

City of Albany

Planning and Zoning Commission Minutes October 26, 2010, Meeting

APPROVED

Note: These minutes are subject to Planning and Zoning Commission approval. The minutes are not verbatim. An audiotape of the meeting is available for public review.

Regular Meeting

1. Call to order

The meeting of the Planning and Zoning Commission was called to order by Vice Chair Moss, in the City Council Chambers at 7:30 p.m. on Tuesday, October 26, 2010.

2. Pledge of Allegiance

3. Roll Call

Present: Maass, Moss, Panian

Absent: Arkin, Gardner

Staff present: Planning Manager Jeff Bond, Special Counsel Greg Stepanicich Planning Clerk Amanda Bennett

4. Consent Calendar

- a. **727 San Pablo. Conditional Use Permit.** The applicant requests City approval to allow a fitness and personal training studio in a vacant commercial space. Nine off street parking spaces will be provided.

Recommendation: For information only.

Planning Manager Bond explained there was a noticing glitch which was why the recommendation was "information only." Commissioner Panian moved continuation to the next meeting. Commissioner Maass seconded.

Vote to continue item **4a**:

Ayes: Maass, Moss, Panian

Nays: None

Motion passed, 3-0.

5. Public Comment on Non-Agenda Items

Clay Larson, Albany resident, wished Ed Fields "Happy birthday." Commissioner Panian stated there was water management inconsistency between the green points checklist and best practices. Vice Chair Moss noted the new green building code would be implemented in January, and the Commission should meet to discuss it in advance. Commissioner Panian wanted to streamline the process to help applicants do the green thing. Vice Chair Moss noted some communities required reports or inspections, and the city might need to consider moving in that direction.

6. Discussions and Possible Action on Matters Related to the Following Items

Planning Manager Bond introduced Greg Stepanicich, Special Counsel. Planning Manager Bond also noted that health concerns related to wireless antennas were not the purview of the

Commission. That important discussion would occur in another venue.

- a. **1035 San Pablo. Planning Application #08-038. Conditional Use Permit. Design Review.** Request for approval of a conditional use permit and design review to allow installation of a nine new antennas and five equipment boxes to the roof top of an existing commercial building.
Recommendation: approval.

Planning Manager Bond delivered the staff report. Vice Chair Moss opened the public hearing and invited the applicant to make a presentation. Shannon McDougall, representing AT&T, spoke in favor of the application. Francis Chapman wanted the city to prepare a long-term vision and make sure the non-conforming equipment would be brought into conformance. He stated the applicant should have used 940 San Pablo Avenue, because it was further from residential uses. He stated this needed an independent review.

Maureen Crowley, Albany resident, read from the zoning ordinance (and handed in a copy) about the height exception for rooftop equipment proviso re: aggregate percentage of square footage. There was already much more than ten percent coverage on that roof. Ed Fields, Albany resident, stated this needed independent expertise and independent monitoring. Julie Beck, Albany resident, wanted these uses moved away from residential uses, recommending the CMX zone, the fire station, or Town Centre.

Michael Barnes, Albany resident, tested field strengths in Albany and found them to be low for urban areas and within allowable limits. He reported it was difficult and expensive to get good coverage in Albany. Dmitri Belser, Executive Director of the Center for Accessible Technology, reported coverage was essential for the disabled.

Heike Abeck, Albany resident, opposed the use in a residential neighborhood. Mr. Larson reported on the height of 1035 San Pablo Avenue having been in question over the years. He requested confirmation of actual heights and an explanation why these were not located at the center of the roof rather than at the edge. Margie Keel El Cerrito resident, had health concerns and was upset the commission had no right to address this. She was concerned property values would drop.

Jan Hitchcock, Albany resident, had health concerns, and noted other carriers had coverage in Albany (she handed in coverage map printouts). Eric Bergman, Albany resident, opposed the use in a residential area, aesthetically and health-wise. Resident at 1201 Dartmouth, stated the alternative sites should be addressed first.

Ms. McDougall spoke in favor of the application. Bill Hammett, engineer, was available to answer questions. No one else wished to speak. Vice Chair Moss closed the public hearing. He asked staff whether Town Centre was feasible. Planning Manager Bond indicated it might be possible with an architectural tower. Commissioner Panian asked whether the Commission could legally approve an increase of a non-conforming use.

