

The meeting was convened at 7:30 p.m. in the City Council Chambers and was called to order by Chair Massey who led the Pledge of Allegiance.

Those present were: Commissioner Bonilla, Commissioner Drechsler, Commissioner Whitaker, Vice-Chair Hugg, Chair Massey

Motion made by Commissioner Bonilla and 2<sup>nd</sup> by Commissioner Drechsler to approve the minutes of February 25, 2014 with changes. Vote: 4-0-1 Motion passes. Vice-Chair Hugg abstained having been absent from this meeting.

Chair Massey opened the Public Comment Period.

Rich Hedges spoke about the CVS Pharmacy that will be a study session item for the Planning Commission on 3/25/14.

- No one opposes development in this location.
- People were negative after listening quietly to the developer proposal.
- People do not want the pile-driving; lagoon is silting up.
- No one liked the appearance of the proposed building.
- No drive-through was wanted.
- No one was in favor of a left-turn out of the parking lot.
- Parking is not possible when the Fish Market is operating – parking lot is full. People will end up parking by the Marina Library.
- People want to see what the Fish Market reflects.
- This is not an issue of don't build.
- We are not anti-development.
- The lagoon is a wonderful place for kids and people to enjoy. Don't mess it up.

The Chair closed the public comment period.

## **ITEM 1**

### **PUBLIC HEARING**

#### **PA13-071 ZONING CODE AMENDMENTS FOR REASONABLE ACCOMMODATION**

Julia Klein, Senior Planner, gave the staff presentation.

Planning Commission questions for staff:

- How does this ordinance apply to multi-family development? *Staff: For new multi-family development projects, which require-discretionary Planning Application review,*

*the project and the reasonable accommodation request would come to the Planning Commission for review. If it is a duplex or a single-family dwelling, where the changes are minor in nature (would not typically trigger a Planning Application) and can be reviewed through the building permit application process, the applicant can file a reasonable accommodation request and it would be subject to review at Zoning Administrator level.*

- *What if someone becomes disabled and the property owner doesn't want to make alterations? Staff: Any resident that wants to make physical alterations to a building must get property owner approval. If there are difficulties, the tenant would have to file through some other agencies, such as tenant-landlord mediation. City Attorney: This proposed ordinance applies only to residential, not commercial. For commercial properties, it would still require property owner consent.*
- *How would the City enforce removal? Staff: Once the construction is completed, inspected and finalized by the Building Inspector, it is not expected that City staff would go out to check the work again.*
- *Would you provide an example of how a reasonable accommodation request may be a burden on the City? Staff: One example would be a resident might request to construct a ramp that extends to the public sidewalk and necessitate that the City pay for the alteration to the sidewalk in order to accommodate the minimum slope for an ADA compliant ramp. Another example could be the amount of time necessary to explore alternatives. This may be either the applicant's time or staff time.*
- *I have a concern about charging a fee. I understand the need but my hope is that it would be kept as small as possible. Staff: The Planning Commission may make a recommendation to the City Council regarding the range of application fees. The range of fees vary among jurisdictions with reasonable accommodation ordinances, with some jurisdictions having no fees and others charging a fee with an option for applicants to apply for a fee waiver based upon the applicant's financial situation. Additionally, with regards to appeal fees, there are two considerations to keep in mind: 1.) There is an overall interest in standardizing appeal fees. The fee to appeal a Zoning Administrator decision to Planning Commission, and the fee to appeal a Planning Commission decision to City Council. These fees are currently the same. And 2.) Is that if there are no appeal fees, it may create delays or increase the financial burden on the applicant for the reasonable accommodation by unintentionally sending the message that it's easy to appeal. Regarding special needs groups, I'm used to seeing low-income people in that group. Is assistance needed for these groups and is there money available to help? Staff: The City's Community Relations Commission is charged with distribution of Community Development Block Grants (CDBG). We have seen the federal government reduce funding for this in recent years and we are not aware of a city-program that can financially assist to make up the difference in reduced funds. However, non-profit groups that have applied to receive a portion of available CDBG funding, these requests are reviewed and granted by the CRC.*

