

*City of Albany*  
**Planning and Zoning Commission**  
**Minutes July 10, 2007, Meeting**

*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 Chair Arkin, in the City Council Chambers at 7:30 p.m. on Tuesday, July 10, 2007.

**2. Pledge of Allegiance**

**3. Roll Call**

Present: Arkin, Hitchcock, Maass, Moss, Panian

Absent: None

Staff present: Planning & Building Manager Jeff Bond, Assistant Planner Amber Curl,  
Planning Clerk Amanda Bennett

**4. Consent Calendar**

**a. Minutes from the April 24, 2007, May 8, 2007 and May 22, 2007 meetings.**

*Staff recommendation: approve.*

The consent calendar was approved unanimously.

**5. Public Comment on Non-Agenda Items**

There was no public comment.

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

**a. 1370 Marin Avenue (Bright Star School).** A request for a determination by the Planning and Zoning Commission that the school is operating in compliance with City requirements and conditions of approval and to allow an increase to 55 students.

*Staff recommendation: approve resolution, making determination that school is operating in compliance with approvals.*

Commissioners Panian and Maass recused themselves due to proximity to their residences. Planning Manager Bond and Assistant Planner Curl delivered the staff report. Chair Arkin opened the public hearing. Swarna Matz, the project applicant, spoke in favor of the application.

Glen Elder, 1007 Ramona, asked the Commission not to approve the application until all of the conditions of approval from the original application were met. His concerns included the fence, parking, and planting and landscape. Johari Sims and Loni Gentry, Bright Star parents, spoke in favor of the application. No one else wished to speak. Chair Arkin closed the public hearing.

There was a brief discussion about the issues raised by Mr. Elder. Chair Arkin opined that the site was much improved. He asked about a sign leaning up against the building. Ms. Matz noted they had not applied for approval for the sign yet. Commissioner Moss agreed the site was improved and reported he did not find there to be traffic impacts at 8:00 a.m. and 6:00 p.m.

He wanted to see a schematic landscape and site plan showing as-builts including the hardscape, softscape, the fence, and the refuse and recycling enclosure.

Commissioner Moss moved approval with the conditions: that the plans described above be provided to staff for approval and the work contracted for before September; and the fence be designed with input from the neighbor and replaced. Commissioner Hitchcock seconded.

Vote to approve item 6a:

Ayes: Arkin, Hitchcock, Moss

Nays: None

Motion passed, 3-0.

**Findings. 1370 Marin**

**Determination of Compliance with Conditions from Planning and Zoning Commission approval of application 06-035.** *On July 10, 2007 the Commission reviewed the conditions of approval from application 06-035 and determined the project was in substantial compliance with the conditions. The school, therefore, as part of the approval, the Planning and Zoning Commission made the following conditions on the determination of compliance to allow an increase in enrollment from 30 to 55 children:*

- **A comprehensive site and landscape plan shall be provided, showing all as-builts, including hardscape, softscape, trash and trash screening.**
- **The applicant shall consult and work with the neighbor to the south on design and construction a new 6' fence along the southern property line, subject to staff approval before September.**

**Special Findings Regarding General Plan Land Use Designation and Minimum Lot Size**

<b>Special Finding</b>	<i>Explanation</i>
<p>For purposes of evaluating the application for a use permit at 1370 Marin, the goals and policies of Public/Quasi Public land use designation shall apply to the subject property.</p>	<p>The General Plan land use diagram shows a category of "Institutional" use which includes a specific sub-designation for "Churches." The land use diagram specifically designates the property as a "Church" land use.</p> <p>The only reference to church land uses in the text of the Land Use Element of the General Plan is a paragraph associated with the "Public/Quasi-Public Land Use," which states "The Land Use Plan identifies City of Albany lands, schools, churches, and public utilities." There is no indication in the text of the General</p>

