



**APPROVED MINUTES
SUNNYVALE PLANNING COMMISSION
April 9, 2012
456 W. Olive Avenue, Sunnyvale, CA 94086**

7:00 PM - Study Session – West Conference Room

- 1. File #:** 2012-7124
Location: 811 Mulberry Lane (APN: 198-28-019)
Proposed Project: Design Review for a 1,200 square foot second-story addition to an existing 2,447 square foot single-family home resulting in (gross floor area) square feet and 52.7% floor area ratio in a n R-0 (Low Density Residential) Zoning District.
Environmental Review: Categorically Exempt Class 1
Staff Contact: Shaunn Mendrin, 408-730-7429, smendrin@ci.sunnyvale.ca.us
Notes: (20 minutes)
- 2. Subject:** Review of 2012 Planners Institute
Notes: (30 minutes)
- 3. Public Comment on** (5 minutes)
Study Session Agenda
Items
- 4. Comments from the Chair** (5 minutes)

8:00 PM - Public Hearing – Council Chambers

The Planning Commission met in regular session with Chair Hendricks presiding.

CALL TO ORDER/SALUTE TO THE FLAG

ROLL CALL

Members Present: Chair Glenn Hendricks; Vice Chair Gustav Larsson; Commissioner Arcadi Kolchak; and Commissioner Brandon Sulser.

Members Absent: Commissioner Bo Chang (excused); Commissioner Maria Dohadwala (excused); and Commissioner Nick Travis (excused).

Staff Present: Trudi Ryan, Planning Officer; Kathryn Berry, Senior Assistant City Attorney; Diana O'Dell, Senior Planner; and Recording Secretary, Debbie Gorman.

SCHEDULED PRESENTATION - None

PUBLIC ANNOUNCEMENTS/PUBLIC COMMENTS

Speakers are limited to three (3) minutes. If you wish to address the Planning Commission, please complete a speaker's card and give it to the Recording Secretary or you may orally make a request to speak. If your subject is not on the agenda, you will be recognized at this time; but the Brown Act (Open Meeting Law) does not allow action by Planning Commission Members. If you wish to speak to a subject listed on the agenda, you will be recognized at the time the item is being considered by the Planning Commission.

CONSENT CALENDAR

1.A. APPROVAL OF MINUTES of March 26, 2012.

ACTIONS: Vice Chair Larsson moved to approve the consent calendar. Comm. Sulser seconded. Motion carried 3-0, with Comm. Kolchak abstaining and Comm. Chang, Comm. Dohadwala, and Comm. Travis absent.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **File #:** **2012-7119**
 Location: **880 Lori Ave. (APN: 165-25-071)**
 Proposed Project: Use Permit to allow a Large Family Day Care (LFDC) within
 300 feet of another LFDC.
 Applicant/Owner: Lee Miller / Gary and Li Chiao Miller Trustee
 Environmental Review: Categorically Exempt Class 1
 Staff Contact: Elise Lieberman, 408-730-7440,
 elieberman@ci.sunnyvale.ca.us

Trudi Ryan, Planning Officer, presented the staff report.

Vice Chair Larsson discussed with staff the proposal to limit the outdoor play to two hours. Ms. Ryan said she does not think there is a condition limiting the outdoor play to a certain number of hours.

Chair Hendricks asked staff to comment about petitions as the report includes a petition from neighbors opposing the project. Ms. Ryan said a petition is one piece of information of several to take into consideration. She said staff does not know what was discussed when the signatures were being collected. Chair Hendricks confirmed with staff that the proposed project would be allowed by right if there were not another day care within 300 feet and the Planning Commission is looking at the cumulative effect of multiple day cares.

Chair Hendricks opened the public hearing.

