



**MEETING**

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

**ROLL CALL**

Present: COMMISSIONERS Zermeno, McKillop, Sacks, Caveglia, Halliday, Thnay  
 CHAIRPERSON Bogue  
 Absent: COMMISSIONER None

Staff Members Present: Anderly, Bauman, Calame, Camire, Conneely, Ehrenthal, Looney, Patenaude, Rizk

General Public Present: Approximately 50

**PUBLIC COMMENT**

Evelyn Cormier invited everyone to the League of Women's Voter's meeting this next weekend.

**AGENDA**

1. Mission-Garin Annexation Study: Final Environmental Impact Report - General Plan Amendment PL-2003-0356 - Zone Change PL-2003-0357 and Text Amendment PL-2003-0358
2. Variance Application No. PL-2003-0219 - Roberto Lomeli (Applicant/Owner) - To Retain Two Carports that Exceed 50 Percent of The House Area and Are Located within The Required Front and Side Yard - The Property is Located at 956 Folsom Avenue
3. Use Permit No. PL-2002-0577 - Jack-in-the-Box (Anthony Poligono Operator/Applicant) - Foodmaker Inc. (Owner) - Request to Amend Use Permit 80-109 to Expand Hours of Drive-Through to 24 Hours Daily - The Property is Located at 1075 Tennyson Road Approximately 150 Feet East of Tampa Avenue

**PUBLIC HEARINGS**

1. Mission-Garin Annexation Study: Final Environmental Impact Report - General Plan Amendment PL-2003-0356 - Zone Change PL-2003-0357 and Text Amendment PL-2003-0358

Senior Planner Calame described the study area and gave a background summary of the history of the analysis. Staff requested that the Planning Commission recommend to the City Council the FEIR, the General Plan Amendments, the Zone Changes and the Text Amendment to

establish the Special Design District for the Mission-Garin Area. He then explained staff recommendations zoning in the various areas and explained the text of the Special Design District, an overlay plan amendments and district. He referenced Attachment C the Mission-Garin Area Special Design District, noting that staff is recommending adding a further sentence to Item 12 to read, "A lesser amount may be considered based upon topographic conditions." He then described the staff recommendation and explained the reasoning behind their choices for development areas and the recommended land use pattern. He suggested development could be clustered in various areas to mitigate the potential impact of the development. He reviewed written correspondence received prior to the hearing. He clarified that the proposed 10-acre zoning would have no effect on rebuilding substandard parcels since they are considered a conforming lot size according to the City Zoning Ordinance. He was available for questions. There were none.

The public hearing was opened at 7:56 p.m.

Al Mendall thanked staff for the process and the input of the community. He described this as the last large undeveloped piece of land in the City of Hayward, which was based on the fact that all the other land has been developed. He was with the group who proposed recommending to the City Council, Alternative "E". He explained the reasons they made this choice adding, once you develop it, you are stuck with it.

Scott Raty, on behalf of the Chamber of Commerce, asked for consideration of 600-800 units in the area. He commented that construction is ideally suited for this area. He emphasized the long-term goals for owner occupied units of the City of Hayward. The number of units is important for rehabilitation of the school in the area. The park in-lieu fee will be a great benefit to HARD with the increased numbers of units. Inclusionary housing is another factor to meet the goal. His recommendation was to increase approving the number of units to more than 600 and add more above the 200-foot level. He said he was looking for consistency in the goals for the City of Hayward. He added there would be minimum traffic problems with great fiscal benefits to the City.

Commissioner Halliday asked about the quarry as an eyesore and how putting housing in this location would improve the outlook in this area.

Mr. Raty said they looked at the substantial benefits of allowing the development community to do things like trails, etc. He added that Hayward Area Recreation and Park District needs the money to operate, noting this is a great opportunity.

Frank Berlogar spoke on behalf of a number of properties. He noted that they are all buildable. The earthquake study zone is generally one-mile on each side of the fault line. It is now a narrow strip. He proposed a study in that zone, relative to safety outside the earthquake zone. He suggested that with further development they could upgrade the study area with water improvements including another tank.

