

**CITY OF UNION CITY  
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING  
OF DECEMBER 20, 2007, 7:00 P.M.  
IN THE COUNCIL CHAMBERS OF CITY HALL  
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

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

**STAFF:** Mark Leonard (Director, Economic and Community Development); Avalon Schultz (Assistant Planner); Janice Lum (Assistant Planner); Mintze Cheng (Director, Public Works); Kit Faubion (City Attorney); Kris Fitzgerald (Administrative Assistant).

- II. APPROVAL OF MINUTES: The regular Planning Commission Minutes of December 6, 2007 were approved as submitted.**

- III. ORAL COMMUNICATIONS: None.**

- IV. WRITTEN COMMUNICATIONS: None.**

- V. PUBLIC HEARINGS:**

- A. CONTINUED HEARINGS:**

- B. NEW HEARINGS:**

- 1. CITY OF UNION CITY, CITYWIDE, Zoning Text Amendment AT-03-07; the City is proposing to amend Chapter 17.32 and Chapter 12.24 of the Union City Municipal Code to clarify the City's regulations relating to Utility Undergrounding and Chapter 18.28 and Chapter 18.30 to regulate the parking of vehicles with signs. This project is considered exempt under Section 15061(b) (3) of the California Environmental Quality Act (CEQA) Guidelines.**

Carmela Campbell, Senior Planner, presented the staff report.

Commissioner Lew asked what would be considered an undue financial burden.

Ms. Campbell replied that it is very difficult to define; however, the wording used is so that if the cost of undergrounding is substantially more in relation to the cost of the project then it would not be required. Ms. Campbell stated that for example a project such as a new non-residential project would be required to underground both the distribution system and the service drop; however, there are some small parcels in the Old Alvarado area where a small business could be located and in that situation the level of development may not be consistent with the level of improvement. Ms. Campbell stated that any suggestions would be appreciated.

Commissioner Lew stated that she would ask for a cost analysis of the project. Commissioner Lew noted

that there are no exceptions to the requirement for undergrounding the service drop but undergrounding the distribution system would have exceptions. Commissioner Lew stated that she would ask for a cost study from the developer and ask the applicant why it is an undue financial burden. Commissioner Lew stated that she feels that the term “undue financial burden” will still lead to inconsistent decision making. Commissioner Lew asked if the City would prefer if the explanation came from the developer or applicant.

Ms. Campbell replied that the City would prefer that option. Ms. Campbell stated that currently the City requires two cost estimates for the utility undergrounding and perhaps that requirement could be expanded to a cost analysis of the project.

Commissioner Lew suggested that the applicant present a cost study and explain why it is a financial burden.

Mintze Cheng, Director, Public Works, replied that when staff met with PG&E staff, they were very hesitant to provide any firm numbers because of past problems.

Commissioner Lew noted that the waiver process does not come into play until after the Planning Commission and City Council have approved the development.

Ms. Cheng stated that was true.

Commissioner Lew asked if Ms. Cheng is comfortable with the term “undue financial burden”.

Ms. Campbell stated that staff researched several cities looking for data to help clarify this terminology.

Commissioner Lew asked if other cities use this terminology.

Ms. Campbell replied that they do and no definition of what it means.

Commissioner Lew referred to page a-6 on the second line from the top of the page the word “unless” is duplicated and the second one should be deleted.

Ms. Campbell stated that was corrected in the new resolution provided in the desk item.

Commissioner Lew referred to page A-13 and recommended adding “or any authorized employee(s)” in addition to the registered owner.

Commissioner Sweeney stated that her copy the first word is plural and asked if that is correct.

Ms. Campbell replied that was corrected in the desk item.

Commissioner Lew referred to page A-17, 12.24.120(a) (1) and asked why is it only directed to the landowner.

Ms. Campbell stated that they felt that the term would capture all the parties.

Commissioner Lew asked what if the developer is not the landowner.

Ms. Campbell stated that since that does occur perhaps wording can be added “and/or applicant”.

Commissioner Lew referred to page a-19, section 17.32.030(c) and stated that 1722 appears to be missing a period.

Ms. Campbell replied that is correct.

Commissioner Lew referred to page 2 of the City Council Policy statement, #5 and suggested that to be consistent with the Zoning Text Amendment the “and” should be deleted before “landowner”.

Ms. Campbell replied that it was done that way to cover both possibilities for applications for the waiver.

Commissioner Sweeney asked if the words “the applicant” should also be added to the policy statement to remain consistent.

Commissioner Lew agreed with that change.

Ms. Campbell stated that any changes made to the Zoning Text Amendment will be reflected in the City Council Policy statement.

Commissioner Sweeney stated that she would like to see the chart included in the policy statement because it illustrates the text rather clearly.

Commissioner Sweeney asked if the multi-family units are defined as five or more.

Ms. Campbell replied that is correct.

Commissioner Sweeney stated that it needs to be clarified for both of the remodel projects within the chart that the same threshold applies.

Commissioner Sweeney asked what is the City’s control of placement of campaign signs on vehicles. Commissioner Sweeney referred to the large trucks that have campaign signs mounted on them and they just drive around. Commissioner Sweeney asked if they are parked in the right of way will they be covered by the new text.

Ms. Campbell stated that with some minor changes campaign signs could be covered.

Commissioner Sweeney asked if the vehicle is not owned by the company that it is advertising for will it still be covered by the new text.

Ms. Campbell stated that they will look into the issue and see if it can be covered by the new text.

Commissioner Singh asked how is staff going to define “financial hardship”.

Ms. Cheng replied that it would be very hard for staff to use hard numbers and it will be decided on a case by case basis.

Mark Leonard, Director, Economic and Community Development, stated that the financial position of the business is not what is being looked at. Mr. Leonard stated that staff will look at the cost of the project and the cost of the undergrounding to see whether or not it is disproportionate to the cost of the project.

Commissioner Singh stated that the determination should be done by the City Council.

Commissioner Singh stated that having sidewalks and bicycle lanes is very important to reduce the carbon emission impacts.

Chairperson Anderson stated that he is concerned with the use of the term “company vehicles” because he does not feel that it is the right term to use.

Ms. Campbell stated that a definition is being proposed for company vehicle.

Chairperson Anderson stated that it should cover situations rather than just be a definition.

Chairperson Anderson noted that the residential collectors and minor roadways were left out of the text and asked if it would be allowed to park cars with signs in those areas.

Ms. Campbell replied that it correct. Ms. Campbell stated that they are targeting busy arterials and streets.

Commissioner Lew made a recommendation that company vehicles be specified as ones that have signs or other company markings on it.

Ms. Campbell stated that it was not specified in the definition but it is called out in the prohibited signs section and Section 18.28, and that staff was trying to use company vehicles as a generic term. Ms. Campbell stated that the idea was to receive all company vehicles, with or without signs, parked off the street.

Chairperson Anderson opened the public hearing.

Barry Ferrier, 32212 Allison Way, Union City, Ca, asked what about vehicles with big signs that are parked on private property, such as shopping center parking lots. Mr. Ferrier stated that there are some big trucks with signs painted on them that park across two spaces. Mr. Ferrier stated his concerns about vehicles with signs on them that park in residential areas.

Hugh McNamara, 32238 Mercury Way, Union City, Ca, stated that this is also a problem along Whipple Road.

Chairperson Anderson closed the public hearing.

Ms. Campbell read back the changes to the documents:

- 1 Section 18.30.050, Prohibited Signs, add “any authorized employees” at the end of subsection m.
- 2 Section 12.24.120, Process to Weigh the Utility Undergrounding Requirement, subsection (a) (1), add the words “or applicant” at the end of the sentence.
- 3 Section 12.24.120, Process to Weigh the Utility Undergrounding Requirement, subsection (a) (1); clarify the wording to require a cost analysis taking into consideration how much the utility undergrounding will cost in relationship to the project.
- 4 Section 17.32.030 (c); add a period between 17 and 22.
- 5 City Council Policy Statement, adding the words “and applicant” to the first sentence.
- 6 City Council Policy Statement, correct the chart and add it to the policy statement.

