

CITY OF CAMPBELL PLANNING COMMISSION
MINUTES

7:30 P.M.

TUESDAY

JANUARY 14, 2020
CITY HALL COUNCIL CHAMBERS

The Planning Commission meeting of January 14, 2020, was called to order at 7:30 p.m., in the Council Chambers, 70 North First Street, Campbell, California by Chair Krey and the following proceedings were had, to wit:

ROLL CALL

Commissioners Present:	Chair:	Michael Krey
	Commissioner:	Adam Buchbinder
	Commissioner:	Nick Colvill
	Commissioner:	Terry Hines
	Commissioner:	Andrew Rivlin
Commissioners Absent:	Vice Chair:	Maggie Ostrowski
	Commissioner:	Stuart Ching
Staff Present:	Community	
	Development Director:	Paul Kermoyan
	Assistant Planner:	Naz Pouya Healy
	Acting City Attorney:	Stephanie Hall
	Recording Secretary:	Corinne Shinn

APPROVAL OF MINUTES

Motion: Upon motion by Commissioner Buchbinder, seconded by Commissioner Rivlin, the Planning Commission minutes of the meeting of December 10, 2019, were approved as submitted. (5-0-2-0; Commissioners Ching and Ostrowski were absent).

COMMUNICATIONS

None

AGENDA MODIFICATIONS OR POSTPONEMENTS

None

ORAL REQUESTS

None

PUBLIC HEARINGS

Chair Krey read Agenda Item No. 1 into the record as follows:

- 1. PLN2019-189 (Appeal)** Public Hearing to consider the Appeal (PLN2019-189) of the Community Development Director's approval of an Administrative Planned Development Permit for a large fitness studio with late-night activities (PLN2019-106), to allow an increase in the maximum number of occupants from 34 to 80 individuals within an existing commercial building on property located at **842 W. Hamilton Avenue**. Staff is recommending that this item be deemed Statutorily Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Naz Pouya Healy, Assistant Planner*

Ms. Naz Pouya Healy, Assistant Planner, provided the staff report, with a recommendation for denial of this appeal without prejudice.

Director Paul Kermoyan:

- Explained to the Commission that when an applicant/appellant wants to file an appeal, staff must accept that appeal and process it.
- Added that staff had directed this applicant to file a Modification to make requested changes to their already-approved Administrative Planned Development Approval or simply to apply for an entirely new Admin PD.
- Reported that instead, they decided to file for appeal.
- Reminded that an appeal is based on an error made in the decision. That is not what has occurred here but rather staff approved exactly what they had applied for when approving their Admin PD. They were approved for all they requested.
- Advised that staff would need to re-assess this use in order to consider the increase in occupancy.

Commissioner Rivlin clarified with staff that this application was approved, and this business could open with a maximum occupancy of 34.

Director Paul Kermoyan replied yes. They could also submit for consideration of an increase in occupancy where staff can evaluate and determine what occupancy load this space could accommodate with a future modification.

Commissioner Buchbinder asked staff what kind of delay the applicant would experience with the filing of a new modification application.

Planner Naz Pouya Healy said the processing of an Admin PD is between 45 and 60 days. Reminded that she did some research with their original application regarding parking and occupancy and took it no further since they had enough parking for the occupancy they requested. More research is required with a proposed expansion in occupancy.

Commissioner Colvill asked why the applicant decided on an appeal rather than a modification.

Planner Naz Pouya Healy:

- Said that occupancy first became an issue when she was out of the office.
- Stated that during her absence, this applicant asked Senior Planner Daniel Fama for their options to increase their approved occupancy.
- Added that Senior Planner Daniel Fama advised them could file for their building permit for their tenant improvements right away and they file for a new Admin PD for expansion of their occupancy. He also told them they could appeal but that it wasn't the right path.

Chair Krey asked staff for information procedurally on what the Commission is deciding on here.

