



MEETING

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

ROLL CALL

Present: COMMISSIONERS Bogue, Sacks, Fraas, Halliday, Thnay
 CHAIRPERSON Zermeño
 Absent: COMMISSIONER McKillop

Staff Members Present: Anderly, Conneely, Koonze, Looney, Patenaude

General Public Present: Approximately 80

PUBLIC COMMENT

There were no comments.

AGENDA

1. Use Permit Application No. PL-2003-0497 and Variance Application No. PL-2003-0498 - Parwani & Associates, Inc. (Applicant) / Shakil Bafaiz (Owner) - Reconsideration of a Request to Remodel a Service Station by Expanding the "Food Mart" with a Variance to Allow the Building on the Rear and Side Property Lines Where a Minimum Setback of 5 Feet is Required - The Property is Located at 392 West Harder Road

2. Appeal of the Planning Director's Denial of Administrative Use Permit No. PL-2003-0330 Operation Paintball (Operator/Applicant) - Seecon XVI Partners (Owner) - Request to Operate a Commercial Amusement Facility (Paintball) and Request Approval of an Exception to the Number of Parking Spaces Required - The Property is Located at 1932 West Winton Avenue

PUBLIC HEARINGS

1. Use Permit Application No. PL-2003-0497 and Variance Application No. PL-2003-0498 - Parwani & Associates, Inc. (Applicant) / Shakil Bafaiz (Owner) - Reconsideration of a Request to Remodel a Service Station by Expanding the "Food Mart" with a Variance to Allow the Building on the Rear and Side Property Lines Where a Minimum Setback of 5 Feet is Required - The Property is Located at 392 West Harder Road

Planning Manager Anderly described the proposal, which had been heard by the Commission at a previous date. She commented on the changes, noting that the new plan shows almost 20 percent landscaping and that a driveway on Bishop would be closed off. She added that staff is

supportive of the design which has a new roof, and sign. Staff is recommending approval for this project. Three neighbors called to say they did not support the modifications. Staff believes the change is more attractive and more efficient and will provide more retail opportunities within walking distance of the neighborhood.

Commissioner Sacks discussed the positive comments of people in the community during a previous hearing. Many customers supported it at that time.

Planning Manager Anderly said most of the time they get negative calls rather than positive. There had been a petition with the previous application signed by customers supporting the remodel.

Commissioner Bogue discussed the ivy growing on the chain link fence as an appropriate landscaping element. Since it is not in the conditions, what type of requirement is there for this barrier, should the ivy fail.

Planning Manager Anderly said they would have to replant the ivy unless it was specified that they needed to plant something faster growing.

Commissioner Halliday discussed the tower feature.

Planning Manager Anderly said that if the tower were wider, it would sit more effectively into that area of the roof.

Commissioner Halliday said technically the applicant is supposed to cover 20 percent of the site with landscaping and would that make a difference to staff.

Planning Manager Anderly noted that modifications to existing service stations are to meet the current design standards. However, applicants are only required to meet as many of the standards as possible.

Chairperson Zermeño said he liked the bike racks but could not find the trash enclosure.

Planning Manager Anderly said it is in the southwest corner making it more accessible to the waste company.

Commissioner Bogue asked whether the canopy would appear similar to the roofing.

Planning Manager Anderly said the applicant is suggesting metal tile, which appears tile-like.

Commissioner Halliday asked how condition 3 is how enforced since this is the only service station grand fathered into an alcohol sales permit.

Planning Manager Anderly said it would be difficult to enforce were the station to change hands. It does become burdensome to staff and basically, depends on the good will of the operator.



Commissioner Thnay commented that this plan is definitely much better than the previous one. He asked whether the new proposed driveway could it be expanded to 20-feet.

Planning Manager Anderly responded that widening the driveway would reduce the landscaping. Observation confirms that most of the customers come from Bishop.

Chairperson Zermeño discussed the trees not being severely topped as well as the rules.

The public hearing opened and closed at 7:45 p.m. with no comment.

Commissioner Bogue said this plan is so much better than the previous presentation since this new plan works better for the site. He then moved, seconded by Commissioner Thnay, to approve the staff recommendation, with an additional condition under the landscaping, having to do with the ivy covered fence. Should the ivy fail, the City should require a masonry wall and fast growing appropriately chosen landscaping.