Mimi Bauer thanked staff for including the neighborhood in discussions of the areas to be involved. She said the task is to decide what is best for the citizens of Hayward as well as what is best for everyone. She noted that the view shed and fault line information had been



discussed. She said a survey from Fairview Park Neighborhoods Association concluded that residents want Alternative "A" or "E"; why set yourself up for more possible troubles. She then described the City of Hayward becoming like East Palo Alto, taking open space by building mansions.

Commissioner Halliday asked her about both Alternative "E" and staff recommendations.

Ms. Bauer responded that the recommendation is fine except for the area above the fault line. She said residents asked for no building of houses on the other side of the fault and in the view shed.

Milton Murray asked to concede his time to Jack Smith.

Jack Smith agreed with complimenting staff. He said they took the time to include the people in the areas within the process. He said he would agree with the staff recommendation. However, it does not go far enough. He said he spoke as the attorney for the Garin and Warren families. Garin Park is an amazing thing and has already been expanded. It is now the largest park in Hayward, Union City or Fremont. He said you start with this large open space area guaranteed to be in the public domain for generations. He then described the Garin and Warren families, which are basically the same family. He recommended approval of 320 units in the bowl of the La Vista quarry. Although there will be rehabilitation of the area, the area below that is suitable for development. In front could be a park open to the public. He said this would retain the open space as well as build a good project. He reminded members that this meeting was merely to set goals since any project in the area would require substantial study.

Commissioner Halliday asked about development of the quarry bowl and whether it could be less dense than 3.5 units per acre.

Mr. Smith responded that there could be an appropriate way of doing it with no more than 304 units.

Commissioner Zermeño asked about building units on the Quarry, what safe parts would there be. He also asked about safeguards against slides.

Mr. Smith said there have been minor slides but these have been repaired. He emphasized that Alameda County has the best rules for quarries in the State. The City of Hayward would have to craft stringent rules for this development, completion and rehabilitation.

Guy Warren emphasized that the hill area needs a lot of improvement just to update it. All of which will be expensive to do. He named a number of projects such as the Alquire extension, Tennyson extension, and Calhoun Street. A lot of money needs to be spent to bring them up to date. The development below the 200-foot level won't pay for it. The Warren family has an old pistol range of 15 acres, about 4 of which are level. Staff's recommendation is for one

house on the property, which is not really fair. He added that the more development in the area, the more improvements could be made.

Richard Ersted referred to his letter of June 24<sup>th</sup>. He noted that under the Special Design District when a project comes in with more than the allowed units, the excess units would come out of the total number of units. As a result he suggested increasing the number of dwelling units for the area in that event.

Commissioner Halliday asked staff to comment on the intent of the original sentence.

Senior Planner Calame said any further development plan for the area would need a General Plan amendment for any changes of allocation of numbers of Dwelling units in the General Plan. He also noted the length of the process.

Commissioner Halliday asked whether this would allow developers to pool the number of units.

Senior Planner Calame said it would be possible if they got together and proposed the shift.

Dr. Joseph Connell, Chair of Redevelopment Committee, commented about the Neighborhood Plan adopted by the City Council. He encouraged more housing in the Mission-Garin study area. He said most would agree with the need for more upscale and affordable housing, beyond what staff is recommending. More housing is vital to the community.

Dean Nielsen emphasized the need for consistency in the land use and growth of the City. There is an inconsistency in the staff treatment. This plan is not fair for the property owners on the east side of the fault. He said staff is carving out an area in the west and depriving people in the east and the north of those same rights.

Ed Mullins said he lives in the Mission-Garin area. He listened to alternatives, and favors more housing than staff recommends. He emphasized the need for more housing in the area. Alameda County predicts a shortfall of needed housing within the next 10 years. Hayward is already in the forefront of housing affordability.

Joe Callahan said he was speaking for the Garin property. He noted that in planning for the EIR, staff produced a document, which looked at the impacts in the area of traffic, and schools and was able to conclude that most impacts of development in the area could be mitigated. He then described the area between Calhoun and Alquire, as having been developed helter/skelter. He discussed the quarry development as well as the number of developments that could open up the area. He noted that the Garin-McKenzie property is an extensive part of the Alquire area, which would be a beneficial addition to the area's expansion and upgrading for existing infrastructure. He emphasized the opportunity for creating significant housing throughout the area.