Darcy Hellums, applicant, said she currently runs a daycare in a house on Morse Avenue with 12 children, however the current location is being sold. She said her landlord assisted her in locating the 880 Lori Avenue site as a possible rental. She said she has looked for other locations; however, this is the only option she found. She said she spoke with one of the potential neighbors and they were concerned about noise levels and children looking through the fence. Ms. Hellums said that the children would only be outside about twice a day. She explained her plans for the use of the space and for blocking noise, discussing the program and structured curriculum she offers. She said she spoke with the owner of the nearby LFDC, Manijeh Khazeni, and her main concern was traffic safety for children that may be playing in the street. She said she has a parking agreement that both parents of her day care children would have to read and initial along with a staggered drop off and pick up chart. She said that Commercial day cares only require one parking space for 14 students and her driveway has two parking spaces, and two on street. She said if she is not able to run the LFDC at this site that a small family day care is not a viable option as she would need to let go six children and a teacher. She discussed the childcare situation in the community and said her goal is to make a smooth transition for the daycare children.

Vice Chair Larsson said during the presentation Ms. Hellums mentioned safety of children playing in the street as a concern of other daycare. He asked Ms. Hellums if she knew which children were playing in the street. He said also in that in her written comments she had spoken

with neighbors who seemed supportive. Ms. Hellums clarified the neighbors were not necessarily supportive, but were understanding, yet uncertain.

Manijeh Khazeni, neighbor and owner of the other LFDC within 300 feet, clarified that in her conversation with Ms. Hellums she meant neighborhood children playing in the street were her concern, not the children from her daycare. Ms. Khazeni said as she is supportive of this LFDC as a qualified teacher with a quality program and she is not concerned about the competition. However, she said she is very concerned about increased traffic and the safety of children in the neighborhood with the extra cars.

Majid Barghi, a neighbor, said he agrees with Manijeh regarding the concern about traffic. He said sometimes that he has a problem finding a parking space near his house. He said Lori Avenue already has enough traffic and safety is the main issue.

Marie Bond, a neighbor, said she is most concerned about an increase in traffic and impact on parking as there is already a lack of parking on the street. She said if the daycare were a little further away, she would not mind. She commented that there is also a small daycare on the street. Vice Chair Larsson discussed with Ms. Bond the current parking and the drop off and pick up of children. Ms. Bond said with 12 additional daycare children on the street there could be three or four children being picked up at the same time, and with the multiple daycares she is concerned about multiple cars coming at same time.

Mohammad Beyk, co-owner of the other LFDC, commented about traffic and parking. He said there is a small daycare about five houses down and kids in the neighborhood do play on the sidewalks. He said three daycares in the same area bring concerns about safety and traffic.

Ms. Hellums said that safety is her biggest concern. She said her daycare parents understand they need to drive slow and safely, and have a staggered drop off and pick up schedule. She said Manijeh closes her daycare at 5:30 p.m. and her daycare would close at 6 p.m. She said she has been living on Morse Avenue, right across from Columbia Neighborhood Center and there have not been any concerns with traffic, parking or safety. She said parents hold their children's hands when in the street and typically, there is only one or two children being picked up at a time with a few minutes needed for dropping off and picking up.

Chair Hendricks closed the public hearing.

Comm. Kolchak asked staff about the nearby small daycare. Ms. Ryan said the Planning Division does not track the small family daycares.

Vice Chair Larsson said the applicant mentioned that there is always at least one space available for parking in the driveway and confirmed with staff that a requirement for this could be added to the conditions.

Vice Chair Larsson moved for Alternative 2, to approve the Use Permit with modified conditions: to add a condition that requires at least one parking space always be available in the driveway for use by the parents. Comm. Kolchak seconded the motion.

Vice Chair Larsson said he was able to make the findings. He said the main issues brought up have been traffic and parking in the neighborhood. He said the City has traffic calming available if speed becomes an issue. He said it appears this neighborhood already has parking issues and he said with the staggered drop off and pickup times that we talking about a car about every five to 10 minutes, which seems like a small number of cars. He said he was able to make the findings and there is a need for more day care in the community. He said for these reasons he supports the approval of the project.

Comm. Kolchak said he was able to make the findings and after looking at the parking agreement from the daycare, that with the modification to the conditions regarding the parking spaces in the driveway, and the detail provided by the applicant, he can support the motion.

Comm. Sulser said he would be supporting the motion. He said he thinks the applicant has made efforts to control noise levels.