Commissioner Sacks asked about the restriction of the wall and landscaping. She then asked staff for reaction and reflection.

Planning Manager Anderly responded that typically the design standards do not support the chain link fence. In this instance it is well planted and not visible. Should the ivy fail, it would then have to meet the more current design standards, which would call for a solid barrier and other types of planting. It might be that masonry might not be necessary since the Fire Department access is on the other side. It might be solid wood or a masonry wall.

Commissioner Bogue then included "a solid fence or masonry wall."

Commissioner Sacks said she could support that.

Commissioner Halliday said she could find no hours of operation in the conditions and whether it was standard to list them.

Planning Manager Anderly said staff might not have limited them. There are those kinds of standard when a project like this abuts a residence. However, in this case they are abutting the Fire Station. Neighbors did not complain about noise. There could be an additional condition were noise to become a problem.

Chairperson Zermeño reopened the public hearing at 7:51 to ask the owners their hours of operation.

Shakil Bafaiz, owner, said the hours were 5 a.m. to 11 p.m.

The public hearing was re-closed at 7:52 p.m.

Commissioner Halliday indicated that she was fine with those hours and would not ask to amend the motion.

The motion passed unanimously with Commissioner McKillop absent.

2. Appeal of the Planning Director's Denial of Administrative Use Permit No. PL-2003-0330 Operation Paintball (Operator/Applicant) – Seecon XVI Partners (Owner) – Request to Operate a Commercial Amusement Facility (Paintball) and Request Approval of an Exception to the Number of Parking Spaces Required – The Property is Located at 1932 West Winton Avenue

Assistant Planner Koonze said the item was originally heard on July 24, 2003, at which time the Planning Commission directed staff to bring back conditions of approval, as well as an Environmental report. He noted that Fire and Building staff inspected the site and found multiple violations on the site. As a result, the applicant was directed to suspend all operations until the items are fixed. He pointed out that the purpose of this meeting was to consider proper use of the buildings. He said the applicant submitted a parking plan and site layout. They have a shared parking plan with adjacent businesses. As to the design, staff thought an interesting graphic outside might complement building entryways. The applicant opposes condition of a 5-year limitation stating that it would not give them time to look for new location, which would be more appropriate to the business. The second disagreement was with continuing the operation of the paintball activities. Again, staff is going back to the determination that the building and facilities are not safe to occupy as determined by the Building and Fire officials. Another concern by the applicant was the restrictions on patrons and the hours of operation. He noted that Larry Hulse, Supervising Building Inspector, and Fire Marshal Dean Montevago were in the audience.

Commissioner Thnay asked how long would it take to get approval from City.

Planning Manager Anderly responded that the applicant indicated that they are ready to submit their plans. Once these were reviewed and necessary improvements installed, they would be able to open for business.

Commissioner Halliday requested clarification of the hours of operation Monday through Thursday, and when under 18-year olds could use the facility. It was decided that anyone could use the facility during the evening hours when adjacent businesses are closed. She then asked about the business being told to shut down and not doing it, and what is the usual format for that to occur.

Planning Manager Anderly responded that Community and Economic Director Ehrental, based on the Building Official and Fire Official's report, called their attorney and advised them to close. She said she received an email from the applicant in which they said they thought the safety issues had been addressed. Although the Building Official had not officially red tagged the building, the Planning Director had asked them to close, they were not allowed any use on the site, until the City could verify that the safety concerns had been addressed.

Commissioner Halliday said she spoke to the attorney who said he was somewhat confused



since the outdoor facility had been red-tagged before it was closed. They thought they could continue to use the building until it was red-tagged.

Commissioner Bogue said he also had a conversation with attorney and referred to the letter from Operation Paintball. They thought they had taken care of the items and wondered what other items need to be taken care of before they could reopen the building.

Fire Marshall Montevago explained that the initial inspection was a courtesy inspection during which he noted several violations. Since then it has been determined that the building itself is in non-compliance with codes from both fire and building. Building is not rated appropriate for this use. He asked that the building official address the concerns of the appropriateness of the building.

Chairperson Zermeño asked about the inspection on September 4, and whether a second inspection had then been made.

Fire Marshall Montevago said there had been no second inspection, however, they received additional information on the business itself and the building.

Planning Manager Anderly indicated that a fire alarm system would need to be installed.

Commissioner Fraas asked about the code violations and whether the building could be employed for the proposed use.

