



CITY OF NEWARK PLANNING COMMISSION

37101 Newark Boulevard, Newark, California 94560-3796 □ 510/578-4330 □ FAX 510/578-4265

City Administration Building
7:30 p.m.
City Council Chambers

AGENDA Tuesday, August 22, 2017

A. ROLL CALL

B. MINUTES

- B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, June 27, 2017. (MOTION)**

C. WRITTEN COMMUNICATIONS

- D. ORAL COMMUNICATIONS (Anyone wishing to address the Commission on any planning item not on the Agenda may take the podium and state his/her name and address clearly for the recorder.)**

E. PUBLIC HEARINGS

- E.1 Hearing to consider U2017-004, a conditional use permit, for a haunted house attraction to be held from September 28 through November 1, 2017, inside an existing building located at 5530 Newpark Plaza (APN: 901-0111-005) – from Associate Planner Mangalam. (ADJOURNED FROM AUGUST 8, 2017 SCHEDULED PLANNING COMMISSION MEETING) (RESOLUTION)**
- E.2 Hearing to consider P-17-05, a planned unit development, E-17-06, environmental determination, TTM-17-07, vesting tentative tract map 8387, and U-17-08, a conditional use permit, for a proposed eight-lot, sixteen-unit, multi-family residential townhome-style subdivision at 37243 and 37257 Filbert Street (APN(s) 092-0131-001-09, 092-0131-002-04 AND 092-0131-003) – from Assistant Planner Bowab. (ADJOURNED FROM AUGUST 8, 2017 SCHEDULED PLANNING COMMISSION MEETING) (RESOLUTIONS - 2)**
- E.3 Hearing to consider P-17-01, a planned unit development, U-17-02, a conditional use permit, and E-17-03, an addendum to the Dumbarton Transit Oriented Development (TOD) Specific Plan Program Environmental Impact Report (PEIR) (SCH No. 2010042012) and the subsequent Initial Study/Mitigated Negative Declaration (IS/MND) for the SHH/FMC project (SCH No. 2014012056), for a proposed five-story mixed-use hotel and retail space at 37556 Willow Street (APN 092-0115-011-03) – from Assistant Planner Bowab. (ADJOURNED FROM AUGUST 8, 2017 SCHEDULED PLANNING COMMISSION MEETING) (RESOLUTIONS – 2)**

- E.4 Hearing to consider a General Plan Amendment to incorporate by reference the Union City/Newark Local Hazard Mitigation Plan: Volume 1 and Newark’s portion of Volume 2 into the General Plan Safety Element – from Assistant City Manager Grindall. (RESOLUTION)**

F. STAFF REPORTS

- F.1 MUP-17-001, a minor conditional use permit, to establish a large family day care home at 6271 Brittany Avenue – from Deputy Community Development Director Interiano. (REVIEW OPTIONAL)**

- F.2 ASC-16-20, an Administrative Special Civic Review, for an accessory structure to a single-family residence at 38244 Aralia Drive – from Assistant Planner Bowab. (INFORMATIONAL)**

G. COMMISSION MATTERS

- G.1 Report on City Council actions.**

H. ADJOURNMENT

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the Planning Commission, will be made available for public inspection at this meeting and at the Planning Division Counter located at 37101 Newark Boulevard, 1st Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection.

CITY OF NEWARK

PLANNING COMMISSION

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City Administration Building
7:30 p.m.
City Council Chambers

MINUTES

Tuesday, June 27, 2017

A. ROLL CALL

At 7:30 p.m., Chairperson Nillo called the meeting to order. All Planning Commissioners were present except Commissioner Otterstetter (personal).

B. MINUTES

B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, June 13, 2017.

Commissioner Fitts moved, Vice-Chairperson Bridges seconded, to approve the Minutes of June 27, 2017. The motion passed 4 AYES, 1 ABSENT (Otterstetter).

C. WRITTEN COMMUNICATIONS

None.

D. ORAL COMMUNICATIONS

None.

E. PUBLIC HEARINGS

None.

F. STAFF REPORTS

F.1 Planning Commission Workshop – A workshop will be held to discuss a draft of the Citywide and Administrative Provisions of the proposed new Zoning Code.

Deputy Community Development Director Interiano stated tonight's workshop would cover the general and administrative standards of the proposed zoning code and introduced Consultant Martha Miller from RRM Design Group.

Consultant Miller gave the staff report via a Power Point presentation.

Assistant City Manager Grindall asked the Planning Commission for input on the proposed design review process.

Answering Vice-Chairperson Bridges, ACM Grindall stated a Notice of Action would be sent to the Planning Commission who would then have the opportunity to request to review the project.

Discussion ensued on the distance required for notifying neighbors.

Answering Commissioner Aguilar, Associate Planner Mangalam confirmed no housing impact fees are charged for Accessory Dwelling Units. ACM Grindall added the other impact fees are assessed at the much lower multi-unit fee rate.

