



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, March 12, 2009, 7:30 p.m.  
777 B Street, Hayward, CA 94541**

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**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chair Lavelle.

**ROLL CALL**

Present: COMMISSIONERS: McKillop, Márquez, Mendall, Peixoto, Thnay, Loché  
CHAIRPERSON: Lavelle  
Absent: COMMISSIONER:

Commissioner Loché led in the Pledge of Allegiance.

Staff Members Present: Conneely, Koonze, Patenaude, Nguyen, Philis

General Public Present: 7

**PUBLIC COMMENTS**

There were no public comments.

**PUBLIC HEARING**

- 1. Site Plan Review Application No. PL-2006-0446 and Tentative Tract Map 7847 Application No. PL-2006-0445 - A. Mark Waldman (Applicant) / Bernard De Bacca (Property Owner) - Request to Construct 18 Townhouse Units – The Property is Located at the Northwest Corner of South Garden Avenue and Marin Avenue**

Associate Planner Tim Koonze gave the report. Included with the report was a letter received from concerned citizen, Mr. John Kyle, that the number of parking spots would be inadequate and that the development would have an adverse impact on the local schools due to the number of new students. Mr. Koonze stated that the number of parking spots conforms to the City requirement and no adverse comments were received from the school district. Staff then recommended that the Commission approve the subject project.

Commissioner Mendall asked if the private street will be wide enough to provide parking and staff said not without reducing the number of units. He then asked if the Green Building Ordinance will apply to this project. Mr. Patenaude said the development would be subject to the ordinance if construction begins after August 1, 2009.

Commissioner Peixoto said he visited the site. He said according to the report, the school district estimates three students would be generated from the project. He asked how the school estimated that number. Mr. Koonze was not familiar with the process, but pointed out a project couldn't be

denied because of the impact on schools. He explained that the school district is obligated to accommodate the number of potential students per the general plan designation to which this project conforms.

Commissioner Peixoto then asked if residents could park across the street from the project. Mr. Koonze said they were allowed to park on the public street. Commissioner Peixoto asked if the liquor store owner, located across from the project, had made any comments regarding parking and staff said no. He then confirmed that each unit would have two parking spots and the complex would have four spots for guests for a total of 40 parking spots. Commissioner Peixoto asked how the number of guest parking spots was calculated and staff replied that the Off-Street Parking Regulation requires 2.1 parking spots per unit and that includes guest parking. Staff also pointed out that this project has large, uninterrupted street frontages so there should be plenty of available street parking.

Lastly, Commissioner Peixoto asked if the owner of the single family home on the property has agreed to be part of the home owners association (HOA). Mr. Koonze said the owner doesn't have to join the HOA but would be responsible for a proportionate share of the cost for the upkeep of the private road. Whether this cost is one-time or on-going would be determined by an agreement with the developer.

Commissioner Thnay asked why the street within the complex is private and asked if that was City policy. Mr. Koonze explained that the standard width of a public street is 40 feet and at its widest the private drive is only 28 feet. To have the HOA be responsible for the maintenance of a private street is standard practice. Commissioner Thnay expressed concern that the residents would have to pay too much and suggested that the City should help maintain it. Planning Manager Richard Patenaude said the public wouldn't use the street; there is no potential for public through traffic, so only complex residents should be responsible for its maintenance.

Commissioner Loché asked who would be responsible for maintenance issues such as graffiti. Mr. Koonze responded that the HOA would be responsible to abate the graffiti within 48 hours whether they did it themselves or hired a service. Commissioner Loché then confirmed the deadline for being held to the Green Building Ordinance and Mr. Patenaude explained that if building permits are submitted after August 1, 2009, the project would be subject to the ordinance.

Chair Lavelle asked why this project is called an infill development. Mr. Koonze explained that the large portion of unused land within the proposed construction area makes it an infill project. Mr. Patenaude further explained that the California Environmental Quality Act (CEQA) considers it an infill project if the development size is less than 5 acres and won't have a significant impact on City services.

Chair Lavelle then asked staff to explain at what point, before or during construction, the owner of the single family home would enter into an agreement with the developer regarding the maintenance of the private drive. Mr. Koonze explained that access would be maintained throughout construction and the amount or percentage paid by the owner will be determined in an agreement between the owner and the developer; the City wouldn't be involved.

Commissioner Márquez noticed that the original application said 13 single family homes and three



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duplex homes were slated for construction and asked why there was a change in the number of units. Mr. Koonze reported that the project has gone through a number of changes, but by creating only multi-family units, the project would be consistent with the current zoning. Commissioner Márquez asked if the 13 trees slated for removal would be replaced within the development or throughout the City and staff replied within the development. She then asked how much notice would be given to current residents whose homes will be removed as part of the project and staff replied that the developer may be able to speak to that later.

Commissioner Loché expressed concern about the impact on residents who live near the project site, and asked what is being done to alleviate inconveniences created during construction. Mr. Koonze said impacts would be minimized in a number of different methods outlined in the Conditions of Approval for both the single family home owner and surrounding neighbors.

Chair Lavelle opened the public hearing at 7:52 p.m.

