

**CITY OF UNION CITY
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING
OF MARCH 19, 2009, 7:00 P.M.
IN THE COUNCIL CHAMBERS OF CITY HALL
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

I. ROLL CALL: Commissioners Raymond Gonzales Jr., Jo Ann Lew, Froilan (Roy) Panlilio, Gurnam (Gary) Singh, and Chairperson Tikisa Anderson

STAFF: Joan Malloy (Economic and Community Development Director); Carmela Campbell (Planning Manager); Avalon Schultz (Associate Planner); Kit Faubion (Assistant City Attorney); Kris Fitzgerald (Administrative Assistant).

II. APPROVAL OF MINUTES: The regular Planning Commission minutes of March 5, 2009 were approved with corrections.

III. ORAL COMMUNICATIONS: None.

IV. WRITTEN COMMUNICATIONS: None.

V. PUBLIC HEARINGS:

A. CONTINUED HEARINGS: None.

B. NEW HEARINGS: None.

VI. SUPPLEMENTAL STAFF REPORTS:

A. CONTINUED REPORTS: None.

B. NEW REPORTS:

- 1.** Update on green building ordinance for private development.

Avalon Schultz, Associate Planner, presented the staff report.

Commissioner Panlilio asked if this will be an added burden to the builders.

Ms. Schultz replied that there will be an added cost but there are a lot of positive benefits.

Commissioner Panlilio asked how long will it take to recoup the added cost.

Ms. Schultz stated that she has not seen any definitive reports on that aspect yet.

Commissioner Panlilio asked if there will be alternatives available. Commissioner Panlilio wanted to have alternatives so that if one option is too costly perhaps there is an alternative that is less costly and give the builders and homeowners more choices.

Ms. Schultz replied that they intend to allow for flexibility in meeting the requirements.

Commissioner Singh asked if this would apply to projects over 500 square feet.

Ms. Schultz replied that for residential projects over 500 square feet, applicants would be required to come in and talk to staff about how they can add green components to their project. Ms. Schultz stated that staff is only recommending green building certification for new residential construction. Ms. Schultz stated that they are recommending a threshold for non-residential projects of 1,000 square feet.

Commissioner Singh stated his concerns about the thresholds.

Carmela Campbell, Planning Manager, stated that staff does not want to overburden the community.

Chairperson Anderson asked how these new standards will work with the zoning ordinance and other performance standards.

Ms. Schultz replied that the green building standards would be added to Title 15 of the Zoning Ordinance for Building and Construction requirements. Ms. Schultz stated that compliance with the green building ordinance would not need to be conditioned because it would already be in the code.

Chairperson Anderson asked how changes to Title 15 will affect Title 18.

Ms. Campbell replied that most of the provisions have to do with construction details that are not called out in Title 18, so most likely staff will add a condition of approval that will require the applicants to comply with Title 15.

Joan Malloy, Director, Economic and Community Development, stated that periodically the City Council approves updates to the building code standards and fire code standards.

Commissioner Lew stated that she thinks this is a step in the right direction and is glad the City is doing this.

Commissioner Lew referred to page 3, first bulleted item and asked if the standards would apply to the entire building or just the secondary dwelling unit.

Ms. Schultz replied that it is just for the secondary dwelling unit. Ms. Schultz stated that it is not the intent to make the homeowner retrofit the entire house just because they want to put in a secondary dwelling unit.

Commissioner Lew asked if they would still make suggestions of changes and upgrades that the homeowner could make to the main dwelling unit when they come in to talk about the secondary dwelling unit.

Ms. Malloy replied that it would be possible to do that.

Commissioner Lew recommended that the building permit process be discounted if the homeowner chooses to do more than is required.

Commissioner Lew referred to page 4, second bullet item and reiterated her previous suggestions for this item as well.

Ms. Schultz replied staff will forward her comments to the City Council.

Commissioner Lew referred to page 4, third bullet item, and #2 and asked if the City has envisioned allowing wind energy devices in the City.

Ms. Schultz replied that this is referring to on-site energy generation and that the specific language is no longer being recommended; staff is recommending using the StopWaste checklist included as a desk item.

