



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, September 6, 2007, 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 Vice Chair Peixoto followed by the Pledge of Allegiance.

**ROLL CALL**

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

Staff Members Present: Conneely, Connolly, Rizk, Lens

General Public Present: Approximately 15

**ELECTION OF OFFICERS**

Vice Chair Peixoto called for the election of officers. Commissioner Thnay made a motion, seconded by Commissioner Loché, and was unanimously approved, with Chair McKillop and Commissioner Lavelle absent, to elect Commissioner Peixoto as Chairperson, Commissioner Lavelle as Vice Chair and Commissioner Mendall as Secretary.

**PUBLIC COMMENTS**

There were no public comments.

**PUBLIC HEARINGS**

1. Site Plan Review No. PL-2007-0354 – Browman Development (Applicant/Owner) – Request to Deconstruct Existing One- and Two-Story Structures for Replacement with a One-Story Structure- The Property Is Located at 838-880 B Street at the Northwest Corner of Mission Boulevard

Staff report submitted by Principal Planner Patenaude, dated September 6, 2007, was filed.

Planning Manager Rizk summarized the report and indicated revisions to the following Conditions of Approval:

*Condition of Approval No. 3, "Prior to deconstruction, the applicant shall meet with a member of the City's Planning Division staff and a representative of the Hayward Area Historical Society to tour the building to reasonably designate interior architectural fixtures and features of interest that can be removed without causing any structural damage and/or be overly difficult to remove. The*

*applicant shall then contract with a licensed contractor for the removal of any architectural features or fixtures of interest and shall donate such items to the Hayward Area Historical Society or a designee of the Society.”*

*Condition of Approval No. 5, “Excepting the storage of construction-related materials during the initial construction of the proposed building and initial tenant improvements, no outside storage of materials, crates, boxes, etc., shall be permitted anywhere on site, except within the trash enclosure areas as permitted by fire codes. No material shall be stacked higher than the height of any trash enclosure screen wall and gate.”*

*Condition of Approval No. 9, “A minimum of two trash receptacles shall be placed at/near each customer entry along B Street, one at the customer entry along Mission Boulevard and, with the adjacent property owner’s concurrence, one at the entry along the north side of the building. Trash receptacles shall be a decorative...”*

*Condition of Approval No. 11, “In consultation with the Hayward Historical Society, the applicant shall pay for and erect a plaque describing the history of the Palmtag Building, with final design and size of the plaque to be approved by Planning Division staff.”*

*Condition of Approval No. 14, “Prior to issuance of a certificate of occupancy, if feasible, the applicant shall consult with the adjacent property owner and staff to devise a detailed plan for the rear connection to the parking and for the trash enclosure for review and approval by the Planning Director. Surfaces shall be constructed of decorative materials and colors shall be compatible with the color palette of the building, subject to such adjacent property owner’s approval.”*

*Condition of Approval No. 18, “Prior to issuance of a certificate of occupancy, if feasible, the applicant shall consult with the adjacent property owner and staff to devise detailed landscaping and irrigation plans prepared by a licensed landscape architect and submitted for review and approval by the City Landscape Architect. Landscaping and irrigation plans...”*

*Condition of Approval No. 20, “Visible sides of the trash enclosure must be screened with continuous shrubs and vines that are a minimum 5-gallon in size. If vines area not self clinging type, vine supports shall be provided.”*

*Condition of Approval No. 26, deleted.*

*Condition of Approval No. 35 g), “Prior to issuance of a certificate of occupancy, if feasible, the applicant shall consult with the adjacent property owner and staff to install a concrete pad located just outside each trash enclosure, in order to accommodate the weight of the truck while servicing the containers, since asphalt can fail over time at these locations.”*

In response to Commissioner Mendall’s concern for the building proposal being one-story, Planning Manager Rizk indicated that the project is an appropriate design and is compatible with the surrounding buildings in the area. In reference to the half million dollars approved previously for the façade improvement, Mr. Rizk indicated that the money would not be used for the proposed project. Mr. Rizk also clarified that there was no negative mitigation declaration, only a negative declaration.



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Commissioner Sacks complimented the revision presented.

Commissioner Loché inquired about the timeline for the construction. Planning Manager Rizk indicated that the applicant would be able to respond.

Chair Peixoto opened the public hearing at 7:55 p.m.

Mr. Victor De Melo, Vice Chair for Browman Development Company, indicated enthusiasm about the project and concurred with the proposed revisions. He indicated that upon completion of the construction, Peet's Coffee tentatively plans to open before Thanksgiving Day of 2008. Mr. De Melo responded to Commissioner Mendall's inquiry regarding a two-story mixed use development alternative, indicating that the cost of having a commercial second story and the cost associated with the rent are not financially feasible. Planning Manager Rizk indicated that feasibility depends on the development assessment and market conditions.

Commissioner Sacks congratulated Mr. De Melo for the project.

Commissioner Thnay complimented the project and inquired about the reasoning for having two coffee shops in downtown. Mr. De Melo indicated that diverse retail would attract more people to downtown.

In response to Chair Peixoto's inquiry for a corner type of entry for the project, Mr. De Melo indicated that the proposed configuration was selected in order to maximize seating and entry areas.

