

City of Albany
Planning & Zoning Commission
Minutes of September 13, 2017 Meeting

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

3
4 **Regular Meeting**

5
6 1. **CALL TO ORDER:** The regular meeting of the Planning and Zoning Commission was
7 called to order by Chair Giesen-Fields in the City Council Chambers at 7:00 P.M. on
8 Wednesday, September 13, 2017.

9
10 2. **PLEDGE OF ALLEGIANCE**

11
12 3. **ROLL CALL**

13
14 Present: Jennings, Kent, Menotti, Giesen-Fields
15 Absent: Donaldson
16 Staff Present: City Planner Anne Hersch
17 Associate Planner Christopher Tan

18
19 4. **EX PARTE COMMUNICATION DISCLOSURES**

20
21 None

22
23 5. **CONSENT CALENDAR**

24
25 City Planner Anne Hersch reported Item 5-2, 1100 San Pablo Avenue, is informational only
26 and no Commission action is needed. In Item 5-3, 1037 Ventura, the applicant is seeking
27 a parking exception rather than a reduction. Staff posted revised findings online with the
28 agenda.

29
30 5-1. **Planning & Zoning Commission Meeting Minutes of July 26, 2017.**

31
32 5-2. **Informational item identifying revisions to the final map at 1100 San Pablo Ave.**
33 **(Belmont Village Senior Living), as a result of the final placement of utilities -**
34 Belmont Village Senior Living is a 175-unit senior independent and assisted living
35 development, which opened in July 2017. The subject site is owned by the
36 University of California and under long-term lease by Belmont Village. As a
37 result of the final placement of utilities at the site, changes to the plat and legal

1 descriptions were necessary at the rear of the property, along 10th Street.
2 These changes align public utility easements and public access easements
3 with the final locations of utilities and the fire truck turnaround, respectively.
4 The revisions (1) vacate the public access easements and public utility
5 easements, which were recorded with the County Assessor's Office in 2015, and
6 (2) grant new easements to align with the final physical conditions. No
7 changes to the project design, open space dedication, or other easements
8 are proposed.

9 **Recommendation: Staff recommends that the Planning & Zoning Commission**
10 **review and approve the proposed revisions.**

11 **CEQA: The Environmental Impact Report (EIR) was certified by the City Council**
12 **via Resolution #2011-51, as well as an addendum to the EIR approved on May**
13 **6, 2013. An environmental impact report for the project was approved by the**
14 **City Council in July 2012. The proposed sign design review does not generate**
15 **new or substantially more severe impacts than what were previously analyzed**
16 **in the project EIR.**

17
18
19 **Motion to approve the meeting minutes of July 26, 2017 as presented and to**
20 **approve Item 5-2** pursuant to the staff report dated September 13, 2017.

21 Menotti

22 Seconded by: Jennings

23 AYES: Jennings, Kent, Menotti, Giesen-Fields

24 NAYES: None

25 ABSTAINING: None

26 ABSENT: Donaldson

27 **Motion passed, 4-0-0-1**

28
29 **5-3. PA 17-048 Design Review & Parking Reduction for a Two-Story Addition at 1037**
30 **Ventura** - The applicant is seeking Design Review and Parking Reduction
31 approval for a 650 sq. ft. second-story rear addition at 1037 Ventura. The
32 subject site is 4,050 sq. ft. lot with a 3 bedroom, 2 bathroom 1,577 sq. ft. house
33 built in 1941. The applicant is proposing to build a 211 sq. ft. first floor addition
34 at the rear of the home and a 439 sq. ft. second story addition. The ground
35 floor addition includes a new guest bedroom, new bathroom, kids/mud room.
36 The second story addition will create a new master suite. A Parking Reduction
37 is required to waive one required off-street parking space. This will result in a 4
38 bedroom, 3 bathroom, 2,227 sq. ft. home with a maximum height of 21'-8".
39 One off-street parking is provided in the existing garage. The architectural style
40 of the home is not proposed to change.