	<p>Plan or in the text of the Zoning Ordinance of an intent to restrict the use of property designated "Church" in the General Plan be limited exclusively to church uses.</p> <p>Furthermore, in Table 1 of Section 20.12.040 Permitted Land Uses by District, the Zoning Ordinance incorporates Religious Institutions under the general category of Public and Quasi-public land uses, and such use is a conditionally permitted use in an R-1 District ;</p> <p>Finally, the City of Albany is a charter city. Courts have ruled that in the event of an inconsistency between general plan land use policies and zoning ordinance requirements, the zoning ordinance shall take precedence.</p>
<p>The minimum lot size regulation is not applicable to the proposed application because the parcel is legally nonconforming in size with respect to the established quasi-public use and there is an apparent intent of minimum lot size standards to be applicable to the creation of new lots.</p>	<p>Table 2A of Section 20.24.020 of the Zoning Ordinance specifies site development regulations, including among other standards, floor area ratio and minimum lot size. Minimum lot size in an R-1 district for a public/quasi-public use is 10,000 square feet.</p> <p>The subject parcel is 4,916 square feet, thus has conforming lot size with respect to single family residential use but nonconforming with respect to public/quasi public use; and</p> <p>Footnote 10 of Table 2A states "Existing lots which do not meet minimum area standards may be developed or improved as provides in Section 20.44, Nonconforming Uses, Structured and Lots;"</p> <p>In turn, Section 20.44.010 C., Permitted Use of Nonconforming Lot, states "a nonconforming lot may be occupied by any use permitted in the zoning district in which the lot is located, subject to the requirements of this Chapter, including but not limited to setbacks, height, and lot coverage."</p> <p>The only reference in the Zoning Ordinance to an application of the minimum lot size</p>

	<p>standard is in reference to establishment a newly-created lot (see Section 20.100.040, Variances);</p> <p>It also should be noted that Public/Quasi Public uses are not subject to a maximum FAR. If the property were to be used for residential purposes, however, the existing building is nonconforming in FAR. The maximum FAR permitted is .55 and the building has an FAR of .70.</p>
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**Special Findings Regarding Noise Study and Noise Impact**

<u>Special Finding</u>	<i>Explanation</i>
<p>For purposes of evaluating the potential noise impacting the school, for application PA06-035, for a use permit at 1370 Marin, the noise study and findings completed by Wilson, Ihrig and Associates shall be applicable.</p>	<p>City of Albany General Plan policies require mitigation measures to reduce noise exposure to normally acceptable levels. The normally acceptable exterior noise level for schools is 60 L<sub>dn</sub>. The normally acceptable interior noise level for schools is 40 L<sub>eq</sub> during the noisiest hour. The noise limit is interpreted by staff to be for the benefit of the children since it is acceptable for adults to work in environments with noise levels well above 60dBA.</p> <p>The City of Albany retained Charles Salter and Associates to conduct a noise study to determine noise levels at the subject site and potential mitigation measures to reduce noise levels at the site if they exceed the maximum allowable 60dBA. Salter and Associates found that noise levels did exceed the maximum allowable and recommended a 6' to 8' wall along Marin Avenue to reduce noise levels at the site.</p> <p>The applicant retained Wilson, Ihrig and Associates to conduct a similar study. Wilson Ihrig also found that noise levels exceeded the maximum allowable and recommended a 4' to 6' wall along Marin Avenue to reduce noise levels at the site.</p> <p>Both consultant firms are well known,</p>

	<p>reputable consultants in the industry; therefore, the Commission determined that the recommendation for a 4' wall, as recommended by Wilson, Ihrig and Associates, shall be appropriate and applicable to the project.</p> <p>Also, the City of Albany allows a maximum height of 3' in the front yard. Social Services Licensing requires a fence/wall with a minimum height of 4' for play areas at school/day care sites. The Commission determined that Social Services Licensing requirements supercede those of the City.</p>
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**Findings for Conditional Use Permit approval (Per section 20.100.030.D of the AMC)**