Commissioner Sweeney made a motion to recommend approval to the City Council of Zoning Text Amendment AT-03-07 and City Council Policy Statements with the stated changes, making findings 1 -

4, and adopting a resolution confirming this action.

Commissioner Lew seconded.

AYES	5 (Anderson, Crosby, Lew, Singh, Sweeney)
NOES	0
ABSTAIN	0
ABSENT	1 (Saini)

2. **PAPPAS UNION CITY, COURTHOUSE DRIVE SHOPPING CENTER, Zoning Text Amendment AT-02-07, Use Permit UP-03-07, V-03-07, Adopt a Mitigated Negative Declaration**; the applicant is requesting a Zoning Text Amendment (AT-02-07) to allow Day Spas and Fast-food/Quick Service Restaurants as conditionally permitted uses in the SRSC sub-area of the CUL (Union Landing Commercial) Zoning District; a Use Permit (UP-03-07) approval for a day spa, a quick service restaurant, and a mattress store; and a parking Variance (V-03-07) to allow a reduction of 48 parking spaces. The proposed uses will be located within the Courthouse Drive Shopping Center in Union Landing (APN: 463-0060-051-00). The City intends to adopt a Mitigated Negative Declaration (MND) for the above project consistent with the requirements of the California Environmental Quality Act (CEQA) Guidelines.

Avalon Schultz, Assistant Planner, presented the staff report.

Commissioner Crosby asked how the definition of day spa was created.

Ms. Schultz replied that it was a combination of research done from other jurisdictions. Ms. Schultz stated that other jurisdictions tend to preclude massage only establishments and given this application, staff tried to tailor the definition to include Massage Envy because it meets the intent of the SRSC sub area.

Commissioner Crosby referred to the cross parking easement for Sports Authority and asked how many extra spaces are available at Sports Authority.

Ms. Schultz replied that by the zoning code requirements there are eight additional spaces.

Commissioner Crosby asked how many employees are anticipated for the new uses.

Ms. Schultz replied that the applicant stated it would be 10 – 13 at any one time. Ms. Schultz stated that staff felt that the applicant’s estimated numbers were on the high end.

Commissioner Crosby referred to the history of variances in Union Landing and asked if it was just for parking variances or variances in general were common.

Ms. Schultz replied that parking variances have been uncommon in Union Landing.

Commissioner Crosby referred to Teriyaki Experience and asked how the conference room is going to be used.

Ms. Schultz directed that question to the applicant.

Commissioner Crosby stated that he has concerns about being able to satisfy the criteria for a variance.

Commissioner Singh referred to the day spa and asked what type of client they are expecting to attract.

Ms. Schultz replied that Massage Envy has come highly recommended. Ms. Schultz stated several city staffers have frequented the business's other locations. Ms. Schultz stated that all information received has been very positive. Ms. Schultz stated that they try to accommodate people with families or working persons. Ms. Schultz stated that staff had concerns about massage type businesses but the Police Department has a very thorough background check requirement for any person who wants to be a massage therapist in Union City.

Commissioner Singh asked what type of locations are the other facilities located in.

Ms. Schultz replied that they tend to be in retail centers similar to Union Landing. Ms. Schultz stated that they tend to be located in more affluent communities and they tend to be located in retail commercial centers.

Mark Leonard, Director, Economic and Community Development Department, stated that his understanding is that the other facilities are located in sub regional retail centers as opposed to neighborhood shopping centers.

Commissioner Singh referred to condition #9 and stated that the language needs to be stronger to make sure that the employees are going to park in the Sports Authority lot.

Ms. Schultz stated that there is an element of trust when there is a Use Permit that the applicant will abide by the condition. Ms. Schultz stated that it is in the best interest of the tenant to ensure there is ample parking available for his customers.

Commissioner Singh stated his concern that other businesses might be hurt by a lack of parking.

Ms. Schultz stated that it is her understanding that this particular area of Union Landing is the least congested parking area of the whole center. Ms. Schultz stated that staff does not think it will be a problem for Sports Authority to accommodate the parking.

Commissioner Singh stated that he is concerned that the day spa is going to have a greater parking demand.

Ms. Schultz stated that it is a membership facility and staff believes that the parking will not be a problem especially with the condition that the employees park in the Sports Authority lot. Ms. Schultz stated that there are 10 treatment rooms and while there may be some client overlap, the time that the clients spend there is limited. Ms. Schultz stated that this is not like other day spas where there are other types of treatments available and clients spend more time having different treatments. Ms. Schultz stated that staff has reviewed this specific use and believes the parking demand will be accommodated. Ms. Schultz stated that if there is a problem in the future the Use Permit can be brought back for review.

Commissioner Sweeney referred to the day spa definition and asked how, in the future, this will preclude this particular business being replaced with a spa that does not operate like this one.

Ms. Schultz replied that it is her understanding that when you roll over a Conditional Use Permit it is based on the specific statement of use. Ms. Schultz stated that if the use is very similar to another use, staff will let the Use Permit rollover but if it has a different scenario and clientele and tenant space layout

then they would not let the permit rollover. Ms. Schultz stated that a condition could be included that would limit the rollover capabilities of the Use Permit.

Commissioner Sweeney asked if they submit a statement of use that meets the requirements for our definition of a day spa, which includes other treatments, how could we say that it is not a similar use.

Kit Faubion, Assistant City Attorney, replied that as a conditional use they would still have to come back with a change and describe that change and get a revised or new conditional use permit. Ms. Faubion stated that it is still a conditional use and the conditional use permit that is issued is for this use under these circumstances with these conditions and someone stepping into those shoes they would need to amend the conditional use permit because it is not permitted by right in the sub regional center.

Commissioner Sweeney stated that she doesn't understand what is the difference between one day spa and another day spa is and how the City enforces that.

Ms. Faubion replied that they would have to come to the City and tell what the difference is and they would have to meet this definition. Ms. Faubion stated that if they want to propose something different then they may want to come in with a text amendment to expand or to move around the combination of uses but in any case either a text amendment or a revised conditional use permit would be required. Ms. Faubion stated that even if it didn't have all ten uses it would still have to come in as a conditional use permit, revision or new one, unless they are coming in unchanged from the current use.

Commissioner Sweeney asked where in the facility will the combination of massage therapy/spa tubs/pools/steam rooms/saunas or other related accessory uses be located.

Ms. Schultz replied that the reason that the definition begins with "massage therapy membership program or a combination of" is to allow something like Massage Envy to go forward without offering that same combination of uses.

Commissioner Sweeney stated that she is very uncomfortable with this because she doesn't see this as a day spa. Commissioner Sweeney stated that this is not what most people think of as a day spa. Commissioner Sweeney stated that this is a massage therapy location, which is fine, but she doesn't understand why we are calling it something different. Commissioner Sweeney stated that she is uncomfortable with the definition.

Commissioner Sweeney stated that she does not see how the City will enforce the off-site parking. Commissioner Sweeney stated that staff has said that there will be six excess parking spaces when it has been fully leased and there will be more than six employees from this particular use. Commissioner Sweeney asked what the City can do to ensure that this happens.

Mr. Leonard stated that a stronger condition of approval could be added, that says "Prior to the issuance of tenant improvement building permits that the applicant shall submit a contract with the City which pledges to require their employees to park off site as indicated." Mr. Leonard stated that gives the City a much stronger enforcement tool.

Commissioner Singh stated that is a great idea because we don't want to hurt other businesses.

Commissioner Lew stated that she had problems understanding the report and could not follow the logic.

Commissioner Lew referred to the first paragraph, third line, page 13 and asked if there has been crime in that particular area of Courthouse Drive.

Ms. Schultz replied that there has been a problem.

Commissioner Lew asked what kind of crimes have occurred.

Ms. Schultz replied that people have been breaking into the vacant tenant spaces in an attempt to get into the occupied tenant spaces which do not have surveillance cameras or alarm systems as the property owner advised them to have. Ms. Schultz stated that there is a condition of approval included to require the new tenants to have cameras and alarm systems.

Commissioner Lew asked if the Planning Commission approves this project will the crime decrease in that area.

Ms. Schultz replied that is what staff believes.

