

**CITY OF UNION CITY
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING
OF SEPTEMBER 6, 2007, 7:00 P.M.
IN THE COUNCIL CHAMBERS OF CITY HALL
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

- I. ROLL CALL: Commissioners Lew, Singh, and Chairperson Sweeney
ABSENT: Commissioners Anderson, Saini**

STAFF: Carmela Campbell (Senior Planner); Janice Lum (Assistant Planner); Mike Rodriquez (City Attorney); Kris Fitzgerald (Administrative Assistant).

- II. APPROVAL OF MINUTES:** The Regular Planning Commission Minutes of August 16, 2007 were approved as submitted.

III. ORAL COMMUNICATIONS:

Barry Ferrier, 32212 Allison Way, Union City, stated that at the Alvarado Plaza shopping center the monument sign on Dyer Street has been moved back but the bushes still have not been trimmed and you cannot see oncoming traffic. Mr. Ferrier stated that the other sign on Alvarado Boulevard is still in the incorrect location on the left side so that you cannot see oncoming traffic.

Chairperson Sweeney stated that this matter has been brought before the commission before and she would encourage staff to contact the shopping center management to resolve this issue. Chairperson Sweeney stated that the sign is on the wrong side of the driveway, which is the side closest to Dyer Street and the plan called for it to be on the other side where it did not block the view of oncoming traffic. Chairperson Sweeney noted that the bushes are on Dyer Street between the entry sign and the railroad tracks and they still need to be trimmed.

Carmela Campbell, Senior Planner, stated that they would refer the trimming of the bushes to Public Works.

- IV. WRITTEN COMMUNICATIONS:** None.

V. PUBLIC HEARINGS:

- A. CONTINUED HEARINGS:** None.

B. NEW HEARINGS:

- 1. JOLLIBEE, 32460 DYER ST., Modification Use Permit UP-06-99 and Administrative Site Development Review ASD-13-07;** the applicant is requesting approval of a modification to their Use Permit (MOD UP-06-99) to extend drive-thru operations to 24 hours for the Jollibee restaurant located at 32460 Dyer Street (APN: 463-0060-015-11). The applicant is also requesting approval of an Administrative Site Development Review permit (ASD-13-07) to install additional lighting on the building exterior. This project is considered categorically exempt per Section 15303, Class 3(a), New Construction, of the California Environmental Quality Act (CEQA) Guidelines.

Janice Lum, Assistant Planner, presented the staff report.

Commissioner Lew stated that she had submitted her questions to Ms. Lum earlier via email.

Commissioner Lew asked why staff was recommending these particular operating hours.

Ms. Lum replied that the applicant is satisfied with the closing time but because of their new breakfast line they need to open at an earlier time and staff wanted to offer the applicant some flexibility in times.

Commissioner Lew asked why does it matter that the dining room has specific hours when the drive through is open 24 hours.

Ms. Lum replied that it could matter for safety issues but we don't have to constrain them if there is no issue with the times. Ms. Lum stated that putting hours in provides a back up for future issues.

Commissioner Lew stated her concern that this issue was not discussed with the applicant and that we are being arbitrary about it. Commissioner Lew asked what are the hours for Krispy Kreme.

Ms. Lum replied that she is not sure what the current hours are but she has the original approved hours from the staff report. Ms. Lum noted that businesses propose hours on their application but they may not be operating on those hours.

Commissioner Lew asked if that is how the hours were specified in Jollibee's original application.

Ms. Lum stated that it was discussed in the staff report but never formalized in the conditions of approval.

Commissioner Singh stated that he thought having the drive through open 24 hours will be good if it creates more business for them.

Commissioner Singh asked if it would be possible to have lighting in the landscape area along the drive through similar to the lighting at the Nakamura clinic. Commissioner Singh stated his concern about having the seven lights mounted on the building will throw too much glare onto the adjacent properties along Alvarado-Niles Road. Commissioner Singh noted that Krispy Kreme doesn't have that much outdoor lighting.

Ms. Lum stated that that option was discussed with the applicant and they indicated that they preferred the lighting on the building. Ms. Lum believes having the lights on the building was more for ease of installation but staff did condition that they could require additional exterior site lighting.

Commissioner Singh noted that the landscaping around the drive through needs trimming.

Ms. Lum stated that she thinks they were trying to accomplish a couple of things to bring visibility to the building and creating ambient light around the drive through by installing the lights on the building.

Commissioner Singh asked if they are going to be 100 watt lights.

Ms. Lum replied that a condition has been included to have staff look at the lighting levels. Ms. Lum stated they will have a photometric plan and the wattage will be modified accordingly.

Commissioner Singh asked if the cashier's window is bullet-proof or will it be made that way.