41 **Recommendation: Staff recommends that the Planning & Zoning Commission**
42 **review and approve the proposed project subject to the attached findings and**
43 **Conditions of Approval.**

1 **CEQA: The project is Categorically exempt pursuant to Section 15303 "New**
2 **Construction or Conversion of Small Structures."**

3
4 Associate Planner Christopher Tan presented the staff report dated September 13, 2017.
5

6 **Mike Pourzand**, applicant, advised the Commission that his clients talked to neighbors and
7 received positive feedback generally. In response to the letter opposing the proposed
8 project, Mr. Pourzand stated the proposed project is an addition to the second story, not
9 a two-story project. Structures between the project site and the complaining parties likely
10 will block construction noise. There should not be a parking issue as the lot has sufficient
11 street frontage for construction vehicle parking. He disagreed with characterizing the
12 finished home as a "monster" project. The project will not impact the complaining parties'
13 privacy or sunlight because approximately 300 feet separates their homes from the project
14 site.
15

16 PUBLIC COMMENTS OPENED
17

18 **Nancey Hartman**, 1028 Ventura, requested clarification of the 2016 ballot measure
19 regarding parking and expressed concern about parking on Ventura.
20

21 City Planner Hersch explained the effect of the ballot measure and stated the update to
22 the parking regulations will be presented to the City Council on September 18.
23

24 **Carol Hurwitz**, 1041 Ventura, reported the rear of the home is visible to homes located in
25 the cul de sac. Current construction noise is rather loud.
26

27 **Mr. Pourzand** indicated he received a permit to replace the chimney and work has begun.
28 Demolition of the brick chimney is noisy but within the noise limits. Construction will be
29 complete in 6-7 months.
30

31 PUBLIC COMMENTS CLOSED
32

33 Commissioner Kent noted the space is sufficient for parking and the common practice of
34 parking in the front driveway. He did not believe this is an obstacle to approving the
35 project.
36

37 When asked, **Mr. Pourzand** advised that the driveway will be slightly wider after
38 construction to accommodate a vehicle.
39

40 Chair Giesen-Fields suggested the Commission could require any expansion of the
41 driveway be done with permeable material in order to comply with the driveway width
42 requirement. The change in building height is modest. The placement of the side windows
43 appears to be dictated by the floor plan.
44

1 Commissioner Kent agreed the home was visible from the cul de sac, but the view does
2 not dominate the street.

3
4 Chair Giesen-Fields stated the Commission does not enforce construction hours. The
5 Commission does encourage applicants to work with neighbors regarding construction
6 days and hours.

7
8 **Motion to approve PA 17-048** for 1037 Ventura with staff to work with the
9 applicant regarding the driveway pavement width and pursuant to the staff
10 report dated September 13, 2017. Menotti

11 Seconded by: Jennings

12 AYES: Jennings, Kent, Menotti, Giesen-Fields

13 NAYES: None

14 ABSTAINING: None

15 ABSENT: Donaldson

16 **Motion passed, 4-0-0-1**

17
18 Chair Giesen-Fields noted the 14-day appeal period.

19
20 **6. PUBLIC COMMENT**

21
22 None

23
24 **7. DISCUSSIONS AND POSSIBLE ACTION ON MATTERS RELATED TO THE FOLLOWING ITEMS:**

25
26 **7-1 **Study Session** PA 17-047 Design Review & Variance for a Rear Deck at 951**

27 **Castro** - The applicant is seeking Design Review and Variance approval for a
28 rear deck at 951 Castro. The subject site is 2,500 sq. ft. lot with a 2 bedroom, 1
29 bathroom 1,339 sq. ft. house built in 1947. The applicant is proposing to build a
30 new rear deck off the main level of the existing home. The home has an
31 existing non-conforming rear setback of 12'-1". The proposed deck is
32 proposed to measure 173 sq. ft. in area and will encroach into the required
33 setback area. A Variance is required to allow the proposed deck
34 encroachment. The project scope also includes an interior remodel and
35 conversion of 72 sq. ft. of lower space to create a full bathroom. All remodel
36 work is proposed within the existing building envelope. This will result in a 2
37 bedroom, 2 bathroom 1,411 sq. ft. home with a maximum height of 23'-5".
38 Parking is provided in the existing garage.

39 **Recommendation: Staff recommends that the Planning & Zoning Commission**
40 **review the proposed project and provide feedback to the applicant and staff.**

41
42 **CEQA: The project is Categorically exempt pursuant to Section 15303 "New**
43 **Construction or Conversion of Small Structures.**

44
45 Associate Planner Tan presented the staff report dated September 13, 2017.