Commissioner Lew stated that she does not see the logic in that. Commissioner Lew stated that filling up the space and approving this application is not going to make a difference in the level of crime. Commissioner Lew stated that she does not think that statement from the staff report supports this application.

Commissioner Lew stated that she does not think the definition of day spa is a very good one.

Commissioner Lew referred to the first paragraph of page 5 of the staff report and Chapter 18.39.050 and noted that there are two different definitions for fast food, retail food and quick service. Commissioner Lew asked which definition should be used for Teriyaki Experience.

Ms. Schultz stated that retail food uses were used in reference to Anderson Bakery and Cold Stone Creamery. Ms. Schultz stated that the other restaurants in Courthouse are Gerry's Grill and Teriyaki Experience. Ms. Schultz stated that Teriyaki Experience should be considered a fast food/quick service restaurant.

Commissioner Lew stated that she does not think that Teriyaki Experience fits the definition for fast food quick service because there is table service.

Ms. Schultz stated that customers order their food at the counter and then take it to a table to eat. Ms. Schultz stated that there is no wait service for Teriyaki Experience.

Commissioner Lew asked who decided what is conditionally permitted and what is permitted in this table.

Ms. Schultz replied that the original table was approved by the Planning Commission and City Council in 2005.

Commissioner Lew asked if there was a site specific plan for Union Landing at the time or did this come from a consultant.

Ms. Schultz replied that the table was prepared by staff for the Planning Commission in 2005 because as Union Landing filled up with uses, it became apparent that some retail uses are more desirable than others, and staff created the two tables in Chapter 18.39 to breakdown retail and food services into the different categories. Ms. Schultz stated that originally fast food/quick service was not seen as desirable for this sub area but now staff is recommending a change because of changing demands.

Commissioner Lew stated that every time staff mentions that it is desirable it is based on revenue.

Ms. Schultz replied not just revenue but bringing in more people to Union Landing and keeping them there longer. Ms. Schultz stated that the General Plan states that there can be non-retail sales tax generators in Union Landing if they are appropriate in drawing in more people.

Commissioner Lew stated that she does not see how this will draw more people in and asked where are the numbers to show this.

Mr. Leonard stated that Union City has two issues; one is that we do not have our fair share of per capita sales, if you look at the sales tax returns from all cities county-wide we are near the bottom of the list. Mr. Leonard stated that we have leakage to other communities. Mr. Leonard stated that people are spending their money outside of Union City. Mr. Leonard stated that sales tax is the second largest source of revenue that cities in general have and is the second largest source of revenue in Union City, with property taxes being first. Mr. Leonard stated that we have to find ways to diversify our economy and get people to shop in Union City. Mr. Leonard stated that the second issue is that based on community surveys and have determined that the community wants more of a variety of shopping opportunities. Mr. Leonard stated that our zoning was designed in such a way as to create more variety of shopping opportunities. Mr. Leonard stated that staff believes that Teriyaki Experience is a unique use in the Bay Area because of the unique way that it is prepared. Mr. Leonard stated that it will generate some sales tax both direct and indirect. Mr. Leonard stated that the indirect sales tax factor is very important because it will bring people into the area that will not only go to Teriyaki Experience but will shop at the other shops in the area. Mr. Leonard stated that we are trying to change the economic character of Union City to address the direct economic issues and the social issues that have been brought to our attention through community surveys.

Commissioner Lew thanked Mr. Leonard for that information.

Commissioner Lew referred to page 15 and noted the bulleted item for retail food uses and stated that it is different from the definition section of Title 18 and asked which is correct.

Ms. Schultz replied that the condition is part of the original conditions for the Courthouse Drive shopping center and staff is proposing modifications to it as shown by the strike-throughs and underlines.

Commissioner Lew stated that it does not match the definition in Title 18.

Ms. Schultz replied that this is not a text amendment it is just a condition on the project. Ms. Schultz stated that staff can revise the last bullet to be consistent with the zoning text. Ms. Schultz stated that this is a modification of the square footage that was approved in 2004 and with the new application staff is modifying the square footage allowed on Courthouse Drive and this is not applicable to any other site in Union City.

Commissioner Lew asked if this refers to the applicant, Teriyaki Experience.

Ms. Schultz replied that this is from the 2004 approval for Courthouse Drive and was applied to the property owner at that time.

Commissioner Lew stated it would be clearer if you are either defining retail food uses or not.

Ms. Schultz stated that there are no retail food uses as a part of this application.

Chairperson Anderson stated that he thought it would help if staff explained that approval of this

application modifies several other documents and one of the documents it would modify is the previous Use Permit.

Ms. Schultz stated that when a resolution is modified staff does not go back and change the original resolution but we do file the current approved resolution with a note of what was changed from the previous approvals.

Commissioner Lew asked which Use Permit approval is being referred to, the new one or the old one.

Ms. Schultz stated that everything applies to the current Use Permit.

Commissioner Lew referred to condition #4 and asked if they are allowed to have outdoor storage or displays in the rear of the building.

Ms. Schultz replied that the condition should be clarified to not permit any outdoor storage or displays.

Commissioner Crosby asked what are the legal ramifications of discovering that there are four less parking spots than are required under the existing Conditional Use Permit for the property.

Ms. Faubion replied that she does not see any legal ramifications for that, but it could come into play if there were four fewer and the commission determined that those four spaces were needed for the application that is before it. Ms. Faubion stated that if those four spaces made a difference in the project now before you then that would be relevant to your decision. Ms. Faubion stated that the staff analysis shows that the area may be overparked, if you follow the zoning ordinance specifically. Ms. Faubion stated that there is evidence in the form of the LSA parking study for the commissioner's to evaluate in making their decision.

Commissioner Crosby stated that this ties into the concerns of the other commissioners with regards to the remedies that the City would have in regards to the employees parking in the other lot. Commissioner Crosby asked what remedy do we have now, disregarding this application, to enforce that they are not meeting the parking standards required in the first approval.

Ms. Faubion stated that if you have a condition of approval that has been adopted for a permit approval and a condition has not been met, then the City has an enforcement program that is usually on a complaint basis. Ms. Faubion stated that the City would investigate the situation and report its findings and what recommendations can be made.

Mr. Leonard stated that the process would be to ask the applicant to find places for four more stalls. Mr. Leonard stated that on this site there may be opportunities to adjust landscaping tongues or other curb radii to get more parking. Mr. Leonard stated that if it could not be provided then we could hold a hearing on the Variance that was granted and declare it invalid and require a change in the uses. Mr. Leonard questioned whether we would do that for four spaces if we don't see a practical problem, probably not.

Commissioner Crosby stated that was his assumption. Commissioner Crosby asked whether a condition is significant if we are asking the applicant to have his employees to park off-site and promise that they are and what are practical remedies. Commissioner Crosby asked if a contract would provide broader and more easily enforceable remedies, such as per diem penalties.

Mr. Leonard replied that it would be much easier to go to court for breach of contract. Mr. Leonard stated that as a practical matter if there is a problem out there and there is not enough parking and we are getting

complaints, then he could have one of the staff people watch the employees come in and if they are not parking in front of Sport Authority, then we can call that Use Permit up for review and hold a public hearing and terminate that Use Permit.

Commissioner Crosby stated that he would be more confident if the condition was stronger.

Chairperson Anderson asked to add a condition that would prohibit the sale of alcoholic beverages.

Ms. Schultz stated that this was discussed at the DRC and the Police Department did not have a concern about the sale of alcohol for consumption on site. Ms. Schultz stated that she asked the applicant and he said that he didn't intend to sell alcohol.

Chairperson Anderson stated that the General Plan states that there should be no sales of alcoholic beverages in that area.

Ms. Schultz stated that she believes that Gerry's Grill serves alcoholic beverages.

Chairperson Anderson stated that he wants the condition to prohibit any user from selling alcoholic beverages for this specific use.

Commissioner Sweeney asked if that was because it is a fast food take out type.

Chairperson Anderson replied yes.

Commissioner Sweeney asked if this particular prohibition should be considered in the future for the definition of fast food in-line uses or just for this location.

Chairperson Anderson stated that his concern is for this use in this particular location.

