

CITY OF FOUNTAIN VALLEY
REGULAR MEETING OF THE PLANNING COMMISSION
FOUNTAIN VALLEY COUNCIL CHAMBERS

JUNE 10, 2009

MINUTES

CALL TO ORDER

The Fountain Valley Planning Commission meeting was called to order at 7:00 p.m. in the City Council Chambers.

SALUTE TO THE FLAG

Chair Drilling led the salute to the flag.

ROLL CALL

Commissioners present: Drilling, Jensen, Proctor, Walker
Commissioners absent: Frank and Gaston (Frank and Gaston arrived late)
Staff members present: Andrew Perea, Planning Director, Steven Ayers, Planner,
Matt Jenkins, Assistant Planner, Rebecca Leifkes, Housing
Technician

APPROVAL OF MINUTES

The Planning Commission minutes of May 27, 2009, were approved as amended by a unanimous vote.

Chair Drilling stated that it was customary for Commissioners to visit applicant sites; that unless any Commissioner had further disclosure statements at this time, it may be stated that no contact was made during the site visit with the applicant, his/her agent, or neighbors of the proposed project.

PUBLIC HEARINGS

1. VERIZON WIRELESS – CONDITIONAL USE PERMIT NO. 1669
Petition submitted by Core Communications on behalf of Verizon Wireless to install a new wireless communications facility consisting of twelve (12) panel antennas, four (4) GPS antennas, and one (1) microwave dish on a new 50'-0", monopalm located at 16061 Brookhurst Street. Continued from the April 8, 2009 and May 13, 2009 and May 27, 2009, Planning Commission meetings.

Chair Drilling opened the public hearing.

Matt Jenkins, Assistant Planner presented the staff report. He stated that the monopalm would be located in the rear of the Performing Arts Center; that the equipment would be housed within an enclosure and that supports the request as submitted.

Michelle Felton, 15505 Sand Canyon Ave., Irvine, stated that she had read all the conditions but needed clarification on Condition 21 that states the equipment shall be covered with a roof structure; she stated this could be achieved one of two ways.

Andy Perea, Planning Director stated that staff would like to see some designs and that the City would not allow chain link, but would allow the walls to be raised to eight feet.

Mr. Jenkins stated that this was included in Condition 21 because Nextel has this as a condition and they have an existing equipment enclosure on the south side of the building.

Ms. Felton stated that by adding the roof, a fan would have to be added; that would add to the cost, noise and size of the equipment.

Commissioner Walker asked if the Commission could vote on the item with approval from staff, and recommended that applicant work with staff on design.

Commissioner Walker asked for clarification stating there is an inconsistency between Condition 10 that states the applicant will repair the facility within 21 days and Condition 23 that states the problems will be resolved within 24 hours. He stated he would like there to be consistency with similar approvals and feels it should be 24 hours to cure.

Mr. Perea stated that Condition 10 deals with residential and Condition 23 is geared toward emergency services; and that the Commission can make a motion to revise Condition 10 to 24 hours for consistency.

Chair Drilling closed the public hearing.

Vice Chair Jensen motioned to adopt Resolution No. 09-07 approving Conditional Use Permit No. 1669 to install a new wireless communications facility consisting of twelve (12) panel antennas, four (4) GPS antennas, and one (1) microwave dish on a new 50'-0" monopalm located at 16061 Brookhurst Street with noted corrections changing Condition 10 to be 24 hours, and including adding the roof structure with approval from staff.

Commissioner Proctor seconded the motion.

By a vote of 4-0 the Planning Commission adopted Resolution No. 09-07 approving a request submitted by Core Communications on behalf of Verizon Wireless for the installation of a 50 ft tall monopalm and associated telecommunication equipment adjacent to the building at 16061 Brookhurst St.

2. T-MOBILE - ZONE CHANGE 471 – CONDITIONAL USE PERMIT NO. 1673 - Petition submitted by Omnipoint Communications a subsidiary of T-Mobile, Inc to rezone the property located at 18225 Bushard Street from Zone A1 – Agricultural to Zone PI – Public and Institutional and a request to construct, operate and maintain a wireless communications facility. The antenna will be concealed inside a 50' pole disguised as a flag pole.

Chair Drilling opened the public hearing.

Steven Ayers, Planner presented the staff report. He indicated that T-Mobile is proposing to install and operate a 50' freestanding flagpole wireless communication facility that will include equipment cabinets, to be located in an underground vault, with two three ft. tall vent stacks; that the applicant is proposing to add additional landscaping to mask the vent stacks; that the use and operation of the church will remain the same, that due to this action, a zone change is required to bring the site into consistency with the general plan and that staff supports the request as submitted.