Chairperson Bogue asked about the EVA as a potential trail.

Mr. Callahan agreed that it was and pointed out the trails on his plan map.



Commissioner Halliday noted that the staff recommendation recommends development of that part of the area.

Jay Egy spoke for the DaSilva group and asked to increase the development in the LaVista quarry to include the 321-unit townhouse project. Since the total area is 148 acres, this is only 15 percent of the total area. He said they looked at the half-mile measurement to BART to check whether it would be in the transit sphere, and were developing it as a transit community. He showed the view perspective. He then showed artist renderings of what they would look for in the project. He noted that they have worked with staff throughout the process.

Commissioner Thnay asked about the seismic engineers comments about design and asked about redundancies.

Mr. Egy said they looked at the impact on roadway and utilities. As a result they have proposed an extra wide shoulder at the side, so that were it to shift, the roadway would still be usable. As to the utilities, there will be further pipe design considerations. They would also plan to install a fire hydrant on either side of the fault for continuing the water system. He explained a number of possible plans and designs available.

Commissioner Halliday asked about the consideration of the need for water, and whether this plan is contingent on the development of the pistol range.

Mr. Egy responded that they would develop the Calhoun water system. With the LaVista Quarry development, they would install a water system in the initial phase similar to the present Garin system. He emphasized that the Quarry development would be able to support the Calhoun tank.

Peter Ruggeri described the development of the properties in the area and explained that this would extend the Alquire property toward the quarry property. The EVAs would provide access to present properties in the area. The improvements to the Bodega Street area of streets, water and sewer capabilities was also discussed. He said he showed their proposals to the Bodega/Alquire area neighborhoods as well as their provisions for utilities.

Samuel Tavake said he is the owner of property next to the quarry. He said their property is now in the County and he wanted assurance that the annexation will not make him lose the ability to keep animals on his property.

Commissioner McKillop asked how the existing properties are treated when annexed into the City of Hayward.

Senior Planner Calame said he could not give a complete response tonight. City staff is aware of the County proceedings regarding land uses on this property and he did not want to hazard a

guess about what might be legal and how it would be viewed by the City of Hayward.

Commissioner McKillop suggested that generally, a property would be grandfathered in for those conditions.

Planning Director Anderly noted that any legal use in the County would be accepted legally within the City unless the use has ceased for 6 months.

Evelyn Cormier, representing the Hayward Area Planning Association (HAPA), thanked staff for their hard work during the process. She noted the number of issues, which had also been commented on by others. She said the State Fish and Game wanted larger setbacks from creeks beds to 100-feet. The Regional Air Quality Control Board had concerns that the DEIR does not take into consideration a stronger preference for smart growth. She added that Alternative E would protect the view shed and include smart growth infill. HAPA recognizes this as the best opportunity for City and residents of Hayward.

Thomas Tomanek described the piece of property he owns which he bought 24 years ago. He described the amount of work he has put into it and the cost to him. He commented on other projects he had proposed that did not go because of the lack of water in the area. He asked for consideration of upgrading the increase of the number of units allowed in the area.

Commissioner Halliday asked about his property, which looks as though it has agricultural zoning and what the reasoning would be.

Senior Planner Calame explained that the property was above the 200-foot elevation.

Bob Johnson emphasized no building along the fault line.

Jim Moita said he was speaking for his mother who was a Bodega Street property owner, asked staff the density on the former Mancotte property. He also said they would like parity with that density. Presently, the single-family homes are occupied by relatives. He added that this area was developed first because it is the last flat property up there.

Senior Planner Calame said currently for almost all this property, the zoning is agriculture. He said this property was originally to be used for Phase II of the Clarendon Hills project. The reasons for the division were insufficient water and utilities services in the area. There were a combination of water and earthquake regulations and, perhaps, personal financial reasons why it did not go forward. Since the Planned Development permit expired, the zoning reverted to agriculture. He added that as a Planned development, the density was projected for around 30 units per acre, which would be in the high-density range.