Chairperson Anderson asked if a condition could be included to prohibit the property owner from leasing the two remaining spaces for restaurant or food uses.

Ms. Schultz replied that there is a condition that says the applicant will submit a written agreement to the City in condition #5.

Chairperson Anderson referred to the LSA study and asked if there was any traffic analysis performed as a part of the study.

Ms. Schultz replied that it was parking analysis only.

Chairperson Anderson asked how they determined parking demand.

Ms. Schultz stated that the spaces that were being used at different times of day and on different days of the week were counted.

Chairperson Anderson asked how does the study predict how much parking will be needed for the future uses.

Ms. Schultz stated that the rationale is that with the existing mix of uses, if parking is currently only peaking at 77% of what the zoning ordinance requires, logically this ratio could be applied to future uses. Ms. Schultz stated that there is not another way to accurately predict parking demand.

Chairperson Anderson asked if it is possible to determine parking need by traffic volume.

Ms. Schultz stated that it is not done that way.

Chairperson Anderson stated that the analysis used the City's zoning ordinance and determined what the required parking load would be and used that as a way of determining what the traffic volume would be for these new uses and he thinks that is flawed.

Mintze Cheng, Director, Public Works, stated that there is a different school of thought that sometimes consultants do come out when they don't have other valid information to support the numbers, sometimes they do use circulation or traffic numbers to give a general estimate.

Chairperson Anderson stated that this study is essential to your ability to recommend the variance and without this study you would not have recommended a variance approval. Chairperson Anderson stated that he believes that the study done by LSA is flawed. Chairperson Anderson stated that Union Landing is severely underparked and to be able to predict what the future demand would be based on a zoning code is not valid.

Ms. Schultz stated that normally we use the zoning code to determine parking requirements and what LSA saw when they did their field work is that even though the zoning code requirement is 146 parking spaces for the existing uses, only 113 spaces were occupied at the centers busiest time.

Chairperson Anderson stated that it is what is occupied now and doesn't include the new uses.

Ms. Schultz stated that LSA counted 113 occupied spaces which was 77% of the required 146 spaces. Ms. Schultz stated that 92 spaces is what is required by the new uses per the zoning code not taking into account the bulk retail. Ms. Schultz stated that in their professional opinion, the same rate of 77% would not change just because new tenants came in. Ms. Schultz stated that staff thought that because of this report that maybe the code requirements are more conservative than what is demanded on site. Ms. Schultz stated that you need to take into consideration that when someone comes to Union Landing they are not necessarily going to drive around to each place they visit.

Chairperson Anderson stated that all of these applications are dependent on each other and they cannot be approved without each other. Chairperson Anderson stated that there is a land use element in the General Plan which has a finding that says there must be consistency between the zoning ordinance and the General Plan. Chairperson Anderson stated that that finding cannot be made because it is not consistent.

Chairperson Anderson referred to land use element goals D.1, D.2 or D.3 and he feels that these approvals would be contradictory to the General Plan.

Ms. Schultz suggested referring to economic development element ED-D.1.2 where it states that some non-retail business may be included in the mix for Union Landing.

Chairperson Anderson stated that it does say that.

Ms. Schultz stated that staff has reviewed these uses for consistency with the SRSC sub area and believes that they are appropriate for Union Landing.

Chairperson Anderson stated that he understands that but we are looking at just not some non-retail we are looking at specific fast food and day spa uses which are not permitted uses in the SRSC sub area and

the zoning ordinance says that the only way they can be permitted is if the zoning ordinance is modified to allow them. Chairperson Anderson stated that we are creating inconsistency with the General Plan with this and there is one Use Permit application for four different uses and none of them can stand on their own. Chairperson Anderson stated that Teriyaki Experience and the day spa can't stand without the text amendment; the restaurant expansion can't stand without the variance which is based on a parking study which he believes is flawed.

Chairperson Anderson asked if the City Council had given staff direction that they want changes in the General Plan to take out these land use policies.

Mr. Leonard stated that they have not received any direction from the City Council to make changes to the General Plan. Mr. Leonard stated that he does not see that we are creating inconsistency between the General Plan and the Zoning Ordinance. Mr. Leonard stated that they were not sure at first that Massage Envy would be a good fit for Union City and after investigation they learned that Massage Envy brings in a type of customer that does not now come into Union Landing. Mr. Leonard stated that the use should bring in more secondary sales in the other stores.

Chairperson Anderson stated that in the ordinance there are some areas that allow this as a conditionally permitted use and some areas that allow it as a permitted use but not in the sub regional specialty area and it is not that these uses aren't compatible with Union Landing it is just not compatible with the area that they want to go into. Chairperson Anderson feels that we are rewriting the General Plan to make it compatible with the zoning ordinance and it bothers him that instead of the elected officials writing the General Plan for the City the developer's are.

Chairperson Anderson asked if there had been any previous requests for day spas or fast food restaurants in Union Landing or the SRSC area.

Mr. Leonard stated that he did not think we have had any requests in any part of Union Landing other than this particular site.

Chairperson Anderson stated that he thinks these applications will create an inconsistency between the zoning ordinance and the General Plan.

Chairperson Anderson asked what is the difference between in line and fast food restaurants.

Ms. Schultz replied that in-line means that it is next to other tenants as part of a building, stand alone would be a separate building. Ms. Schultz stated that staff doesn't believe that this application or the zoning text amendment would be inconsistent with the General Plan. Ms. Schultz stated that you have to keep in mind that the municipal code's lists of permitted and conditionally permitted uses were created in 2004 because we thought that changes were needed to keep the code updated and this is a similar type of request.

Chairperson Anderson read General Plan Land Use LU-D.3.1 and he thinks that an approval of these applications would be inconsistent with the General Plan.

Mr. Leonard stated that he doesn't see it that way.

Chairperson Anderson stated that the staff report states that the applications could be unbundled and voted on separately and he does not think that is true and the reason is that the restaurant expansion depends on the variance; the massage business and Teriyaki Experience depend on the Zoning Text Amendment.

Ms. Schultz stated that the Use Permits could be split from one another.

Chairperson Anderson stated that he doesn't think that is true.

Chairperson Anderson explained how he believed that the applications were connected and that he didn't see how they could vote on them separately.

Chairperson Anderson stated that the Sleep Train application would not meet the zoning code criteria as based on statements made in the staff report.

Mr. Leonard stated that staff recognizes that issue and the desk item addresses that issue. Mr. Leonard stated that they want to condition Sleep Train to be in only one location in Union Landing.

Chairperson Anderson opened the public hearing

John Pappas, Pappas Investments, 2020 L Street, Sacramento, CA 95814, stated that the construction of the project took place in 04/early 05 and part of the approvals included the sub regional specialty commercial zoning. Mr. Pappas stated they have worked very hard to place tenants that would be acceptable to the City. Mr. Pappas stated that it takes about 6 to 18 months to work out an agreement with potential tenants. Mr. Pappas stated that he is very pleased with the tenant mix that is being presented this evening. Mr. Pappas stated that this has brought in a mall tenant, Lane Bryant, who has agreed to lease 5,000 square feet of space. Mr. Pappas stated that it has taken 2 ½ years to complete this agreement. Mr. Pappas stated that having an in-line food use is an advantage because the restaurant patron is more likely to shop in the adjacent stores. Mr. Pappas stated that they understand the employee parking issues for Massage Envy and the regional manager can address that issue. Mr. Pappas stated that even when parking is drawn on the plans what happens when it is actually striped doesn't always match. Mr. Pappas apologized for the error. Mr. Pappas stated that Mr. Leonard has sent enforcement personnel out for sign enforcement and they have cooperated with the City. Mr. Pappas stated that having vacant space is an attractive nuisance and if the spaces are filled up it will help to deter the possibility of burglaries. Mr. Pappas stated that vacancies in the center make the center look less attractive to shoppers. Mr. Pappas stated that Massage Envy is a very sought after tenant mainly because they bring in female shoppers who have a tendency to go on to shop at the other nearby stores. Mr. Pappas believes that having Massage Envy in the same center as Lane Bryant is vital to the center.

Commissioner Lew asked how committed is Pappas properties to supporting the police station in Union Landing.