Chair Hendricks thanked the members of the public for attending and providing input. He said he could make the findings and would be supporting the motion. He said he thinks the cumulative effect in a day would be 12 cars in morning and 12 cars in the afternoon, which he does not think will be a problem.

ACTION: Vice Chair Larsson made a motion on 2012-7119 to approve the Use Permit with modified conditions: to add a condition that requires at least one parking space always be available in the driveway for use by day care parents. Comm. Kolchak seconded. Motion carried 4-0, with Comm. Chang, Comm. Dohadwala and Comm. Travis absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than April 24, 2012.

3. **File #:** 2011-7719
Location: 153 E. Fremont Ave. (APN: 211-34-001)
Proposed Project: Appeal of a decision by the Zoning Administrator approving with conditions a Special Development Permit to allow live entertainment (amplified acoustic music) at Da Kine Café.
Appellant/Applicant/Owner: Tulip After School/Da Kine Café / Soo Lee et al
Environmental Review: Categorically Exempt Class 1
Staff Contact: Mariya Hodge, 408-730-7659, mhodge@ci.sunnyvale.ca.us

Trudi Ryan, Planning Officer, presented the staff report. She provided a correction, referring to page eight of the report that the language in Alternative 1 and 4 should also include the “new condition AT-6”.

Comm. Sulser discussed with staff the proposed hours of operation requested by the applicant.

Vice Chair Larsson asked about the six-month review, how neighbors could find out about the review. Staff explained that an approval this evening would be granting a six-month permit and the applicant would need to apply for a new permit in six months so the standard public noticing for a Zoning Administrator public hearing would occur. Ms. Ryan said staff would remind the applicant about two months before the permit would expire that they would need to re-apply and staff would have about five months of experience to consider for the next permit.

Chair Hendricks asked staff about petitions as the report includes a petition from neighbors opposing the project. Ms. Ryan said a petition is one piece of several pieces of information to be considered and staff does not know what was discussed when the signatures were being collected. Chair Hendricks asked staff about maximum capacity, outdoor tables, and amplification. Ms. Ryan said the amplification is only allowed for inside the restaurant and the conditions of approval require the doors to be kept closed. Chair Hendricks noted that on his site visit he observed that it looks like the restaurant is already set up for amplified music. Staff said yes, and that the applicant was advised that they needed an entertainment permit. Chair Hendricks confirmed that special approvals would be needed for special events.

Chair Hendricks opened the public hearing.

Pete Be, applicant and managing director at the Da Kine Café, and provided a letter and outline of his discussion this evening. He said Da Kine Café is a Hawaiian restaurant with Hawaiian-themed music and sound would not be heard outside. He said the demographics they are targeting are families. He said this is not a high school hang out and most of the high school students are gone by 4 p.m. He said to minimize noise they have agreed to not empty trash until the music has stopped. He said a few neighbors came by and said the restaurant is not what the petition said it was, clarifying that this is not a nightclub. He confirmed that this is a Hawaiian restaurant with Island style cuisine and Tahitian and hula music and dancing.

Ram, a neighbor, said the townhome area he lives in has been a quiet area with no noise from the businesses. He expressed his concern that with approval of this project that he thinks they will have unwanted noise that will disturb the neighborhood.

Sameer Nigade, a neighbor, said this business backs up to his neighborhood, which has been a nice, quiet neighborhood. He said that if there is a restaurant with live music that he thinks there will be a noise factor not appropriate for the neighborhood. He said he is also concerned about more traffic in the parking lot and possible problems that may result. Vice Chair Larsson talked with Mr. Nigade about the neighborhood, including noise from football games, with Mr. Nigade saying the football games are okay, however he does not think the proposed entertainment is a good example for kids.

Giridhar Malavali, a neighbor, said he lives next to this site, and said he is concerned about the times of operation of the live music. He said he thinks the live entertainment during the 6 to 9 p.m. time on a school night will be noise affecting his children's study time. He said the music has already disturbed them. He said noise from the high school is occasional and does not usually go past 7 p.m. and this live entertainment would be on a regular basis. Vice Chair Larsson confirmed with Mr. Malavali that the noise and amplification has already been a problem. Chair Hendricks asked how loud the music was. Mr. Malavali said the first time he heard it, he thought it was his next-door neighbor and then he realized it was from the restaurant.

