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2
3 **MINUTES OF THE REGULAR**
4 **PINOLE PLANNING COMMISSION**

5
6 **September 23, 2019**
7

8
9 **A. CALL TO ORDER:** 7:07 P.M.
10

11 **B. PLEDGE OF ALLEGIANCE AND ROLL CALL**
12

13 Commissioners Present: Flashman, Kurrent, Moriarty, Murphy, Chair Brooks
14

15 Commissioners Absent: Ojeda, Wong
16

17 Staff Present: Tamara Miller, Development Services Director/City
18 Engineer
19 Justin Shiu, Contract Planner
20

21 **C. CITIZENS TO BE HEARD:**
22

23 JAMES TILLMAN, Pinole, provided the Planning Commission with written
24 information regarding the CVS Pharmacy project which included a wireless facility
25 located at 1617 Canyon Road. He reported that the existing Cellular on Wheels
26 (COWs) remained on-site but were intended to be temporary and the installation and
27 design of the clock tower had been intended to hide the antennas from view. The
28 COWs and required landscaping remained non-compliant with the project conditions.
29 He also expressed concern the Planning Commission Development Review
30 Subcommittee meetings had not been open to the public, the public had not been
31 adequately notified of changes to the project, and the property looked like an
32 industrial ghetto. He questioned the lack of oversight by the City and asked to be
33 provided an update on the status of the project by City staff. He expressed concern
34 with the absence of legal counsel and suggested the mistakes from the project had
35 cost the City and had negatively impacted property values.
36

37 The Commission acknowledged the CVS project had been discussed in the past,
38 particularly related to concerns with the design of the clock tower. The project design
39 had been signed off by the Planning Commission Development Review
40 Subcommittee, an advisory body only, and former Planning Manager. The
41 Commission acknowledged the temporary COWs were still in place and required
42 landscaping had yet to be installed. The Commission asked the Interim Planning
43 Manager to look into the matter to determine whether the City had any recourse on
44 the design.
45

1 Development Services Director/City Engineer Tamara Miller reported that of the
2 three COWs on the site, two had been relocated from their temporary location to the
3 clock tower, with the third to be relocated soon. The COWs would then be removed
4 from the site and landscaping planted, that work expected to be completed in mid-
5 November.

6
7 PAMELA RICHARDSON, Pinole, agreed with the concerns the City was looking like
8 a slum. She identified numerous areas of the City in need of weed abatement,
9 including property near the freeway, and Ms. Miller advised that any concerns with
10 maintenance/weed abatement located on Caltrans-owned property should be
11 directed to Caltrans and she provided information on the link to the Caltrans' website.
12

13 **D. CONSENT CALENDAR:** None

14
15 **E. PUBLIC HEARINGS:**

16
17 **1. Conditional Use Permit 19-06: The Little Red Tricycle Childcare**

18
19 **Request:** Consideration of a use permit request to expand the day
20 care capacity of an existing small family day care home for
21 up to 8 children to a large family day care home for up to
22 14 children (with up to 12 children under age 6).
23

24 **Applicant:** Michelle Mendler
25 1491 Wallace Court
26 Pinole, CA 94564
27

28 **Location:** 1491 Wallace Court (APN: 403-352-013)
29

30 **Project Planner:** Justin Shiu
31

32 Commissioner Kurrent reported for the record that he lived close to, but outside of,
33 the perimeter of the property located at 1491 Wallace Court and would therefore
34 participate in the discussion of the item.
35

36 Contract Planner Justin Shiu provided a PowerPoint presentation of the staff report
37 dated September 23, 2019, and recommended the Planning Commission approve
38 Resolution 19-13, conditionally approving a Conditional Use Permit (CUP) to allow a
39 large family day care home at 1491 Wallace Court, subject to the conditions of
40 Approval as contained in Exhibit A to the staff report.
41

42 Mr. Shiu clarified the photographs included in the staff report had been taken and
43 provided by the applicant, and the application had been properly noticed to the public.
44 No comments had been received until after the distribution of the staff report.
45
46

1 MICHELLE MENDLER, 1491 Wallace Court, Pinole, presented photographs of the
2 classroom where the children would be cared for as well as the outside play area.
3 As an Early Child Care Educator, she spoke to her experience working with children
4 over the past 20 years and experience with pre-school and day care operations. She
5 liked helping people in the community and other people in their small businesses.
6 She also clarified the hours of operation for the day care would be 8:00 A.M. to 5:00
7 P.M., Monday through Friday.