Mr. Frank Goulart, Chair for Friends of Hayward, spoke about the historical aspect of the Palmtag Building. Mr. Goulart indicated that the building has not lost its character or integrity. He suggested that an Environmental Impact Report (EIR) should be done. He made reference to The Louvre, the only underground saloon that existed in Hayward at the time that was located in the basement of the building years ago.

In response to Commissioner Mendall's inquiry regarding some of the features that could be captured and transferred into the new building, Mr. Goulart indicated that he would like to save the staircase, the wood framing upstairs, the windows, the skylights and The Louvre features among others.

Commissioner Sacks spoke optimistically about the revised conditions of approval and specifically referred to Condition of Approval No. 3. She indicated that the revisions should mitigate the concern voiced. Mr. Goulart expressed concern about the deconstruction of the building, but was optimistic about the developer and the revisions presented.

Chair Peixoto closed the public hearing at 8:17 p.m.

Commissioner Thnay commended Mr. Goulart's interest for maintaining historical buildings. He expressed his struggle for maintaining historical buildings and at the same time attracting more people to downtown. Mr. Thnay made a motion per staff recommendation and proposed that some elements of interest in the Palmtag Building should be preserved and incorporated into the design of the new building.

Commissioner Sacks seconded the motion.

Commissioner Loché inquired about a foreseen conflict with having a bank and a commercial establishment on the second floor. Planning Manager Rizk indicated that from a land use perspective, the ordinance would allow for such use.

Commissioner Mendall indicated that the approved half-million dollars for the façade improvement was not sufficient to change the building and was sympathetic to the historic nature, but favored improving the area. He supported Condition of Approval No. 3 and reluctantly supported the motion.

Commissioner Sacks expressed mixed feelings about the project; however, she indicated that the Palmtag Building disintegrated a long time ago and has not been functioning as a two-story building. Ms. Sacks echoed Commissioner Thnay's suggestion that the developer capture some of the elements and re-use them for the new building. She supported the motion.

Commissioner Mendall recommended that staff prioritize the half million dollars towards preserving other historic buildings.

Chair Peixoto indicated that there are historic buildings that do not have functionality and expressed that the proposed building will be actively used. He supported the motion.

Commissioner Thnay moved, seconded by Commissioner Sacks, and unanimously approved with Commissioner Lavelle and McKillop absent, to adopt the Initial Study and Negative Declaration, prepared pursuant to the California Environmental Quality Act (CEQA) guidelines, and approve the Site Plan Review application with revisions to Conditions of Approval Nos. 3, 5, 9, 11, 14, 18, 20, 34g); deletion of Condition of Approval No. 26 and addition of a condition that the applicant is encouraged to preserve existing elements of interest from the existing building and incorporate them into the new building.

2. Zone Change Application No. PL-2005-0536 - Susan Cronk for Simeon Commercial Properties (Applicant) / SimVest Real Estate I, LLC (Owner) – A Request to Modify a Planned Development District to Allow a Neighborhood-Serving Retail Center on a 1.5-acre parcel at Mt. Eden Business Park - The project is located at 26250 Industrial Boulevard adjacent to Highway 92

Staff report submitted by Associate Planner Camire, dated September 6, 2007, was filed.

Planning Manager Rizk summarized the report and clarified questions from the Commissioners.



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Chair Peixoto opened the public hearing at 8:39 p.m.

Mr. Russ Pitto, CEO for Simeon Commercial Properties, indicated that he did the presentation for the original project in 1997. He mentioned that they have not been successful finding a full service restaurant that would commit to the area. After doing a study, they learned that what seems realistic for the area would be a retail center such as a drive-thru Starbucks, up-scale 7-Eleven and other prospective tenants. He indicated that surrounding neighbors such as the Life Chiropractor, the Fairfield Inn and Suites by Marriot and Heald Business College support the proposed project.

In response to Commissioner Mendall's inquiry regarding the space in the proposed project, Mr. Pitto indicated that a smaller restaurant or diner would fit but not a large franchise.

Commissioner Loché inquired if more housing would have an impact on the proposed project. Mr. Pitto indicated that the proposal would not change the dynamics of the neighborhood.

Commissioner Sacks indicated that there are certain destination restaurants that are successful. From past experience, she favored a place to eat, a gas station and a motel. She was not in favor of having a 7-Eleven next to the motel. Mr. Pitto indicated that they have not received opposition to the proposed 7-Eleven store.

Commissioner Thnay inquired if he would foresee viability to have a sit-down restaurant in the future, provided the project was approved. Mr. Pitto envisioned a better probability for a small diner for that area due to the increase of traffic that the convenience store would generate.

Mr. Solomon Ets-Hokin, Director of Real Estate for Simeon and former consultant for the viability of a restaurant in 2005, mentioned that he worked diligently to get a restaurant in that area, but there were no sustainable tenants.

Mr. Tom Greenland, Real Estate Manager for the 7-Eleven, indicated that his team was available for answers to concerns. In response to Commissioner Mendall, Mr. Greenland indicated that an upscale 7-Eleven has a different architecture, lightning, technology and delicatessen/snacks based on the demand.