Comm. Sulser discussed the noise ordinance with staff. Ms. Ryan added the entertainment use at this restaurant was not permitted.

Chandvashekhan Joshi, a neighbor, said he had heard the restaurant noise at night. He said he feels bad for those who live closer or do not have double paned windows. He said most of the businesses in the commercial complex are closed by 9 p.m. He expressed concern about the customers this kind of entertainment may attract and in the summer, more children are around and the alcohol, music and dance could disturb the area.

Sunil Kumar Rai, a neighbor, expressed his concern about permitting alcohol and entertainment, and the noise from people leaving the restaurant late in the evening. He said there are a lot of young children and families with school-aged children in this neighborhood. He said he thinks the crime rate could go up if the entertainment is allowed. He said the neighborhood is not gated and he thinks the use could be a problem for the residential community.

Robert Chen, apartment manager next to the shopping center, discussed his concerns about noise from the shopping center operations, including noise from taking the garbage out. He said he has already had tenants move out due to the noise. He said the business owner wants to stay open later and there will be more noise in the parking lot later at night. He said when the school has activities, they are usually over by 10 p.m. He said he does not think parents want their children from the high school to come here, as there are already some problems. He said

the business owner has already started having music without a permit. Chair Hendricks asked Mr. Chen how late the nearby gas station is open. Mr. Chen said, probably 9 o'clock.

Mr. Be said he has heard the message about noise, drugs, and attracting high school kids. He said his facility faces Sunnyvale-Saratoga Road and they do not have a back door. He said he would challenge a noise meter to see if the noise the neighbors are talking about comes from his facility. He said the demographic for their business is families and that they provide a kid-friendly environment. He said they work closely with Fremont High School to eliminate potential issues. He said he has not seen drug dealing going on and they have worked with the High School to help eliminate pot smoking.

Vice Chair Larsson confirmed with the applicant that they have license to sell beer and wine. Mr. Be said that when they opened the facility that he did not know he needed a permit for entertainment and said they have worked with Neighborhood Preservation staff to correct the permit situation. He addressed previous activities at the site.

Chair Hendricks discussed with the applicant the volume of the music.

Comm. Kolchak clarified with the applicant that they would like to play Hawaiian music, and occasionally play jazz or soft rock.

Chair Hendricks confirmed with the applicant that their occupancy is 48.

Ms. Ryan clarified the noise ordinance and the decibels allowed and said the noise would be measured at the property line.

Chair Hendricks closed the public hearing.

Vice Chair Larsson moved for Alternative 1, to grant the appeal and approve the Special Development Permit with the conditions listed in Attachment B (including new Conditions of Approval #PC-1 and AT-6). Comm. Sulser seconded the motion.

Vice Chair Larsson said he could make the findings. He said the major issue seems to be noise. He said allowing this use for a six-month period should allow ample time to collect data. He said if there is a problem, neighbors should contact the City. He said regarding noise, there is only one door, which must be kept closed, and it is pointing towards Sunnyvale-Saratoga Road. He said there is a condition that prohibits dancing, or DJ music, so the establishment is not turning into a nightclub.

Comm. Sulser said he agrees with Vice Chair Larsson. He said if the applicant follows the conditions of approval, this business should not be a problem. He said if there are any problems that the public should contact City staff.

Chair Hendricks confirmed with Vice Chair Larsson that he was satisfied with the six-month review going to the Zoning Administrator hearing for review.

Comm. Kolchak offered a Friendly Amendment that if there are issues occurring that need to be addressed sooner than six months that the review occur earlier. Vice Chair Larsson discussed the Friendly Amendment with staff. **Comm. Kolchak** reworded his **Friendly Amendment to add to condition GC-4.b that if there are valid complaints about more than five separate events at the Café that an earlier review process would be triggered. The Friendly Amendment was acceptable to the maker and seconder of the motion.**

Chair Hendricks thanked the public for attending and providing input. He said he could make the findings and the issue here is volume. He said he is having trouble believing dinner-level music with the door closed could translate so loud to go over the complex into the housing area. He said with the Friendly Amendment that the City could review this permit earlier if there are any problems.