- There is a need to be fair, equitable, etc., is there a process for a fee to be waived? *City Attorney: There is a range of fees for reasonable accommodation requests, and one possibility is to consider fees based on a sliding scale of income or a waiver. The Planning Commission can make recommendations regarding fees to the City Council.*
- How much of this would be like a special use or a change of use; an extreme or noticeable alteration; what triggers are there for a checklist? *Staff: As proposed in the ordinance, there is a section that discusses the ability for the decision making body to require Conditions of Approval. Section 27.15.090 (on page 4 of Attachment 3) states that Conditions of Approval may be imposed on a request for reasonable accommodation. Currently, a standard Condition of Approval is applied to all Planning Application projects requiring that applicants record a Notice of Project Restrictions. This is an option for reasonable accommodation requests. City Attorney: In order to ensure that future owners know of the alteration/modification from the reasonable accommodation request, the Conditions of Approval could require that the applicant record a Notice of Project Restrictions.*
- The Commission discussed the benefits and constraints associated with whether or not a physical alteration/modification due to a reasonable accommodation request should be required to be removed upon a change in property ownership or when the disabled person no longer resides in the dwelling.
- Staff: Currently, applicants are required to record a Notice of Project Restrictions for Planning Application projects; this is not a requirement for building permit applications that do not require a Planning Application. However, as proposed in the draft ordinance, the decision making body may require Conditions of Approval, and given the City's lack of experience with requests for reasonable accommodation, the draft ordinance provides flexibility to the decision making body to consider conditions on a case-by-case basis.
- The staff presentation is more clear in distinguishing between a reasonable accommodation alteration that is part of a Planning Application and is part of a larger project vs. a stand-alone reasonable accommodation alteration request that is minor in nature and can be reviewed through the building permit application process. Could the draft ordinance provide more clarity? *Staff: yes, we can incorporate that.*
- How would noticing be done? *Staff: As proposed, the draft ordinance requires that the surrounding properties be notified and empowers the Zoning Administrator with the discretion to waive the requirement and to adjust the noticing to those neighbors most affected by the reasonable accommodation request. For example, if the subject property is located adjacent to HWY 101, the Zoning Administrator may require that the applicant notify the abutting property owners & residents; but waive the requirement to notify the property owner immediately on the other side of HWY 101. This may apply to a creek, alley, or other situations. Additionally, if the reasonable accommodation request is part of a larger project that requires other Planning Application approvals, the intent is that the application would be required to comply with the noticing requirement for the Planning Application. Currently, the noticing radius for Planning Applications is a*

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*minimum of 500 feet. For example, a request for reasonable accommodation will not reduce the noticing area in a situation where a new building is proposed to be built because the new building would trigger the requirement for a Planning Application.*

The Chair opened the public comment period. No one wishing to speak, the Chair closed the public comment period.

The Planning Commission had the following comments:

- Section on flexibility needs additional wording.
- Keep the bar low to consider requests.
- Mindful of removing barriers to reasonable accommodation.
- Definitions section, pg 2 , lists some disabilities; however, it does not include people with a debilitating disease; or is the list intended as an example of possible disabilities? *Staff: It is a sample list of disabilities, it is not an all inclusive list. The intent is to be consistent with federal and state laws regarding disabled persons. We can instead incorporate specific reference to state and federal laws as it pertains to persons with disabilities.*
- Regarding the Findings section, it talks about adverse impact upon surrounding properties. *Staff: explained that interest-based negotiation is something that staff often does when a request is made that is outside the normal zoning parameters, such as trying to build a larger home that might impact setbacks.*
- Fees should be minimal and there should be a means for a waiver. Should be some fee for appeals.
- *City Attorney: does the Commission want to see this again before going to Council? Chief of Planning suggested that we move forward with a recommendation to the Council given the City's interest in adhering to the Housing Element schedule for streamlined review. Commission: agreed.*

The Planning Commission provided the following direction to staff:

- Assistant City Attorney provided a summary of the Planning Commission's direction to staff:
  1. Commission is in favor of minimal application fee with the ability to request a fee waiver.
  2. Commission is interested in making it clear that the Zoning Administrator has the ability to require recordation of the conditions of approval or its equivalent.
  3. Commission is interested in having the ordinance explicitly state the Zoning Administrator has the authority to decide, at the time of granting the approval for the reasonable accommodation request, whether the improvement/modification should be permanent in nature or whether it should to be removed at a later date.
  4. Add language to Findings section, item (f), instead of saying that, "There are no reasonable alternatives", change it to say, "No reasonable alternatives have been identified".

5. Revisit need to define "housing for the disabled." Reference state and federal laws.
6. Agree there should be a fee for appeals.

Motion by Drechsler, 2<sup>nd</sup> by Bonilla to recommend this Ordinance to the City Council with the changes stated by City Attorney. Vote: 5-0, motion passes.

#### Announcements/Communications

1. From staff
  - a. Update on Landscape water efficiency ordinance, will be handled by the upcoming Sustainability Commission.
  - b. March 18<sup>th</sup>, Caltrain holding a series of meetings on Draft Environmental Impact Report for electrical rail.
  - c. 3/19 at 7pm, Community Resources Commission and Senior Commission joint meeting to review Housing Element items.
  - d. 3/25, Study Session on CVS Pharmacy on Norfolk.
  - e. 3/26 public workshop on the Housing Element.
  - f. Annual field trip is due. Potential projects to visit will be put together.
2. From the Commission
  - a. Dianne Whitaker out of town on 4/23 meeting

The Chair adjourned the meeting at 9:30 p.m. on Tuesday evening, March 11, 2014 .