<b>Required Finding</b>	<b>Explanation</b>
<p>1. <b>Necessity, Desirability, Compatibility.</b>  <i>The project's size, intensity and location of the proposed use will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.</i></p>	<p><i>The projects will be a desirable use in that it provides another option for preschool and day care. With all conditions and regulations complied with the project will create a compatible, desirable use and site for the neighborhood and community.</i></p>
<p>2. <b>Adverse Impacts.</b> <i>The project's use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or physically injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:</i></p> <ul style="list-style-type: none"> <li>a. <i>The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;</i></li> <li>b. <i>The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;</i></li> <li>c. <i>The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;</i></li> <li>d. <i>Treatment given, as appropriate, to such</i></li> </ul>	<ul style="list-style-type: none"> <li>a. <i>The nature of the proposed site, size and shape are appropriate for a preschool and day care. There is yard area for the children to play and a large two-story building where classes can be conducted.</i></li> <li>b. <i>Approval of the project will increase the demand for parking and increase the amount of traffic; however, both can be managed with certain conditions and regulations of parking and driving behavior. Staff recommends that a Traffic Management Plan (TMP) be required to manage and regulate these behaviors.</i></li> <li>c. <i>With the conditions of approval regarding noise implemented no noise, glare, dust or odor will be produced by the approval of the project.</i></li> <li>d. <i>Landscaping, screening and signage are all subject to design review. Conditions</i></li> </ul>

<p><i>aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;</i></p>	<p><i>of approval pertaining to landscaping have been applied requiring specific areas for landscaping.</i></p>
<p>3. <b>Consistency with Zoning Ordinance, General Plan and Specific Plan.</b> <i>That such use or feature as proposed will comply with the applicable provisions of this Chapter and will be consistent with the policies and standards of the General Plan and any applicable specific plan.</i></p>	<p><i>The parcel is zoned "R-1 (Single-Family Residential)", which is not consistent with the General Plan land use designation. The City of Albany is a charter city and thus in the event of an inconsistency between general plan land use policies and zoning ordinance requirements, the zoning ordinance takes precedence. Municipal Code Section 20.12.040 states that schools are permitted in all districts, except for high-density residential, with a conditional use permit,. Staff believes that Public/Quasi Public uses, which include schools, at the subject site and all other sites with the land use designation of "Church", meet the intent and spirit of the General Plan. Staff therefore recommends that the Commission make a special finding that interprets the land use designation of "Church" to be encompassed within the scope of Public/Quasi-public uses.</i></p>

**Findings for Conditional Use Permit approval to allow a parking waiver (Per section 20.100.030(D) of the AMC)**

<b>Required Finding</b>	<b>Explanation</b>
<p>a. <i>On the basis of a survey of comparable situations, parking demand for the proposed use or uses will be less than the required number of spaces.</i></p>	<p><i>The proposed project is for a school and daycare, which means that the majority of vehicular traffic will be for drop-off and pick-up; both of which require an adult to park. The maximum number of employees on site at anytime will be four (4); therefore, the nine (9) required parking spaces are excessive for staff parking.</i></p> <p><i>Although they are public schools and are not subject to city approval, Marin Elementary School and Albany Middle School have little to no parking available on-site. There are residential day cares, which are permitted by the state law, that do not provide any parking</i></p>

	<p><i>spaces on-site. Rockridge Montessori School in Oakland was approved in 2004, has a smaller site, in a similar context with twice as many children and no on-site parking.</i></p>
<p><i>b. The probably long-term occupancy of the property or structure, based on the project design, will not generate substantial additional parking demand.</i></p>	<p><i>The type of use requires temporary parking during pick-up and drop times. A Traffic Mitigation Plan has been required to monitor/direct parking during these times. Also, a majority of enrollees are Albany residents which means that alternative modes of transportation are commonly used which is allowed by the small size of the city. The project will not generate substantial additional parking demand.</i></p>
<p><i>c. Based on a current survey of parking space availability and usage within a five hundred (500)-foot walking distance of the boundary of the site of the subject building, a reduction of the parking requirement will not have a substantial effect on the parking available for neighboring uses.</i></p>	<p><i>Staff conducted such a parking count in a 500' radius of the site on Monday, June 12, 2006, Tuesday, June 13, 2006 and Friday, June 16, 2006. The average percent of utilization for all streets was 65%, with the exception of Santa Fe Avenue (south) which had a utilization rate of 100%. A condition of approval has been adding prohibiting Bright Star enrollees to use Santa Fe Avenue for parking.</i></p>

