

**APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING
SEPTEMBER 12, 2001**

1 **ROLL CALL**

2
3 Time: The meeting was called to order at 7:08 p.m.

4
5 Location: North Berkeley Senior Center.

6
7 Commissioners Present: Bronstein, Curl, Howerton, Poschman, Tabb, Wengraf, Wrenn.

8 Commissioners Absent: Hicks, McCamant.

9 Staff Present: Barrett, Cederborg, Cosin, Diamond, Ratcliffe, Rhoades.

10
11
12 **INTRODUCTION OF THE NEW PLANNING AND DEVELOPMENT**
13 **DIRECTOR**

14
15 Staff Cosin introduced the new Planning Director Carol Barrett.

16
17 Director Barrett expressed her pleasure at the opportunity to work for the City of
18 Berkeley.

19
20 **PUBLIC COMMENT PERIOD**

21
22 Linda Hart spoke on behalf of Alice Landes, a homeowner at 1155 Hearst. Linda Hart
23 noted Ms. Landes' opposition to zoning changes proposed for the 1100 block of Hearst.
24 She stated that the proposed zoning would be inconsistent with the existing types of
25 structures in the area. She urged the Commission not to reclassify those properties.

26
27 **ORDER OF AGENDA**

28
29 Commissioners agreed to place item 10 immediately following item 7.

30
31 **CHAIRPERSON'S REPORT**

32
33 No report.

34
35 **CITY COUNCIL ACTIONS**

36
37 No report.

38
39 **FUTURE AGENDAS**

40
41 It was noted that the second Planning Commission meeting in September has been
42 rescheduled for September 19.

43
44 It was also noted that there will be a public hearing concerning the proposed MULI
45 rezoning in October.

46

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47 **ZONING ORDINANCE AMENDMENTS : TECHNICAL CORRECTIONS TO**
48 **THE ZONING ORDINANCE**

49

50 Staff Ratcliffe presented two minor typographical errors that require correction.

51

52 M/S/C to open the public hearing (Poschman/Wengraf). Ayes: Curl, Wengraf, Howerton,
53 Wrenn, Tabb, Bronstein, Poschman. Noes: None. Abstentions: None. Absent:
54 McCamant, Hicks.

55

56 Howie Muir suggested the corrections are too narrow and do not cover all the standards.
57 He gave suggestions for changes to modify the proposed corrections.

58

59 M/S/C to close the public hearing (Poschman/Wengraf). Ayes: Curl, Wengraf, Wrenn,
60 Tabb, Bronstein, Poschman, Howerton. Noes: None. Abstentions: None. Absent:
61 McCamant, Hicks.

62

63 M/S/C to approve Staff recommendation with additional changes as outlined by Mr.
64 Muir. (Wengraf/Poschman). Ayes: Curl, Howerton, Wengraf, Wrenn, Tabb, Bronstein,
65 Poschman. Noes: None. Abstentions: None. Absent: McCamant, Hicks.

66

67 **ZONING ORDINANCE AMENDMENTS: PROVISION OF REASONABLE**
68 **ACCOMMODATION TO ENSURE FAIR ACCESS TO HOUSING AND**
69 **PROPOSED AMENDMENT TO ZONING ORDINANCE REGARDING**
70 **APPLICATION PROCESS FOR ACCESS RAMPS**

71

72 Staff Cosin explained that the City Attorney requested the Zoning Ordinance amendment.
73 The proposed rezoning is intended to create greater disabled access in the City.

74

75 M/S/C to open the public hearing (Poschman/Bronstein). Ayes: Curl, Wengraf, Wrenn,
76 Tabb, Bronstein, Poschman, Howerton. Noes: None. Abstentions: None. Absent:
77 McCamant, Hicks.

78

79 Gerald Baptiste, the Deputy Director for the Center for Independent Living, supported the
80 Staff's recommendation to add the chapter on access and to alter the Zoning Ordinance
81 concerning the application process for ramps.

82

83 Margie Cochran, also from the Center for Independent Living, stated her support for
84 Staff's recommendation.

85

86 M/S/C to close the public hearing (Poschman/Wengraf). Ayes: Curl, Wengraf, Wrenn,
87 Tabb, Bronstein, Poschman, Howerton. Noes: None. Abstentions: None. Absent:
88 McCamant, Hicks.

89

90 Commissioner Poschman requested that Staff explain the public hearing notice.

91

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92 Staff Cosin explained there are two separate amendments. One concerns the addition of a
93 “reasonable accommodation” chapter to the Zoning Ordinance, and the second proposes
94 an amendment regarding the section dealing with ramps and lifts. Where there is a
95 maximum height, the recommendation is to eliminate a height limit entirely. At present
96 an Administrative Use Permit (AUP) is required in order to construct an access ramp or
97 lift within a setback; this requirement would be removed, and the ramp/lift would be
98 handled as a ministerial permit. These changes would make the process easier for the
99 disabled community because a public review process and additional fees would not be
100 required.