Mr. Pappas replied that they are participants in the PBID and the property manager attends every PBID meeting. Mr. Pappas stated that they are very supportive of the police and their presence at Union Landing.

Commissioner Lew asked if he had any issues in renewing the PBID when it comes up for renewal.

Mr. Pappas stated that he did not.

Patrick Vath, Regional Manager, Massage Envy, 2900 Eagles Peak Lane, Lincoln, CA 95648, stated that Massage Envy is a new business concept. Mr. Vath stated that they have over 300 clinics open nationwide with another 100 planned. Mr. Vath stated that they do not fit any of the historical definitions of a massage business. Mr. Vath stated that Massage Envy has the highest level professional training for all of their staff, including the therapists. Mr. Vath stated that it is in their economic best interest to insure

that there is parking for their customers. Mr. Vath stated that it is standard policy for all the clinics to have the entire staff park well away from the building and reserve the near in spots for the customers. Mr. Vath stated that all prospective new employees are told about this policy.

Commissioner Lew asked what type of business license does this business require.

Mr. Vath replied that generally it is a massage establishment permit or business license.

Commissioner Lew asked are the individual therapists licensed.

Mr. Vath replied that they are separately permitted, which requires a minimum of 125 hours of formal training. Mr. Vath stated that Massage Envy requires a minimum of 500 hours of formal training before they will even interview a candidate for a therapist position. Mr. Vath stated that they assist the therapist in going through the police background checks and Massage Envy also runs their own background checks on each prospective employee.

Commissioner Lew asked if they are considered therapists under the Business & Professions Code.

Mr. Vath replied that is correct.

Commissioner Lew asked if they are required to have a state license.

Mr. Vath replied that it is not required currently but Massage Envy is working with the state legislature to pass a statewide massage licensing law, which would still operate in concert with local permitting. Mr. Vath stated that with a state license a therapist would be able to practice anywhere in the state similarly to estheticians.

Chairperson Anderson asked for a summary of the business statement of use.

Jonathan Shaffer, Franchisee, Massage Envy, 1562 Ridgewood Rd, Alamo, CA, stated that he did submit a one page statement of use to the Ms. Schultz.

Chairperson Anderson asked for a summary.

Mr. Shaffer stated that they normally offer one hour massages to the customer.

Chairperson Anderson asked if there is a rule for whether the customer is clothed or not.

Mr. Shaffer stated that it is the preference of the customer but they are covered with a sheet at all times.

Chairperson Anderson asked if the therapists keep their clothes on.

Mr. Shaffer stated absolutely, they have a zero tolerance policy for any inappropriate behavior.

Commissioner Singh asked if there will be surveillance cameras in the building.

Mr. Shaffer replied that there will be four cameras inside the building.

Commissioner Singh asked what the demographic of the therapists is.

Mr. Shaffer replied that it tends to be around 60% females and 40% males.

Mr. Shaffer stated that it should not be an issue for the employees to park away from the building and he will enforce it with no exceptions and it would be a cause for termination.

Mr. Shaffer stated that in the early morning hours and late evening hours there might only be 3 clients, 2 therapists and a front desk person in the facility.

Chairperson Anderson asked where the total client number of 1500 is derived from.

Mr. Shaffer replied that it is for the memberships that he hopes to sell.

Commissioner Lew asked if they accept physician referrals.

Mr. Shaffer replied that they can. Mr. Shaffer stated that he plans to market his business to the chiropractor industry to get referrals.

Commissioner Lew asked about sports industry or work place injury referrals.

Mr. Shaffer stated that they would be accepted.

Commissioner Lew asked if they would accept health insurance.

Mr. Shaffer stated that normally it would be the client's responsibility to seek reimbursement from their health savings plan or other plan.

Mr. Vath stated that normally they provide to the client their receipt for money spent and a copy of the therapist client intake notes and it is up to the client to claim against their insurance. Mr. Vath stated that they do not bill the insurance companies directly.

Makhan Baines, Teriyaki Experience, 31853 Alvarado Blvd, Union City, CA, stated that he was looking for a unique concept for a restaurant and found this restaurant in Canada. Mr. Baines stated that everything is cooked on the grill in water, nothing is cooked in oil. Mr. Baines stated that the conference room is for his use as he plans to franchise the business in the future and he will use it to hold franchisee meetings.

Chairperson Anderson asked there is a Teriyaki Experience in the local area.

Mr. Baines replied that there is not one in California; the first one is open in Atlanta, GA. Mr. Baines stated that there is one planned for San Francisco and Hayward and this would be the third one.

Commissioner Lew stated that she thinks this is a wonderful concept. Commissioner Lew asked if he looked at any other properties in Union City for this business.

Mr. Baines replied that he had not.

Commissioner Lew asked if he understood that the reason this has come before the Planning Commission is because it is not a permitted use or conditionally permitted use in Union Landing. Commissioner Lew stated that there are other areas in Union City where this would be a permitted use.

Mr. Baines stated that either the locations are too big or too small; they generally require about 1,200 square feet of space.

Commissioner Lew asked if there any other place in Union City where he would consider locating.

Mr. Baines replied that other locations did not fit with his business concept and would not attract the clientele that he is looking for.

Commissioner Lew asked if they would only come to Union Landing.

Mr. Baines stated that they would not only come for the food but also to shop.

Commissioner Lew stated that she disagrees and she thinks that Teriyaki Experience would fit anywhere that has traffic. Commissioner Lew thinks that the food will be the draw not other things around it.

Commissioner Sweeney referred to the business statement of use that mentioned the sale of alcohol and asked if the food will mostly be take out food.

Mr. Baines replied that it will be both ways, customers will probably eat on premise at lunch time and do take out for evening meals.

Commissioner Sweeney asked if the alcohol sales that he anticipates are for on-site consumption or to go.

Mr. Baines stated that he is not anticipating any alcohol sales; the reference to alcohol sales is from the original corporate statement of use that he copied. Mr. Baines stated that the stores in Canada do not sell alcohol.

Commissioner Sweeney stated that she had a problem with someone getting a meal to go and also buying alcohol.

Mr. Baines stated that he would not allow that. Mr. Baines stated that he is comfortable with the condition of approval prohibiting the sale of alcohol.

Mr. Pappas stated that they are comfortable with the conditions of approval that he received with the staff report; however, he does have an issue with the desk item with a new condition of approval for Sleep Train. Mr. Pappas stated that he understands that minimizing redundancy of business types in Union Landing has been a priority for the Planning Commission. Mr. Pappas stated that a representative from Sleep Train is not here this evening to address this new condition of approval. Mr. Pappas stated that he cannot control what they do in their other center. Mr. Pappas would like time to consult with Sleep Train but he does not want to hold up the rest of the project.

Chairperson Anderson stated that he agrees with Mr. Pappas because it is not a condition on the applicant but a condition on Sleep Train. Chairperson Anderson noted that Sleep Train is also applying for a Use Permit which would make the condition apply. Chairperson Anderson stated that he would probably accept the condition as written.

Mr. Leonard stated that staff strongly encouraged Sleep Train to attend the meeting and their representative did not feel the need to attend.

Chairperson Anderson closed the public hearing.

Chairperson Anderson asked for the consensus of the commission.

Commissioner Lew stated that she found the staff report confusing and that the City seems to have

painted itself into a corner by thinking that it knew what it wanted and come to find out it really doesn't know what it wanted, although the laws and General Plan are in place and now the commission is trying to figure out what does the City want and what can we do without breaking the law. Commissioner Lew is not sure that we can do anything here that would make it an ethical approval. Commissioner Lew stated that if there is a way to approve this without penalizing the applicant and the franchisees and the businesses she would like to know how.