Mr. Moita asked that the density on the flat parcels be equal to that of those in the hill areas. He then asked for consideration of higher density for this parcel.

Kindra Mendall thanked staff and commissioners for their time and effort. She asked for preservation of the hillside and open space. Fremont and UC have supported open space. This is just being consistent. She asked, just because you can build, should you. She commented



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that the vision for the City of Hayward in the General Plan was updated, emphasizing smart growth and preservation of open space. She explained that Alternative "E" was consistent with the new vision.

Dominick Cuevas explained that he owns acreage in the Mission/Garin area. He said he has a horse ranch up there of 15-acres, which is land between the gun range and quarry. He noted now it is an eyesore. As to the earthquake fault, why worry about it. Now that there is more engineering in dealing with the results of earthquakes, they are willing to advance their land. He said this is the chance to plan the future.

Linda Cuevas said she was opposed to the Limited Open Space designation. Their property is within the Hayward BART station sphere, and only three minutes from Mission Boulevard, making them just part of the Garin Park. She emphasized that the fault-line runs all through the area, and there are engineers who know how to build smart. Although there is no guarantee, she emphasized that this City Hall is a result of that. She added, look at the hills there are houses there.

Patrick Sullivan said there is always an inherent danger in building on the hillside.

Jack Golden said he was curious about whether any of the commissioners had been on Bodega Street. He said his main concern was lack of communication with neighbors up there. Although he did admit the City Manager had come to talk with them, these are the people who will be directly impacted by this. He emphasized that there was no communication between what the people here are doing, and the people who are being impacted which are the residents on Bodega. Since the personal meeting with City Manager Armas, there has been no communication. He said there is a serious problem with lack of communication. Any development on Alquire is going to take out a house.

Commissioner McKillop asked Mr. Golden whether he had contacted any of the Planning Commissioners. She then asked him what it was he wanted.

Mr. Golden stressed more communications.

Commissioner Caveglia asked him about his choice of the alternatives.

Mr. Golden said, medium density.

Commissioner Halliday said the Commission was available to be talked to. She noted that she had been on Bodega Street, which is a difficult road. She asked whether he is supporting development in return for services.

Mr. Golden said it is a nice area for the personal convenience of residents. They are still able to have chickens and birds. He said he did not support any further development.

Commissioner Halliday explained that the meeting was not to decide on any specific development proposal for the area, but rather to create a plan for the district.

Commissioner Sacks emphasized that members were there to listen to everyone. She added that most members are reachable. People could call and talk to them. She also thanked everyone for coming to this meeting.

Chairperson Bogue reminded everyone that all commissioners went to most of the meetings that were held, so they were not that difficult to reach.

Martin Inderbitzen representing the McKenzie property, complimented staff on an excellent job. As to the McKenzie property and the Garin-La Vista representatives, they worked to coordinate development of those properties. Staff did their job and measured them against the City's own goals and objectives. He would not deny there are selfish interests, but agreed to the need to work with the City of Hayward and see what opportunities will work for all of them. He wanted everyone to note the key policies guiding these developments such as a better water supply for the City of Hayward, more housing, public safety and funding for parks, among other things.

Chris Zaballos explained that he was there to represent the apartment complex that is difficult to find, Oak Hills apartments. He noted that the present structure is Phase I of what was to have been a two-phase project. He pointed out the property below their location, which, with the staff alternative, would allow only 12 units on 3,500 square-foot lots. He asked for reconsideration of the lots and the number of units on it. He added they would need 32 units for that area because of the limitations of the fault and slope.

Commissioner McKillop asked about Attachment C and whether approving this would negate this possibility.

Senior Planner Calame responded that staff would have to look at the details, for a project specific development although 12 units are theoretically possible on the parcel zoned Planned Development when a specific project comes in, the number might need to be adjusted.

Joseph Oberman explained that he had not been involved in this project, but any development would impact traffic on Mission. He said there is a need for a lot more development in Hayward. Most of the developments would not be seen from the rest of the City residents. He added that 320 units are small and he would like to see more affordable housing among the projects.