8
9 Responding to the Commission, Ms. Mendler explained that the property had been
10 purchased in March 2019; the children in the day care would be picked up by 5:00
11 P.M. but were oftentimes picked up earlier in the afternoon; she did not oppose an
12 extension of the hours of operation beyond 5:00 P.M. if the Commission permitted;
13 and extended care had been offered in the past but the service would be
14 discontinued. There would be designated parking for parent drop-off and pick-up;
15 the family owned only one vehicle and employee parking could be accommodated
16 where an existing recreational vehicle (RV) was currently located in the sideyard, and
17 she confirmed the RV could be moved. There were no plans to have more than two
18 part-time employees on-site at one time. The left side of the driveway would
19 accommodate two parked vehicles with one vehicle parked in the driveway meeting
20 the required parking. She also identified stairs that led to the backyard of the property
21 with a gate leading to a locked entrance off of Kilkenny Way.

22 23 PUBLIC HEARING OPENED

24
25 BENJAMIN MENDLER, 1491 Wallace Court, Pinole, identified himself as Mrs.
26 Mendler's husband. He was baffled why anyone would be opposed to the project
27 although he understood there could be noise and parking concerns. He attested to
28 his wife's character, experience, and dedication caring for children.

29
30 The following individuals including family, friends, and parents of children cared for
31 by the applicant spoke in support of the applicant; attested to her character, the
32 cleanliness of the property, the applicant's background and experience in childcare
33 and child education, but had no comments related to the specifics of the application
34 other than to ask the Planning Commission to support the application and question
35 why anyone would be opposed to something that would benefit children and bring a
36 much-needed service to the City:

37
38 DIANA MENDLER, 1320 Portland Avenue, Albany
39 EUGENE MENDLER, 1320 Portland Avenue, Albany
40 IVETTE CISNEROS-IRIARTE, 1568 Partridge Drive, Hercules
41 FRANK IRIARTE, 1568 Partridge Drive, Hercules
42 MICHÍ BOCOBO
43 DOUGLAS HANDA
44 THERESA REILLY
45 JOSHUA LOPEZ
46 CALI REXFORD

1 JAZMIN LOUIE

2 LOREN BEATTIE (did not speak)

3 MARK NORRIS, (did not speak)

4 LaTASHA MAHAR

5
6 PAMELA S. RICHARDSON, Pinole, commented that while she liked the idea of a
7 day care facility, Wallace Court and Kilkenny Way were unsafe for children to cross
8 and there had been issues with speeding traffic on Wallace Court. She urged the
9 Police Department to patrol the area and the City to consider posting speed limit
10 signs that also identified the presence of children in the area.

11
12 FREDERICK CORRIEA, Pinole, who resided across the street from the subject
13 property, expressed concern he had been unaware of the application for a day care
14 operation. He suggested the applicant had blatantly disregarded the parking
15 situation in the neighborhood from the beginning and there had been vehicles parked
16 in front of his home and his neighbors at all hours of the day. He questioned how the
17 parking requirements for a large day care facility would be enforced. He also noted
18 the prior tenants of the same property had also disregarded the parking situation in
19 the neighborhood. In addition, the hours of operation for the day care facility staff
20 had identified were different than what had been posted online and he asked that the
21 hours again be clarified.