Commissioner Lew referred to page 5, third line and asked if the applicant agrees to modify their building to include green components would that change the scope of their building permit.

Ms. Campbell replied that the goal is to talk to the applicant before they submit for building permits so that they can integrate those components into the plans without adding a lot of extra cost.

Ms. Schultz stated that the goal is to talk with the applicant about how to incorporate green building in their project.

Ms. Campbell stated that staff will be preparing handouts for the public.

Commissioner Lew asked if staff will require an applicant to correct code violations even if they are not part of the project.

Ms. Schultz stated that when the building inspectors perform their inspections they inspect to the plans but if they do see a life safety hazard they will require the applicant to fix it.

Commissioner Lew stated that she just wanted the public to be clear about the impacts on them.

Ms. Schultz stated that the incorporation of green building measures would be voluntary for residential additions and remodels.

Ms. Schultz stated that for commercial projects, applicants are required to use an architect, who is able to note all the proposed changes clearly on the plans.

Commissioner Lew stated that the checklist is a great idea.

Commissioner Gonzales stated that he is glad to see the City is moving in the right direction.

Commissioner Gonzales suggested having breakeven illustrations or guidelines so that applicants can see how long it will take to recoup their costs. Commissioner Gonzales stated his concerns that some homeowners would not be able to recoup their costs in a timely fashion. Commissioner Gonzales asked if there could be a discount based on either when the applicant purchased the home or the applicant's age.

Ms. Schultz replied that this is why staff is not recommending mandatory compliance for residential additions or remodels. Ms. Schultz stated that staff understands that there are many different situations in the City and it may not be feasible for everyone to retrofit existing homes.

Kit Faubion, City Attorney, stated that the City must be careful not to make any arbitrary distinctions in any of the regulations.

Commissioner Gonzales asked if the options can be chosen by the applicant.

Ms. Schultz replied that staff would leave the option of how to meet green building requirements up to the applicant/builder.

Ms. Schultz suggested having a study session prior to bringing the Green Building Ordinance to a public hearing.

Commissioner Gonzales asked if any of these implementations would carry any tax credits based on renewable energy.

Ms. Schultz replied that there are several areas where this is a possible. Ms. Schultz noted there is an idea to place some stimulus money into a pot with StopWaste.Org so that residents throughout the county could learn about rebates or other financing help.

Commissioner Panlilio asked how green is City Hall.

Ms. Campbell stated that staff is working with PG&E and ABAG to do energy audits of all the City buildings so that we can see where work needs to be done.

Commissioner Panlilio stated that the City has to set an example for the community.

2. Appeal of Zoning Interpretation – Appeal of Economic and Community Development Director’s Zoning Interpretation Regarding establishment of a Smart & Final store in Union Landing at 31070 Dyer Street.

Carmela Campbell, Planning Manager, presented the staff report.

Commissioner Gonzales stated that he see three reasons to deny the applicant; square footage more than 20,000 square feet; having the benefits of being a wholesale store; not a specialty store.

Ms. Campbell stated that those are correct. Ms. Campbell stated that the issue of sales tax generating uses is in the Economic Development element of the General Plan and applies to all of Union Landing.

Commissioner Gonzales stated that he is also empathetic to the applicant’s problem.

Commissioner Gonzales asked what kind of stores would be considered to use that space.

Ms. Campbell stated that staff provided the commission with a copy of Chapter 18.39 of the Union City Municipal Code, which is the Union Landing section. Ms. Campbell stated that it lists out all of the permitted and conditionally permitted uses. Ms. Campbell stated that there are a broad amount of uses that could go in there.

Commissioner Gonzales asked if staff had talked with the applicant about other possible uses.

Ms. Campbell replied that staff has been working with the property owner and have suggested some uses that would have a regional draw and are not currently in the area. Ms. Campbell stated that right now it is difficult time for businesses to expand.

Commissioner Gonzales stated that he thinks that they can find a tenant that would fit the criteria.

Commissioner Singh asked if the applicant would be willing to reduce the square footage under 20,000 square feet. Commissioner Singh stated that he visited one of the Smart and Final stores and suggested modifying the products they carry to meet the criteria.