Mr. Perea added that the Conditional Use Permit cannot be approved without the zone change which is contingent upon City Council approval.

Chair Drilling asked how the church property was designated agricultural.

Mr. Perea stated that most of the City had been zoned agricultural and as parcels were being developed, zone changes were done at that time; that when the General Plan was updated in the 1990s Agriculture uses were eliminated; that the City had gone through citywide rezoning of Fire Stations and schools, and is in the process of rezoning all the churches, but this church has not yet been rezoned so the applicant is requesting the zone change.

Chair Drilling asked if the equipment would be in the public view.

Mr. Ayers stated that the equipment vault will be underground, the antennas will be in the flagpole and the vent stacks will be screened with landscaping.

Vice Chair Jensen stated it would look like an 18 inch wide flag pole.

Mr. Perea stated that there is one located and the southeast corner of Magnolia and Talbert that is 18 inches wide.

Jin Park, Sequoia Development of One Venture, Suite 200, Irvine, CA representing T-Mobile was available to answer questions. He stated that he had photos of the flag pole located at the southeast corner of Magnolia and Talbert for the Commission.

Chair Drilling asked how tall is the existing pole and proposed flag poles are.

Mr. Park stated the existing and the proposed flag pole are both 50 ft.

Commissioner Proctor asked the diameter of the existing flag pole on the church property.

Mr. Park stated it is smaller than 18 inches.

Bill Walker residing at 9472 Toucan, Fountain Valley stated he lives within 200 ft. of the proposed location; he asked if other churches would be required to be rezoned Public Institutional or if by rezoning the whole parcel it makes it susceptible to some other action; if a Change of Ownership is required if the church is changing ownership of the property; if there are known health issues associated with emissions, or if the City knows if there are any actions that T-Mobile is defending against regarding health issues since he has concerns regarding noise levels, vibrations and magnetic waves and radiation emitted by the equipment; if there are studies that show what happens to property values in proximity of the flagpoles.

Mr. Perea stated that this church is a legal non-conforming use currently, but due to what is being proposed, they are required to be re-zoned to PI; that any new church, or expansion, change of use would require this rezoning; that if T-Mobile were to sell to or change to another carrier, then they would be required to advise the City of any change of ownership at the time; that studies have been conducted by the Federal Communication Commission (FCC) has conducted the studies and has established standards for safe human exposure, and have passed laws that pre-empt cities from denying projects based solely on health impacts; and the he cannot comment on the property value issue since he has not seen or conducted studies.

Jin Park stated that the health issues come up frequently and that T-Mobile operates in full compliance with those standards set by the FCC, and he brought additional informational brochures; that in cases where the equipment is above grade, there is minimal noise, equivalent to the sound of a house fan, for equipment housed underground, no noise or vibration can be detected.

Commissioner Walker wanted to clarify that no smoke comes out of the stacks; that they are used to circulate air and one is an exhaust and one is an intake; and that it is much more expensive to install these underground and he commended the applicant for efforts in working with staff; and he asked the height of the vent stacks.

Mr. Park stated they would be between 2 ft. and 3 ft.

Commissioner Walker wanted to clarify that the church is on the west side of the street and not on the east side of the street.

Janet Walker residing at 9472 Toucan Avenue, Fountain Valley, stated that she has walked around the area and has viewed the flag pole at the Magnolia site and understands how it can be allowed in a commercial zone; that she believes it is unattractive and that the flag pole should not be allowed next to a residential zone.

Commissioner Proctor asked what color the flag pole would be painted.

Jin Park stated the pole would be painted white or a metal color.

Commissioner Walker stated that the flag pole was originally proposed to be 24 inches in diameter and he is glad to see it will be 18 inches wide and maybe in the future they can get as narrow as 6 to 8 inches; and he believes the equipment at Magnolia and Talbert looks better than free-standing panels or fake pines when they are not done properly.

Chair Drilling closed the public hearing.

Commissioner Walker moved to adopt Resolution No. 09-26 approving Conditional Use Permit No. 1673 submitted by T-Mobile, on behalf of the First Methodist Church of Fountain Valley, to install and operate a freestanding flagpole wireless communication facility and adopt Resolution No. 09-29 recommending approval of Zone Change No. 421 to change the zoning of the 2.4 acre parcel at 18225 Bushard Street from A-1 – Agricultural to PI – Public Institutional.

Vice Chair Jensen seconded the motion.

