



CITY OF NEWARK

Planning Commission

City Hall, City Council Chambers

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MINUTES

Tuesday, May 14, 2024

7:00 P.M.

A. ROLL CALL

Chair Aguilar called the meeting to order at 7:00 pm. All members of the Planning Commission were present: Chair Aguilar, Vice Chair Bogisich, Commissioner Becker, Commissioner Fitts, and Commissioner Catancio.

B. MINUTES

B1. Approval of Minutes of the regular Planning Commission meeting of April 23, 2024.

MOTION APPROVED

Chair Aguilar requested a motion. Vice Chair Bogisich moved, and Commissioner Catancio seconded, to approve the Minutes of the regular Planning Commission meeting on April 23, 2024. The motion passed – **3 AYES, 2 ABSTAIN** (Commissioners Becker and Fitts were absent).

C. WRITTEN COMMUNICATIONS

None.

D. ORAL COMMUNICATIONS

Members of the public are invited to address the Planning Commission on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Commission from acting on non-agenda items.

None.

E. PUBLIC HEARINGS

- E.1 Public Hearing to consider an appeal to the Community Development Director’s approval of DR2022-008 and MUP2022-022, a Design Review and Minor Use Permit for the exterior façade improvements, addition of a new cash and pick-up window, modification to the existing drive-through, addition of a new second drive-through, and associated on-site improvements for McDonald’s located at 35192 Newark Boulevard (APN 92A-720-10). The subject site is zoned CC: Community Commercial and has a General Plan Land-Use designation of Community Commercial.**

(MOTION)

Assistant Planner (AP) Joseph Balatbat presented a request from Maurice Ladresh the “appellant” for an appeal of the Community Development Director’s approval of a Design Review and Minor Use Permit (MUP) for the McDonald’s improvement project at 35192 Newark Boulevard. The hearing was continued from the April 23, 2024, Planning Commission meeting. The applicant, Robert Priest from Design UA Inc., and the property owner, McDonald’s USA LLC, submitted their application on October 22, 2022. The project received approval on March 13, 2024, and the appeal was filed on March 27, 2024.

AP Balatbat provided a project overview as follows:

- 1. Site Description:** The site, approximately 40,300 square feet, is part of the Rosemont Square Shopping Center, zoned as Community Commercial (CC).
- 2. Current Structure:** The existing McDonald’s includes a single drive-through, a trash enclosure, a parking area, and landscaping.
- 3. Project Details:** Proposed improvements include adding new 47-foot payment and 67-foot pickup window areas, interior remodeling, a new flat roof increasing the building height from 16 feet to 18 feet 9.5 inches, drive-through modifications, and new landscaping and signage. These changes aim to enhance order processing efficiency.

Appeal Points and Staff Responses:

1. Notice of Action (NOA):

- Appellant claimed that the NOA is incomplete without Exhibit C (project plans and description).
- **Response:** Exhibit C was part of the NOA, and the NOA was prepared and issued per the municipal code requirements, including the project description, Community Development Director's action, findings, conditions, and the appeal procedures.

2. Building Improvements:

- The appellant was concerned about the building height increase and its impact on the shopping center's visual aesthetics.
- **Response:** the restaurant building would remain in the existing location; the height increase is within the CC Zoning District's 100-foot maximum allowed height.

3. Drive-Through Improvements:

- The appellant argued that the approval documents lacked details to assess improvements.
- **Response:** The NOA included detailed information regarding the drive-through improvements, and findings describe the project's compliance with required standards.

4. On-Site Improvements:

- The appellant highlighted concerns with the removal of parking spaces, affecting safety and traffic flow.

- **Response:** the project was reviewed by all relevant City departments; 27 parking spaces provided in the project exceed the required minimum of 24 spaces.

5. Design Review Findings (Criteria A and B):

- The appellant cited a lack of reference to the project building height and the impacts the additional height could have on neighboring properties.
- **Response:** the project description and NOA included the height increase, and overall findings support the project's design.