22
23 RAFAEL MENIS, Pinole, spoke to the benefits of a day care facility to the City as a
24 whole and how it integrated with the policies of the General Plan. He suggested it
25 would be beneficial to have a small business that generated revenue for the City
26 through various means and tax methods. A day care operation allowed broader
27 community improvement and allowed parents to have care for their children without
28 having to go outside of the community, thereby reducing carbon emissions, saving
29 time, and improving the quality of life. There were several conditions of approval
30 related to the parking requirements and if the CUP was approved by the Planning
31 Commission there was a mechanism for revocation of the use permit in the event
32 conditions were not met. He supported the application as a benefit to the community
33 and suggested any adverse impacts would be mitigated by the associated conditions
34 of approval.

35
36 LORI GONZALES, 1481 Wallace Court, Pinole stated she could confirm the property
37 was maintained but she felt she had been manipulated by the applicant as it related
38 to a fence on her property, and the way the application was being rushed through the
39 process. Even if the RV was moved, she questioned what would happen if the RV
40 was brought back onto the property. She referenced the parking situation and the
41 fact that employees parked in front of her property while there were other parking
42 spaces available. Also, there was some question whether the applicant actually
43 resided at the property.

44
45 BERNARD McINTOSH, 227 Cottage Avenue, Richmond, explained that he was the
46 owner of property at 1481 Wallace Court.

1 Mr. McIntosh expressed concern that noise from the children could impact property
2 values. He requested clarification of the age of the children to be served, whether
3 the applicant owned or lived in the home, the number of employees on-site, and
4 whether the property owner was required to also reside on-site.
5

6 Chair Brooks explained that day care operations were under the purview of the State
7 and not the City of Pinole.
8

9 Mr. McIntosh added the applicant was not to use the living room as part of the day
10 care operation pursuant to the Facility Evaluation Report from the Department of
11 Social Services, as contained in Attachment C to the staff report, although he
12 understood the living room was being used as a playroom. Given the inconsistencies
13 between the report and the applicant's testimony, he asked that a new application be
14 required and that the applicant be required to comply with the information in the
15 report.
16

17 REBUTTAL:

18

19 Mrs. Mendler stated that prior to her decision to open the day care operation she had
20 taken her neighbors into consideration, was aware where residents parked on the
21 street, and was mindful of those around her. She had been respectful to her
22 neighbors and did not park in residents' parking spaces, although she acknowledged
23 that one of her teachers had used a parking space directly across the street from her
24 property. She had asked that employee not to park in that location in the future. She
25 also sent e-mails and newsletters each Friday to the parents of the day care to inform
26 them of the parking arrangements and any new information as needed.
27

28 Mrs. Mendler explained that the arrangement for drop-off and pick-up had been
29 staggered to allow for adequate parking. She added that she accepted children from
30 3 months to 6 years of age, and was not taking school age school children since
31 older children would not be a good mix with the program she offered. As to the dining
32 and living room space in the home, she explained that the area was joined and she
33 would review that issue further. Familiar with the State licensing requirements for
34 day care operations, she would clarify the specifics of her application with the State
35 and could share that information with the City.
36

37 Mrs. Richardson reiterated her concerns with the speed of traffic in the neighborhood
38 and again asked that the Police Department patrol the neighborhood, particularly
39 when children were present.
40

41 Mr. Corriea also reiterated his concerns with the parking situation particularly with the
42 parents' drop-off and pickup arrangement and since he had a business vehicle which
43 stored valuable equipment for his job and he needed to be able to see the vehicle at
44 all times in front of his own property. He questioned how the parking issue would be
45 resolved.
46

1 Chair Brooks explained that the street parking was public parking and he would
2 encourage the residents to attempt to resolve the issues between themselves. He
3 reiterated the application included a revocation process for the CUP once approved.
4

5 The Planning Commission referenced the Pinole Municipal Code (PMC) parking
6 requirements for the application which the applicant had met as part of the
7 application. The Commission also discussed the fact that street parking was public
8 parking, parking in front of a resident's home was not guaranteed, and there was
9 adequate street parking available on Kilkenny Way that could be utilized.
10

11 Mr. McIntosh again asked the Planning Commission to require a new report from the
12 State given the inconsistencies he had identified, and Chair Brooks reiterated the day
13 care operation itself was under the purview of the State and not the City of Pinole.
14 The Planning Commission was only discussing the CUP and the attached conditions
15 of approval.
16