Commissioner Frank arrived at 7:26pm

By a vote of 4-0-1, Commissioner Frank abstaining, the Planning Commission adopted Resolution No. 09-26 approving Conditional Use Permit No. 1673 submitted by T-Mobile, on behalf of the First Methodist Church of Fountain Valley, to install and operate a freestanding flagpole wireless communication facility and adopt Resolution No. 09-29 recommending approval of Zone Change No. 421 to change the zoning of the 2.383 acre parcel at 18225 Bushard Street from A-1 – Agricultural to PI – Public Institutional.

Mr. Perea stated that a public hearing will be scheduled before the Council for the zone change and the Conditional Use Permit is conditional upon that approval.

3. NAVY FEDERAL CREDIT UNION – CONDITIONAL USE PERMIT NO. 1675
Petition submitted by Schuss Clark, an architectural corporation, on behalf of Navy Federal Credit Union (NFCU) to install an outdoor Automated Teller Machine at the business located at 18709 Brookhurst Street.

Mr. Ayers presented the staff report. He stated that the ATMs will be located on the front elevation of the suite and will operate 24 hours a day, seven days a week and that staff supports the request as submitted.

Chair Drilling opened the public hearing.

Amy Malloy, representative for Navy Federal Credit Union stated that she had read all the conditions; she asked for clarification on whether Condition 11 called for a separate trash containment area or the existing area needed to be screened and gated.

Mr. Perea stated the existing refuse containment area shall be screened and gated.

Commissioner Proctor asked if Navy Federal Credit Union intends to have a guard walking the premises.

Ms. Malloy stated that bullet proof glass will be installed; that a guard will not be on-site.

Chair Drilling closed the public hearing.

Commissioner Proctor motioned to adopt Resolution No. 09-27 approving Conditional Use Permit No. 1675 submitted by Schuss Clark, on behalf of Navy Federal Credit Union, to install and operate an automatic teller machine at the new branch located at 18709 Brookhurst Street.

Commissioner Frank seconded the motion.

By a vote of 5-0 the Planning Commission adopted Resolution No. 09-27 approving Conditional Use Permit No. 1675 submitted by Schuss Clark, on behalf of Navy Federal Credit Union, to install and operate an automatic teller machine at the new branch located at 18709 Brookhurst Street

4. AP SMOKES AND LIQUOR MART – CONDITIONAL USE PERMIT NO. 1676
Petition submitted by Paul Dharam to obtain a Conditional Use Permit for off-sale general liquor (Type Type 21) in conjunction with an existing retail mini-market at 17951 Magnolia Street.

Mr. Ayers presented the staff report. He stated the applicant has purchased the business and is it operating as a mini-market; that the previous owner lost their Conditional Use Permit through the revocation process by City Council; and that the Police Department has recommended that the applicant be required to have video surveillance systems installed to monitor sales transactions.

Chair Drilling opened the public hearing.

Vice Chair Jensen asked if the video surveillance equipment was to be permanent.

Mr. Perea stated that it will be permanent as it is a requirement of the Police Department.

Commissioner Frank asked if the Police Department was going to come on a regular or random basis to check the sales to ensure that they are not selling to minors.

Mr. Perea stated that he is not sure when they would check it, but believes that the Police Department would check it if there were complaints or ongoing problems, but he would have to confirm that with the Police Department.

Commissioner Frank stated that it is unknown if it will be a planned response as in management by exception rather than pro-activity.

Mr. Perea stated that it is unknown.

Chair Drilling asked what the hours of operation will be.

Mr. Perea stated the hours of operation are the same are currently being operated as a market and that they are just proposing to add the sale of liquor.

Chair Drilling asked if the commission is able to change hours.

Mr. Perea stated that the hours can be changed to address concerns.

Commissioner Walker stated that the business is currently a market, but the picture provided with the application shows beer advertisement in the window.

Mr. Perea stated that their Conditional Use Permit was revoked by City Council and the liquor license was suspended by ABC so they can operate as a market only; that the request they are making is to sell liquor which requires a CUP.

Chair Drilling asked why it is necessary to have the hours as proposed.

Mark Atchan, business advisor and agent for the buyers of 17951 Magnolia Street, Fountain Valley stated that the new owner is currently operating the business as a mini-market.

Satish Skarpa, owner of the business stated these are normal business hours for a liquor store and they are providing a service.

Chair Drilling asked if there is a lot of business from 12:00am to 2:00a.m or if he knows what the percentage of their business is between that period.

Mr. Skarpa stated that sometimes there is a lot of business during that time, other times, not as much business; and that he owns an AM/PM and a liquor store in Costa Mesa.

Mr. Atcham stated that the owner would like the later hours so that they can afford to pay the high rent and overhead.

Commissioner Walker asked how long the owner has been working at the subject site.