Commissioner Sweeney stated that she doesn't think that the General Plan or the Zoning Ordinance is a static document and as times change, and the City's conditions change, and the demands of the citizen's change, we make adjustments. Commissioner Sweeney stated that we thought we had a pretty clear vision of what we would see in this development but the tenants did not step forward so it is time to step back again and take a different look at this and see if a different mix of businesses makes more sense in this area and still addresses the general need of the community for diverse businesses that we don't currently see offered, without the overconcentration of any particular type of business. Commissioner Sweeney doesn't see it as a big deal to make the changes in response to changes in the community and the conditions and the opportunities in Union Landing. Commissioner Sweeney stated that there were many things that she was uncomfortable with but with the changes discussed this evening, including the restrictions on employee parking and restricting the fast food restaurant from selling alcohol, makes her feel more certain that this will be a viable and valuable addition to the community. Commissioner Sweeney stated that she does not have a problem with the hours of operation because they are spread out compared to their neighbors and there won't be too much of a problem with that. Commissioner Sweeney stated that she has a problem with the parking. Commissioner Sweeney stated that she has probably seen every proposal come through and this was the best they could do. Commissioner Sweeney stated that it was a problem to get enough space in the shops buildings to make it viable and park it at the full rate. Commissioner Sweeney stated that as time goes on and as uses come in that are a little more intense than we might have originally envisioned, the parking starts looking very tight. Commissioner Sweeney stated that with the spillover across the street she doesn't think that there will be a problem any worse than at any other location in Union Landing. Commissioner Sweeney stated that she can support this with the changes and the assurances that we won't be seeing the impacts that she originally expected and she would certainly want to include the desk item condition regarding Sleep Train.

Commissioner Lew stated that she is not sure that she can legally vote for it based on these findings. Commissioner Lew stated that she is uncertain.

Commissioner Singh stated that we should do what is good for the City which will generate more revenue for the City. Commissioner Singh asked what is the size of the parking stalls.

Mr. Leonard replied that they are 9 feet by 18 feet.

Commissioner Singh stated that they could be reduced to 8 ½ feet and could create more parking spaces and that would be one way to solve the problem.

Mr. Leonard stated that we used to allow compact spaces but there was trouble with cars being hit by other cars, cars are getting bigger, people in this area drive SUV's and mini-vans which do not fit in the smaller spaces. Mr. Leonard stated that we no longer allow the compact size stall and we also changed the standard size spot to 9 foot by 18 foot with a 26 foot back up aisle or 9 ½ foot by 18 foot with a 25 foot back up aisle. Mr. Leonard stated that Wal Mart used the 9 ½ foot by 18 foot with a 26 back up aisle and used a ratio of seven spaces per 1,000 square feet of floor area, whereas the City only requires 5 spaces per 1,000 square feet of floor area. Mr. Leonard stated that is why there is always space to park at Wal Mart. Mr. Leonard would not recommend putting in compact spaces.

Commissioner Singh asked if the Police could monitor the day spa once a month or something.

Mr. Leonard stated that it probably will in fact happen. Mr. Leonard stated that the Police Department will be doing the background applications and they will probably send in undercover officers to check on them.

Commissioner Singh stated that he would support the application.

Commissioner Crosby stated that he is comfortable with the proposed uses individually and even somewhat as a group but he doesn't feel comfortable granting a Variance for the parking. Commissioner Crosby stated that he does not think we meet the standard to grant the Variance. Commissioner Crosby stated that what he thinks should be done is that if the City feels they have made a mistake and allowed too big of a building to be built then the City Council needs to reevaluate and apply new parking standards and not try to shoehorn this into a Variance. Commissioner Crosby stated that a Variance is supposed to be used for extraordinary circumstances or conditions, which he does not feel this application meets. Commissioner Crosby stated just because the property owner has had trouble leasing this space it is not an extraordinary circumstance or condition. Commissioner Crosby stated that now to fit the tenant composition proposed we need to give them another reduction in parking to now culminate with a 20% variance in total for parking. Commissioner Crosby stated that to him it doesn't apply to what a variance should be used for. Commissioner Crosby stated that to him that means changing the zoning code to require less parking. Commissioner Crosby stated that in addition to requiring extraordinary circumstances to grant a variance the circumstances cannot result from actions of the applicant. Commissioner Crosby stated that in this case the applicant built the building and if this was going to be an issue, they should have designed it with more of a parking cushion, like Wal Mart. Commissioner Crosby stated this Variance cannot meet finding #4 because the applicant has chosen these tenants and there is no right to decide what composition the tenants will have in the building. Commissioner Crosby stated that it looks like the commission would be granting special privileges to this property owner because no other property owner is getting this privilege. Commissioner Crosby stated that finding #6 may not be made because if the parking spills over it could injure other adjacent property owners who have nothing to do with this application. Commissioner Crosby stated that he would not vote for this variance but he suggested that the City Council needs to rezone this district or change the parking requirements. Commissioner Crosby stated that there should be consistent, predictable zoning and planning decisions that everyone can rely upon. Commissioner Crosby stated that he cannot grant a variance because it would be a good idea to have this group of people go into this site. Commissioner Crosby stated that he agreed that it probably would be a good idea to have that group of people go into that site but that cannot be the rationalization under the law to satisfy the variance criteria, which were not satisfied.

Chairperson Anderson stated that he agrees with Commissioner Crosby's position on the variance. Chairperson Anderson stated that without the variance you cannot have the restaurant space increased. Chairperson Anderson stated that with this application they are all so intertwined it would be impossible to vote to deny one without denying the others. Chairperson Anderson stated that Teriyaki Experience and Massage Envy rely on the text amendment and he has a problem with the text amendment. Chairperson Anderson stated that he believes the text amendment change makes it inconsistent with the General Plan. Chairperson Anderson stated that he would not vote for those. Chairperson Anderson stated that Sleep Train would not be appropriate because it would be a duplication. Chairperson Anderson stated that he will vote no on this application.

Commissioner Lew stated that she agrees with Commissioner Crosby's position.

Commissioner Crosby stated that this needs to be rejected on the Variance and the applicants need to change the application so that a Variance is not required but instead change the zoning for either this

location or the parking requirements.

Chairperson Anderson asked if he would prefer a continuance.

Commissioner Crosby asked if the commission denies the application can it be appealed to the City Council.

Chairperson Anderson replied that is correct.

Commissioner Crosby thinks the decision could be made tonight.

Ms. Schultz stated that this discussion will be forwarded to the City Council along with the staff report.

Mr. Leonard stated that if we change the parking standards that would affect the whole city and he does not see the value in doing that because in this case perhaps we approved too big of a building on the site. Mr. Leonard stated that fact ought not to cause us to change the standards for all retail commercial uses in the City. Mr. Leonard stated that parking standards don't vary by zone they vary by uses. Mr. Leonard stated that a Variance was the best way to handle the application.

Chairperson Anderson recessed the meeting.

Chairperson Anderson reconvened the meeting.

Mr. Pappas stated that Commissioner Crosby's comments are very direct and to the point. Mr. Pappas gave a history of the site in regards to the creation of these parcels. Mr. Pappas stated that because of the way that this parcel was created it has made it very difficult to develop because it is an odd shape and size. Mr. Pappas stated that this occurred because of decisions made by the City. Mr. Pappas stated that even if the buildings were smaller it would not create more parking. Mr. Pappas feels that this is an extraordinary circumstance and should be considered in the granting of the Variance.

Mr. Leonard stated that this parcel was created by decisions made about where to locate Courthouse Drive and it was a very difficult parcel to develop. Mr. Leonard noted that the City also took part of the property for an entry to Union Landing, which left the applicant with less area to work with.

Chairperson Anderson stated that this is not the first Variance for this site and this orientation and this size was there when the applicant made his design plans and the parking allocations were based on the size of the buildings and what Union City expected as tenants. Chairperson Anderson stated that this site is not meant to handle general commercial traffic, it is a specialty zone. Chairperson Anderson stated that the applicant did not meet several of the previous conditions and now the applicant is asking for another Variance.