17 In an attempt to provide clarification, Commissioner Flashman explained the report
18 from the State had been included as background information. If the Planning
19 Commission approved the CUP, the applicant would have to go back to the State
20 and have the report modified prior to the issuance of a license from the State to reflect
21 the number of children served by the day care operation. At that time, the living room
22 could be identified as an area where the children were allowed.
23

24 Mr. McIntosh opposed the large day care operation, stated he also had not been
25 adequately noticed of the public hearing, and suggested the day care operation be
26 kept at a maximum of eight children at this time, and that in the future residents, many
27 of whom were elderly, could be properly notified if the day care wanted to expand.
28

29 PUBLIC HEARING CLOSED

30

31 The Planning Commission discussed the application and offered the following
32 comments and/or direction to staff:
33

- 34 • Recognized that parking was an issue and suggested the conditions of
35 approval contained in Exhibit A related to parking be modified to reflect that
36 the two parking spaces on the side of the home where an RV was currently
37 parked would be made available for employees; and recommended a
38 condition requiring the property owner to be a resident of the property.
39 (Moriarty) [It was clarified that Condition 6 required the applicant to comply
40 with State law requirements for the operation of a large day care facility.]
41
- 42 • Recommended an additional condition to read: *Designated parking spots*
43 *identified in the project application intended to satisfy the Pinole Municipal*
44 *Code must be used as proposed. Parking areas for employees, parent pick-*
45 *up and Single Family Residential code requirements must be used as*

1 *proposed. The applicant must abide by the Pinole Municipal Code especially*
2 *with regard to parking of recreational vehicles, boats and trailers in the front*
3 *driveway. Also recommended Condition 4 be revised to reflect the hours of*
4 *operation would be 7:30 A.M. to 6:00 P.M., Monday through Friday.*

5
6 Detailed the State requirements for a day care operation and suggested the
7 applicant was compliant with the PMC as to the required parking. The street
8 was a public street and parking was not guaranteed. Encouraged the
9 neighbors to work together to resolve any issues. Noted that Pinole did not
10 have a Noise Ordinance and found the applicant was being as
11 accommodating as possible with respect to noise from the day care.
12 Acknowledged the concerns with speeding traffic in the neighborhood which
13 would not be exacerbated by the day care operation and suggested those
14 concerns would be better directed to the City Council and the Police
15 Department. (Kurrent)

- 16
17
 - Supported a modification to the hours of operation and the additional condition
18 as proposed. Acknowledged the concerns expressed by those in support and
19 opposition but would have liked to have known whether those in support were
20 Pinole residents who would benefit from the day care operation. Supported
21 the application subject to the modifications. (Murphy)

22
23
 - Recognized the need and benefit for childcare and the concerns with how it
24 would change the culture of the neighborhood, made more difficult by parking
25 constraints and noise from the day care. Supported the revision to Condition
26 4 and the additional condition as stated. Also acknowledged the City had no
27 role in the State requirements for day care operations. (Flashman)

28
29
 - Read into the record Condition 9 which detailed the process of a possible
30 revocation hearing before the Planning Commission in the event the operation
31 resulted in conflicts from the use. (Brooks).

32

33 **MOTION** to adopt Planning Commission Resolution 19-13, with Exhibit A: Conditions
34 of Approval, Resolution of the Planning Commission of the City of Pinole, County of
35 Contra Costa, State of California, Approving A Conditional Use Permit (CUP 19-06)
36 to Allow the Operation of a Large Family Day Care Home at an Existing Residence
37 at 1491 Wallace Court, APN: 403-352-013, subject to a modification of the first
38 sentence of Condition 4, to read: *The operating hours of the large family day care*
39 *shall be Monday through Friday, 7:30 A.M. to 6:00 P.M., and a new condition to read:*

40
41 *Designated parking spots identified in the project application intended to satisfy*
42 *the Pinole Municipal Code must be used as proposed. Parking areas for*
43 *employees, parent pick-up and Single Family Residential code requirements*
44 *must be used as proposed. The applicant must abide by the Pinole Municipal*

1 *Code especially with regard to parking of recreational vehicles, boats and trailers*
2 *in the front driveway.*

3
4 **MOTION: Kurrent**

SECONDED: Moriarty

APPROVED: 5-0-2
 ABSENT: Ojeda, Wong

5
6
7 Chair Brooks identified the 10-day appeal process in writing to the City Clerk.