101
102 Commissioner Poschman asked why appeals are not included in this proposal
103 since the samples from other cities included in the Commissioners’ packet provide appeal
104 measures.

105
106 Commissioner Wengraf expressed her concern that if public notice is not required,
107 encroachments in the side yard next to adjacent properties could occur without the
108 knowledge of those property owners. She also asked if a designated landmark seeking to
109 add a ramp would be required to submit to the City’s landmark process.

110
111 Staff Rhoades explained that this amendment would not affect the existing landmark
112 process.

113
114 Commissioner Wengraf stated that she supports the intent of the proposed rezoning, but
115 is concerned about neighbors who may be unaware of changes made that will affect
116 them.

117
118 Commissioner Poschman stated that since there is no notice to all who may be affected,
119 and no appeal process possible, the proposed amendment is flawed.

120
121 Staff Cosin stated that the only change in terms of process would be with regard to
122 wheelchair lifts and ramps.

123
124 Commissioner Wengraf asked what would happen to a property once there is a change of
125 ownership.

126
127 Staff Cosin stated there are no provisions for any ramp or lift to be removed in this case.

128
129 Commissioner Wengraf asked if only owners could obtain these permits and if curb cuts
130 are included.

131
132 Staff Cosin answered that the permits could only be issued to building owners and that
133 curb cuts are not included.

134
135 Commissioner Poschman asked why the City of Berkeley chose to deviate from the
136 approaches followed by other cities. He suggested that signatures be collected to make
137 sure those affected will be notified before property changes take place.

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138

139 Staff Rhoades stated that there is a backlog of AUPs and, under the current system, it
140 takes months to obtain one.

141

142 Commissioner Wengraf asked if a compromise could be made. In each case, it should be
143 determined whether a side yard encroachment is involved; if not, then a ministerial
144 permit could be issued, however, if a side yard encroachment is involved, then an AUP
145 would be required.

146

147 Staff Cosin agreed to make changes requiring more notification on ramps and lifts that
148 will encroach into side yards.

149

150 M/S/C to close the public hearing (Poschman/Wengraf). Ayes: Curl, Wengraf, Wrenn,
151 Tabb, Bronstein, Poschman, Howerton. Noes: None. Abstentions: None. Absent:
152 McCamant, Hicks.

153

154 M/S/C to approve Staff recommendation with changes (Wengraf/Poschman). Ayes: Curl,
155 Howerton, Wengraf, Wrenn, Tabb, Bronstein, Poschman. Noes: None. Abstentions:
156 None. Absent: McCamant, Hicks.

157

158 **ZONING ORDINANCE AMENDMENTS: PROHIBITIONS AND**
159 **RESTRICTIONS RELATED TO CARRY-OUT AND QUICK SERVICE**
160 **RESTAURANTS ON SAN PABLO AVENUE**

161

162 Staff Ratcliffe provided a background report. The City Council, concerned by the
163 proliferation of carry-out and quick service restaurants on San Pablo, referred the matter
164 to the Planning Commission. Staff proposes to prohibit quick service and carry out
165 drive-throughs in designated nodes and eliminate the spacing restrictions. Staff proposed
166 that Drive-throughs may be allowed in other places besides the nodes with a Use Permit,
167 as there are some benefits for families or disabled persons. It was noted that there are
168 three drive-throughs currently in Berkeley.

169

170 Commissioner Wengraf asked for clarification regarding the distinction between quick
171 service and carry out.

172

173 Staff Ratcliffe stated that already prepared food is carry-out and food prepared on the
174 premises that might be eaten on those premises is considered quick service.

175

176 Commissioner Wengraf asked if there are different standards for each.

177

178 Staff Cosin stated that the findings are the same for both. She noted that the current
179 zoning would be applied only to new restaurants.

180

181 M/S/C to open the public hearing (Poschman/Wengraf). Ayes: Curl, Wengraf, Wrenn,
182 Tabb, Bronstein, Poschman, Howerton. Noes: None. Abstentions: None. Absent:
183 McCamant, Hicks.