6. Minor Use Permit (MUP) Findings (Criteria C, F, and G):

- The appellant questioned the automobile drive-through queuing analysis and potential traffic impacts.
- **Response:** the drive-through queuing analysis confirms that the improvements would reduce automobile circulation constraints and improving customer service. All MUP findings can be made in the affirmative.

AP Balatbat concluded that the project is categorically exempt from CEQA under Guidelines §15301 (Class 1) and §15303 (Class 3), as it involves improvements to existing facilities.

Staff Recommendation: Staff requests that the Planning Commission review the appeal of the Director's approval of the project and recommends the following action:

Adopt the Draft Resolution denying the appeal and approving the Design Review (DR2022-008) and Minor Use Permit (MUP2022-022) for the new building improvements, drive-through improvements, and on-site improvements for McDonald's at 35192 Newark Boulevard based on the findings provided in Attachment 1, Draft Resolution.

Chair Aguilar asked the Commission if there were any questions for staff.

Vice Chair Bogisich inquired about changes to the building's footprint and its impact on the parking lot.

AP Balatbat confirmed that the building will largely remain within the same footprint, with a small extension for the new pickup and payment windows, which will not encroach into the parking areas but will extend slightly beyond the existing footprint.

Chair Aguilar opened the Public Hearing and invited the applicant to speak.

Robert Priest, representing Designer UA Inc., thanked the Staff and the Planning Commission. He noted that McDonald's representatives, operators, and the construction team were present in person and via Zoom for any questions. Mr. Priest emphasized that the project aims to renovate an aging building to meet current customer needs and comply with State and City codes.

Chair Aguilar asked if the design was consistent with typical McDonald's upgrades or if there were any unusual elements.

Mr. Priest responded that the design is consistent with McDonald's recent building upgrade approach, developed in 2017-2018, aimed at revitalizing older buildings. These upgrades include new technology, improved food processing methods, updated customer environments, and enhanced brand image. Similar projects are being implemented throughout the Bay Area to maintain brand identity.

Chair Aguilar asked how long the construction would take.

Mr. Priest replied that it typically takes about four to five months.

Vice Chair Bogisich questioned whether the McDonald's would be closed during construction.

Mr. Priest answered affirmatively.

Chair Aguilar asked Mr. Priest if he agreed to the conditions of approval.

Mr. Priest responded affirmatively.

Chair Aguilar invited the appellant to speak.

Attorney Len Rifkind of The Rifkind Law Group, at 1010 B Street, Suite 200, San Rafael, CA 94901, addressed the Commission. Attorney Rifkind was representing Mr. Maurice Ladresh, the appellant. He clarified the appellant was not appealing the notice's adequacy and expressed gratitude to the applicant and McDonald's for their cooperation throughout the process. Attorney Rifkind emphasized concerns regarding sightlines from Newark Boulevard, stressing the importance of visibility for pedestrians, cyclists, and motorists along the street to observe the Rosemont Square Shopping Center. Attorney Rifkind expressed concerns about the proposed development's compatibility with existing and potential developments. He highlighted that the Rosemont Shopping Center, owned by Mr. Maurice Ladresh, includes a vacant undeveloped parcel, which is also owned by Mr. Ladresh, and is directly behind McDonald's. If McDonald's height increases from 16 feet to 18 feet 9.5 inches, it could impact public sight lines. McDonald's plans to increase the building's height to accommodate HVAC equipment on the roof. However, Attorney Rifkind pointed out that the City's municipal code requires screening for rooftop equipment. He questioned whether the HVAC equipment could be installed in a way that would not require increasing the building's height, thus preserving the current dimensions. Attorney Rifkind also noted that the Planning Commission has the discretion to make exceptions to screening requirements if infeasible due to health or utility needs, suggesting alternative designs to keep the building's height unchanged. He added that this is the primary reason driving the appeal. Attorney Rifkind raised concerns about the drive-through configuration, including the two lanes, 11-foot single-arm gateways, pre-sale boards, an order canopy, and a menu board. He emphasized that these elements should be oriented to minimize visual impact from Newark Boulevard towards the shopping center and vacant lot. Attorney Rifkind acknowledged that the trash enclosure would remain in the same location but hoped it would not exceed its current height and would be screened with plantings.