**b. 922 Polk. Planning Application 07-027. Design Review.** Request for Design Review approval to allow an existing 1,680sq.ft. basement to be converted into habitable space.  
*Staff recommendation: approve.*

Assistant Planner Curl delivered the staff report. There was a brief discussion about the state law regarding secondary residential units. Chair Arkin opened the hearing for public comment and invited the applicant to speak. Amparo Esteban, the property owner, was available to answer questions.

Ed Fields, Kains Avenue, encouraged expediting this approval because secondary units should be encouraged. George Baronofsky, 918 Polk, wanted to know whether the garage was really supposed to be large enough for two cars and whether the driveway would be widened. Doris Mendel, 926 Polk, objected to a multi-unit house in a single-family residential zone. No one else wished to speak. Chair Arkin closed the public hearing.

There was a great deal of concern among the Commissioners that the rest of the finished basement would either be attached to the secondary unit, making it too large to qualify as a

secondary unit (making the building a duplex or multi-unit building which would not be allowed) or be converted to a third unit (which would also not be allowed). Commissioner Moss asked staff to agendize revision to the Zoning Ordinance regarding secondary units.

Commissioner Panian moved continuation of this item to allow the applicant to come back with clearer plans with possible revisions to the windows and exterior stair, and access to and arrangement of the basement rooms. Commissioner Maass seconded.

Vote to continue item **6b**:

Ayes: Arkin, Hitchcock, Maass, Moss, Panian

Nays: None

Motion passed, 5-0.

**c. 1260 Brighton. Discussion of Planning Application 07-039. Design Review. Variance.**

Request for a variance to allow a 6' tall fence in the front yard (along San Gabriel) where 3'-6" is the maximum height permitted located at New Brighton Apartments.

*Staff recommendation: discuss, no action to be taken.*

Assistant Planner Curl delivered the staff report. Chair Arkin opened the public hearing. Bill Lane, the project architect, was available to answer questions. Annette Lemans, 631 San Gabriel, would prefer native plants to a lawn, and landscape to a fence. Jean Safir, Albany resident, asked the Commissioners to speak into their microphones. Ed Fields, Albany resident, recalled another multi-unit building where the City required removal of a similar side-yard fence. No one else wished to speak. Chair Arkin closed the public hearing.

Chair Arkin asked staff to agendize revision to the Zoning Ordinance regarding front yards of corner lots. Commissioners Moss and Panian wanted a benefit to the City to grant a variance – the fence would need to be lovely, landscaped, not all the way out to the sidewalk, perhaps stepped, certainly articulated.

Commissioner Hitchcock favored the fence for security inside and outside of the property. She noted the large-scale projects in the vicinity (BART and the middle school). She would favor the fence being set back from the sidewalk. Chair Arkin thought openness and visibility would be more of a deterrent than a fence, and more in character with the rest of Albany. He suggested an architectural solution – securing the inner portion of the parcel and providing landscaping on the outside. He and Commissioner Moss both lobbied for more modern details than the cornice addition currently proposed.

**d. 747 San Pablo Avenue. Planning Application 07-048. Design Review.** Request for Design Review approval to allow the remodeling of an existing commercial structure, which would result in a new building facade.

*Staff recommendation: provide direction to applicant on appropriate changes and continue the item to item to the July 24, 2007 hearing.*



Chair Arkin recused himself due to his relationship to the parcel. Commissioner Panian recused himself due to proximity to his residence. Assistant Planner Curl delivered the staff report. Acting Chair Moss opened the public hearing. Tim Banuelos, the project architect, was available to answer questions. No one else wished to speak. Acting Chair Maass closed the public hearing.

Commissioner Maass wanted the design to wrap around the side. Commissioner Hitchcock recommended greenery and anything that could be done to make the roof more attractive to those viewing it from the building to the north. There was consensus among the Commissioners that additional height of two to four feet in the parapet would be allowable.