ACTION: Vice Chair Larsson made a motion on 2011-7719 to grant the appeal and approve the Special Development Permit with the conditions listed in Attachment B (including new Conditions of Approval #PC-1 and AT-6) and other modifications: to add to condition GC-4.b that if there are valid complaints for more than five separate events at the Café that an earlier review process would be triggered. Comm. Sulser seconded. Motion carried 4-0, with Comm. Chang, Comm. Dohadwala and Comm. Travis absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than April 24, 2012.

4. **File #:** 2011-7829
Location: 411, 425 North Fair Oaks Avenue and 599 East Taylor Avenue (APN: 204-38-046 and 204-38-047)
Proposed Project: Application on a 0.4 acre site. Rezone from R-3 (Medium Density Residential) to R-3/PD, Special Development Permit to construct eight townhome units and a Vesting Tentative Map to create eight townhouse lots and one common lot.
Applicant/Owner: Silicon Valley Builders, LLC
Environmental Review: Mitigated Negative Declaration
Staff Contact: Diana O'Dell, (408) 730-7257
dodell@ci.sunnyvale.ca.us
Notes: *This item is scheduled to be considered by City Council at the 4/24/12 Council meeting.*

Diana O'Dell, Senior Planner, presented the staff report.

Comm. Sulser discussed with staff useable open space with staff explaining that in R-3 zoned areas there is no requirement for private useable open space.

Chair Hendricks opened the public hearing.

Sanjeev Acharya, applicant and owner of Silicon Valley Builders, said a neighborhood outreach meeting was held and the neighbors were supportive of a nice project being built in the neighborhood. He said the neighbors were more concerned about lighting in the nearby areas. **Richard Haro**, designer, discussed the details of the project including fencing for sound protection from North Fair Oaks, and the changes in the colors for the project. He discussed other changes to the plan since the study session including relief on the outside of the buildings and tree plans.

Chair Hendricks discussed with Mr. Haro changes in the trash cart plan. Chair Hendricks asked if the trash cart area would be a permanent, "no parking" area, or "no parking on trash pickup days" only area. **Trudi Ryan**, Planning Officer, said the Department of Public Works would determine what the final markings would be for the trash cart area. Chair Hendricks asked if the applicant would be opposed to "no parking at any time" for this area. Mr. Haro said the applicant would not be opposed, as the area is only about two parking spaces in size.

Mr. Haro asked for flexibility to work with staff on the removal of several trees on the property. He said there are a couple of fruit trees and a Yucca tree that they would like to remove. Mr. Acharya said the landscaping plan includes many trees.

Chair Hendricks asked staff about the request. Ms. O'Dell said she believes the applicant is requesting flexibility to remove an English Walnut and a Chinese Pistache trees which are maintained on the current landscape plan. She said she believes the Yucca has already been approved for removal.

Chair Hendricks closed the public hearing.

Comm. Sulser moved for Alternative 1 to recommend to City Council to adopt the Mitigated Negative Declaration and introduce an Ordinance to Rezone 411, 425 N. Fair Oaks Avenue and 599 E. Taylor Avenue from R-3 to R-3/PD and approve the Special Development Permit and Vesting Tentative Map with modified conditions: adding that staff have the flexibility to work with the applicant on the landscaping, making the best effort to maintain the English Walnut and Chinese Pistache trees; and staff have the flexibility to work with the applicant on whether it is better to stripe the trash cart area as a “no parking” area or to allow parking at certain times. Vice Chair Larsson seconded the motion.

Comm. Sulser said he thinks this is an attractive project and a better design since the study session. He said the applicant asked for two deviations: the front setback which is a minor deviation; and a deviation for useable open space per unit which he would not usually grant. He said however, the way this project has open space sections in front of the units on Fair Oaks, that he can make findings to approve the project.

Vice Chair Larsson said he could make findings and agrees that useable open space meets the intent of the requirement. Vice Chair Larsson asked the maker of the motion if the motion includes flexibility on the removal of certain trees. Comm. Sulser said he was not leaning in that direction.