He also addressed concerns about the signage, complimenting the design but stressing the importance of compliance with the City's signage program regarding

lighting and lumens as per Sections D and F of the Design Review Findings, and hoping is consistent with the signage character of the area.

Attorney Rifkind then highlighted another issue: the addition of a second drive-through lane. While he understood this could handle more cars, he worried about the potential bottleneck when two lanes merge into one for the pay and pickup windows, potentially causing traffic congestion. With that said, he requested that the Planning Commission ask the applicant to thoroughly analyze and ensure the functionality of the second drive-through lane as part of the Minor Use Permit (MUP). He requested that the restaurant supply delivery times be clearly written in the Conditions of Approval so everyone can easily find them. Lastly, he noted that there are private Covenants, Conditions, and Restrictions (CC&Rs) specific to the Rosemont Shopping Center. He emphasized that Mr. Ladresh reserves all rights under these CC&Rs, which are separate from the municipal code. Attorney Rifkind concluded his presentation by offering to answer any questions from the Commissioners.

Commissioner Becker asked Attorney Rifkind if he opposed the Notice of Action (NOA), as he was not involved in the appeal's initial preparation.

Attorney Rifkind replied that the NOA was adequate and that his main concerns were the building's height and the addition of a second drive-through lane.

Commissioner Becker clarified that the applicant's concern was with the sidelines and asked if Attorney Rifkin was withdrawing any concerns about the NOA.

Attorney Rifkind confirmed he was withdrawing those concerns.

Vice Chair Bogisich noted that two lanes might cause more traffic but would prevent blockages during busy times. She explained that with two lanes, it would be a simple matter of taking turns.

Attorney Rifkind argued it would still cause a bottleneck.

Vice Chair Bogisich responded that it would avoid blockages, and customers would be directed to parking if there was an issue at the pickup window, with their food brought to them when ready.

Attorney Rifkind noted that the queuing study was conducted in the summer and suggested repeating it during regular times. He urged the Planning Commission to ask tough questions to ensure the design is effective to avoid future hearings for permit revocation issues.

Chair Aguilar asked if anyone wanted to address the Commission on item E.1. With no further comments, Chair Aguilar closed the Public Hearing and asked the Commissioners if they had any further comments or questions.

Commissioner Becker addressed the issue of queuing, noting that competitors like In-N-Out Burger and Chick-fil-A use double-order windows to reduce traffic queues. He suggested that doubling the lanes at the McDonald's in question could shorten queuing lines and reduce cars backing up into oncoming traffic. He acknowledged that while he is not a traffic expert, the double queuing setup appears effective based on competitors' experiences.

Commissioner Becker also mentioned concerns about signage, light splash, trash enclosures, order boards, and screening processes, expressing confidence that these issues had been addressed by the designer and thoroughly reviewed by Staff. He emphasized that conditions of approval are in place to handle any future issues, should they arise. He then inquired if Staff had received any feedback from property or business owners within the Rosemont Shopping Center.

AP Balatbat confirmed that no comments or concerns had been received from property or business owners.

Commissioner Becker asked whether the 2 feet and 9.5 inches height would affect sightlines from Newark Boulevard to the building and the adjacent empty parcel.

In response, Deputy Community Development Director (DCDD) Art Interiano clarified that sightlines are not a code requirement. He explained that the height, which is within the 100-foot limit, has been reviewed by engineers and planners and meets the requirements.

Commissioner Becker further inquired about the appeal's comment regarding visual impact, seeking clarification if it referred to the entire shopping area or just Mr. Ladresh's property.