Colleen Hutchings asked whether the State land is included in the alternatives and what happens if the State does not concede the land to the City.

Community and Economic Development Director Ehrenthal said that Route 238 is still in the state improvement plan. However, if the State ever relinquishes its property, the City of Hayward would look at other land use alternatives.



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Ms. Hutchings noted the narrow streets as well as gridlock in the schools and added that the plan of staff is a good compromise.

The public hearing closed at 9:56 p.m.

Planning Manager Anderly commented that impacts on regional traffic congestion are not fully mitigated by any of the plans, and that a statement of overriding considerations would be necessary.

Commissioner Halliday thanked everyone and said she was heartened by the turnout. It has been a really interesting process. She also thanked a number of people, particularly those residents who showed her the neighborhood. She also thanked Guy Warren and Jay Ege who took the time to show her the La Vista quarry property as well as the Warren property. She said she appreciated the view. Staff has done a good job. She said she looked at Alternative "E" which she thought was a good idea at first, except for the fault line. She explained again that they were dealing with the general concept for the area, but no specific proposals. She discussed zoning and the general plan and how it was developed. The original concept was to create an urban limit line and now staff has finished that plan. Any building in the northern end would have to erect the infrastructure there. She moved, seconded by Commissioner Sacks, to approve the staff recommendation, adding that both the Commission and City Council will look at each development proposal as it is presented.

Commissioner Zermeño thanked staff and everyone who spoke. He said he originally favored Alternative "E" but the property owners have asked for flexibility. He emphasized that Hayward might be facing a financial crunch in the near future. He added that the City of Hayward does need money, housing, and open space. Although the staff plan is consistent with the general plan, he said he would support the motion with the addition of a friendly amendment to reopen or restudy the proposal for the LaVista Quarry. He explained that the City of Hayward's compromise is overlooking the Quarry. He said we don't know what the future would bring. He commented that 300+ houses would add more money to the City's financial base. He said they needed to capitalize on housing in the quarry. If the developers could add a shuttle, it would be a win, win, win for everyone, for the City of Hayward, the owners, developers and the citizens. He asked to make this an amendment to the motion.

Commissioner Halliday said she wanted to listen to what the other commissioners had to say before accepting this amendment.

Commissioner Thnay said this was no easy decision. He explained that he enjoyed the views from his home at Twin Bridges. He said this plan might consolidate the long-term viability of the area, and what the Commission can do that will help everyone. He added that the EVS study showed alternatives for traffic. Seismic issues are a concern as well. He suggested that they needed to decide what was best for Hayward, the views, and what would be in the citizen's and City's best interest. He emphasized that staff did a great job. But there are further

opportunities to explore since the staff alternative is so limited. He added that the City of Hayward needs more housing. He reminded people that Twin Bridges was born with pain and trepidation, so if preservation and seismic safety can be overcome this could be a great opportunity for the City of Hayward.

Commissioner Caveglia stated that the most sane alternative is "E", adding, who says we need more housing. He said he was prepared to support the staff recommendation, however, without Commissioner Zermeno's amendment since it doubles the amount of housing. He particularly decried the rhetoric. When the Chamber of Commerce says traffic impacts are minimal, and the Environmental Impact Report says, traffic is significant and unavoidable. There comes a point when you say enough. The 300+ homes staff is suggesting is already a major concession. He added that dragging in the idea that Hayward now had an inclusionary zoning ordinance was an insult since members of the City Council led by Councilman Ward had completely gutted that proposal making it meaningless for actually producing any affordable housing in this town. To further claim that building \$600,000 homes on the hillsides will produce affordable housing is absolutely immoral.