Mr. Skarpa stated he has been an owner of other locations for 20 years, but not at this site so he does not know how much business he will get during that time.

Mr. Atcham stated the owner has liquor stores on Beach Blvd. in Huntington Beach and on Fairview in Costa Mesa.

Commissioner Walker asked if Condition 7 is correct since the previous resolution was for both suites but has been revoked.

Commissioner Walker stated that Condition 7 needs to be removed since the CUP was revoked.

Commissioner Walker asked who is currently operating the store. He stated that they do not appear to be following the requirements since a condition is that they are not allowed to advertise alcohol in the windows and the picture submitted with the application shows three different liquor signs in the windows; and asked who provided the photo.

Mr. Atchan stated that the photo was provided by the previous owner and it is unknown when the photo was taken.

Mr. Perea stated that the Conditional Use Permit revocation eliminated their ability to sell liquor.

Commissioner Frank asked if the old owner is required to sell the business within a specified time period as a condition of the revocation.

Mr. Perea stated that the owners are not required to sell and can continue to operate the business as market as long as the current owner is not selling alcohol.

Commissioner Walker stated the picture shows advertisements for liquor and Condition 33 states there will be not advertising of alcohol toward the public.

Mr. Perea stated that per the sign code, anything more than 3 ft. from the window is not considered signage.

Commissioner Proctor asked if the 10 minute parking only signs painted on the curbs are allowed.

Mr. Perea stated that there is no separate parking designations allowed throughout the City, and while they may be designated, they are not enforced.

Commissioner Proctor asked to have the curbs repainted to remove the 10 minute parking only spot.

Mr. Perea stated the business is requesting the same closing hours but they currently open at 8:00 am, and the new owners want to open at 7:00am.

Commissioner Walker stated he is not as concerned about when they open.

Commissioner Frank stated he does not want the store open until 2:00am. He is proposing that the closing hours be revised to 10:00pm weekdays and 12:00am weekends; he is not concerned with when they open but he is more concerned about when they close.

Commissioner Walker agreed that the hours should be changed to close 2 hours earlier.

Commissioner Frank moved to Adopt Resolution No. 09-28 approving Conditional Use Permit No. 1676 submitted by Dharam Paul to obtain a Conditional Use Permit for off-sale general liquor (Type Type 21) in conjunction with an existing retail mini-market at 17951 Magnolia Street with a revision in the hours of operation to be Sunday through Thursday from 7:00 a.m. to 10:00 p.m. and Friday and Saturday from 7:00 a.m. to 12:00 a.m. and to include a Condition that the curbs be repainted to remove the 10 Minute Only parking signs from the curbs.

Commissioner Frank asked staff to review surveillance video occasionally.

Mr. Perea stated that he is sure the Police Department would do whatever they can within the confines of law.

Chair Drilling stated that the video surveillance equipment should be checked regularly to be sure the mechanics of the system are working; she asked if the equipment can be checked quarterly to make sure it is operating properly.

Mr. Perea stated that the surveillance equipment is a requirement of the Police Department to have it installed and monitored.

Commissioner Proctor stated that the emphasis on the name of the business is on "smokes" and "liquor" not on the store being a mini-mart.

Mr. Atchan stated they had to put up a sign advertising that they are no longer able to sell liquor.

Vice Chair Jensen stated that based on Condition 32 they will only be allowed one third of floor area for alcoholic beverages and the remaining two-thirds must be devoted to selling something else besides alcohol.

Mr. Atchan asked if he could make a comment.

Mr. Perea stated that comments would have to be limited to hours of operation since the motion was revised to address the hours.

Mr. Atchan stated there is another liquor store on the southwest corner of the intersection but he does not know their hours of operation but is sure they are open later than 12:00 a.m.

Commissioner Frank stated that the other store was not subject to numerous complaints and is not in front of this Commission.

Mr. Atchan stated that these are new owners.

Commissioner Frank stated there was no difference to him since this location was known as a place where under aged people could buy alcohol; and that the applicant could come back later in the future showing that they have complied with all of their Conditions and could request to change the hours of operation.

Mr. Atchan asked if they could stay open and just not sell alcohol after midnight.

Commissioner Frank stated no; that the hours the business will close is 10:00 p.m. weekdays and 12:00 a.m. weekends.

Mr. Atchan stated that they are being restricted.

Commissioner Walker stated they could back in the future to request a change of hours.

Commissioner Frank stated that while he cannot say if he would approve a change to the hours in the future, that if they came back and showed they were complying by not selling any alcohol to minors, he would be more amiable to entertain the idea, but currently he is not interested in allowing the later hours of operation.

Chair Drilling closed the public hearing.