Joan Malloy, Director, Economic and Community Development, asked if he was suggesting that they modify their product line so that they become more of a general merchandise store instead of a supermarket.

Commissioner Singh agreed with that and also suggested that they modify the square footage to be under 20,000 square feet.

Commissioner Panlilio agreed with Commissioner Singh's suggestions.

Ms. Malloy stated that this has been suggested to the applicant and also that they would need to sell the items at retail prices instead of wholesale prices.

Ms. Malloy stated that we only receive sales tax revenue on retail sales.

Chairperson Anderson clarified that the commission is to decide whether the Zoning Administrator made a correct decision about this use.

Chairperson Anderson stated that clearly a supermarket is not allowed in the Specialty Region.

Chairperson Anderson stated that the store should not duplicate sales from the other areas.

Ms. Malloy stated that the intent of the Sub Regional Specialty Commercial area is to provide unique items that cannot be found elsewhere and this is especially true with regards to a food store. Ms. Malloy stated that it should be an attraction that will bring people to the center to buy items that they cannot find at Lucky's or WalMart.

Chairperson Anderson asked if it would be a specialty food store.

Ms. Malloy replied that staff did not feel that it met the definition of a specialty food store.

Chairperson Anderson asked if the other stores appeared to serve a regional area or just the local community area.

Ms. Campbell replied that when she visited the Fremont store it appeared to only serve the local community area.

Chairperson Anderson stated that there doesn't appear to be enough data to determine whether they are a regional or local area use.

Ms. Malloy stated that based on the research staff has done it has not been indicated.

Chairperson Anderson asked if the surrounding area has been notified of the applicant's intent to have a Smart and Final store in Union Landing.

Ms. Campbell replied that so far the process has not triggered a noticing requirement. Ms. Campbell stated that if the applicant does move forward with a Use Permit then it will be noticed or if the applicant appeals tonight's decision to the City Council it will then be noticed.

Chairperson Anderson stated that he does not think that they would meet the requirements for a specialty food store for a Use Permit.

Chairperson Anderson asked what it would take to get this particular use approved for the location.

Ms. Malloy suggested that we finish tonight's process before speculating on other possible scenarios.

Commissioner Lew stated that this was an unfortunate set of circumstances. Commissioner Lew referred to the list of permitted uses for the SRSC and asked if an applicant wanted to open a store selling those items would they have to come in and apply for a Use Permit.

Ms. Campbell replied that if it is a permitted use then the applicant would only have to get a business license in order to operate.

Commissioner Lew stated that she feels that Smart and Final is more like Linen's and Things and should be allowed because they sell a variety of items.

Ms. Campbell replied that the definition of supermarket with a focus on prepackaged goods and grocery sales of more than 50% makes them a supermarket and Linens and Things did not sell any grocery items. Ms. Campbell stated that the Smart and Final Extra sold slightly different products than the store in Oakland.

Commissioner Lew stated that it was unfortunate that this area was not designated CC so that the store could be located there.

Ms. Campbell noted that the intent of the General Plan policy was to limit the CC area.

Chairperson Anderson noted that there is a Land Use element that prohibits expansion of the CC type stores beyond the designated area. Chairperson Anderson stated that the General Plan would have to be changed to allow this to happen.

Ms. Malloy replied that is correct. Ms. Malloy stated that in about 2000 there was an application for a drug store in this same location and it was ultimately denied by the City Council.

Commissioner Gonzales asked if staff had researched how other cities had defined the Smart and Final stores.

Ms. Campbell stated that it is difficult to compare zoning ordinances with other cities.

Ms. Malloy stated that for Union Landing a specific zoning ordinance and General Plan element was written and they do not apply to any other part of the city.

Commissioner Singh asked if the applicant is willing to put in more taxable merchandise would the store then be acceptable.

Ms. Campbell stated that if the applicant was agreeable to that staff would request Smart and Final to submit documentation and a plan so that we could really understand what Smart and Final wants to do with that space and then evaluate it and bring it to the commission through the Use Permit process.

Commissioner Singh stated that they would have to reduce the square footage under 20,000.