Commissioner Sacks said she did appreciate Commissioner Caveglia's feelings and noted that this motion is the foundation for the recommendation of this area by staff, this plan does everything for which they had asked. She said she was struggling with this since not everyone will be pleased. She explained one reason not to accept the amendment was assessing what she saw at the La Vista Quarry. She noted the erosion at the top of the quarry, and wondered what might be going on up at the quarry. She said she had not seen enough source material to be convinced that building in the quarry is a safe proposition. She added that it was disturbing to her, having seen the contrast and the evidence, particularly with the fault line. Someday that is going to shake, and with any instability, it is going to come down. She was also bothered about utilities across fault lines. She commented that the staff recommendation compromises with clustering and she had seen good examples of what can be done. She said Commissioner Halliday had mentioned the feathering concept when they were on the task force. As time goes on, and with the wrong direction, there could end up being big boxes on the side of the hill. She suggested staff should look at specific projects and be particularly careful about the view.

Commissioner McKillop noted that the previous comments were well thought out and passionate. She added that she too had given this a lot of thought, and agreed it was a tough decision. She said that their duty as commissioners was to ask, what might be best for the City of Hayward? As to the rehabilitation of the quarry issue, no one knows if a collapse may or may not happen. She said if the density for the planned alternative remains as staff recommends, there would be no opportunity to bring that quarry back to the rehabilitation it should have. Building in the quarry would have little impact on the view shed. It would present the ability to rehabilitate the area as well as bringing in another park. She suggested having the developer guarantee to dedicate land to Garin, as well as paying in-lieu fees for parks. She suggested that the City of Hayward would be realizing over \$3 million to parks with the proposed quarry project. By increasing the density, the City would be allowing more flexibility. She noted that the EIR supports a higher density. She stated that she would support the amendment.

Chairperson Bogue said the staff recommendation does not include enough homes and that



more homes in the quarry makes a lot of sense. The project would be feasible, affordable and a net gain to the City. Since it is planned in a village format, the project has a synergy going up and coming down close to South Hayward BART station. He noted that crossing of the fault line would ensure continued service to the area. He added that traffic patterns were not changed since the number of units is minimal. He stated he would not support the motion without the amendment.

Commissioner Zermeño said they were not seeing any projects at this point. He emphasized that all of the staff and Commissioners are working to improve and preserve the City of Hayward. He said he liked the amendment, which would be to reopen or revisit LaVista Quarry to include up to 300 units, and added additionally to revisit the Zaballos property at Oak Hills.

Community and Economic Development Director Ehrental referred back to what Senior Planner Calame had said earlier. That by adopting this plan, there was no prohibition on any changes in the future with an application for a General Plan Amendment. This presentation is simply looking at the base and as a guide for the future. She noted that anyone could come in with a change in the General Plan.

Commissioner Halliday said she would accept approval of the staff recommendation since it does not preclude other projects coming back. She said she understood them to say that certain areas might be difficult to develop. The quarry might need too much development right now for them to go with it. She explained that maybe the quarry needs a rest. It will be worked until 2008. Like to see it played out, be reclaimed and, perhaps, some years later look at it again, as a result she would not be accepting the amendment.

Commissioner Zermeño then offered a substitute motion, seconded by Commissioner McKillop, to accept the staff alternative plus, plan to restudy or revisit the LaVista Quarry as well as the Zaballos property, Oak Hills. He said he understands the concerns expressed but felt assured there would be enough safeguards. He was trying to look into the future at the needs of the City of Hayward.

The motion carried by the following vote:

- AYES: COMMISSIONERS Thnay, McKillop, Zermeño  
CHAIRPERSON Bogue
- NOES: COMMISSIONER Caveglia, Sacks
- ABSENT: None
- ABSTAIN: Halliday

2. Variance Application No. PL-2003-0219 - Roberto Lomeli (Applicant/Owner) - To Retain Two Carports that Exceed 50 Percent of The House Area and Are Located within The Required Front and Side Yard - The Property is Located at 956 Folsom Avenue

Associate Planner Camire described the carports, which were already built on the property without permits. She noted that although the property is an irregular shape, staff is not supporting approval of the variance since it impacts the neighbors' light and view. There is also an impediment to allowing emergency vehicles access to the home.

The public hearing opened at 10:53 p.m.

Alberto Lens, a neighbor, said that before these neighbors moved in, the lot was dirt, with a lot of mud and was ugly. He said his neighbors used to work on cars everyday. Now, these people have fixed the house nicely. The yard is concrete, and a clean area. So this is a good improvement. He said he liked what they have done and supported the variance application. They are two very hard workers with five children. He said he came to say the carports do not bother him since they are such an improvement. He added that that they could have built a second story on the house and they would have been legal. This is really not bothering anyone.