DCDD Interiano specified that the comment pertained specifically to Mr. Ladresh's property.

Vice Chair Bogisich observed that when Mi Pueblo and Lucky's occupied the shopping center, the area appeared wider. Therefore, she expressed doubt that another establishment would be hindered by the presence of McDonald's due to its width.

Commissioner Catancio compared the queuing situation to a grocery store, where a second teller opens when lines get too long to prevent blockages in the aisles. She noted that similarly, long lines at the discussed location possibly prevent people from accessing parking spaces or visiting the restaurant. If more options to get food were available, it might encourage people to stay in line. Additionally, she inquired about height requirements for the vacant lot at Rosemont Shopping Center, to which DCDD Interiano responded that the height requirement for that zoning district is 100 feet.

Chair Aguilar reiterated concerns raised by Attorney Rifkind regarding sightlines, trash enclosures, signage, and lighting compliance. He sought confirmation that these concerns had been addressed in the conditions and Exhibit B, and if the application met the City's design review standards.

AP Balatbat confirmed that everything complied with the required findings and design review criteria, including code requirements.

Chair Aguilar further questioned if all aspects of the project, apart from the height requirement, were in conformance with the City's Zoning and General Plan Land Use designation.

AP Balatbat affirmed this, mentioning a minor short-term bicycle parking requirement that would be reviewed at the building permit stage.

Chair Aguilar concluded by stating his perspective that the project is in conformance with the code. He expressed respect for the appellant's concerns and advised them to discuss zoning and height standards with Staff.

Commissioner Fitts emphasized the importance of well-designed trash enclosures, noting past issues with properties lacking them. He indicated that it is a McDonald's building, and they have successfully implemented such designs before.

Commissioner Becker noted that regardless of the Commission's decision, the applicant could still communicate with Mr. Ladresh or his representatives. Staff reaffirmed Commissioner Becker's statement.

Chair Aguilar requested a motion. Commissioner Becker moved, and Vice Chair Bogisich seconded the motion to approve the motion.

Chair Aguilar clarified the action by stating that a motion was being made to confirm the denial while approving the initial Design Review and Minor Use Permit.

Attorney Alex Mog affirmed that the Commission needed to vote to deny the appeal and approve the Design Review and Minor Use Permit for the project.

The motion passed unanimously – 5AYES.

Attorney Alex Mog formally noted that decisions made by the Planning Commission are subject to appeal to the City Council within 14 days of the date of the action, and those appeals must be submitted to the City Clerk.

STAFF REPORTS

- F.1. Adopt a resolution approving a two-year extension of the approval of Vesting Tentative Map (Tract 8559) for the FMC Willow and Grand Park Project at 8787 Enterprise Drive (APNs 537-0852-001-08, 537-0852-002-009, & 092-0100-005). The project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15061(b)(3).**

(MOTION)

Senior Planner (SP) Carmelisa Lopez presented a two-year extension request for the approval of Vesting Tentative Map Track 8559, submitted by Lennar Corporation, the developer of the FMC Willow and Grand Park project. She stated that the mixed-use development was approved by the City Council on September

22, 2022, and includes 279 attached townhomes, a community building, a mixed-use building with 91 affordable units and ground floor retail, one acre set aside for a future transit station, and revisions to the boundaries of the proposed Grand Park—a 5-acre public park approved as part of the Harbor Point project and an adjacent residential development approved in 2019.

SP Lopez noted that the project's entitlements include a General Plan and Specific Plan Amendment, Design Review, Minor Use Permit, Density Bonus Park Agreement Amendment, Alternative Means of Compliance to Payment of Housing Impact Fees, and an Addendum to the Dumbarton Transit Oriented Development Specific Plan Environmental Impact Report. She noted that the approved site plan for the project was included as an attachment in the Staff Report.

