



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, November 18, 2004, 7:30 p.m.
777 B Street, Hayward, CA 94541**

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m., by Chair Sacks followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS: Lavelle, McKillop, Bogue, Thnay, Peixoto, Zermeño
CHAIRPERSON: Sacks
Absent: COMMISSIONER: None

Staff Members Present: Anderly, Conneely, Ehrental, Emura, Patenaude, Pearson, Reyes

General Public Present: Approximately 9

PUBLIC COMMENTS

There were no public comments.

PUBLIC HEARINGS

1. **Tentative Parcel Conveyance of Surplus Real Property Parcel No. 122** – at Orchard Avenue and Whitman Street - to the Adjoining Property Owner (**Continued to December 2, 2004 meeting**)
2. **Use Permit No. PL-2003-0701 – Lewis Larimer (Applicant/Owner)** – Request for Outdoor Storage of Welding Contractor's Equipment and Product – The Project is Located at 3322 Baumberg Avenue (**Continued from October 7, 2004 meeting**)

Staff report submitted by Associate Planner Emura, dated November 18, 2004, was filed.

Associate Planner Emura presented the staff report. He responded to questions from Chair Sacks.

Chair Sacks opened the public hearing at 7:37 p.m.

Lewis Larimer, the business owner and applicant, commented that improvements will cost him approximately \$30,000 to \$50,000 and at this time these improvement costs will financially impact his business. He was concerned that with these unanticipated costs and his personal financial hardships he could not meet the February 16, 2005 completion deadline. In response to Planning Commissioner Zermeño, he thought that he would need an additional six months. In response to a question from Planning Commissioner McKillop, Mr. Larimer enumerated the various costs dealing with the landscape, in particular the \$7,400 needed to connect water for irrigation and

electricity for lighting and electrical timer. He requested the ability to re-apply when the use permit expires.

In response to this discussion, Deputy City Attorney Conneely stated that the Commission would need to amend the condition that allows Mr. Larimer to re-apply 90 days prior to expiration of the use permit.

Chair Sacks closed the public hearing at 7:45 p.m.

Commissioner Zermefio moved to approve the staff recommendation with a six month extension of all dates. He agreed that the added improvement costs would cause a heavy burden on the owner. He thought the landscape conditions are necessary for the future of this area. Commissioner Bogue seconded the motion and clarified that the motion includes the revised conditions as discussed and added a friendly amendment to Condition #17. He agreed to allow a total of nine months to complete the improvements.

Commissioner Lavelle stated that as she did not participate in the October hearing, she would abstain on this vote.

Commissioner Thnay expressed concern that Mr. Larimer would have to go through the public hearing process when he re-applies. Planning Manager Anderly responded that the applicant has submitted plans, which will facilitate the process.

Commissioner Zermefio moved, seconded by Commissioner Bogue, and carried, with the following roll call vote to accept the staff recommendation with two amendments: 1) to provide an extension of six months from the February 16, 2005 due date and 2) to revise the condition that allows him to re-apply prior to the expiration of the use permit.

AYES:	COMMISSIONERS	McKillop	Thnay,	Bogue,
		Zermefio		
	CHAIR	Sacks		
NOES:	COMMISSIONER	Peixoto		
ABSENT:	COMMISSIONER	None		
ABSTAIN:	COMMISSIONER	Lavelle		

Item 4 was discussed prior to Item 3.

4. Use Permit Text Amendment Application No. PL-2004-0337 – Paige Bennett (Applicant)
– Request to Amend the Fence Height Regulations Within the Zoning Ordinance to Allow an 8-Foot High Fence Where the Ordinance Limits the Fence Height to 6 Feet

Staff report submitted by Associate Planner Pearson, dated November 18, 2004, was filed.