By a vote of 5-0 the Planning Commission adopted Resolution No. 09-28 approving Conditional Use Permit No. 1676 submitted by Dharam Paul and Shashi Kanta Sharma, on behalf of the property owner, to establish and operate a liquor store with off-sale general liquor (Type 21) in conjunction with an existing retail mini-market at 17951 Magnolia Street with a change in the hours of operation to be Sunday through Thursday from 7:00 a.m. to 10:00 p.m. and Friday and Saturday from 7:00 a.m. to 12:00 a.m.

Commissioner Gaston arrived at 8:10pm

PUBLIC APPEARANCE

None

NEW BUSINESS

5. SIGN COMMITTEE MEETING UPDATE

Mr. Perea gave a brief update of the Sign Committee actions from the June 10, 2009 meeting.

SIGN PERMIT NO. 08-34 - FOUNTAIN VALLEY REGIONAL HOSPITAL

The Sign Committee recommended approval of Sign Permit No. 08-34 subject to Planning Commission approval of the requested variances. The Planning Commission will consider the variance request at their July meeting.

SIGN PERMIT NO. 09-08 – WARNER / BUSHARD

The shopping center located at southwest corner of Warner and Bushard the Sign Committee approved Sign Permit No. 09-08 subject to the property owner posting a financial surety bond to guarantee consistency of all signage on one of the multi-tenant buildings. By a unanimous vote, the Sign Committee approve the permit.

SIGN PERMIT NO. 09-12 – RUG GO.

Sign A Rama's request, on behalf of Rug Co., to install one illuminated cabinet sign located at 18155 Euclid, was approved as submitted. By a unanimous vote, the Sign Committee approved the permit.

The Commission received the report as presented.

UNFINISHED BUSINESS

None

COMMISSION COMMENTS

Mr. Perea advised that the City Hall will be closed every other Friday beginning July 2, 2009, that hours of operation are will be 7:00am to 5:00pm Monday through Thursday and open 8:00am to 5:00pm every other Friday.

Commissioner Frank asked when the packets would be delivered if the office was closed that Friday.

Mr. Perea stated that the packets will be delivered on Thursdays; that the Artificial Turf was approved by the City Council last week; that the Density Bonus will be going before Council in July; and that there is a project being proposed to the County, off Harbor in our M1 zone influence, to develop 66 affordable senior apartments; that the County recently enacted an affordable housing Overlay Zone within our sphere of influence, that allows residential units in an M-1 zone when the project is next to major arterial, if the units will be 100% affordable; that it does not require public review or public notice and that once it is signed by the County Planning Director it is available for review for 15 days. The City will be submitting an appeal during the 15 day comment period.

Vice Chair Jensen asked if the location was south of Edinger.

Mr. Perea stated that the location is east of Harbor, south of Edinger. He stated that the Summerfest is this weekend with a Car show on Saturday.

Vice Chair Jensen asked about the construction at Edinger and Euclid.

Mr. Perea that construction is moving forward on that site.

Chair Drilling asked if the fountain is off due to budget cuts.

Mr. Perea stated the fountain is off to conserve energy and save money.

Chair Drilling stated that she has been to the Fresh and Easy, off Warner, numerous times, that recently had an academy approved and there were a lot of kids loitering between 4:00 p.m. and 5:00 p.m.

Commissioner Frank stated that there were concerns brought up at the time of approval and there was to be plenty of room to the rear of the location to accommodate the children.

Mr. Perea stated that the Preschool is not open yet and is still in construction, and that the Tutoring facility is open and maybe where the children are coming from, or from the high school.

Chair Drilling stated that nothing is happening with the Arby's.

Mr. Jenkins stated he spoke with the City's Building Official, Bob Elkins, who advised there are problems with construction.

Mr. Perea stated they are not allowed to construct on an Edison easement but are working through the issues.

Commissioner Proctor stated that the Hospital is moving along and looks good.

Commissioner Walker asked if anything is happening with Sam's sign program for the Gas station.

Mr. Jenkins stated they are submitting conceptual plans for the signs soon, but no formal submission yet.

Vice Chair Jensen asked if anything has happened with the Newhope Edinger property.

Mr. Perea the property was recently sold and he met with the new owner and architect and they are interested in developing condos.

Chair Drilling asked about the vacant nursery property.

Mr. Perea stated there is interest in the property but nothing is happening.

Commissioner Frank stated that now is not the time financially to open a business.

ADJOURNMENT

The Planning Commission meeting of June 10, 2009, was adjourned at 8:25 p.m. to the next regularly scheduled Planning Commission meeting of July 8, 2009.

APPROVED:

Chairperson

Secretary