8
9 **F. OLD BUSINESS:** None

10
11 **G. NEW BUSINESS:** None

12
13 **H. CITY PLANNER'S / COMMISSIONERS' REPORT**

14
15 Mr. Shiu reported that staff had applied for Senate Bill (SB) 2 Planning Grants and
16 had received some interest for the use of the former Toys R' Us building which may
17 include modifications to the façade, to be reviewed by the Design Review
18 Subcommittee of the Planning Commission should the applicant submit a pre-
19 application design.

20
21 Commissioner Moriarty inquired of the status of the preparation of the meeting
22 minutes and the appeal of the Extra Space Storage application.

23
24 Mr. Shiu reported the appeal of Extra Space Storage had been scheduled for City
25 Council consideration on October 15, 2019.

26
27 Ms. Miller advised that a scope of work was under negotiation with a service provider
28 for preparation of the meeting minutes which process was not yet complete.

29
30 Commissioner Moriarty inquired of the status of the Gateway Development
31 conditions related to the trail, and Ms. Miller reported the development
32 enhancements to the creekside had been included in the Development Agreement
33 (DA) in negotiations with the County and the Army Corps of Engineers, but trees or
34 shrubs could not be planted in the flood plain and the City hoped to negotiate for
35 some isolated trees, shrubs, and signs outside of the flood plain. The trail would be
36 paved in mid-October, with the City negotiating some of the landscaping to be offset
37 with landscaping enhancements to the median. If the enhancements could not be
38 provided, the applicant would provide a fee in-lieu of the enhancements.

39
40 Commissioner Moriarty also requested a digital copy of the Capital Improvement
41 Plan (CIP) identifying the green infrastructure, and an update on any new Planning
42 Commission training opportunities.

43
44 Ms. Miller expressed the willingness to coordinate with the Finance Director so that
45 information could be provided. She reported the City had retained another Planner
46 who had joined the City for three days a week.

Commissioner Kurrent inquired of the status of the DaVita Dialysis Center, Dr. Lee's Optometry building and the Making Waves application. He also asked staff to provide an update in response to Mr. Tillman's concerns at the next meeting and that Item B2, as shown on the meeting agenda be removed from future agendas.

Mr. Shiu reported that signage was under review for the DaVita Dialysis Center and Ms. Miller reported the building shell had been finalized and could be open by the end of the year. The project construction set of drawings had advanced for Dr. Lee's Optometry building and staff had also received an application for Making Waves, which was currently under review for completeness and with an Initial Study Consultant having been retained for the project.

Commissioner Murphy requested a future discussion of the CVS Pharmacy application, although Ms. Miller advised the clock tower had been built as permitted. The Planning Commission could discuss and clarify the process between the Design Review Subcommittee and the Planning Commission itself at a future meeting.

Commissioner Murphy reported he had attended the Pinole for Fair Government informational session with numerous public engagement sessions scheduled for September and October. He also attended the Coastal Cleanup.

Chair Brooks inquired whether the City had any leverage with Caltrans to clean up on and off-ramps.

Ms. Miller reported that Caltrans picked up litter twice a year and staff was speaking with Caltrans about a possible partnership and would also be discussing Caltrans' Adopt a Highway Program, which would involve budget allocations from the City Council.

I. COMMUNICATIONS: None

J. NEXT MEETING

The next meeting of the Planning Commission to be a Regular Meeting to be held on Monday, October 28, 2019 at 7:00 P.M.

K. ADJOURNMENT: 9:27 P.M

Transcribed by:

Sherri D. Lewis
Transcriber