Director Paul Kermoyan:

- Said that the Commission has an appeal before them
- Stated that it is incumbent on the appellant to make the case to this Commission that the City's administrative decision was made in error.
- Reminded that staff decided in favor of all they requested.
- Added that it was only after approval that they changed their mind and wanted to almost triple their occupancy from the approved 34 to 80.

Chair Krey asked Director Paul Kermoyan if the Commission discusses the merits of an occupancy increase to 80 since there is no information available.

Director Paul Kermoyan replied that the Commission is restricted to making the required findings that there were errors of fact, a dispute with the findings made for the approval or inadequacy on the imposed conditions of approval.

Chair Krey opened the Public Hearing for Agenda Item No. 1.

Mr. Adel Bazzi, Representative for Appellant:

- Provided some background by explaining that this fitness business was originally started in 2010 as a large fitness studio and in the last nine-and-a-half years has developed into 118 locations serving hundreds of thousands of people. It is a proven system.
- Advised that his client, Mr. Lopez, currently owns the San Jose location, which is the #1 location for this franchise. Mr. Lopez decided he wanted to open a second location and came to Campbell for that second location.
- Added that Mr. Lopez was originally planning smaller facility at this site consisting of 1,500 square foot that could serve up to 34 occupants.
- Stated that Mr. Lopez decided to sign a lease for two adjacent spaces resulting in a tenant space of 5,400/5,500 square feet, which can accommodate more than 34 occupants.
- Admitted that it was his mistake that he overlooked the limitation to 34 occupants with the original submittal.
- Said that they do appreciate the approval of their original request but after approval they asked City staff to reconsider for an increase in occupancy.
- Reported that his client, Mr. Lopez, spoke with Senior Planner Daniel Fama. It was Mr. Lopez's understanding that an appeal was the recommendation forward by Mr. Fama.
- Reminded that this is just one number that was provided in error as to the occupancy.
- Explained that Mr. Lopez's San Jose location has between 65 and 80 participants per class.
- Assured that Mr. Lopez knows how to run this business.
- Concluded that the error in their requested occupancy was just an honest mistake.
- Said that per California Building and Fire Codes, they can have an occupancy of more than 100 in this space.
- Opined that there is more than sufficient parking with the 183 spaces that are shared between three separately owned parcels operating as one combined shopping center.
- Said that he asked Planner Naz Pouya Healy what staff's position was on their appeal and learned it was a recommendation by staff for denial of the appeal.
- Stated that Planner Naz Pouya Healy told them they only have 56 parking spaces associated with their tenant space and that is the reason they can't be approved for 80 at this time.
- Pointed out that since May 2019, they have not yet been able to open up this business.

Chair Krey asked Mr. Adel Bazzi why they had not come back with a new proposal. Was the reason the time it might take to process it?

Mr. Adel Bazzi replied that they were told by staff that an appeal would be easier and cheaper. However, cost wasn't a factor.

Chair Krey reported that he is a frequent patron at this shopping center and finds parking is never packed.

Mr. Adel Bazzi:

- Explained that Mr. Lopez's classes are conducted in the early morning. There is a 4 a.m., 5 a.m., 6 a.m. and 7 a.m. class. At that time their clients would be the only one's parking there as the PetSmart opens at 10 a.m. After conclusion of the 7 a.m. class, this use closes until 5 p.m. for its evening classes. There are only two to three classes held on Saturday and Sunday.
- Assured that they would present zero impact in terms of parking.

Commissioner Hines thanked Mr. Lopez for bringing his business to Campbell.

Ms. Shannon Balco, San Jose Resident:

- Recounted how she had gained a lot of weight during pregnancy and kept that added weight for lots of years.
- Advised that at one point it was learned that her daughter needed a kidney transplant and she was dismayed that as a result of her weight she was no eligible to give her daughter a kidney.
- Reported that as a result she discovered this program (camp) and lost 115 pounds as a result.
- Added that she also gained a family, friends and community from this program.
- Stated that this use will be good for Campbell.

Commissioner Colvill asked if the applicant was not here.

Mr. Adel Bazzi said that the owners are here this evening. Mr. David Lopez and his wife have operated their San Jose location for two years now.