Fire Marshall Montevago said the occupancy for the building was not the occupancy, which was known at the time. The use is required to have a notification system, with alarms throughout the buildings.

Commissioner Fraas asked how this affects the retail as well as the gaming area.

Commissioner Bogue asked what more work needed to be done in order for the applicant to use this building for this business.

Supervising Building Inspector Hulse explained that originally the building was built to use as a warehouse and is now an assembly area. He said the City has worked with the architect to bring the building into compliance. There are still other safety methods that need to apply, for example: a smoke alarm system, exit lighting, and an alarm system. The architect was going to submit additional plans.

Commissioner Bogue asked about the building's occupancy load.

Supervising Building Inspector Hulse explained that according to the Building Code if you have an A-4 occupancy, which is an assembly, building, and the occupancy load is less than

50, they could build according to Class B classification. But they would still have to meet other codes for the fire and safety.

Chairperson Zermeño asked about the smoke alarm and audible alarms plus audio system. He noted that exit lighting and exit signs for evacuation are there.

Supervising Building Inspector Hulse explained that they had done a courtesy inspection from which they determined things that needed to be done. He said it is up to the architect to tell the City what level of occupancy is anticipated for the building. When a building is over 5,000 square feet, it must be completely sprinkled which can be a very costly process. By reducing the square footage they could more easily and cheaply comply with the other fire requirements.

Commissioner Fraas asked him what building issues are separate from fire issues.

Supervising Building Inspector Hulse explained that the Building and Fire Codes work hand in hand. This building was designed and built as a warehouse. Now the question is how to exit the people from the building.

Chairperson Zermeño asked whether it was the City's assumption that 50 people would occupy the building at one time.

Supervising Building Inspector Hulse explained that when 50 or more people occupy the building, it must be totally sprinklered. When fewer people occupy the building, it can just be alarmed, which is much less expensive.

Commissioner Halliday suggested that since the applicant cannot change the building size has the City recommended that they close off parts of the building.

Planning Manager Anderly suggested that there are two separate buildings, only one of which is over 5,000 square feet. Since part of it is retail, they might move a wall in order to change the size of the playing field, and not need the more expensive safety systems.

Supervising Building Inspector Hulse explained the concept of a mixed-use building. The City has suggested reducing the square footage to below 5,000 in any and all of their spaces.

Commissioner Halliday asked whether the applicant could physically reduce the size of each space.

Supervising Building Inspector Hulse explained that they have one area with 5,800 square feet at this point. If they reduce it to less than 5,000 they would be in compliance with the lesser requirements.

The public hearing was opened at 8:27 p.m.

Robert Sakai, the applicant's attorney, noted the number of supporters who were in attendance. He said there would have been more had this not been back to school night. He then asked that the time limit of the use permit approval be for a minimum of 10 years rather than five years.



He explained his conversation with Community and Economic Director Ehrental regarding safety concerns, as well as the Fire Marshall's concerns. As to the closing of the business, the outdoor playing field was red-tagged so their expectation was that the City would red tag the building if they were requiring the business to be closed.

Commissioner Halliday asked staff to explain the reason for the 5-year condition, adding that it was interesting to see this condition. She wondered how this condition was calculated to amortize the costs which would be incurred by installing the new requirements. It seems confusing since the applicant could not know what improvements will be required or how much they will cost.

Planning Manager Anderly explained that this was not necessary to amortize every cost. They should be able to recover many of their renovation costs during the 5-year period. Staff still does not think this is the best location for this particular business. Some of the safety recommendations came late to the applicant because the previous recommendation to the Commission was for a denial of the application.

Commissioner Thnay suggested that if the building and fire codes are satisfied, is it possible to eliminate the five-year requirement and provide for an opportunity of renewal if there are no complaints.

Planning Manager Anderly indicated that the Commission could add a condition that would allow the applicant to renew the application within 30-days before the expiration date.

Mr. Sakai explained that the concern would be that competitors would complain to get the City to pull the permit.

Commissioner Thnay said staff needed to protect the integrity of the area. This operation is good for the City.

Assistant City Attorney Conneely explained that the renewal could be submitted. However, if there is a record of complaints or any change in adjacent uses, the change of circumstances in the future should be of consideration.