46

1 **Rick Kern**, owner, remarked that an adjacent property, also a 50-foot by 50-foot lot, has a
2 deck that is larger than the proposed deck will be. The neighbor's deck is raised above
3 grade.

4
5 PUBLIC COMMENTS OPENED

6
7 None

8
9 PUBLIC COMMENTS CLOSED

10
11 When asked, City Planner Hersch explained that a deck could extend up to 6 feet into the
12 rear yard setback on a standard lot with 100-foot depth. Because this lot is not standard,
13 a variance is needed.

14
15 Commissioner Jennings commented that the outdoor space appears to be severely
16 constrained. Allowing a deck could create more usable outdoor space.

17
18 When asked, **Mr. Kern** indicated the design of the deck railing has not been determined.
19 The space below the deck will be used to access the garage.

20
21 Commissioner Kent had difficulty justifying the variances; although, the deck would add to
22 the livability of the house. Four windows facing the neighbor's property could create
23 privacy issues if the neighbor adds onto his house.

24
25 Commissioner Jennings could make the unique site findings. She wanted more information
26 regarding adverse impacts on neighboring properties.

27
28 Chair Giesen-Fields clarified the need to make certain findings before granting variances.
29 Having neighbors' agreement to design and construction of the deck will allow the
30 Commission to be more confident in making findings. He recommended a wood railing in
31 a style that will not be perceived as a solid wall.

32
33 **Louise Erickson**, owner, reported the adjacent property has been vacant for the past nine
34 months. She requested alternatives to obtaining their approval of the deck design.

35
36 Chair Giesen-Fields advised Ms. Erickson to make some attempts to contact the owner and
37 to share those attempts with the Commission. She can also provide the Commission with
38 comparable properties.

39
40 **7-2. **Call for Review** PA 16-033 Conditional Use Permit for Orange Theory Fitness**
41 **at 1495 Solano Ave.** The Planning & Zoning Commission called the Conditional
42 Use Permit for Orange Theory Fitness for a compliance review. The subject site
43 8,313 sq. ft. with a 6,411 sq. ft. retail/office building with a parking garage built
44 in 1995. The applicant leases 3,152 sq. ft. of ground level space for Orange
45 Theory Fitness. The business offers instructional exercise classes for up to 24

1 participants at a time. Approximately 7 classes are offered during the day
2 Monday-Friday starting at 6 am. The last class is offered at 7:30 pm. The
3 Conditional Use Permit was approved in July 2016 and the business
4 commenced operations in April 2017. The Commission has the right to call a
5 Conditional Use Permit application for review. A series of on-going noise
6 concerns have been identified and will be evaluated by the Commission.

7 **Recommendation: Staff recommends that the Planning & Zoning Commission**
8 **review the Conditional Use Permit and applicant submitted materials and**
9 **make a determination regarding compliance with project findings and**
10 **Conditions of Approval.**

- 11
- 12 1. If the Commission concludes that the permit is in compliance, no
- 13 action is required.
- 14 2. If the Commission concludes that the permit is out of compliance and
- 15 revocation is the next step, a motion would be required to direct staff
- 16 to prepare findings of denial for future review.
- 17

18 **CEQA: The project is Categorically exempt pursuant to Section 15332 "In-Fill**
19 **Development Projects."**

20

21 City Planner Hersch presented the staff report dated September 13, 2017.

22

23 **Bryan Wenten**, attorney for Orange Theory Fitness, reported that in the absence of
24 substantial evidence of noncompliance with conditions of approval or of creating a
25 nuisance, Orange Theory Fitness has a right to continue operating pursuant to the
26 Conditional Use Permit. Orange Theory Fitness has gone to substantial lengths to address
27 the neighbors' concerns. The neighbor appears to want all noise to cease. Testing shows
28 noise levels below those required by City ordinance.