Ms. Darla Lease, San Jose Resident:

- Recounted that she grew up in the Cambrian area and today lives in the family home her parents purchased in the 50's.
- Said when she was looking for a fitness program, she found this business in San Jose. It meant the world for her to find this program, as with it she has lost 56 pounds, dropped two medications and no longer needs frequent costly chiropractic treatments.
- Assured that having this fitness camp located in Campbell could benefit a lot of families.
- Advised that she attends the 4 a.m. class at their San Jose location, which takes her about 20 minutes. However, it would take just about 10 minutes for her to drive to this new Campbell site instead.

Ms. Marie Rueda:

- Stated that she participated at a Southern California location of this fitness camp program.
- Added that when she came back to Campbell, she found nothing like it locally to the camp she had participated in Southern California.
- Stated that she has been waiting nearly a year now for this Campbell location to open.

Samuel Mendoza, Sunnyvale Resident:

- Reported that through this program he has lost 120 pounds.

- Added that participating in the program with his wife also repaired the relationship with his wife.
- Concluded this this camp program will help a lot of people.

Mr. Adel Bazzi:

- Stated that during the last week he secured a copy of the shared parking agreement in place for this center depicting 183 shared parking spaces.
- Added that this agreement has been in place since 1969.

Chair Krey closed the Public Hearing for Agenda Item No. 1.

Director Paul Kermoyan:

- Said that staff was provided with that agreement yesterday (January 13, 2020).
- Pointed out that the agreement only includes two properties while there are three.
- Clarified with the Commission the Senior Planner Daniel Fama is a brilliant planner and knows the correct options to recommend.
- Added that he has no doubt that Mr. Fama would have told the applicant not to file for an appeal as there was no error in fact associated with the approval.
- Added that an appeal is the cheapest mode, but he could not imagine a time that Senior Planner Daniel Fama would tell an applicant to file an appeal that doesn't meet the requirements for an appeal.
- Said that saying that an appeal was the best option provided by staff is incorrect. Something has happened here.
- Reiterated that the parking agreement filed in the 60's was between owners when today there are three. Potential impacts on these owners need to be evaluated. With three owners, staff cannot assign parking on one property to a use on another without their approval. Unless all three owners sign the application.
- Stated again that an appeal is the wrong path as there was no error made in the approval of the Admin PD. What they want to do is to modify what was approved due to a change in circumstances with a larger tenant space.
- Concluded that the Commission deliberation is limited to determining if an error was made that requires correction.

Planner Naz Pouya Healy:

- Informed the Commission that Senior Planner Daniel Fama had spoken with her immediately after his conversation with her project's applicant.
- Said that Daniel told her that he had advised the applicant to accept their approved Admin PD and file for building permits for their tenant improvements; and then file for a Modification to the Administrative Planned Development Permit to increase their occupancy.

Commissioner Hines asked Planner Naz Pouya Healy what the cost to file for a Modification to an Administrative Planned Development Permit would cost the applicant.

Planner Naz Pouya Healy replied approximately \$3,000.

Commissioner Hines asked how much time it would take to process the modification.

Planner Naz Pouya Healy replied between 45 and 60 days.

Commissioner Buchbinder:

- Said he appreciates this use coming into Campbell.
- Admitted that this Commission does not have much choice in making changes on appeal as there is no required ground to apply.
- Added that it is simply an error, a frustrating one.
- Concluded there was nothing to do.

Director Paul Kermoyan:

- Said that they should have already submitted their tenant improvements to Building based on their original approval. They had the opportunity to not skip a beat, but they've now lost time here going through the wrong process to get their desired changes in occupancy.

Commissioner Rivlin:

- Verified with staff that this business can still open under the original approval with 34 occupants and a building permit submittal to complete tenant improvements.
- Asked if there is a chance timing for the modification could be shortened from the maximum range up to 60 days?

Planner Naz Pouya Healy replied yes. She added that she already had both Fire and Building look at the plans and site.