Commissioner Lew made a motion to deny Zoning Text Amendment AT-03-07, Use Permit UP-03-07, Variance V-03-07, and Mitigated Negative Declaration because the proposed municipal code text amendment is not consistent with the General Plan and the purpose for the subregional specialty commercial sub area to provide a variety special commercial uses to attract shoppers from a sub regional market area, that the proposed municipal code text amendment does not achieve the purposes of Title 18, that the proposed location of the conditional uses are not in accord with the purposes of the zoning ordinance and the purposes of the district in which the site is located; that the proposed conditional uses do not comply with each of the provisions of Title 18; that the strict or literal interpretation and enforcement of the specified regulation would not result in practical difficult or unnecessary physical hardship inconsistent with the zoning title; that there are not exceptional or extraordinary circumstances

or conditions that are applicable to the property involved; that the granting of the variance would constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district; that the granting of the variance would be detrimental to the public health, safety or welfare or materially injurious to properties and improvements in the vicinity; that the granting of the variance would result in parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets; and that the granting of the variance would create a safety hazard or any other condition inconsistent with the purposes of the title; and it is recommended the Planning Commission not approve Zoning Text Amendment AT-03-07, Use Permit UP-03-07 and Variance V-03-07 and adopt a resolution confirming this action.

Commissioner Crosby seconded.

AYES	3 (Anderson, Crosby, Lew)
NOES	2 (Singh, Sweeney)
ABSTAIN	0
ABSENT	1 (Saini)

**VI. SUPPLEMENTAL STAFF REPORTS:**

**A. CONTINUED REPORTS:** None.

**B. NEW REPORTS:**

- PASQUALE CONTRERAS, 33855 14<sup>TH</sup> STREET, Administrative Site Development Review ASD-24-07;** the applicant is requesting approval of Administrative Site Development Review ASD-24-07 to install a new one-story, 2,033 square foot manufactured home located at 33855 14<sup>th</sup> Street (APN: 486-0045-006-00). 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 asked if the two projects shown for reference were City projects.

Ms. Lum replied that they were privately done.

Commissioner Lew asked how green is this project compared to building a home from scratch.

Ms. Lum stated that staff did not do that analysis.

Commissioner Lew asked if the City's only concern is the appearance of the home's exterior.

Ms. Lum stated that is correct.

Commissioner Lew stated that normally the commission does not delve into the interior of a single family residence and she is concerned about raising this issue in the staff report and whether the commission should be discussing this at all.

Ms. Lum stated that the interior is only discussed to the extent that it impacts the ability of the façade to have a highly articulated enhanced quality. Ms. Lum stated that staff sometimes does make suggestions

about interior layouts during the development process. Ms. Lum stated that if something is in conflict with the building code or otherwise impacting the exterior of the building based on the layout then staff will make recommendations.

Commissioner Lew stated that she does not see any difference between an entrance to a utility room and a home that has an entrance into a mud room before you enter the living area. Commissioner Lew stated that she does not have a concern with the entrance into the utility room.

Commissioner Lew referred to condition #7 and asked why are window bands going to be required for the garage which will be at the rear of the property.

Ms. Lum stated that it is a standard condition that is applied to all new single family homes for consistency.

Commissioner Lew stated that would be true for garages that face the street but why would it be necessary here where the garage is not on the public street.

Ms. Lum stated that in this case it would not be as much of an enhancement from the public right-of-way.

Commissioner Lew asked to make the condition an option for the applicant not a requirement.

Ms. Lum stated that it is important to retain the part of the condition that refers to the insulation and the portion referring to the top window bands could be removed.

Commissioner Lew asked if the applicant submitted a landscape plan.

Ms. Lum replied that a landscape plan was not submitted.

Commissioner Lew asked if a fence plan was submitted.

Ms. Lum replied that a fence plan was not submitted.

Commissioner Lew stated that another mitigating item could be the landscaping and where the fence will be located that would help address the appearance of the property. Commissioner Lew stated that she might not approve of this but there are other things to look at to mitigate the appearance of the front. Commissioner Lew stated that a plus for this project is that the garage is at the rear and the front could look more attractive by not having the garage be the focal point of the residence. Commissioner Lew recommended that the City look at designs where the garage is not the focal point for single family residences for future projects.

Commissioner Singh asked what is the situation for utility undergrounding.

Ms. Lum replied that they will need to underground the lateral to serve the new home.

Commissioner Crosby asked if the applicant is the owner and will be the occupant of the home.

Ms. Lum replied that the owner intends to reside in the unit and the applicant is a representative on behalf of the owner and a representative from the home builder is present.

Commissioner Crosby asked at what point was the home purchased.

Ms. Lum replied that she believes that the home was purchased after a set of improvements and enhancements that had potential to make the unit work for the neighborhood was agreed upon. Ms. Lum stated that after staff saw pictures of the unit they no longer felt that the home no longer had the potential to work with the neighborhood.

Chairperson Anderson opened the public hearing.

Michael Smith, CCPS, 1777 G St, Merced, CA 95340, stated that he is a planning and land use consultant. Mr. Smith stated that he doesn't have a lot of concern about this project except for staff's recommendation of denial for the project. Mr. Smith stated that they went over the criteria from HUD, the State and local requirements with staff. Mr. Smith stated that all parties have no problem with adding the suggested enhancements. Mr. Smith stated that they have added shutters to the windows, a special design porch for the front, and pillars to border the windows. Mr. Smith stated that because the lot is long and narrow the house has to be situated in a certain way. Mr. Smith stated that on a normal width lot the house would be oriented differently.

Chairperson Anderson asked what prevented the applicant from coming up with a different plan.

Mr. Smith stated that this was the home the applicant could afford. Mr. Smith stated that what the applicant could not do was change dealerships as she had already purchased the home. Mr. Smith stated that he explained that the home met certain requirements and should be approved to go and the client bought the home.

Commissioner Lew asked if the Planning Commission does not approve this application will the applicant take the house back.

Mr. Smith replied that it would be up to the dealership.

Commissioner Lew asked if the City does not approve the application does that annul the contract or do they have return rights.

Mr. Smith replied that would have to be up to the dealership that he does not represent.

Juan Martinez, 3600 Langster Ave, Atwater, CA, stated that he represents the dealership. Mr. Martinez stated that they agreed to make any changes necessary to fit into the neighborhood. Mr. Martinez stated that the property owner picked this home because it fit her needs and the size of the lot. Mr. Martinez stated that the home was not ordered until about one month ago. Mr. Martinez stated that this home is built in Idaho and is better built in some aspects than some stick homes. Mr. Martinez stated that at one of the last meetings between the property owner and staff, the property owner agreed to stucco the home after it was on site, if it was necessary. Mr. Martinez stated that the home had to be ordered because after a certain date the manufacturer would be unable to transship the home to California due to winter weather concerns. Mr. Martinez stated that once they had the home in California they felt they would be able to make any further changes required to get the application approved. Mr. Martinez stated that if the home is not approved then he would have to resell the home.

Commissioner Sweeney stated that the intent is the utility room will be the front entrance to the home. Commissioner Sweeney stated so when you open the front door the washer and dryer are right there.

Mr. Martinez replied that the washer and dryer are set over to the right.

Commissioner Sweeney asked if the washer and the dryer are enclosed in any way.

Mr. Martinez replied that they are not.

Commissioner Sweeney asked if the hot water heater is in its own closet.

Mr. Martinez replied that the hot water heater is enclosed.

Commissioner Sweeney referred to the entrance on the side that goes into the living room and asked how will a person approaching the house know that the other entrance is the front entrance and not the one on the side that looks more like a front door.

Mr. Martinez replied that a porch is going to be added to the new front entrance to make it look more like a front entry.

Commissioner Sweeney asked if there would be obscure glass in the bathroom window.

Mr. Martinez replied that it is a dual pane window with clear glass.

Commissioner Sweeney stated that is very unusual to have clear glass in a bathroom window that faces the street.

Mr. Martinez stated that it is the property owner's intention to plumb the garage and place the washer and dryer there and not inside the house itself.

Commissioner Lew asked if the water heater was going to be moved.

Mr. Martinez stated that it will stay where it currently located.

Chairperson Anderson asked where the furnace is located.

Mr. Martinez stated that it is between the second bathroom and bedroom #4.

Ms. Lum stated that there is a condition to provide obscure glazing in the master bathroom.

Commissioner Lew asked if the retreat and the master bathroom could be switched even though this unit is already built.

Mr. Martinez replied that they looked into doing this but the engineering fee was very high but it would be possible.

Commissioner Lew asked if the applicant would be willing to do that.

Mr. Martinez referred the question to the property owner.