Associate Planner Pearson presented the staff report that describes the applicant's request to increase the allowable fence height from six feet to eight feet in residential areas. He responded to questions from Commissioners, noting that reasons for this request include increased privacy,



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security and maintaining animals within yards. Staff recommended denial of the request and noted that the Police Department objected to the height, in particular when in pursuit of suspects and in general surveillance. He noted, with smaller yards, higher fences tend to create a boxed in feeling and deter sunlight as well as views. He showed how trees could alleviate privacy issues and noted that the applicant is requesting a uniform design for fencing. The applicant has also suggested a feature that is permitted in the City of Fremont that allows two feet of lattice on the top of six foot solid board fencing. He reported that emails were received against this request. He stated that if the Planning Commission directs staff to review the ordinance, staff is recommending the consideration of permitting arbors in front yards; as currently the maximum height in a front yard is four feet.

Chair Sacks opened the public hearing at 8:01 p.m.

Page Bennett, applicant, stated that she has spent a substantial amount of time to research this issue. She stated that she reviewed the ordinances of other cities and submitted to staff a draft that was similar to the ordinance of the City of Fremont. From her research, she was convinced a 7 foot residential fence would be sufficient to provide for privacy and as a noise buffer, but would like to have the ordinance allow for an 8 foot height. She was supportive of the arbors. She recommended that all fencing over six feet require a permit. This would allow for standardizing fencing on arterials and could improve the City aesthetically. She would like to see the special circumstances section of the City's ordinance revised to handle situation as hers and for infill construction. She submitted a statement against some of the discussion of the agenda report. She thought this would relieve some of the burden of the Community Preservation office. She noted the amount of time it takes to process complaints. She stated that there are 21 homes in Twin Bridges and Fairway Park that are in violation of the current ordinance. She reported the recent occurrences of vandalism and petty thefts in her neighborhood and her involvement in Neighborhood Alert.

Commissioner Peixoto asked the applicant if she was aware of the ordinance. Ms Bennett said that she was not aware of the City ordinance. She commented that the original fencing was beginning to have loose boards. She received verbal approvals from her neighbors to build a taller fence within the fenced yard. She affirmed that her 7 foot fence does violate the subdivision's CCRs. She affirmed that she did break the agreement with the City of Hayward that she would take down the fence by a definite date.

Joe Dolly, neighbor, supported Ms. Page's application for a text change. He expressed his concerns, noting that safety and security are a real issue for his neighborhood. He objected to the staff recommendations relative to sunlight. He spoke strongly against the Police Department concerns. He walked through the neighborhood and showed a map of a minimum of twenty-one homes that have violated the six foot regulation.

George Dimmick, representing Old Highlands Homeowners Association, stated that the Association unanimously agreed for the need to have the eight foot regulation and that anything over six feet require a permit for special circumstances. He urged approval of permitting eight feet high fences.

Commissioner Peixoto asked him about traffic safety issues on narrow roads when there are eight foot fences. In response, Mr. Dimmick was of the opinion that the ordinance applied to rear and side yards and not at corner lots where traffic safety is a concern. Mr. Dimmick stated that he supported fencing in rear yards with a permit for special circumstances. He explained his recent experience where he was obligated to reduce his fence to the required four feet.

Wade Winblad stated that he lives in the hills and there is a need for flexibility to have varying fence heights. He urged the amendment change. His opinion for safety was a higher fence. He also spoke on behalf of his neighbor.

Chair Sacks closed the public hearing at 8:20 p.m.

Chair Sacks commented on the average height of men and women. Planning Manager Anderly stated that the reference to five feet in the staff report related to eye level not height of an individual.

Commissioner Bogue clarified with staff that the fence height is one issue, but other proposed changes to the City's Zoning Ordinance could be included in the recommendation to the City Council.

Commissioner Peixoto asked about the California Building Code requirement that any fence over six feet must have a permit. Associate Planner Pearson clarified that the permit is required primarily due to the fence construction, its wind load, footing and post details for a more sound and strong fence.

Commissioner Peixoto read from the report and asked about departmental impacts should the higher fence height be approved, such as police safety. He asked if the volume of work for the Planning Division would increase.

Planning Manager Anderly responded that the Police Department impacts could increase if it became a workers compensation issue. There could be an increase in workload in the permit center if the new height is approved. She also discussed the site plan review process, stating that permits may not always be issued if fencing companies place that responsibility on the property owner.