Ms. Malloy stated that if they came in as a general merchandise store they would not need to reduce or limit the size of the store.

Adam Tennant, Westgate Ventures, stated that staff has been very available to the applicant since day one. Mr. Tennant stated that at this point they are in a position of agreeing to disagree. Mr. Tennant referred to the letter in the staff report and stated that they searched very hard for suitable tenants for this space. Mr. Tennant stated that they believe that Smart and Final is a specialty store and not a supermarket. Mr. Tennant stated that Smart and Final is for parties, caterers and big get-togethers not for day to day shopping. Mr. Tennant feels that Smart and Final fills a niche between WalMart and Lucky that are already in Union Landing. Mr. Tennant feels that the specialty store definition is very subjective. Mr. Tennant stated that he does not think that Smart and Final wants to come to Union Landing to

compete with Lucky. Mr. Tennant stated that there is a potential ripple effect because of a co-tenancy clause with the other two current stores in the building. Mr. Tennant stated that because of the clauses in those agreements, there is an opportunity for the other two tenants to leave and no one wants to see 70,000 square feet of empty tenant space. Mr. Tennant stated that there is a backup space available in Hayward and they will go there if they have to. Mr. Tennant stated that other cities have really been trying to attract businesses by dropping fees and other means. Mr. Tennant referred to section 18.39.050 which is conditional use by development type where the commission can allow "any other retail sales use determined to be the same or similar to a specialty food store to proceed forward assuming the granting of a Use Permit." Mr. Tennant stated that if they receive that endorsement this evening, they are willing to go through the Use Permit process.

Commissioner Gonzales asked what makes Smart and Final unique.

Mr. Tennant replied that every store is different and their goal is not to offer the same things as a supermarket.

Commissioner Gonzales noted that each of the Smart and Final stores appears to be different from the others in some way and asked if Smart and Final had given them a model of what the Union City store would be like.

Mr. Tennant replied that they had not done that.

Commissioner Gonzales asked if they would be willing to change their store format in order to be located in Union City.

Mr. Tennant asked if the bulk size or packaging makes a difference.

Commissioner Gonzales replied it is the product that would have to differentiate from other retailers within the surrounding regions.

Mr. Tennant asked if the price point or the size of the product would make a difference.

Commissioner Gonzales replied it would not.

Ms. Malloy stated that the photographs in the packet that are four to a page were submitted by the applicant and the photographs that are two to a page were taken by staff at the Oakland Smart and Final.

Commissioner Gonzales noted that they could offer more cooking appliances.

Chairperson Anderson asked if there are any Smart and Final stores where less than 50% of the products are grocery items.

Mr. Tennant replied that perhaps the Pleasant Hill store.

Chairperson Anderson asked if the model for Smart and Final is 50% or more products are grocery items.

Mr. Tennant replied that more often than not that is the case.

Chairperson Anderson stated that by our definition that is a supermarket.

Terry Pries, 31070 Dyer St., stated that they strongly feel that Smart and Final is a specialty store and they would like the Planning Commission to approve their use and allow for a variance from the 20,000 square foot limit.

Commissioner Singh asked if he would be running the store.

Mr. Pries replied that he owns the building. Mr. Pries stated that if the Planning Commission agrees that Smart and Final is a specialty store, then they will come in and apply for a Use Permit.

Commissioner Singh stated that they don't want a store like the Fremont store and asked if they would be willing to change the merchandise mix to more retail.

Mr. Pries replied that Smart and Final has their own niche and he does not want to tell them what merchandise they can carry.

Commissioner Singh noted that the square footage is still too big.

Mr. Pries replied that there could be a Variance.

Commissioner Gonzales stated that it is unfortunate that a representative from Smart and Final was not here tonight.

Commissioner Gonzales stated that the commissions need to see what Smart and Final is proposing for this store.

Mr. Tennant asked for general merchandise what is the square footage is permitted.

Ms. Campbell replied that under 75,000 square feet general merchandise is permitted and over 75,000 square feet is not permitted in the CC or OC.