Commissioner Sacks expressed concern for the social target that a 7-Eleven that sells liquor would represent for the neighborhood and specifically when located in close proximity to the motel. Ms. Sacks also indicated concern for hours of operation and security provisions.

Mr. Jeff Hetherington, Operations Manager with 7-Eleven, indicated that they build stores based on demographics, which are deemed safe for customers as well as employees. He indicated that from an engineering and lighting stand point the new stores look different. In regards to potential nuisance behavior, he indicated that the stores have enhanced services through technology that is able to mitigate any nuisance and have trained employees to offer a better service. He indicated that 7-Eleven intends to be more of a convenience store in order to attract different operators.

Chair Peixoto closed the public hearing at 9:06 p.m.

Commissioner Mendall indicated that he works in close proximity to the proposed project and favored a sit-down restaurant. He was sympathetic to the fact that the place was not found feasible to attract what Council had originally envisioned. He indicated that he would be in support of a sit-down restaurant or drive-thru coffee shop, but not an up-scale 7-Eleven.

Commissioner Thnay indicated that the developer has done diligent work in attracting the right retail tenant. He indicated that having seen the place vacant for some time, he would like to see a new functional business.

Commissioner Loché indicated that the developer has made the attempt to find a sit-down restaurant and indicated that the area would not be best served with a 7-Eleven and would like to maintain Council's initial plan for the area.

Commissioner Sacks understood that a restaurant is not viable; however, indicated that small restaurants would be more appropriate for the area. Upon concurrence with Assistant City Attorney Conneely, Ms. Sacks made a motion to direct staff to conduct a California Environmental Quality Act (CEQA) review and prepare findings and conditions of approval to bring back without placing restrictions as far as prospective tenants.

Chair Thnay seconded the motion.

Commissioner Mendall did not support the motion because he disagreed with not having restrictions, specifically opposed consideration of an upscale 7-Eleven as a convenient store. He favored more restaurants. Commissioner Mendall offered a substitute motion to direct staff to conduct CEQA analysis and prepare findings and conditions of approval eliminating the consideration of a 7-Eleven as an approved use.

Commissioner Loché inquired about clarification on the difference between a fast food restaurant and a drive-thru shop.

In response to Commissioner Loché's inquiry for the difference between a fast-food drive-thru restaurant and a drive-thru coffee shop, Planning Manager Rizk indicated that the Municipal Code is less restrictive for small, kiosk-sized drive-thru coffee shops.

Commissioner Loché seconded the motion.

It was moved by Commissioner Mendall, seconded by Commissioner Loché, and failed by the following roll call vote:

AYES:	Commissioners Mendall, Loché
NOES:	Commissioners Sacks, Thnay CHAIR Peixoto
ABSENT:	Commissioner Lavelle, McKillop
ABSTAINED:	None



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Commissioner Thnay agreed with the substitute motion and favored a sit-down restaurant, but indicated that he wanted more flexibility in terms of convenience stores, such as the up-scale 7-Eleven. Planning Manager Rizk indicated that a conditional use permit, to allow alcohol sales would also be required should the project come back after more analysis. Assistant City Attorney Conneely added that at this point, the Commission was not required to determine if a convenience store should be appropriate for the proposed project.

After discussion ensued, the Commissioners concurred to vote on the initial motion offered by Commissioner Sacks.

It was moved by Commissioner Sacks, seconded by Commissioner Thnay, and failed by the following roll call vote:

AYES: Commissioners Sacks, Thnay  
CHAIR Peixoto  
NOES: Commissioners Mendall, Loché  
ABSENT: Commissioner Lavelle, McKillop  
ABSTAINED: None

Assistant Attorney Connelly indicated that a new motion could be offered or, if the Commission preferred to deny the project, the applicant could appeal it to the City Council.

Discussion ensued and the Commission concurred to vote again on the initial motion offered by Commissioner Sacks.

It was moved by Commissioner Sacks, seconded by Commissioner Thnay, and carried by the following roll call vote to direct staff to conduct a CEQA review and prepare findings and conditions of approval without placing restrictions as far as prospective tenants, such as convenience stores like an up-scale 7-Eleven:

AYES: Commissioners Sacks, Mendall, Thnay  
CHAIR Peixoto  
NOES: Commissioners Loché  
ABSENT: Commissioner Lavelle, McKillop  
ABSTAINED: None

### 3. Oral Report on Planning and Zoning Matters

Planning Manager Rizk announced forthcoming meetings.

Commissioner Sacks reported on reducing water use and availability of water.

4. Commissioners' Announcements, Referrals

Commissioner Mendall reported that the front yard at 367 Ashbrook Way has been under construction for five years and needs attention. He also reported that 30198 Bridgeview Way has garbage on the front yard and the lawn needs attention.

**APPROVAL OF MINUTES**

The minutes of July 26, 2007, were approved.

**ADJOURNMENT**

Chair Peixoto adjourned the meeting at 9:32 p.m.

**APPROVED:**

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Al Mendall, Secretary  
Planning Commissioner

**ATTEST:**

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Miriam Lens  
Commission Secretary