Chair Hendricks offered a Friendly Amendment that staff be allowed the flexibility: to work with the applicant on the landscaping making the best effort to maintain the English Walnut and Chinese Pistache trees; and to work with the applicant on whether it is better to stripe the trash carts area for no parking or to allow parking at certain times. Comm. Sulser asked Chair Hendricks what he thought the advantage of a “no parking” area would be. Chair Hendricks explained that he thought it would be better for traffic circulation, and felt that if parking were allowed sometimes that the trash carts would end up being placed in places other than the trash carts area. **He said the Friendly Amendment would allow the Public Works staff the flexibility to decide whether or not to stripe this area for no parking. The Friendly Amendment was acceptable to the maker and seconder of motion.** Ms. Ryan suggested that the wording include “make the best effort to maintain the English Walnut and the Chinese Pistache.”

Comm. Kolchak said he would be supporting the motion and thinks it is a great project.

Vice Chair Larsson thanked the applicant for the changes in the paint colors and the relief on the walls.

Chair Hendricks said he could make the findings. He said he agrees the deviations are relatively minor and within the Planning Commission’s latitude. He said he appreciates the applicant listening to the Planning Commission’s comments in the study session. He said open space was discussed at an earlier study session and there is a park close to this site. He said he thinks the applicant has done a good job to put a lot into a small space.

ACTION: Comm. Sulser made a motion on 2011-7829 to recommend to City Council to adopt the Mitigated Negative Declaration and introduce an Ordinance to Rezone 411, 425 N. Fair Oaks Avenue and 599 E. Taylor Avenue from R-3 to R-3/PD and approve the Special Development Permit and Vesting Tentative Map with modified conditions: adding that staff have the flexibility to work with the applicant on the landscaping making the best effort to maintain the English Walnut and Chinese Pistache trees; and staff have the flexibility to determine whether it is better to stripe the trash cart area as a “no parking” area or to allow parking at certain times. Vice Chair Larsson seconded. Motion carried 4-0, with Comm. Chang, Comm. Dohadwala and Comm. Travis absent.

APPEAL OPTIONS: This recommendation will be provided to City Council and is scheduled to be considered at the Council meeting on April 24, 2012.

5. Standing Item: Potential Study Issues

Trudi Ryan, Planning Officer, said preliminary papers for the two potential study issues for 2013 discussed at the past couple of meetings are provided. The two items are: *Appropriate locations for bicycle parking* and *Consideration of useable open space in required front yards*.

The commissioners discussed whether action should be taken on the items and decided to postpone taking action at this time as the commissioners that proposed the items are absent.

No new items were added.

NON-AGENDA ITEMS AND COMMENTS

- COMMISSIONERS ORAL COMMENTS

Vice Chair Larsson commented that this past weekend he attended a workshop hosted by the American Planning Association Northern California Chapter regarding land use legal principles, and CEQA (California Environmental Quality Act) and environmental review. He said there is a third workshop for Planning Commissioners coming up and based on the strength of this workshop, he highly suggests attendance.

- STAFF ORAL COMMENTS

City Council Meeting Report

Trudi Ryan, Planning Officer, discussed Planning related items considered by City Council at their April 3, 2012 meeting.

Ms. Ryan announced that Planning staff is available to make presentations regarding the Draft Land Use and Transportation Element (LUTE) and the Draft Climate Action Plan (CAP) to any interested groups. Please contact Gerri Caruso at gcaruso@ci.sunnyvale.ca.us or call the Planning Division at (408) 730-7440 for more information.

Ms. Ryan said that the City Council formed a subcommittee for the selection of a Citizen Advisory Committee (CAC) for the Lawrence Station Area Plan. She said the CAC would include two planning commissioners.

Other Staff Oral Report

Chair Hendricks confirmed with staff that the City would be holding outreach meetings at the Sunnyvale Community Center on April 17, 2012 regarding the El Camino Real Bus Rapid Transit Project.

INFORMATION ONLY ITEMS

ADJOURNMENT

With no further business, the Commission meeting adjourned 9:55 p.m.

Respectfully submitted,

Trudi Ryan
Planning Officer