Ms. Malloy stated general merchandise under 75,000 square feet is listed in both permitted and conditionally permitted. Ms. Malloy stated that the applicant is perhaps looking at the commission finding that they are some other kind of general merchandise or similar enough to that they could fit into 28,000 square feet of space.

Barry Ferrier, 32212 Allison, Union City, CA, stated that he shops at Smart and Final stores in Hayward and Fremont. Mr. Ferrier stated that Smart and Final is a regional draw type store and would fit in Union Landing. Mr. Ferrier stated that on their website Smart and Final calls itself a hybrid store. Mr. Ferrier feels that the definitions are not adequate. Mr. Ferrier stated that if we don't allow the store here it will probably go into the empty Circuit City store in Hayward. Mr. Ferrier stated that Trader Joe's would qualify as a supermarket.

Hugh McNamara, 32238 Mercury Way, Union City, CA, suggested that there should be a compromise so that Smart and Final can go in before the other businesses leave.

Commissioner Panlilio stated that Smart and Final doesn't have fresh fruits or a deli so that makes it different from Lucky. Commissioner Panlilio thinks that Smart and Final is a specialty or hybrid store.

Ms. Campbell stated that the Smart and Final's in Oakland and Fremont had fresh fruits. Ms. Campbell stated that without clarifying information from Smart and Final it is difficult to make a decision about what kind of store it would be.

Commissioner Gonzales stated that his wife shops at Smart and Final because there was something there that she could not get at other stores. Commissioner Gonzales stated that he still needs a better definition.

Ms. Malloy referred the commission back to the Sub Regional Specialty Commercial concept to help define a specialty store as a guide to the decision making.

Commissioner Gonzales asked if specialty defined as the way we purchase products or the product itself.

Ms. Malloy stated that staff has interpreted it to be the product itself based on their site visits. Ms. Malloy stated that they did not see anything about Smart and Final to differentiate it from Lucky or Walmart.

Chairperson Anderson asked if defining specialty store was necessary to the decision to be made this evening.

Ms. Malloy stated that we are requesting that the commission affirm the Economic and Community Development Director's interpretation that based on the information provided by the applicant, Smart and Final, does not qualify as a specialty food store.

Chairperson Anderson asked if the commission could override the Director's decision if they believed had enough information to determine what kind of store Smart and Final is.

Ms. Malloy stated that the commission would have to determine that they meet a different criteria that is consistent with the General Plan and Zoning Ordinance.

Commissioner Gonzales stated that he disagrees with the Zoning Administrator's decision.

Commissioner Singh stated that he disagrees with the Zoning Administrator's decision.

Commissioner Panlilio stated that he feels that Smart and Final carries products that are different from Lucky or WalMart.

Commissioner Gonzales stated that he feels that Smart and Final carries products aimed for large party and catering type events.

Chairperson Anderson asked if Commissioner Gonzales considered Raley's a supermarket.

Commissioner Gonzales replied that he does.

Chairperson Anderson asked if he considered Safeway to be a supermarket.

Commissioner Gonzales replied that he does.

Chairperson Anderson asked if they carry the same type of products.

Commissioner Gonzales replied that when it comes to special items they have very small selection of culinary items but not enough to satisfy a large quantity of needs.

Chairperson Anderson stated that he was trying to understand Commissioner Gonzales definition of supermarket.

Commissioner Gonzales replied that there is usually a small selection of culinary items in every supermarket but they won't have large quantities to meet all needs. Commissioner Gonzales stated that in

Smart and Final you won't find a large selection of supermarket fresh food items but you would find a large selection of culinary items. Commissioner Gonzales stated that Smart and Final satisfies the needs of restaurateurs'.

Commissioner Singh suggested that the owner or applicant have the representative come with him to see staff to provide more information. Commissioner Singh feels that they do not have enough information to make a decision. Commissioner Singh stated that he would like to see them locate in Union City.

Ms. Malloy stated that if the commission finds that they are a specialty food store then the square footage will still be an issue. Ms. Malloy noted that Smart and Final has not been a participant in these proceedings and she would like to get more information from them about the store.