29

30 **Paul Bollard**, Bollard Acoustical Consultants, shared actions taken by Orange Theory Fitness
31 to mitigate noise. The noise generated by Orange Theory Fitness has steadily decreased
32 over time. The most recent testing was conducted after additional mitigations were
33 implemented. When asked, Mr. Bollard reported testing conducted on the deck adjacent
34 to the neighbor's property and inside the neighbor's residence shows noise levels comply
35 with the City's noise ordinance. The noise level was 40 decibels inside the neighbor's home
36 with the windows open and 30 decibels with the windows closed. Prior to the
37 improvements, noise levels complied with the noise ordinance, but Orange Theory Fitness
38 chose to make the improvements to reduce noise. Nighttime noise levels have exceeded
39 the maximum level at times, but that noise was generated by street traffic and such rather
40 than Orange Theory Fitness. Testing included recordings, observations, and analyses of
41 data. Orange Theory Fitness complied with all categories of noise levels. Testing
42 conducted in April occurred prior to implementation of the most recent mitigations. Testing
43 conducted inside the neighbor's residence occurred after implementation of mitigations.

1 **Rory Ellis**, Orange Theory Fitness Director of Design and Construction, described the
2 padding and flooring installed in Orange Theory Fitness.

3
4 PUBLIC COMMENTS OPENED

5
6 **David Garner** advised that the thudding noise has ceased. The instructors' voices continue
7 to wake his family. Mr. Garner's daughter related that instructors' voices and vibrations
8 continue to wake her. At 6:00 a.m., there is no ambient noise, only noise from Orange
9 Theory Fitness. Mr. Garner appreciated Orange Theory Fitness' efforts, but the noise
10 continues. He wanted someone to respond to his emails. Mr. Garner's daughter advised
11 that the main issue is noise at 6:00 a.m. The vibrations she has noticed in the past few weeks
12 may be caused by dumbbells.

13
14 **Unidentified woman** agreed that Orange Theory Fitness instructors can be heard outside
15 the building at 6:00 a.m.

16
17 **Shannon Nakabayashi**, 826 Curtis, indicated the neighborhood in general is noisy. Other
18 businesses in the neighborhood are nuisances. Orange Theory Fitness has made great
19 efforts to mitigate noise.

20
21 **Mr. Ellis** advised that he has responded to emails. He controls the sound at Orange Theory
22 Fitness, and the volume has not been increased in the past three months. This location has
23 the lowest sound level of any of the 750 locations. The business is losing instructors,
24 members, and money because of these issues. When asked, Mr. Ellis related modifications
25 made to workout routines in an effort to reduce noise. He assumed control of the sound
26 system in the Albany studio because of the noise complaints. Classes throughout the day
27 were modified because of complaints about noise throughout the day.

28
29 **Mr. Wenten** encouraged the Commission to focus on the law and relevant evidence.
30 Orange Theory Fitness is in compliance with its use permit and has a legal right to continue
31 operating in the location.

32
33 **Taeasha Bush**, as a member of Orange Theory Fitness, stated the classes are considerably
34 quieter than classes she has attended at other gyms. The instructors do not always use
35 microphones. Mats are not being thrown around. Instructors and staff attempt to control
36 noise.

37
38 **Raul Chinchilla**, Kains Avenue, indicated Orange Theory Fitness has attempted to address
39 noise issues. The instructors have made a point of recognizing noise levels. All along Solano
40 Avenue is noisy.

41
42 PUBLIC COMMENTS CLOSED

43
44 When asked, City Planner Hersch reported the Call for Review does not serve as a
45 compliance report. Staff has not prepared a complete compliance report. The condition

1 of approval does not require noise testing, and the City does not have resources to pay for
2 noise testing. Adjusting the hours of operation to 5:30 a.m. are not part of the current
3 discussion.

4
5 Commissioner Jennings remarked that the perception of noise is subjective; therefore,
6 objective standards are necessary. Objective evidence demonstrates that Orange Theory
7 Fitness complies with the City's noise ordinance and the Conditional Use Permit. She could
8 find no basis to impose additional conditions on Orange Theory Fitness or to revoke the
9 Conditional Use Permit.

10
11 Commissioner Menotti, while sympathetic with the Garners, concurred with Commissioner
12 Jennings' comments. Perhaps the Garners' windows could be replaced with a style that
13 reduces noise.

14
15 Commissioner Kent suggested instructors' voices might not affect the noise study but could
16 affect the neighbors. He questioned whether instructors need to use a microphone.
17 Conflicts will occur where residential uses meet commercial uses. He concurred with
18 replacing the windows or adding vegetation. He recalled Orange Theory Fitness'
19 statement that it would soundproof the building, which supported approval of the use
20 permit. He appreciated Orange Theory Fitness' efforts to reduce noise.