She explained that the extension request was needed by amendments to the subdivision ordinance approved in October 2023, which reduced the limit on extensions of approved tentative maps from up to six years to up to two years and changed the review authority for time extensions to the Planning Commission. Other entitlements, except for the General Plan and Specific Plan amendments, will also expire in two years but will require review and approval by the Community Development Director.

SP Lopez stated that the applicant was requesting an extension due to unforeseen delays, including disputes affecting part of the project site and claims regarding water discharge rights. She went on to say that despite those challenges, significant progress by the applicant had been made, including the submission of improvement plans and the final map to the City, as well as the affordable housing building plans. The Grand Park conceptual design plan is nearly complete, and the applicant has been working closely with City Staff to finalize construction documents.

SP Lopez emphasized that if the Planning Commission approved the Vesting Tentative Map that evening, the new expiration date would be September 22, 2026.

Staff Recommendation: Staff requests that the Planning Commission approve by resolution a 2-year extension of the approval of the Vesting Tentative Map Track 8559 for the FMC Willow and Grand Park project.

Chair Aguilar confirmed with Attorney Mog whether the item was a public hearing process.

Attorney Mog clarified that the public still needed an opportunity to comment.

Chair Aguilar then invited the applicant to speak.

John Barnett from Lennar Homes introduced Edward Walsh from Lennar Homes and their Land Use Counsel, Christian Cebrian from Cox Castle. He expressed gratitude to the staff for their assistance and praised SP Lopez for her excellent presentation. Mr. Barnett noted that despite a recent issue, significant progress has been made. He mentioned that they would have recorded a map this year and not need the extension, but they are optimistic the issue will be resolved soon. He concluded by asking if the Commission had any questions.

Commissioner Becker asked if there was an estimated timeline for the project's beginning.

Mr. Barnett replied with optimism, stating that they anticipate beginning construction within the next few months and continuing with home building through 2026. He also mentioned that they hope to start on the Grand Park as early as 2025 and are currently collaborating with staff on the plans. Mr. Barnett expressed their enthusiasm to move forward.

Regarding the construction of the project, Chair Aguilar asked if that included the affordable housing component.

Mr. Barnett responded affirmatively and stated that Lennar would be providing a completed building pad and construction would start as soon as the pad is ready.

Chair Aguilar requested a motion. Commissioner Fitts moved, and Vice Chair Bogisich seconded to approve the motion. **The motion passed – 5AYES.**

F. COMMISSION MATTERS

G.1 Report on City Council actions.

Community Development Director (CDD) Steven Turner reported no City Council actions to report, but noted the City Council and Planning Commission members attended the Eden Housing groundbreaking ceremony for the Timber Senior Affordable Housing project on Timber Street near Central Avenue. He praised the event's relevance during Affordable Housing Month, highlighting Eden Housing's projects across the Bay Area. CDD Turner acknowledged the project's affordable units, the funding partners including the City of Newark, Alameda County, and private investors, and emphasized the importance of Eden's mission.

G. PLANNING COMMISSIONER COMMENTS

Commissioner Fitts attended and praised the groundbreaking ceremony at Eden Housing, noting the remarkable transformation of a nearly one-acre parcel into 79 affordable housing units. He highlighted the City's successful revitalization efforts in the corridor, citing projects like Timber Housing and Cedar/Robson. Commissioner Fitts concluded by expressing satisfaction with the positive impact on the area, stating it as a fitting development.

Commissioner Catancio attended the Eden Housing event as well and was pleased to see the community gathering. She emphasized the importance of including seniors and appreciated Eden's efforts to ensure their involvement in the community.

Chair Aguilar noted the pleasing development along the Corridor, particularly the housing and infrastructure improvements like sidewalks and landscaped center medians. He concluded by thanking the staff for their presentations and hard work.

H. ADJOURNMENT

Chair Aguilar adjourned the meeting at 8:10 p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Steven Turner", with a long horizontal flourish extending to the right.

Steven Turner,
Secretary