Commissioner Lew stated that she doesn't think it will be that simple for the store representative to come in and explain what the store is going to be selling. Commissioner Lew stated that she could not find any fault with the City's report; that is was on the mark with logical, correct and factual arguments. Commissioner Lew stated that it is unfortunate that the City has worked itself in a corner where we are not just able to let this kind of store move in. Commissioner Lew stated that she does not have a problem with the store moving in other than we have to abide by the General Plan and the Zoning Code. Commissioner Lew stated that the Planning Commission represents the City and has to act in the best interest of the City. Commissioner Lew stated that Smart and Final would be a good fit for that location and that it is similar to Michael's and PetCo. Commissioner Lew stated that they would generate traffic and some sales tax revenue but we would not be in compliance with the General Plan and the City's Zoning Code if we granted the appeal.

Commissioner Panlilio asked if it would be good for the City to have that property vacant.

Commissioner Lew replied that the City has already decided what it wants in that location.

Commissioner Lew stated that this won't be the first time and not the last time that we lose an excellent business anywhere in the City because we were inflexible. Commissioner Lew stated that to change the General Plan and the Zoning Code is a four to six month process and she is not sure that the City Council would want to do that for this applicant.

Commissioner Gonzales stated that he would rather see Smart and Final change their approach to fit our General Plan.

Commissioner Singh agreed with that.

Commissioner Gonzales stated that the definition is not consistent and that is his issue with this situation. Commissioner Gonzales stated that there is no clear evidence to say that it doesn't belong here.

Commissioner Lew stated that the whole report justifies it.

Commissioner Gonzales stated that the report is based on the 20,000 square foot only because it would be a supermarket.

Commissioner Lew replied that it would be a specialty food store, not just a "specialty store", but a "specialty food store".

Mr. Tennant stated that in his understanding the General Plan would not have to be changed if the commission can make a finding that under conditionally permitted uses "any other retail sales use determined by the commission to be the same or similar to the above list". Mr. Tennant stated that the list

includes specialty food store although it has to be less than 20,000 square feet. Mr. Tennant stated that he believes that the commission can make a finding without changing the General Plan.

Chairperson Anderson stated one or both the General Plan and Zoning Ordinance would have to be changed even if they find that it is a specialty food store.

Mr. Tennant asked if that would be because of the size.

Chairperson Anderson replied that the size affects the Zoning Ordinance and the type affects the General Plan.

Chairperson Anderson stated that what they have to decide tonight is not whether or not Smart and Final is a specialty food store but whether the Zoning Administrator make the correct decision based on the current rules and regulations and the information provided.

Mr. Ferrier stated that this is a hybrid store and there needs to be a definition for it. Mr. Ferrier feels that there is not enough information to make a decision.

Commissioner Gonzales made a motion to reverse the Zoning Administrator's decision, grant the appeal and adopt a resolution approving this action.

Commissioner Panlilio seconded.

Ayes	2 (Gonzales, Panlilio)
Noes	3 (Anderson, Lew, Singh)
Abstain	0
Absent	0

Commissioner Lew made a motion to affirm the Zoning Administrator's decision and adopt a resolution approving this action.

Commissioner Singh

Ayes	3 (Anderson, Lew, Singh)
Noes	2 (Gonzales, Panlilio)
Abstain	0
Absent	0

Ms. Malloy stated that if the applicant chose's they can appeal this decision to the City Council within 10 days and it would appear on the City Council meeting of April 14, 2009.

VII. REDEVELOPMENT AND ECONOMIC DEVELOPMENT REPORTS: None.

VIII. COMMISSION MATTERS:

- A. Climate Protection Task Force Planning Commissioner Appointment.

Chairperson Anderson nominated Commissioner Gonzales to be the primary member to the task force and Commissioner Panlilio to be the alternate member.

Commissioner Lew seconded.

AYES	5
NOES	0
ABSTAIN	0
ABSENT	0

- B. Follow-up on Planning Commission referrals to the City Council.

- C. Upcoming applications for the Planning Commission meeting for April 2, 2009.

IX. GOOD OF THE ORDER: None.

X. ADJOURNMENT: 9:55 p.m.

APPROVED:


TIKISA ANDERSON, CHAIRPERSON

ATTEST:


JOAN MALLOY, SECRETARY