Commissioner Rivlin said that the existing maximum occupancy of is 34. Could they likely get approved to go higher than 34 occupants?

Planner Naz Pouya Healy:

- Replied that the applicant could apply for more than their approved occupancy of 34 since they do have 56 parking spaces serving their part of the site.
- Added that they share that parking with a hair salon, spa and picture framing business, which are low demand for parking.
- Reminded that the occupancy the applicant initially requested (34) didn't require staff to consider the potential for increased occupancy beyond that since the existing parking was sufficient to serve them.

Commissioner Buchbinder asked staff if the increase in occupancy would be done with a public hearing or administrative process.

Planner Naz Pouya Healy replied that it would be done at staff level through an administrative process.

Commissioner Hines asked if the occupancy of 34 was supported by Fire and Building.

Planner Naz Pouya Healy replied yes. She added that it is likely that an occupancy up to 80 would result in the inclusion of greater occupancy standards.

Commissioner Colvill asked the number of spaces allotted to this use under the current approval.

Planner Naz Pouya Healy said that there are 56 spaces serving this portion of the three parcels of this shopping center and 180 spaces in total that are serving all three properties.

Director Paul Kermoyan:

- Said that we generally don't receive fitness facility requests with up to 80 participants/occupancy. We usually get applications for smaller facilities with lower occupancies.
- Added that staff would have to vet that out including perhaps surveying other local cities on their standards for parking.
- Said that we currently have sufficient parking to serve a gym but with 80 that is not what this is.

Commissioner Buchbinder said that in terms of the parking agreement, the spaces are very likely not being used in the early-morning hours that this camp will be on site.

Director Paul Kermoyan said that per Code, a combined deed restriction is required to allow parking spaces on one parcel to serve a use occurring on an adjacent parcel.

Commissioner Colvill:

- Agreed that it is hard for the Commission to look at this now. The error was on the part of the applicant. It was not an error by the City.
- Said that it unfortunately has monetary consequences for this applicant.
- Reminded that there are 56 parking stalls to serve the portion of the site on which this tenant space is located.
- Stated that through the submittal of a new application (either Modification to Admin PD or a new Admin PD altogether with the higher occupancy included, in order to modify the already-approved Admin PD, staff would be able to properly evaluate the maximum occupancy that can be assigned.
- Concluded that the Commission is now asking questions of staff that require additional investigation prior to response from staff.

Commissioner Hines:

- Said that this new business is most welcome in Campbell.
- Stated that the applicant just has to follow the defined process.
- Concluded that they should apply and get started on their tenant improvements.

Motion: **Upon motion of Commissioner Hines, seconded by Commissioner Colvill, the Planning Commission adopted Resolution No. 4557 DENYING the appeal and UPHOLDING the Administrative Planned Development Permit for a large fitness studio with late-night activities (PLN2019-106), and a maximum occupancy of 34, within an existing commercial building on property located at 842 W. Hamilton Avenue, by the following roll call vote:**

AYES: Buchbinder, Colvill, Hines, Krey and Rivlin
NOES: None
ABSENT: Ching and Ostrowski
ABSTAIN: None

Chair Krey advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

Director Paul Kermoyan added that this does not mean we are suggested they appeal. Again, the best path for this applicant is to file an application to modify their approved Admin PD.

REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR

Director Paul Kermoyan brought to the attention of the Planning Commission the notice on his written report advising the Commission about the March 4th to 6th 2020 League of California Cities Planning Academy. He encouraged interested Commissioners to let Executive Assistant Corinne Shinn know if they would like and are able to attend. This should occur at their earliest opportunity to allow reservations/arrangements to be made and get conference site hotel rooms reserved before they are fully booked.

ADJOURNMENT

The Planning Commission meeting adjourned at 8:22 p.m. to the next Regular Planning Commission Meeting **January 28, 2020.**

SUBMITTED BY: _____
Corinne Shinn, Recording Secretary

APPROVED BY: _____
Michael Krey, Chair

ATTEST: _____
Paul Kermoyan, Secretary