Ms. Lum replied that she does not know.

Commissioner Singh stated his concerns for the clerks working at the drive through window.

Ms. Lum stated that the Police Department was also concerned but the plans are not clear and the applicant is not here tonight.

Chairperson Sweeney stated that most of her questions were for the applicant and they are not here this evening.

Chairperson Sweeney asked why the desk item is the same as the existing condition #4.

Ms. Lum replied that it is slightly different.

Chairperson Sweeney asked if they didn't comply with this condition the first time how will it be enforced this time.

Carmela Campbell, Senior Planner, stated that the painting condition has been tied to the issuance of building permits for the upgraded lighting.

Chairperson Sweeney opened the public hearing.

Don Ho, 32465 Darlene Way, Union City, stated that he lives about 2 miles away from Union Landing. Mr. Ho stated he can't believe the layout of Union Landing. Mr. Ho stated that there is not enough parking at Union Landing for the existing business. Mr. Ho thinks it is odd to have a 24 hour business on the perimeter of the shopping center. Mr. Ho thinks that they should be centrally located to keep the noise and traffic away from the residential areas.

Barry Ferrier, 32212 Allison Way, Union City, stated that he has no problem with the 24 hour operation; however, he feels that the Alvarado-Niles Road/Dyer Street intersection is very dangerous intersection at all hours. Mr. Ferrier stated that the markings on the road are very difficult to see from the intersection all the way to the overpass. Mr. Ferrier stated that there is a problem with the back light over the rear door, which is so bright it overpowers you as you approach the intersection. Mr. Ferrier stated that it should be shielded so that the light goes down instead of towards the cars. Mr. Ferrier stated that when Krispy Kreme opened 24 hours a day, one of the major complaints was the noise from car stereos as they idle in the drive through lane were very loud.

Hugh McNamara, 32238 Mercury Way, Union City, stated that he has concerns about the color scheme. Mr. McNamara stated that they need to follow the shopping center rules. Mr. McNamara stated that the light issue should be looked into.

Chairperson Sweeney closed the public hearing.

Chairperson Sweeney stated her concerns about the lighting, the colors, and she wants to discuss them with the applicant.

Chairperson Sweeney proposed continuing the hearing to the next meeting so that the applicant can be present. Chairperson Sweeney stated they should come back with the proposal for the replacement lights and their photometric plan. Chairperson Sweeney stated that Krispy Kreme was not required to provide a photometric plan, so there is not an equivalent to compare this project to. Chairperson Sweeney stated she does not see why this applicant would be illuminating their property in excess of the existing 24 hour

restaurant next door. Chairperson Sweeney is not sure how they can make a determination whether their proposal is appropriate in that light.

Ms. Lum stated that they have lighting levels from other businesses that could be used for comparison.

Chairperson Sweeney stated that she does not like the elevation of the lights, the design of the lights, or the level of illumination.

Ms. Lum stated that the applicant's major concern is to get the Use Permit approved so they can get the drive through open.

Chairperson Sweeney stated that if that is their motivation then we should get the lighting and the colors settled at the same time because otherwise their ability to get their attention is reduced.

Commissioner Singh stated that he does not think they will need seven lights because it will be very bright.

Chairperson Sweeney noted that it will be very bright at 400 watts.

Commissioner Singh stated that the shrubs have to come down because they cover the whole area. Commissioner Singh stated that having some sort of sign asking the drivers to lower the stereo volume.

Chairperson Sweeney replied that she heard the original application and also heard the subsequent complaints about the Krispy Kreme drive through. Chairperson Sweeney stated that it is difficult for a business to control the behavior of a customer inside their vehicle. Chairperson Sweeney stated that a sign's effectiveness is questionable. Chairperson Sweeney stated that at this location a sign would be lost within all the rest of the signage. Chairperson Sweeney noted that they have a lot of signage at this location.

Chairperson Sweeney stated that her proposal is to continue this application.

Commissioner Singh agreed.

Commissioner Lew referred to the findings on page 9 and asked why not all of the purposes in Title 18 were not included in the findings. Commissioner Lew suggested adding findings G, I, K, and M from the Municipal Code.

Commissioner Lew stated her concern that the applicant is not being asked to provide solar powered lighting, or limiting how long a car is idling and how fast the service is going to be. Commissioner Lew stated that we are trying to become greener and to allow a business to have a 24 hour drive through with idling cars waiting in line is unacceptable. Commissioner Lew stated that she would prefer to have the dining room open longer hours in order to get the patrons out of their cars. Commissioner Lew encourages the City to ask for solar-powered lighting because it is also attractive as well as being practical.

Commissioner Sweeney made a motion to continue Modification Use Permit UP-06-99 and Administrative Site Development Review ASD-13-07 to October 4, 2007.

