the Board he voted on his own gazebo. Mr. Le Vasseur described several incidents in which he went thru great lengths to accommodate his neighbors. Mr. Le Vasseur stated that it doesn't matter how many shrubs are added they won't cover the roof.

**Carol Peterson, 442 Vista Ridge Dr**, stated she is asking the City for assistance because they cannot communicate with the Home Owner's Association. She stated that when people are in the gazebo are visible from her home and if she can see them then they can see her. She is opposed to the gazebo.

**Motion** to close the public hearing.

M/S: Mandal, Sandhu

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

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Chair Williams asked the Assistant City Attorney to clarify the Commission's role; should they follow the state guidelines. Mr. Bryan Otake explained that the Commission should review the findings and determine if the project is compliant with the zoning regulations, hillside regulations, site and architectural guidelines and California Environmental Quality Act.

Vice Chair Mandal mentioned he understands the points made by all parties and the issues with Home Owner's Association, but the Commission must review the application based on the rules of the Commission.

Commissioner Ciardella asked if Mr. Mercado would be willing to plant taller trees. Mr. Mercado stated he is willing to do anything except take the gazebo down

Commissioner Ali asked if the item can be continued to give the applicant and HOA time to resolve the issues.

Commissioner Tabladillo mentioned she would prefer that the Commission act on this application tonight rather than continuing the item to the next meeting.

**Motion** to adopt Resolution No. 09-019 approving the project, subject to the conditions of approval and the following condition added by the Commission.

1. Applicant shall plant taller trees to block the view of the gazebo from neighboring homes.

M/S: Ciardella, Tabladillo

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

## **XI. ADJOURNMENT**

The meeting was adjourned at 10:05 p.m. to the next regular meeting of May 13, 2009.

Respectfully Submitted,

James Lindsay  
Planning & Neighborhood  
Services Director

Debbie Barbey  
Recording Secretary

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