Acting Chair Moss moved approval with the added conditions regarding greenery, wrap-around, and staff approval of same. Commissioner Hitchcock seconded.

Vote to approve item **6d** as amended:

Ayes: Hitchcock, Maass, Moss

Nays: None

Motion passed, 3-0.

**Findings. 747 San Pablo Avenue**

**Findings for Design Review approval (Per section 20.100.050.E of the AMC)**

<b>Required Finding</b>	<i>Explanation</i>
<p>4. <i>The project conforms to the General Plan, any applicable specific plan, applicable design guidelines adopted by the City of Albany, and all applicable provisions of this Chapter.</i></p>	<p><i>The General Plan designates this area for commercial development. Additionally, the project meets City zoning standards for location, intensity and type of development.</i></p>
<p>5. <i>Approval of project design is consistent with the purpose and intent of this section, which states "designs of projects...will result in improvements that are visually and functionally appropriate to their site conditions and harmonious with their surroundings, including natural landforms and vegetation. Additional purposes of design review include (but are not limited to): that retention and maintenance of existing buildings and landscape features are considered; and that site access and vehicular parking are sufficient."</i></p>	<p><i>The proposal is in scale and harmony with existing development in the vicinity of the site. The architectural style, design and building materials are consistent with the City's San Pablo Design Guidelines. The proposed project will provide safe and convenient access to the property for pedestrians. The project will not remove any significant vegetation and will not require significant grading. The project will not create a visual detriment at the site or the neighborhood. The proposed improvements will be an aesthetic improvement to the site and the San Pablo corridor. The sign plan is very attractive and there thoughtful attractive details such as a roof cap and ceramic tile have</i></p>

	<i>been added.</i>
6. <i>Approval of the project is in the interest of public health, safety and general welfare.</i>	<i>The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact property, improvements or potential future development in the area. The project will be an aesthetic improvement to the site and will increase the safety and welfare of the neighbors..</i>
7. <i>The project is in substantial compliance with applicable general and specific Standards for Review stated in Subsection 20.100.050.D.</i>	<i>The project as designed is in substantial compliance with the standards as stated, including access, architecture, natural features, coordination of design details, and privacy. It is an existing building. The improvements will not have impact on neighbors.</i>

**e. Recommendation to the City Council Regarding Submission to the Association of Bay Area Governments of a Nomination of 1100 Eastshore Highway (Golden Gate Fields) as a Priority Conservation Area.**

*Staff recommendation: provide recommendation to the City Council.*

Planning Manager Bond delivered the staff report. Chair Arkin opened the public hearing. Jean Safir, Albany resident, opined the funds were to be used for acquisition of farms and grazing land. She noted it was clear the process would be fast-tracked based on the published timelines, and so no properties where property value issues could be raised by neighbors should be selected.

Noting the lateness of the hour, the Commissioners approved by unanimous consent an extension to 11:30.

Clay Larson, Adams Street, stated this related to properties that could actually be acquired and properties where there was consensus in the community, and that the waterfront and Golden Gate Fields did not qualify, whereas Albany Hill might. Ed Fields, Kains Avenue, supported any attempt to gain control of the property, because racetracks were pushing to add on-site gambling.

Carol O'Keefe, Albany resident, agreed with Ms. Safir and Mr. Larson. She was surprised to see the Clean Green Task Force proposing wind energy on the bulb, because she thought it was already designated as future East Bay Regional Park District land. Debra Dove, 957 Ordway, recommended the bulb and beach areas only, but not the racetrack. Elizabeth Pond, 1067 Peralta, recommended Albany Hill, the Codornices Creek corridor, or the beach. No one else wished to speak. Chair Arkin closed the public hearing.

Commissioner Moss thought protecting the property could make it more difficult to continue the planning process for the area. Commissioner Hitchcock warned against the appearance of subverting the planning process. Commissioner Maass felt rushed. Chair Arkin asked whether the City had asked ABAG whether Albany sites were appropriate and how much money was available. Staff indicated the questions had not been asked.