The public hearing closed at 10:58 p.m.

Chairperson Bogue discussed the setback of the existing garage, and asked whether the accessory building would be legal if they demolished the existing garage.

Commissioner Zermeño said they were trying to find whether they could save the existing buildings.

Planning Manager Anderly explained that the Planning Commission does not have the authority to waive building codes.

Commissioner Sacks said she noted neither two problems on the property, not enough room for a car to turn around nor enough room for emergency vehicle.

Principal Planner Patenaude explained that the larger carport partially blocks the access to the driveway with only 13-foot access.

Commissioner Sacks asked how they could save some of it but not have nightmares for future property owners. She added that it might be okay now, but later it could be a problem. She said she felt bad about the situation, and was asking whether anything could be salvaged.

Principal Planner Patenaude explained that the present carport attached to the garage might be saved.

Commissioner Sacks asked whether the commission would still need to approve a variance for this.



Principal Planner Patenaude agreed that if the other one were removed, they would still need a variance.

Commissioner Sacks moved, seconded by Commissioner Halliday, to deny the variance for the larger 750-foot structure and approve the variance for the smaller 350-foot structure with staff to bring back findings and conditions of approval.

The motion passed 6:1, with Commissioner Zermeño voting "No."

Assistant City Attorney Conneely reminded them that the applicant could appeal the denial of the variance for the 750-foot structure.

3. Use Permit No. PL-2002-0577 – Jack-in-the-Box (Anthony Poligono Operator/ Applicant) – Foodmaker Inc. (Owner) – Request to Amend Use Permit 80-109 to Expand Hours of Drive-Through to 24 Hours Daily – The Property is Located at 1075 Tennyson Road Approximately 150 Feet East of Tampa Avenue

Principal Planner Patenaude presented the report. Commissioner Zermeño recused himself. Principal Planner Patenaude reported that the primary issue is crime in the area and police calls to the area, half of which occur after 10 p.m. Police noted the service calls were more frequent and serious when the restaurant was open later and longer. He said opening late might contribute to more crime. He said the application gave staff the opportunity to look at previously approved conditions. Staff recommended denying the request but modifying the conditions of approval to include daily pick-up of litter by employees. Also require management to assure orderly conduct on the premises, and post signs on the premises asking patrons to reduce the volume of their car stereos. He noted that the correspondence received by the City of Hayward encouraged the commission to deny the request but that two parties had changed their petition to support. He added that with the sparse landscaping along the property line, the Commission might want to consider more trees.

Commissioner Halliday asked whether all three conditions were covered in the original conditions of approval.

Principal Planner Patenaude explained that today's conditions would have more power to be enforced.

Commissioner Halliday then asked whether the conditions could still be added whether or not the application is approved.

Principal Planner Patenaude said, yes, that's the recommendation.

The public hearing opened at 11:15 p.m.

Virginia Fanelli, speaking for the applicant, asked for approval of opening the drive-through for 24-hour service. She noted the letters of objection and what the restaurant owner had done to work with the neighbors. She explained that they had met with Tom Silva, apartment owner next door, as well as a neighborhood group. As a result, they have already made changes which include turning the speaker unit volume to the lowest decibels, additional trash receptacles, more trash pick ups during the working hours, closed the back lot, hired a security guard who will work from 7 p.m. to 3 a.m., and agreed to plant trees. She said they have also participated in school activities with coupons. As a result of these actions, all the neighbors have withdrawn their objections. She said the restaurant also circulated petitions to patrons asking for 24-hour operation. She stated that the late hours brought in \$400,000 a year. She noted that staff is basing the denial on police recommendations. She called the Police Department to get further information and Lt. Lowe said no recommendation had been made by the Police Department. She then asked for approval with further conditions noting that the Commission can always bring the request back for review. This is a corporate operated restaurant.

Commissioner Sacks commented that these were conditions at the time of the original permit.