Planning Manager Anderly explained that this use permit goes with the land and not the operator. She added that there is a potential, because of the nature of it, it might not always run as smoothly as it does now.

Chairperson Zermeño asked Mr. Sakai whether at any one time, are there more than 50-people playing the game.

Mr. Sakai said he would have to let one of the other speakers address this question.

Jerry Reilly said Larry Hulse and Dean Montevago have been helpful. He noted that after the courtesy inspection on September 4, the applicant corrected the safety concerns. They were notified by Planning Manager Anderly that Community and Economic Director Ehrental was going to close the business, but since they had corrected the concerns noted on the first inspection, they thought they were okay. They thought they were cooperating and moving ahead with the program. Mr. Reilly stated that they were willing to comply with whatever is required. He said they were trying to get their building permits but could not until they get approval for the Use Permit. He assumed they were in compliance with the safety regulations but were willing to make the corrections.

Commissioner Halliday asked about condition 6, which requires that changes in plans must be approved by staff.

Planning Manager explained that if the applicant asked for any deviation to the improvements to be done, they must be approved by the Planning Department.

Chairperson Zermeño asked about the notion of the 5,000 square feet requiring the sprinkler.

Mr. Reilly said yes, he understood it to be driven by the size of the building not the number of players. He explained that at any one time, indoor there might be 8-15 players, on the bigger indoor arena between 12-20, in the outdoor 20-24 as maximums. Normally there are not more than 20-25 players in all the fields.

Commissioner Halliday said it was her understanding that staff was not concerned with the one arena outside, but rather with the building, which has two arenas.

Mr. Reilly said that there is a 4-hour firewall separating these two arenas. To his understanding there were two different issues, the occupancy and the fire issue.

Chairperson Zermeño commented that it is a personal safety issue.

Mr. Reilly said they had no problem with complying with any of the safety regulations. All of the work and issues would have been done by now had the use permit been approved.

Commissioner Thnay asked about how long the average game lasts.

Mr. Reilly explained that each game lasts 10-minutes at the most. It's an elimination series. It can be from 2-10 minutes.

Commissioner Thnay asked about the duration, and the number of people waiting to get in.

Mr. Reilly said the most they have had is 60 people total playing and prepping up. He added that they would love to have the problem of how to play 50-people in each arena.

Commissioner Thnay asked why they were objecting to the jazzy design proposed by staff. He said he thought it might be a good marketing tool.



Mr. Reilly said it was not the actual proposal from staff, it is the mixed signals they seem to be receiving from everyone. He added that they are open to whatever the commission tells them to do to bring this field back into operation. He added that one of the problems seems to be the arbitrary nature in some of the improvements.

Chairperson Zermeño said he understood the applicant to be willing to do the necessary improvements to the work towards getting the paintball operation open for business.

Alicia Robinson discussed the hours of operation. She said they thought they would be able to operate from noon. Staff has proposed Monday through Thursday, 5 p.m. to 10 p.m.. They would like to propose hours from noon until 10 p.m., Monday through Thursday; until midnight on Friday; 10 a.m.-12 a.m. on Saturday; 10 a.m. to 10 p.m. on Sunday. She then discussed the various conditions of approval, including the condition for security, which is not a problem at this point. She then asked about a sign saying "No Drugs" commenting that no parks in the area have that sign. She suggested that she would post a sign saying "No Illegal Drugs" although she thought it was unfair. As to the "No Loitering" signs, she said, everyone who comes to their place is welcomed. They hang around and she likes that. She said she could have the netting ordered in any color.

Commissioner Halliday asked staff to comment on their intent for adding condition 11, requiring a security guard on the premises.

Planning Manager Anderly explained that it is not a requirement but a safeguard and would not be required unless there has been a determination that things are getting out of hand. This might not apply to this operator but to assure whoever operates the facility will have this condition, which is typical for places where people congregate.

Commissioner Halliday commented that if they continue to operate as they have, there is no reason to believe staff will impose this condition.

Planning Manager Anderly agreed that there was no reason to assume it would be imposed, if they continue in the manner in which the business is presently conducted.

Ms. Robinson explained that if there were a problem, she would handle it.

Commissioner Halliday mentioned that there are tensions right now between the applicant and staff. This condition will clarify that this would not be required if it continues the way it is going. What about the condition regarding children being there, there are children as young as 8.

Ms. Robinson said State law would not allow children under the age of 10.