Commissioner Lew seconded.

AYES 3 (Lew, Singh, Sweeney)

NOES 0
ABSTAIN 0
ABSENT 2 (Anderson, Saini)

VI. SUPPLEMENTAL STAFF REPORTS:

A. CONTINUED REPORTS: None.

B. NEW REPORTS:

1. **HEIDEE RAPP-RUIZZORRILLA, 32748 JEAN DRIVE, Administrative Use Permit AUP-06-07;** the applicant is requesting approval of an Administrative Use Permit (AUP-06-07) to operate a large family daycare home for up to 14 children in a single-family residence. The subject property is located at 32748 Jean Drive (APN: 483-0105-059-00). This project is considered categorically exempt per Section 15301, Class 1(a), Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines.

Janice Lum, Assistant Planner, presented the staff report.

Commissioner Singh stated his concerns about the pond in the front yard near the garage. Commissioner Singh stated his concern that there were children's play toys by the front door. Commissioner Singh pointed out an area by the tree where there is some sort of debris that should be removed for the safety of the children. Commissioner Singh stated that the garden hose should be put away.

Commissioner Lew referred to condition #6 and wanted to know the difference between home occupation and accessory use.

Ms. Lum stated that there are two different sections of the municipal code that refer to the same provision for a sign allowance for residential businesses. Ms. Lum stated that both references are valid and consistent and she used the reference located in the residential section of the municipal code but the other section can also be added to the condition.

Commissioner Lew stated that she didn't consider this application to be a home occupation but rather a business within a residence or a non-residential use.

Commissioner Lew stated that her preference is for the applicant to develop a sign plan rather than specifying a sign size. Commissioner Lew stated that she does not think this is a home occupation but instead is a non-residential use in a residential district.

Ms. Campbell stated that in allowing these uses in a residential area we don't want them to have the impact of a non-residential use. Ms. Campbell stated that the process that they go through to be approved wouldn't be similar to another non-residential use in a residential area; for example; religious institutions would have to go through the Use Permit process whereas this application is at the administrative level. Ms. Campbell stated that the goal is to make these uses blend into the residential area and not disrupt the character of the neighborhood and that is why we consider them a home occupation rather than a non-residential use.

Commissioner Lew stated that she is more concerned that the correct regulation is being applied.

Commissioner Lew asked what is the difference between an accessory use and a home occupation. Commissioner Lew noted that Section 18.08.295 of the Municipal Code defines a large family day care as an accessory use in the home.

Ms. Campbell stated that the day care use would be accessory to the primary use which is a residence therefore supporting the City's determination that this use should be treated as a home occupations with respect to signage.

Commissioner Lew asked if home occupation and accessory use are synonymous.

Ms. Lum stated that it is a secondary use to the main use of the home as a residence and the most applicable sign regulation would be the regulation for home based businesses. Ms. Lum stated that the signs are very small and for identification only so that they do not become a visual nuisance in the neighborhood.

Commissioner Lew asked if this business were located in a commercial or industrial area would it be allowed to have larger signs.

Ms. Lum stated that would be correct.

Commissioner Lew stated that her preference is that the applicant be allowed to come up with a sign plan and present it to the director rather than being limited to one and a half square feet of sign.

Ms. Lum suggested that we could look at the standards for all home based businesses.

Chairperson Sweeney opened the public hearing

Heidee Rapp-Ruizzorrilla, 32748 Jean Drive, stated that they would take the sign down. Ms. Rapp-Ruizzorrilla stated that they would fix the problems in the front yard. Ms. Rapp-Ruizzorrilla stated that the children don't play in the front yard.

Commissioner Singh asked how just the two of them will manage fourteen children.

Mr. Rapp-Ruizzorrilla replied that they have taken classes and workshops for managing children.

Ms. Rapp-Ruizzorrilla stated that they attempt to have a very structured day for the children to keep things under control. Ms. Rapp-Ruizzorrilla stated that the licensing allows for 6 children per adult.

Don Ho, 32465 Darlene Way, Union City, stated that he was speaking on behalf of his partner, Kathleen Schnee, who also resides at 32465 Darlene Way. Mr. Ho stated that he would read the statement that she prepared. "I have ALS. I need to rest every two hours. My bedroom faces her backyard. I would not be able to rest because of noise from daycare." Mr. Ho stated that Ms. Schnee has some medical equipment that is not easily moved from room to room. "She already has a big sign up advertising her day care. Is there not an ordinance against big signs on the front of house advertising business? I am also a teacher. Houses and yards in our neighborhood are not conducive to a day care facility with up to fourteen children." Mr. Ho agrees with that. "The residential neighborhood is single family tract homes and our home is approximately the same size as the day care house which is 3 bedrooms, 2 baths and it does have a family room." Mr. Ho stated that they also challenge that they didn't know that there were businesses allowed in a residential zone. "Homes are not big enough to house a day care center. Is there a sign ordinance for the big sign hanging in front of the house? Jean Drive is already a very busy street. We

live on the backside of Jean Drive and we notice that there is quite a bit of traffic going into that neighborhood. I hear noise from the children during the day.”