Associate Planner Pearson stated that he verified the information provided by the applicant.

Commissioner Zermefio asked about the fees charged when an applicant wants to build a higher than six foot fence. He pointed out that if the fees are significant, they could almost be a deterrent to building a higher fence.

Associate Planner Pearson reported that the cost of the building permit is based on the work or value of the project and is often estimated by the contractor.



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Planning Manager Anderly the site plan review costs are on a time and material basis. The costs increase if it involves notification of neighbors. Those fees are charged to the applicant. Planning Manager Anderly commented that the fees could easily be over \$1,000 when there are design issues or could be a simple review, which could be several hundred dollars. There could be an increase in the work load for staff if this is approved.

Commissioner Thnay commented on the staff recommendation in the report to require a site plan review application for any fence exceeding six feet. The applicant would need to pay the fees based on the value of construction. He commented that the staff report was excellent. He pointed out that ten cities permit special options to build a higher fence, although not as a general rule. In reviewing input from various homeowners associations, he felt that there is an overall need for this exception. He felt that his concern for safety from a higher fence exceeded the Police Department's concerns. He stated that the site plan review application process would be a sufficient deterrent for frivolous requests. The six foot fence would be the general rule. His preference would be to have a trellis not just plain hardwood treatment. He moved to recommend to the City Council the text amendment to amend the fence height regulations to allow eight foot high fences with the top two feet open trellis and include an amendment to require a site plan review and a building permit. The site plan review includes reviewing whether views are being blocked and whether neighbors are informed.

Commissioner Zermefio seconded Commissioner Thnay's motion.

Commissioner Lavelle confirmed that there are currently six existing conditions in the City's Zoning Ordinance that allows for higher fences as well as allowable variances.

Planning Manager Anderly stated that it is very rare to request a fence height over six feet that come before the Planning Commission. The cost to apply for a variance is time and materials.

Commissioner Zermefio discussed the exceptions for allowing higher fences, such as hillsides with a retaining wall. He agreed with the current motion to make the six foot height the default. He cited the possibility of higher fences with the trellis over the six foot fence.

Commissioner Bogue would not be supporting the motion. He felt strongly that six foot fences are appropriate. Homes are larger now with smaller lots and higher fences could create a tunnel and box in homes as well as block sunlight. He did not agree that taller fences would block unsightly views. He made a substitute motion, seconded by Commissioner McKillop that the text change be denied and retain the current requirements. Additionally, he requested that this motion include direction to staff to draft an amendment to the ordinance to allow arbors in front yards and driveways.

Commissioner McKillop stated that she agreed with Commissioner Bogue and stated that there is already a process for those with extraordinary circumstances.

Commissioner Peixoto discussed the three basic considerations that include privacy issues, aesthetic issues and safety issues. With respect to the safety issues, he emphasized separating perception from the facts. The Police Department has the facts that it would be more difficult to pursue and higher fences do not make a home safer. He commented that dangerous animals are the responsibility of the owner of the animal. He felt that if the height recommendation is approved, property owners may not apply for the permit and there could be unsafe fences. He did not agree with the privacy issues. He commented on the Twin Bridges neighborhood and noted that views into back yards can be seen from any second story building. He commented on the aesthetic issue. He suggested the review be done in combination with other directions and themes that the Council has set for its goals. He cited the theme of interaction and pointed out recent infill projects have land set aside for gatherings and community. There are design guidelines that include the use of sound and privacy laws and encouraged the preservation of view sheds. He commented on the "double fence" issue that shows two fences and a void in between. He did not think that four home owners could agree on such a fence height. Lastly, he felt that this recommendation could impact the City with bureaucracy and impose on the workload of staff. He moved a substitute motion that would approve the staff recommendation as stipulated without modifications. The motion died for a lack of a second.

Commissioner Lavelle agreed with Commissioner Peixoto's comments regarding the neighbor to neighbor communication. There are already existing exceptions for higher fences. She commented that she supported lattice topped fences.