Attorney John M. Thorpe addressed the commission saying owner De Baca has lived on the property for many years. The project is a green development, he said, and is designed to limit paving and increase planting areas. He said that due to the current economy, building permits probably wouldn't be issued for a couple of years confirming the project would fall under the Green Building Ordinance. Regarding the concerns of the commissioners, Mr. Thorpe said planning staff has worked with neighbors and everyone concerned, even Mr. Kyle, has said the project is much improved. There is plenty of parking along South Garden and Marin he said. Also, he pointed out that it's against the law to land-lock any property so access would always be maintained for the single family home owner.

Commissioner Márquez asked Mr. Thorpe how much notice would be given to current residents before demolition started and he replied up to 120 days or maybe more. She then asked if any of the residents had opposed the project and Mr. Thorpe said Mr. Kyle was originally very opposed to the project but his concerns have since been resolved.

Commissioner Peixoto asked if the house entrances would face the street. Architect Charles Mullen said yes they would with the private yards for each unit located in the interior of the project. Commissioner Peixoto then asked about what plantings would be provided by the developer and Mr. Mullen said the developer would plant everything except the private yards.

Ms. Elaine Barakos, whose elderly mother has lived in the single family home on the property since the mid-60s, said they currently access the house via a gravel road so she wonders why her family should be responsible for any cost of the private drive when they receive no benefit from the project.

Mr. Koonze responded that anyone who uses a private road is responsible for a portion of the cost of maintaining it, but that amount is negotiable with the developer. Ms. Barakos said that this cost should have been made clear to them earlier in the project as neither she, nor her elderly mother, is

prepared to negotiate with a developer. She then asked how her mom would access her house during construction. Mr. Patenaude explained that currently, the conditions of approval for the project require that an agreement regarding the road maintenance fee be in place before the Certificate of Occupancy is issued, but staff is going to recommend that the timeline be pushed back so the agreement is in place before building permits are issued. Chair Lavelle said the motion could include that change.

Mr. Thorpe responded to Ms. Barakos' concern saying that it is illegal to cut off access to the house during construction and if the developer did that the house would have to be condemned and purchased by the developer. He pointed out that the amount paid for the maintenance of the road would have to be agreed upon by the home owner and could possibly be waived. Chair Lavelle said that would have to be discussed by the home owner and the developer at some other time.

Rev. Jesse Davis, pastor of the church near the project site, asked for clarification of the site map and asked if there would be adequate parking for residents. Chair Lavelle said staff indicated earlier that each unit would have 2.1 parking spots and there would be four guest parking spots within the development plus parking on the street. Mr. Davis then asked if there would be an area for children to play and staff responded that there is plenty of group open space. He then asked about landscaping and Chair Lavelle suggested he speak with the developer after the meeting as the project is held to many conditions of approval regarding landscape. Finally, he asked if the units would be rented or sold and staff said they could be sold as ownership units.

Chair Lavelle closed the public hearing at 8:09 p.m.

Commissioner Mendall said he likes that the project meets all the City's requirements and applauds both the applicant and staff for their work. He's pleased with the final plan and with the design of the buildings and the carports. Regarding Commissioner Thnay's earlier comment about the City possibly sharing the cost of maintaining the road he disagreed and said the residents should be solely responsible. He pointed out that small amount of paving makes the project more attractive overall.

Commissioner Mendall then made a motion to approve staff's recommendation with the additional condition that the cost sharing agreement regarding maintenance of the private road be agreed upon before building permits are issued.

Commissioner Loché seconded the motion, confirming the additional language and stating that he was very happy with the development and supported the project.

Chair Lavelle thanked the developer in particular for working with the surrounding neighbors; it is rare, she said, to not see opposition to a project from neighbors. She urged care and guidance regarding the current residents. She had concerns regarding the benefits of tearing down the existing homes when they appeared so well maintained, but she heard staff's explanations and just recommends that current residents are given plenty of notice.

Commissioner Peixote echoed her comments saying it's important to be sensitive to the surrounding community and he hoped that Mr. Thorpe would reach a satisfactory agreement with



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Ms. Barakos and keep the local grocery store owner apprised of any developments as the project moves forward.

Commissioner Mendall moved, seconded by Commissioner Loche, with the following vote, to find the proposed project Categorical Exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15332, Class 32, In-Fill Development, of the guidelines and approve the proposed project, subject to the findings and conditions of approval with one change: that the cost sharing agreement regarding maintenance of the private road be agreed upon before building permits are issued.

AYES:	Commissioners Márquez, Mendall, Peixoto, Thnay, Loché Chair Lavelle
NOES:	None
ABSENT:	Commissioners McKillop
ABSTAINED:	None

Commissioner McKillop left the Council Chambers at approximately 7:45 p.m.

#### **ADDITIONAL MATTERS**

2. Oral Report on Planning and Zoning Matters

Mr. Patenaude said that five Commissioners have responded that they are available for an additional meeting on May 7<sup>th</sup>, so the schedule is being adjusted to reflect the change. There will be a public hearing that night and the Commission will review an extension of a use permit.

3. Commissioners' Announcements, Referrals

None

#### **APPROVAL OF MINUTES**

4. February 19, 2009 approved unanimously with one change: make note in minutes that Commissioner McKillop left after first public hearing and therefore didn't vote on the second.

#### **ADJOURNMENT**

Chair Lavelle adjourned the meeting at 8:18 p.m.

**APPROVED:**

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Rodney Loché, Secretary  
Planning Commissioner

**ATTEST:**

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Suzanne Philis, Senior Secretary  
Office of the City Clerk