

**PLANNING COMMISSION MEETING OF FEBRUARY 23, 2009**

**2008-0994 - Ben P. Aibuedefe** [Appellant] **B&A Enterprises** [Owner]: Appeal by the applicant of a decision by the Director of Community Development denying a Miscellaneous Plan Permit for construction of a trash enclosure at an existing ConocoPhillips automobile service station. The property is located at **801 N. Fair Oaks Avenue** (at E. Ahwanee Ave. near Hwy. 101) in a C-1/PD (Neighborhood Business/Planned Development) Zoning District. (APN: 204-09-004) MH

**Trudi Ryan**, Planning Officer, presented the staff report. She said staff recommends that the Planning Commission deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit.

**Comm. Hungerford** discussed with staff the differences between staff's recommendation, Alternative 1, and Alternative 2 with staff confirming that either alternative requires that a masonry trash enclosure be built or grocery sales would have to cease.

**Comm. Klein** discussed with staff the number of service stations with grocery sales in Sunnyvale. **Comm. Klein** discussed with staff the City's requirements for trash enclosures.

**Chair Rowe** discussed with staff that only four of service stations were recently required to build a trash enclosure as the others were in compliance. **Chair Rowe** discussed with staff the placement of the trash receptacles and accessibility for the solid waste trucks to pick up the trash.

**Chair Rowe opened the public hearing.**

**Ben Aibuedefe**, applicant, said the first permit to construct on this site is from 1968 and he has been involved with this site for about a year. He said that constructing the masonry wall is an economic hardship for him. He asked that he either be given more time to comply or be allowed to build the wall with wood or chain link which is less expensive.

**Comm. Hungerford** asked Mr. Aibuedefe about the cost of the concrete enclosure.

**Comm. Travis** asked Mr. Aibuedefe how much extra time he thinks he needs.

**Chair Rowe** discussed with staff what would be a reasonable extension of time.

**Comm. McKenna** discussed enforcement actions should the enclosure not be built on time.

**Chair Rowe** asked about revocation of the use permit for non-compliance.

**Chair Rowe closed the public hearing.**

**Comm. Sulser** moved for Alternative 1, to deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit. The motion died for lack of a second.

**Comm. Travis** moved for Alternative 3, to grant the appeal and approve the Miscellaneous Plan Permit with modified conditions, while confirming that a modified project with masonry walls and a steel door is required by Code. **Comm. Travis** said he would grant the applicant five months from this hearing date to have the enclosure completed which is one year from the grocery sales extension. **Vice Chair Chang** seconded the motion.

**Comm. Travis** said he recognizes that times are financially difficult right now so he is willing to work with the applicant by giving him more time to complete the enclosure. **Comm. Travis** said that the enclosure must be masonry.

**Vice Chair Chang** said he would be supporting the motion and that this will give the applicant a little more time to complete the enclosure.

**Comm. Klein** said he would be supporting the motion, however he would have required the enclosure be built in a shorter amount of time. **Comm. Klein offered a Friendly Amendment that until the enclosure is built that the applicant/appellant be required to keep the trash bins behind the facility. The Friendly Amendment was acceptable to the maker and seconder of the motion.**

**Comm. Sulser** said he would not be supporting the motion. He said he thinks this is a heartbreaking situation however he does not see a remedy that the Commission can grant.

**Chair Rowe** said she would not be supporting the motion as the City has been very generous in granting the applicant extensions and the City is asking nothing of the applicant that is not asked of other applicants.

**ACTION: Comm. Travis made a motion on 2008-0994 to grant the appeal and approve the Miscellaneous Plan Permit with modified conditions, while confirming that a modified project with masonry walls and a steel door is required by Code; that the applicant be allowed five months from this hearing date to complete the enclosure; and that until the enclosure is built that the applicant be required to keep the trash bins behind the facility. Vice Chair Chang seconded. Motion carried 5-2, with Chair Rowe and Comm. Sulser dissenting.**

**APPEAL OPTIONS: This action is final.**