Commissioner Panian moved forwarding a recommendation not to participate as written. Commissioner Moss seconded.

Vote to approve item **6e** as amended (no recommendation):

Ayes: Arkin, Hitchcock, Moss, Panian

Nays: Maass

Motion passed, 4-1.

Noting the lateness of the hour, the Commissioners approved by unanimous consent an extension to 11:45.

After a poll of the audience members (none were there to hear items **6f** or **6g**), the Commission reordered the agenda to hear item **6h** next.

- f. Review of Administrative Design Review Practices Regarding Vinyl Siding.** Review of staff administrative practice discouraging use of vinyl siding except in unique circumstances.

*Staff recommendation: discuss and provide direction to staff.*

Skipped.

- g. Review of Clean and Green Task Force Recommendations.**

*Staff recommendation: discuss and provide direction to City Council.*

Skipped.

- h. Review of Planning and Zoning Code Section 20.24.050 Regarding Mixed Use Parking Requirements.**

*Staff recommendation: for discussion.*

Assistant Planner Curl delivered the staff report. Chair Arkin opened the public hearing. Susan Moffat, 1012 Kains, stated the residential parking requirements were excessive and ineffective. She hoped for spaces to park bicycles and for car sharing rather than more parking lifts. Ed Fields, Albany resident, opposed an FAR increase on San Pablo Avenue. He wanted to encourage senior housing on San Pablo, which might mean changing the requirement for first-floor retail.

Noting the lateness of the hour, the Commissioners approved by unanimous consent an extension to 12:00.

Clay Larson, Albany resident, felt the FAR was high enough for San Pablo Avenue, and it must be Solano Avenue where there was difficulty. He wanted to see examples. No one else wished to speak. Chair Arkin closed the public hearing.

Chair Arkin suggested encouraging parking in a short lower level (less than six feet in height) that would not be counted in the FAR; he also suggested an exemption of 200 square feet for each residential space. Commissioner Panian noted that if the parking requirements were doubling the construction costs it would be difficult to argue the City was encouraging affordable housing, mixed use, etc. He hoped there was a way to relax the Measure D parking requirements in multiple-unit buildings.

Commissioner Moss did not want all construction maxed out.

Noting the lateness of the hour, the Commissioners approved by unanimous consent an extension to 12:15.

Susan Moffa of 1012 Kains stated that there were parking problems on Kains but would also like to see mixed-use development. For example, a 4-unit condominium constructed behind Arco resulted in a taller, less attractive building to provide the required parking. She also stated the parking lifts were not a practical solution because they are used for storage. Bicycle and car sharing should be continued. It costs \$15K per space, \$20K for podium parking and \$30K for underground. Doubling or more the cost of land, there is no way to provide affordable housing. More efficient solutions are needed.

Ed Fields spoke stating that the parking requirement is not up for discussion. Increasing the FAR may be a hasty choice. Clay Larson stated he would like to see examples of challenges meeting the FAR. He imagines the problems are on Solano and not San Pablo.

Commissioner Panian stated we should really think about the doubling cost of affordable housing as a result of the parking requirements. Commissioner Moss stated it's not about parking. The FAR is meant to keep down mass and encourage better design. Maybe exemptions to parking could be granted if better design is provided. Commissioner Mass suggested allowing the 220sq.ft. exemption like provided for residential. Commissioner Hitchcock asked what do we want in Albany? If there are barriers to affordable housing she would like to see examples.

**7. Announcements/Communications**

- a. Brief status report on the Golden Gate Fields Track Resurfacing application.**
- b. Brief status report on St. Mary's College High School**
- c. Brief status report on Albany Unified School District Cougar Field Project**
- d. Future Agenda Items**

**8. Future Planning And Zoning Commission Meeting Agenda Items**

**9. Adjournment**

The meeting was adjourned at 12:10am.

Next regular meeting: Tuesday, July 24, 2007, 7:30 p.m.

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Submitted by:

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*Amber Curl*  
*Assistant Planner*