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184
185 Resident Howie Muir, who lives on San Pablo and Derby, supported Staff's
186 recommendation. He asked that the Commission support a ban on drive-throughs so as to
187 discourage fast food service and encourage development which is more likely to
188 contribute the local character of the area.
189
190 Resident Cynthia Wooten supported the Staff's findings but stated they are simply
191 findings. She asked the Commission not to act until additional standards are developed.
192 To illustrate the need for more standards regarding this issue, she gave a recent example
193 of a Popeye's fast food restaurant that received a "new use" classification even with the
194 moratorium on new fast food restaurants.
195
196 Commissioner Wengraf asked if Popeye's is considered a "new use".
197
198 Staff Cosin clarified that Popeye's is not a new use but a modification of an existing use.
199
200 John McBride suggested there be a ban on new drive-through operations. He also asked
201 that the City develop design standards; that new buildings not be set back so much from
202 the front property line; and that new development not be oriented to the automobile. He
203 urged new standards which would support local businesses.
204
205 Commissioner Wengraf supported the ban on drive-throughs and asked John McBride
206 how spill-over parking would affect the neighborhoods if buildings are not set back, and
207 therefore, less parking is provided.
208
209 John McBride stated that as a part of the regular zoning process, the City would still
210 require businesses to plan for parking.
211
212 Commissioner Poschman asked John McBride what he thought of the Council's initial
213 idea to place 1000 feet between these businesses, and Staff's suggestion to remove it.
214
215 John McBride stated he prefers standards rather than findings.
216
217 Commissioner Poschman supported the ban on more drive-throughs anywhere on San
218 Pablo. He also suggested AUP and use permits be the same for carry out establishments.
219 He requested that Staff do more analysis to determine if 500 or 250 feet would be more
220 feasible than the proposed 1000 feet. Instead of applying the circular 1000 feet radial
221 boundaries, he suggested using linear boundaries instead.
222
223 Staff Cosin stated that a ban on drive-throughs is possible but the question of whether to
224 employ an AUP or Use Permit was not noticed for the September 12th public hearing.
225 She recommended not using a linear measure since each block is different and should be
226 looked at on a site-by-site basis.
227
228 Commissioner Wengraf favored the ban on drive-throughs and supported Staff's
229 recommendation to eliminate the 1000 feet between uses because restricting these

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230 businesses discourages independently owned restaurants, which are assets to the
231 neighborhood.

232

233 Commissioner Bronstein referred to Solano Avenue planning efforts as an example of
234 taking the whole community into consideration when making changes. She stated that
235 the same should occur on San Pablo. She stated that chain stores will proliferate if there
236 is no zoning control because they have the capital to pay the rents.

237

238 Staff Cosin suggested each potential business be evaluated in relationship to the character
239 of the area.

240

241 Commissioner Wren stated that the design of these businesses in question is an issue of
242 concern.

243

244 Commissioner Tabb supported the idea of not discouraging other kinds of businesses by
245 applying restrictions related to distances between like uses.

246

247 Commissioner Poschman proposed a motion to send the ban on drive-throughs to
248 Council, and suggested requiring a use permits for carry-outs.

249

250 Commissioner Wengraf requested that the motion be severed.

251

252 M/S/F to require a use permit rather than an AUP for carry-outs (Poschman/Bronstein).
253 Ayes: Poschman. Noes: Curl, Wengraf. Abstentions: Tabb, Wrenn, Howerton,
254 Bronstein. Absent: McCamant, Hicks.

255

256 M/S/C to recommend that Council adopt the amendment as presented by Staff, with the
257 change that new food service drive-throughs be prohibited on all of San Pablo Avenue
258 (Poschman/Bronstein). Ayes: Bronstein, Curl, Howerton, Poschman Tabb, Wengraf,
259 Wrenn. Noes: None. Abstentions: None. Absent: Hicks, McCamant.

260

261 Commissioner Wengraf asked about the difference in fees between an AUP and a use
262 permit.

263

264 Staff Ratcliffe stated that the fees for an AUP is around \$400, while the fees for a use
265 permit is around \$2,500.

266

267 M/S/C to close the public hearing (Poschman/Wengraf). Ayes: Curl, Wengraf, Wrenn,
268 Tabb, Bronstein, Poschman, Howerton. Noes: None. Abstentions: None. Absent:
269 McCamant, Hicks.

270

271 **ZONING ORDINANCE AMENDMENTS : PROCEDURAL ISSUES RELATED**
272 **TO THE INTERACTION OF THE LANDMARKS PRESERVATION**
273 **ORDINANCE (LPO) AND THE ZONING ORDINANCE**

274

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275 Staff Diamond recommended that the Commission not take action at its September 12th
276 meeting. She stated that the Landmarks Preservation Commission (LPC) has scheduled
277 two more meetings regarding this matter since there are some unresolved issues regarding
278 design review requirements. She stated that LPC Commissioner Carrie Olsen requested
279 that the Planning Commission not forward an action to Council, given that the LPC is
280 still in the evaluation process.

281

282 M/S/C to open the public hearing (Bronstein/Poschman). Ayes: Curl, Wengraf, Wrenn,
283 Tabb, Bronstein, Poschman, Howerton. Noes: None. Abstentions: None. Absent:
284 McCamant, Hicks.

285

286 John McBride asked the Commission for more time. He stated that the LPC needs more
287 time to discuss how to make this work properly.

288

289 M/S/C to continue public hearing until such time as the Landmarks Preservation
290 Commission comments on the proposed amendments, and require that the continued
291 public hearing be re-noticed (Wengraf/Poschman). Ayes: Curl, Wengraf, Wrenn, Tabb,
292 Bronstein, Poschman, Howerton. Noes: None. Abstentions: None. Absent: McCamant,
293 Hicks.

294

295 **COMMITTEE REPORTS**

296

297 Commissioner Bronstein noted that the LPC item should not be scheduled at the same
298 time as the MULI public hearing.

299

300 **ADJOURNMENT**

301

302 Meeting adjourned at 9:35.