Planning Manager Bond reported Commissioner Gardner would have liked the alternate sites

more thoroughly explored. If approved, she hoped for regular monitoring and clear safety signs. Commissioner Panian wanted heights, setbacks, and square footages pinned down, and the appropriate approval requested (CUP, variance, etc.). Additional study of alternatives would be helpful. If/when approved, independent review and monitoring beginning within six weeks of installation.

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Commissioner Maass agreed. Vice Chair Moss asked whether the Albany Theater would have been more ideal. Ms. McDougall noted it would likely be considered an historic site and not allowed. It would also not be a co-location. An AT&T representative, asked for alternate sites to be narrowed down. Commissioner Panian also wanted site maps of alternates with land use explanations of obstacles. He moved continuation. Commissioner Maass seconded.

Vote to continue item **6a**:

Ayes: Maass, Moss, Panian

Nays: None

Motion passed, 3-0.

- b. **1100 Eastshore (Golden Gate Fields). Planning Application #09-027. Conditional Use Permit. Design Review.** The applicant requests City approval to allow the replacement of six existing cell phone antennas and the addition of three new antennas and a microwave dish on an existing racetrack tower at Golden Gate Fields.
Recommendation: Refer to staff for administrative action as a ministerial permit.

Planning Manager Bond delivered the staff report. Vice Chair Moss opened the public hearing and invited the applicant to make a presentation. Chad Christie was available to answer questions. Mr. Larson stated there was danger of muddying the waters regarding the definition of maintenance. New equipment was being added and there was not enough detail even on the replacements. Ms. Crowley stated we should not call it maintenance when it is adding on. She asked whether AT&T could co-locate at the site.

Mr. Barnes noted the differences in AT&T and Verizon technology, so co-location at that site might not help. He supported coverage at the waterfront for public safety. Mr. Fields stressed this might set a dangerous precedent. He wanted staff to prompt other applicants to look at more remote sites like this one. No one else wished to speak. Vice Chair Moss closed the public hearing.

Commissioner Panian stated this was clearly not just maintenance. He would not approve the application. Commissioner Maass was concerned about setting a precedent. He would not approve the application. Vice Chair Moss thought it could be considered maintenance if this was a technology upgrade. There was a lengthy discussion about whether this needed to be denied or not.

There was a two-minute break. Planning Manager Bond recommended these findings if a denial: this use is not allowed in the Waterfront district and not maintenance but an expansion. Commissioner Panian moved denial based on these findings. Vice Chair Moss seconded.

Vote to deny item **6b**:

Ayes: Moss, Panian

Nays: None

Abstentions: Maass

Motion passed, 2-0.

c. 423 San Pablo. Planning Application #09-031. Conditional Use Permit. Design Review

The applicant requests City approval to allow the replacement of four existing wireless communication antennas with new antennas located on an existing 65-foot high monopole.

Recommendation: direction to staff and applicant and continue to November 9 2010 Commission meeting.

There was consensus to hear **6d** before **6c**.

d. 531 Stannage. Planning Application 10-055. Design Review. The applicant is requesting Design Review approval to demolish the existing home and construct a new residence totaling 2,062 square foot, plus partially below-grade basement.

Recommendation: approval.

Planning Manager Bond delivered the staff report. Vice Chair Moss opened the public hearing and invited the applicant to make a presentation. Aaron Nakahara, the project applicant, was available to answer questions. Hickson Meyer, Albany resident, wanted to see a rendition of the project. He noted the plans showed a big box. He noted the water table was high there, so subterranean development was risky.

Commissioner Panian needed attention to details and massing. He recommended reading and having the architect read the Residential Design Guidelines. He noted the garage door needed attention, the porch could be improved, and the single-form roof broken up. He needed a model or perspective drawing of how it would look from the street. Commissioner Maass wanted to see window details. Vice Chair Moss stated the attic vents on the front and the two windows on the second story were awkward. He recommended recessing the garage door to get a shadow line, using a nice, modern garage door, improving the entry space, and breaking up the materials on the side. Commissioner Panian moved continuation. Commissioner Maass seconded.