21
22 Chair Giesen-Fields sympathized with both parties and appreciated Orange Theory Fitness'
23 modifications. He suggested Orange Theory Fitness consider removing weight training from
24 all classes or at a minimum from early morning classes. The proximity of the business to
25 residences is a unique situation. He would have preferred to have noise studies conducted
26 by an independent third party and after implementation of all mitigation measures. He
27 could not find reasons to revoke the Conditional Use Permit.

28
29 **Motion to find Orange Theory Fitness in compliance with the Albany noise**
30 **ordinance and regulations.** Giesen-Fields

- 31 Seconded by: Jennings
32 AYES: Jennings, Menotti, Kent, Giesen-Fields
33 NAYES: None
34 RECUSED: None
35 ABSENT: Donaldson

36 **Motion passed, 4-0-0-1**

37
38 **7-3. Proposed Zoning Code Amendments to Section 20.20.110 "Medical Marijuana**
39 **Regulations" of the Albany Municipal Code** - The City of Albany Planning &
40 Zoning Commission will hold a public hearing to consider a recommendation
41 to the Albany City Council for proposed Zoning Code Amendments to Section
42 20.20.110 "Medical Marijuana Regulations" of the Albany Municipal Code.

43 **Recommendation: Staff recommends that the Planning & Zoning Commission**
44 **adopt Resolution 2017-06 forwarding a recommendation to City Council to**
45 **amend Section 20.20.110 "Medical Marijuana Regulations" of the Albany**
46 **Municipal Code.**

1
2 **CEQA: The project is exempt from CEQA pursuant to Section 15061(b)(3).**

3
4 City Planner Hersch presented the staff report dated September 13, 2017.

5
6 Commissioner Menotti suggested removing "add your language here" from lines 17-18 on
7 the first page of the resolution.

8
9 When asked, City Planner Hersh advised that the City Council set the policy direction, but
10 the Commission needs to recommend approval of the amendments.

11
12 Commissioner Kent noted the section titled "lighting" does not indicate when lighting can
13 occur in a greenhouse. Evidence of cultivation could be contrary to good ventilation.
14 Perhaps the language should be "glaring evidence." Chair Giesen-Fields agreed that the
15 language is too broad.

16
17 Commissioner Jennings suggested staff review the State's draft regulations. The City's
18 resolution should track with the State's regulations regarding the activities that the City will
19 allow.

20
21 When asked, City Planner Hersch reported the City Council indicated it would review
22 marijuana regulation in the future to consider allowing commercial sales. The Commission
23 can continue the item to allow review of State regulations and to refine provisions. The
24 City's existing zoning provisions will protect the City from State regulations should the City
25 not enact regulations prior to January 1, 2018.

26
27 Commissioner Jennings recommended the item be continued so that she can offer
28 revisions to the resolution. The State will not issue a cultivation license until the applicant
29 has local land use approval. The State does provide limited grandfathering provisions.

30
31 Chair Giesen-Fields concurred with continuing the item to allow staff to review State
32 regulations. After reviewing video of the Council meetings, he did not understand the City
33 Manager's wish to enact regulations prior to January 1, 2018. He requested the City
34 Attorney be present for the next hearing of this item.

35
36 City Planner Hersch requested Commissioners submit comments to her, and she will attach
37 them to the staff report.

38
39 **Motion to continue this item to a date certain of October 11, 2018.** Menotti

40 Seconded by: Giesen-Fields

41 AYES: Jennings, Kent, Donaldson, Giesen-Fields

42 NAYES: None

43 ABSTAINING: None

44 ABSENT: Donaldson

45 **Motion passed, 4-0-0-1**

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8. NEW BUSINESS

None

9. ANNOUNCEMENTS/COMMUNICATIONS/DISCUSSION

9-1. September 27, 2017 meeting cancelled.

10. NEXT MEETING: October 11, 2017

11. ADJOURNMENT

The meeting was adjourned at 9:20 P.M.

Next regular meeting: Wednesday, October 11, 2017 at 7:00 P.M. at Albany City Hall

Submitted by: Anne Hersch, City Planner

Jeff Bond, Community Development Director