Ms. Fanelli responded that the most significant changes are hiring security and closing the back parking lot.

Commissioner Sacks stated that this is a highly drug-induced neighborhood, and asked how they deal with that.

Ms. Fanelli said they are working to try to find avenues, but obviously do not have all the answers. She suggested that, hopefully, by having activity in the area 24 hours, it might help.

Commissioner Halliday asked what the rationale was for not keeping the restaurant open, just the drive-through.

Ms. Fanelli responded that it is easier to watch the window and what is going on as well as being safer for the employees to close the restaurant.

Commissioner Halliday then asked staff whether the City of Hayward has regulations for drive-ins to be open 24-hours a day.

Planning Manager Anderly said they have standard operations for drive-ins. Each application is looked at on a case-by-case basis. For example, the McDonalds near Denny's is not near a residential area. They have approved a Jack-in-the-Box in a different neighborhood. She noted that this applicant seems very well intentioned, but managers change and it is difficult to enforce conditions because of the type of operation.

Commissioner Thnay asked about the schedule of the security guard from 7 p.m. to 3 a.m. and what happens between 3 a.m. and 7 a.m. He then asked whether the corporation would be willing to donate to after school program,

Ms. Fanelli explained that the hours were deemed to be the hours of the most crime in the



area. She added that they have offered to work with the after school programs but the Harder-Tennyson group is not too organized.

Assistant City Attorney Conneely suggested that if members agreed to grant the application, they could put a sunset on the provision.

Tom Silva, owner of the apartment house next door, explained that events have caused a positive change in the area. He said he has been a landlord since 1980 and the past six-months there have been a great deal of changes. He said the situation is different from a year ago. The applicant has responded and become neighbors in the community, as well as making significant improvements in the area. He said with the closing the back area as well as increased security, he would support the 24-hour application. He added that he welcomed their participation.

Commissioner Halliday asked how the parking lot is closed off.

Mr. Silva explained that they store barricades in the back and at a certain time, all the back is blocked off.

The public hearing closed at 11:37 p.m.

Commissioner Bogue said he spent time at the restaurant between 11:30 p.m. and 1 a.m. He noticed that the volume was turned down on the speakers, and commented that he counted 45 cars an hour going through the drive-through. He explained that he was concerned about the drive through because of the lack of directional signs and path of travel from the Tampa driveway but suggested this might be easily taken care of.

Commissioner Thnay moved, seconded by Commissioner Sacks, to grant approval of the application for a 6-month trial period, to include both the applicant's conditions as well as those asked for by staff. He added that he would like to see them contribute about 5-10 percent of future revenues for after-school programs.

Assistant City Attorney Conneely asked whether the motion would include an expiration date 6-months from the date of this request, noting also that to require a contribution might be illegal.

Commissioner Thnay then qualified his motion to say, "encourage" the applicant to contribute to an after-school program.

Commissioner Caveglia then made a substitute motion, seconded by Commissioner Halliday, to approve staff recommendation and deny the appeal.

Commissioner Halliday added that she did appreciate what the owner has done to work with the community. She said she did not see the need for this to become a 24-hour operation

terming it not necessary.

Commissioner Caveglia stated that the police have been clear on their position.

The motion carried by the following vote:

AYES:	COMMISSIONERS Halliday, Caveglia, McKillop
	CHAIRPERSON Bogue
NOES:	COMMISSIONER Thnay, Sacks,
ABSENT:	None
ABSTAIN:	COMMISSIONER Zermeño

#### ADDITIONAL MATTERS

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

Planning Manager Anderly reminded members that at the next meeting they would be electing new officers.

##### 5. Commissioners' Announcements, Referrals

Chairperson Bogue asked for support for a Planning Commission resolution to honor Commissioner Caveglia who was termed out of his position. The vote was unanimous. Chairperson Bogue then thanked Commissioner Caveglia for his hard work as a member of the Commission and read the resolution of commendation.

#### ADJOURNMENT

Chairperson Bogue adjourned the meeting at 11:48 p.m.

APPROVED:

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Barbara Sacks, Secretary  
Planning Commission

ATTEST:

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Edith Looney  
Commission Secretary