Vote to continue item **6d**:

Ayes: Maass, Moss, Panian

Nays: None

Motion passed, 3-0.

a. 423 San Pablo. Planning Application #09-031. Conditional Use Permit. Design Review

The applicant requests City approval to allow the replacement of four existing wireless communication antennas with new antennas located on an existing 65-foot high monopole.

Recommendation: direction to staff and applicant and continue to November 9 2010 Commission meeting.

Item 6c: Planning Manager Bond delivered the staff report. Commissioner Maass asked whether the fact the pole was leaning was a factor.

Planning Manager Bond delivered the staff report. Vice Chair Moss opened the public hearing and invited the applicant to make a presentation. Joe Parker, attorney representing the applicant stated that the original application did add antenna but the application was modified when Verizon determined that new antennas are not necessary for the network. Mr. Parker stated that the applicant felt the proposed work was authorized by the Municipal Code and likens the work to replacement of tires on a car, and the FCC regulates technologies and frequencies. He also agreed to submit an RF study at the end of the project. He also stated that the applicant intends to install new mounting bracket and paint the pole to improve appearance. He also stated that original authority was for panels 6 ½ feet in height and the size was reduced to 48 inches five or six years ago.

Ed Fields, Albany resident spoke stating that there are multiple antennas in each fixture and that the application is not about appearance but about adding new technology to a non-conforming site. Maureen Crowley, Albany resident spoke, expressing concern about the tower leading. She also stated that the tower is very close to the apartment next door and said that El Cerrito Plaza may be a better location. Francis Chapman, Albany resident disagreed with the analogy to tires, and compared the proposal to an upgrade of computer components that changes the performance of a computer. Clay Larsen, Albany resident, stated that he believes there is not enough detail to understand whether there is an upgrade in service.

Joe Parker, attorney representing the applicant, said that the intent was to improve performance. He also stated that there might be an opportunity in the future to talk about removal of the pole if there is new development nearby. Vice Chair Moss asked question about the size of the antennas. Joe Parker and Jason Osborn, representing the applicant responded. No one else wished to speak. Vice Chair Moss closed the public hearing.

Commissioner Panian stated that he does not see a trigger in the code that requires an elimination of grandfather use and that the proposal is close to the threshold of maintenance. Commissioner Maass expressed concern about cavalier actions by the contractors to begin to install the antennas, but stated that work strike him more as maintenance. Vice Chair Moss expressed concern that the work is an alteration. Greg Stepanicich, Legal Counsel for the City noted for the record that the application for six antennas has been withdrawn by the applicant.

Vice Chair Moss briefly re-opened the public hearing. Mr. Parker stated that the comment to modify the brackets was intended to do harm, and can be withdrawn. Ed Fields reiterated that they are adding new antennas, which represents an enlargement in non-conforming use.

Commissioner Panian requested clarification regarding action to be taken. City's legal counsel stated that action to authorize staff to approve is different from motion to approve a conditional use permit. Vice Chair Moss noted that have not heard from the applicant regarding the withdrawal of the conditional use permit application. Jason Osborne, representing the applicant, stated for the record that they formally withdraw the conditional use permit application for two additional antennas.

Commission Panian made a motion for staff to resolve the application with the explicit direction that an RF emission study be done on the new equipment to ensure operating within limits and that a geotechnical report and structure report be prepared. Commissioner Panian also stated that the ordinance should be revisited to address these issues. Commissioner Maass seconded the motion.

Ayes: Maass, Moss, Panian

Nays: None

Motion passed, 3-0.

7. Announcements/Communications:

- a. Update on City Council agenda items related to Planning and Zoning activities.
- b. Review of status of major projects and scheduling of upcoming agenda items

8. Future Planning and Zoning Commission Meeting Agenda Items:

- a. Next Regular Planning and Zoning Commission hearing scheduled for November 9, 2010.
- b. A special meeting of the Planning and Zoning Commission is tentatively scheduled for November 9, 2010.

9. Adjournment

The meeting was adjourned at 11:36 p.m.

Next regular meeting: Tuesday, November 9, 2010, 7:30 p.m.

Submitted by:

Jeff Bond
Planning Manager