Commissioner Halliday commented that the kind of activity on industrial property is not the

same as at a business like Toys R Us, there are no loading docks, or trucks coming in and out of the business, trucks driving in and out could be a safety issue.

Commissioner Fraas congratulated her on her business sense and noted that many of these conditions protect her, and is a process in formalizing the business. The City does not know who might be operating this in the future. Her question was regarding the hours of operations and when patrons under 18 could be on the premises. She asked whether summer days and Christmas recess would fall under those same holiday hours' provisions. She was told no.

Commissioner Bogue discussed the possibility of an exception for children with parents.

Planning Manager Anderly commented that the condition is there for the protection of children in evacuating them in case of a disaster in the area such as a fire or release of chemicals in the industrial area. There has to be a way of removing children from harms way.

The Public Hearing Closed at 9:15 p.m.

Commissioner Bogue asked about the sign on loitering. He commented that it is a normal activity to wait outside.

Planning Manager Anderly said it is a good point since many customers do wait around, removal of the loitering sign would be fine.

Commissioner Bogue moved, seconded by Commissioner Halliday, to approve the staff recommendation with a change in the use permit approval to 10-year period. He said that 16.c., is not necessary. As to the hours of operation, he said he understood the argument for opening earlier, but this provides a sense of protection. The hours should specify that they are only for the playing fields.

Commissioner Halliday commented about the safety of children and being able to remove them in case of emergency. She added that for those children under the age of 18 years old they be allowed in smaller groups. Perhaps a condition should be added that children during business hours be accompanied by a parent or an adult.

Planning Manager Anderly said she thought imposing a condition of ratio of children to adult would be difficult to enforce.

Commissioner Bogue summarized that during the hours of noon to five, Monday through Friday, patrons under 18-years of age could only be there when accompanied by an adult.

Commissioner Bogue suggested going with Condition 10 as it stands, with an addition of 10.a., which would include between the hours of noon to 5 p.m., Monday through Friday, minors under the age of 18 are allowed when accompanied by an adult.

The public hearing was reopened at 9:27 p.m.

Mr. Sakai asked for clarification on whether there is a differentiation between the play fields as



opposed to retail shop.

Planning Manager Anderly said the hours related to children under age of 18, and was not to restrict adults. Retail shop could be open during the day but not to people under the age of 18, unless accompanied by an adult.

Commissioner Sacks said the proposed condition 10 is missing some pieces. She noted that young people at the age of 16 could drive a car.

Chairperson Zermeño re-closed the public hearing at 9:32 p.m..

Commissioner Bogue said he was thinking of how to best address these problems.

Chairperson Zermeño noted that they were trying to help this business succeed.

Planning Manager Anderly suggested that the Planning Commission could make an independent judgment regarding the hours of business relating to children.

Commissioner Halliday said they really could not deny any use by patrons under 16 for special events. She suggested changing the condition to read "from noon to 5 p.m., Monday through Friday patrons under 16-years of age must be accompanied by an adult." She added that she understood that this is for the safety of everyone. Ownership has done a good job of safety up to now but this is to further assure patrons' safety.

Commissioner Fraas asked for friendly amendments to eliminate condition 5, and move 5.b. under Condition 16.

Assistant City Attorney Conneely commented that 5.a., needs to stay in since, by law, the Planning Commission does not have the option to waive the necessary building permits and compliance. She added that 5.a. is also an extra tool for compliance.

Chairperson Zermeño suggested to staff that this would still be on the fast track.

Planning Manager Anderly agreed that staff would fast track this application to the best of their ability.

The motion passed 6:0, with Commissioner McKillop absent.

ADDITIONAL MATTERS

3. Oral Report on Planning and Zoning Matters

Planning Manager Anderly commented about the meeting next week.

4. Commissioners' Announcements, Referrals

Commissioner Sacks commended on all of the young people in the audience.

Commissioner Halliday referred to a comic strip, Zippy, which in July featured the Valle Vista skating rink.

Chairperson Zermeño added his thanks to staff. He noted that the gas station project was good, as was the previous item.

ADJOURNMENT

The meeting was adjourned by Chairperson Zermeño in honor of Hispanic community activist Ray Solis at 10:13 p.m.

APPROVED:

Christopher Thnay, Secretary
Planning Commission

ATTEST:

Edith Looney
Commission Secretary