Mr. Ho stated that he does not mean to offend the homeowners at all but although it is commendable and noble to want to start your own business, it is likewise a choice to live in a community that nurtures a sense of sanctuary from the madness of society. Mr. Ho stated that we treasure our domiciles as havens, a retreat from the turmoils of our outside lives. Mr. Ho stated that we have chosen to live where we live to give us peace, security and serenity. Mr. Ho stated that we have chosen to live in this neighborhood for these qualities. Mr. Ho stated that we really have great neighbors and he wishes that they were here tonight just so they could hear this. Mr. Ho stated that as homeowners it is a privilege and a right to enjoy life within our small community tract with minimal intrusions from the outside. Mr. Ho stated that fortunately they are not on the bus line. Mr. Ho stated that Jean Drive gets a lot of motor traffic which could be a potential hazard for young people being dropped off. Mr. Ho stated that allowing a business in a residential setting can be very disruptive.

Barry Ferrier, 32212 Allison Way, Union City, stated that he is concerned about the signage for the business. Mr. Ferrier stated that on one street almost every house has at least one home occupation license and sometimes more, if signs were allowed the street would be covered in signs. Mr. Ferrier stated that there is a lot of traffic associated with these businesses. Mr. Ferrier stated that the State preempts the City as far as allowing these child care facilities. Mr. Ferrier asked the commission not to change the ordinances regarding signage and home occupations.

Hugh McNamara, 32238 Mercury Way, Union City, stated that a real estate agent who had a commercial office has moved it to his home.

Chairperson Sweeney closed the public hearing.

Commissioner Singh stated that he has a concern about the noise but he would like to approve the application with the stipulation that in one year there is a check into complaints from the neighbors and safety issues. Commissioner Singh stated his concerns about the size of the home in relation to the number of children.

Commissioner Lew recommended modifying condition #6 to incorporate the sign regulation Title 18.30.080(C).

Chairperson Sweeney asked if that is a substitution to the regulation already in the condition.

Commissioner Lew stated that it should be added to the condition.

Chairperson Sweeney stated that she understands the concerns of the neighbors but the City has no regulatory authority for the existing use, as there have been no complaints registered with either the State or the Union City Police Department for the existing use. Chairperson Sweeney stated that at this point there are no reasonable grounds for limiting the use. Chairperson Sweeney noted that this particular home has more on street parking than any similar day care proposal that has come before the commission. Chairperson Sweeney stated that Union City has a desperate need for child care for children this age. Chairperson Sweeney stated it is located in a residential area which might be a problem from some perspectives but it is very convenient for the parents with children. Chairperson Sweeney stated that she supports this application.

Chairperson Sweeney stated that if there is a complaint, the Planning Commission can bring up a Use Permit for review at any time. Chairperson Sweeney stated that for that reason we do not need to set up a timetable for review of the permit.

Commissioner Lew made a motion to approve Administrative Use Permit AUP-06-07, making findings 1 – 4, with amended conditions of approval and adopt a resolution confirming this action.

Commissioner Sweeney seconded.

AYES 3 (Lew, Singh, Sweeney)
NOES 0
ABSTAIN 0
ABSENT 2 (Anderson, Saini)

VII. REDEVELOPMENT AND ECONOMIC DEVELOPMENT REPORTS: None.

VIII. COMMISSION MATTERS:

- A. Follow-up on Planning Commission referrals to the City Council.
- B. Upcoming applications for the next Regular Planning Commission meeting for September 20, 2007.

Because there are no items for the next planning commission meeting, it is canceled.

IX. GOOD OF THE ORDER:

Commissioner Singh noted that the lane markings need to be fixed at the intersection of Alvarado-Niles Road and Dyer Street.

Chairperson Sweeney noted that the Brown church on H Street has put up a metal picket fence. Chairperson Sweeney asked that the City needs to encourage something more decorative rather such an institutional look.

Ms. Campbell stated that they wanted to have the fence as soon as possible due to criminal activity in the area.

Ms. Campbell stated that the City and Redevelopment Agency has received the Helen Putnam award from the California League of Cities for the work on the Pacific States Steel site.

X. ADJOURNMENT: 8:30 p.m.

APPROVED:

CATHI SWEENEY, CHAIRPERSON

ATTEST:

MARK LEONARD, SECRETARY