Geraldine Contreras, Union City, CA, stated that she and her husband want to retire to this home. Mrs. Contreras stated that the house is beautiful and she has done everything that staff has asked her to do even though it has cost her more money. Mrs. Contreras stated that moving the bathroom would cost her more money.

Chairperson Anderson closed the public hearing.

Commissioner Lew stated that she still doesn't know what the City wants and agrees with the applicant that the City hasn't settled on what they want.

Ms. Lum replied that before staff saw photos of the unit they had reached a level of comfort that we thought potentially the unit could work with the enhancements but once staff saw the photos it did not seem that the unit would be able to reach that level through the enhancements staff suggested. Ms. Lum pointed out that staff had suggested flipping the retreat and the bathroom months ago and were told that the unit plan was fixed and that it would be too costly and take too long to change the layout of the unit. Ms. Lum stated that because the house was already built staff was constrained in the changes that could be made to integrate the home into the neighborhood.

Commissioner Lew asked if there is anything that would satisfy the City.

Mark Leonard, Director, Economic and Community Development, stated that you have staff's recommendation in the report and you have to make the decision.

Commissioner Lew stated that it is not only the exterior appearance of a home but also the elements of landscaping and fencing and those elements are missing from the plans so it is hard to make a decision. Commissioner Lew stated that she does not have a problem with the home itself but a little more color and accent features would be nice. Commissioner Lew likes the idea that the garage is in the back and something can be done about the glass in the bathroom. Commissioner Lew suggested a tree or tall hedge to block the view into the bathroom. Commissioner Lew stated that heavy landscaping would make a difference in the appearance of the front.

Commissioner Sweeney stated that she is disappointed that the property owner bought the house while still negotiating with staff. Commissioner Sweeney stated that it is a bit presumptuous to buy the house and put it on the lot the way one wants to. Commissioner Sweeney stated that we need to demand all of the enhancements that have been presented to use from staff's perspective because she is disturbed by the fact that this house is not related to the lot the way that any other house is on the street. Commissioner Sweeney stated that heavy landscaping should include layers of landscaping and something tall to block the bathroom window.

Commissioner Lew stated that she doesn't want grass at all. Commissioner Lew stated that she wants drought tolerant plants and mounding with trees, shrubbery and seasonal flowers.

Chairperson Anderson stated that his reaction is mixed. Chairperson Anderson stated that he agrees with staff's assessment of the property. Chairperson Anderson stated that the applicant made a very compelling argument for her side. Chairperson Anderson stated that he would like to approve this but it does not meet the architectural standards for the City. Chairperson Anderson wondered if some sort of architectural landscaping could improve the overall vision for this house. Chairperson Anderson stated that he would like to continue this application to give the applicant another opportunity to improve the look of this house and make it more compatible with what the City would like to see. Chairperson Anderson stated that he would like to see a landscape plan for this property.

Ms. Lum stated that the project has been conditioned for Bay Friendly landscaping and staff will work with the applicant to create a nice front yard landscape. Ms. Lum stated that the Planning Commission has approved other new homes without the landscape plans. Ms. Lum stated that we often receive the plans after the project is approved and have never depended on the landscape to dress up the house.

Mr. Leonard stated that the commission has a very valid thought about landscaping and fencing because that could in fact make a difference here. Mr. Leonard stated that he would be willing to work with the

property owner to develop some additional architectural enhancements, perhaps the master bath and bedroom could be switched around and a good landscape plan and good fencing plan could be developed. Mr. Leonard asked the commission to be as specific as possible about what they want if the project is continued.

Commissioner Crosby stated that he would approve the project because he does not think that the concerns about the exterior and the orientation of the home on the lot are a problem. Commissioner Crosby stated that he visited the property and does not think that it is too out of character with the neighborhood. Commissioner Crosby stated that if the property owner makes the changes that are proposed that the home will work on the lot. Commissioner Crosby stated that most people don't use their front doors instead using side doors and garage doors to enter their homes. Commissioner Crosby stated that it appears that staff was comfortable with the project until they saw three dimensional pictures of the home and then they were not comfortable with the proposed home. Commissioner Crosby stated that to punish the property owner for the City's issues would not be proper. Commissioner Crosby stated that he sees no reason to continue this project and he would support it.

Chairperson Anderson asked would it be to your purposes at all to if we gave the applicant another opportunity to come to some common ground between what staff wants and what the applicant is willing to provide.

Commissioner Crosby stated that his preference is not to continue and he realizes that is the applicants preference and he would not support that idea.

Chairperson Anderson asked how the applicant would feel about a continuance.

Mr. Smith stated that he would have a problem with that because they have already agreed to everything that staff has asked of them and they would hate to see it continued. Mr. Smith stated that they are willing to provide a landscape plan and change the window in the bathroom.

Commissioner Singh asked what are the things left to be done in the interior.

Ms. Lum replied that staff is not recommending any interior changes at this point because staff took the interior layout as being fixed. Ms. Lum stated that all of the suggestions for exterior modifications and they were in agreement as to what the necessary changes were. Ms. Lum stated that the commission needs to make certain findings. Ms. Lum stated that the house does not appear to be consistent with other homes in the Decoto area and staff does not think that the house as is will meet the finding of being consistent and compatible with the surrounding architecture.

Commissioner Singh stated that if the commission denies the application it will be a financial hardship for the property owner and he would support a continuance.

Commissioner Lew stated that she does not have a problem approving this application tonight.

Chairperson Anderson stated that he would prefer a continuance.

Commissioner Sweeney asked what he hoped to accomplish with a continuance.

Chairperson Anderson replied that with a continuance there would be an opportunity to work with the applicant on the landscaping and other issues raised tonight.

Commissioner Sweeney asked if that would change his opinion from a denial to an approval.

Chairperson Anderson stated that it would because he is sensitive to staff's need to make the findings. Chairperson Anderson stated that for every project there is architectural review component. Chairperson Anderson stated that a project may have met the legal standards but Union City also wants the homes to meet an architectural standard and he thinks that is important.

Commissioner Singh agreed with a continuance.

Commissioner Lew agreed with a continuance.

Chairperson Anderson asked what date the project could be continued to if a continuance is decided on.

Mr. Leonard stated that it would probably have to be the second meeting in January.

Chairperson Anderson asked the applicant what impact a two week continuance would have on her.

Mrs. Contreras replied that the house she is living in has been sold. Mrs. Contreras asked why it has to be continued when she has done everything that staff has asked her to do. Mrs. Contreras stated that there is a huge house on Whipple Road that really stands out from all of the rest of the small homes in the Decoto area and she doesn't think her new home will have that type of impact on the neighborhood.

Chairperson Anderson asked what additional conditions that staff would like to see for this project.

Mr. Leonard stated that there might be things they could suggest but they would be costly; for example, amending the roofline, the applications of stone or brick treatment to the house in key locations, and having a very enhanced landscape plan.

Chairperson Anderson asked if the City has any programs that would assist the homebuyer in making those types of upgrades.

Mr. Leonard replied there is not.

Commissioner Lew stated that the only condition that needs to be added regarding enhancing the exterior finish. Commissioner Lew stated that there are conditions to cover the landscaping, driveway and the treatment of the windows.

Chairperson Anderson asked for a suggestion for the condition.

Commissioner Lew suggested "The applicant shall provide enhanced exterior treatment to the satisfaction of the Planning Division."

Commissioner Lew made a motion to approve Administrative Site Development Review ASD-24-07 with the amended conditions of approval, making findings 1 - 4, and adopting a resolution confirming this action.

Commissioner Sweeney seconded.

AYES	5 (Anderson, Crosby, Lew, Singh, Sweeney)
NOES	0
ABSTAIN	0
ABSENT	1 (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 January 3, 2008.

**IX. GOOD OF THE ORDER:**

Commissioner Lew asked if the Barry Swenson project is part of the DIPSAs Specific Plan Area.

Mr. Leonard replied that it is.

**X. ADJOURNMENT:** 10:25 p. m.

**APPROVED:**

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**TIKISA ANDERSON, CHAIRPERSON**

**ATTEST:**

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**MARK LEONARD, SECRETARY**