Commissioner Thnay did not believe that staff would be inundated with permit requests and still felt that there is a need and there are legitimate requests.

Commissioner Zermefio also echoed the need as evidenced by neighboring cities. He acknowledged emails and recommendations he received by residents. He also did not anticipate staff overload. He would not be supporting this substitute motion.

Commissioners Lavelle and Peixoto commented on the information received and the lack of additional information or good surveys from other homeowners associations.

Chair Sacks stated that she is opposed to eight foot fences. She saw tall fences as hazards, threatening, as fortresses with other privacy concerns. She commented that she still has draperies and window coverings and enjoys the openness living in a mobile home park without fences. The trellis effect, as suggested seems fairly attractive, but the material deteriorates very rapidly and asked that staff investigate that issue. She agreed with the arbor recommendation to staff. She expressed her personal experience in regards to security. She supported the Police Department's recommendations. She asked for a friendly amendment to address Ms. Bennett's request to require better design standards for fences throughout the City.

Commissioner Bogue agreed with improving design standards for fences and standards for arbors but expressed his concern with the language that would amend his motion.

Planning Manager Anderly stated that she had considered amending the ordinance to provide standards for fencing on arterials, but it would require additional staff work that is not available at



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this time, but perhaps in the next year.

Chair Sacks withdrew her motion and asked that the issue on the front yard arbors be tabled for a future discussion. She would be supporting the substitute motion.

Commissioner Bogue moved, seconded by Commissioner McKillop, and carried, to deny the application to amend the Zoning Ordinance fence height.

AYES: COMMISSIONERS Lavelle, McKillop, Bogue,
CHAIR Sacks
NOES: COMMISSIONERS Thnay, Peixoto, Zermeño
ABSENT: COMMISSIONER None
ABSTAIN: COMMISSIONER None

3. Use Permit Text Amendment Application No. PL-2004-0600 - Initiated by the Planning Director – Request for Amendments to the Zoning Ordinance Relative to Definition, Conditionally Permitted Use, and Minimum Design and Performance Standards for Theaters and to the Off-Street Parking Regulations for Theaters

Staff report submitted by Director of Community & Economic Development/ Planning Director Ehrenthal, dated November 18, 2004, was filed.

Director of Community & Economic Development/ Planning Director Ehrenthal presented the staff recommendation and responded to Commission questions. In response to Commissioner Lavelle's request for clarification on the definition of cinema place and the definition of theater, Director of Community and Economic Development Ehrenthal responded that the language was more for convenience.

There were no questions from Planning Commissioners and no requests to speak.

Planning Commission Chair Sacks opened and closed the public hearing at 9:13 p.m.

Commissioner Thnay agreed that this is excellent foresight on behalf of staff. He moved, seconded by Commissioner Zermeño, to approve the staff recommendation.

There was a slight discussion on the definitions related to live performances.

Commissioner Thnay moved, seconded by Commissioner Zermeño, and unanimously carried, to accept the staff recommendation.

ADDITIONAL MATTERS

5. Oral Reports on Planning and Zoning Matters

Planning Manager Anderly announced that on December 4th there will be a Joint City Council/Planning Commission tour from 9 a.m. to 3 p.m.

6. Commissioners' Announcements, Referrals

Chair Sacks reported illegal cigarette signs at the corner of Tennyson and Huntwood and at the gas station next to it. She also reported junk shopping carts at the corner of Folsom and Tampa Streets. Chair Sacks announced a Planning Forum that will occur on December 1st at 6 p.m. in Redwood City. She also welcomed residents in Georgian Manor and Spanish Ranch mobile home parks as they are now receiving cable with community channels. Lastly, she announced that the Alameda County Planning Commission will be conducting a public hearing on the La Vista Quarry on December 6 at 6 p.m.

APPROVAL OF MINUTES

Minutes of November 4, 2004

The minutes were unanimously approved.

ADJOURNMENT

The meeting was adjourned by Chair Sacks at 9:22 p.m.

APPROVED:

Julie McKillop, Secretary
Planning Commission

ATTEST:

Angelina Reyes
City Clerk