Answering Vice-Chairperson Bridges, ACM Grindall cited examples of Class 1, 2, and 3 businesses.

Answering Chairperson Nillo, ACM Grindall stated there are a few legal nonconforming auto repair businesses that would fall into the Class 3 category.

Answering Commissioner Aguilar, ACM Grindall stated the recent changes for warehouses and distribution centers would be incorporated into the new Zoning Code.

Answering Commissioner Aguilar, Consultant Miller stated all non-conforming residential uses were defaulted to Class 1 status and all non-conforming non-residential uses were defaulted to Class 2 status.

Answering Chairperson Nillo, ACM Grindall stated the next step would be to review the District regulations.

Vice-Chairperson Bridges commented that she would like to see high-quality landscaping trees and plants being required for new developments.

Chairperson Nillo thanked staff for their work.

G. COMMISSION MATTERS

G.1 Report on City Council actions.

ACM Grindall stated the City Council approved the Citywide Parks Master Plan with the inclusion of Youth Baseball Fields that was recommended by the Planning Commission.

ACM Grindall announced the Grand Opening for Sprouts Farmers Market will be held on July 12, 2017 at 7 a.m.

Commissioners' Comments

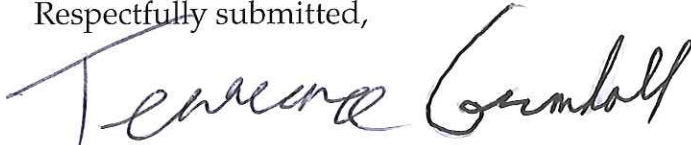
All Planning Commissioners wished the public a Happy, Safe and Sane Fourth of July and encouraged supporting the local non-profit businesses.

Chairperson Nillo congratulated the graduating Class of 2017, and thanked retiring Police Chief Jim Leal for his 30 years of service.

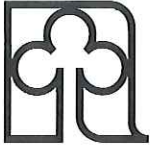
H. ADJOURNMENT

At 8:30 p.m., Chairperson Nillo adjourned the regular Planning Commission meeting of Tuesday, June 27, 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terrence Grindall". The signature is written in a cursive style with a large, sweeping initial "T".

TERRENCE GRINDALL
Secretary



- E.1 **Hearing to consider U2017-004, a conditional use permit, for a haunted house attraction to be held from September 28 through November 1, 2017 inside an existing building located at 5530 Newpark Plaza (APN: 901-0111-005) - from Associate Planner Mangalam**

(ADJOURNED FROM AUGUST 8, 2017) (RESOLUTION)

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Background

On August 8, 2017, a Public Hearing was scheduled with Planning Commission to consider a conditional use permit to operate a seasonal actor driven walkthrough haunted attraction inside an existing building located at 5530 Newpark Plaza. The meeting was adjourned to a regular Planning Commission meeting on August 22, 2017.

The existing building is located in Newpark Plaza, on the perimeter of Newpark Mall. The site is bounded by Newpark Mall on the north, Balentine Drive on the east, South Magazine Drive on the west and Cedar Boulevard on the south. The site is zoned Regional Commercial District (CR).

ScareCo Inc has been organizing haunted attractions in the San Francisco Bay Area since 2014 and has held one event in Oakland called “Platform 13” and two events in Alameda called “Haunted Hornet” since then. ScareCo proposes to organize a similar seasonal event in Newark.

The proposal is to create an actor driven walkthrough attraction by installing a freestanding wall panel system utilizing pre-built panels. Lighting, sound and set dressing will be used for the design and effect and there will be live actors throughout the walkthrough. The attraction will hire approximately 25-30 personnel as scare-actors and some of them from the local Newark Community.

The attraction will run from September 28, 2017 through November 1, 2017 with a soft opening on September 28, 2017. The attraction will be held only on weekends, operating from 7 p.m. to 12 a.m. on Fridays and Saturdays and 7 p.m. to 10 p.m. on Sundays nights. Approximately 350 people are expected to attend daily and at any point of time, there will be no more than 125 people allowed inside the building. There are existing restrooms inside the building and a total of 165 parking spaces will be available for the event. The event is ADA accessible. No alcohol or food will be served at the event. There will be a licensed security officer at the event to the satisfaction of the Police Department.

Findings under Use Permits

The Findings given in the draft resolution of approval contains language that comes from the Newark City Code, Section 17.72.070 (Conditional Use Permit) and is supported by application materials on file.

Further elaboration for each finding is as follows:

- a. *That the proposed location of the conditional use is in accord with the purposes of the zoning title and the purposes of the district in which the site is located.*

The zoning for the site is CR – (Regional Commercial). Section 17.20.020 of Newark Municipal Code states the purpose of the district, which is, the regional commercial district reserves appropriately located areas for commercial uses which serve a regional market. These prime commercial areas are intended for uses which support the economic diversity and future financial well-being of the city through generation of substantial amounts of revenue. Thus, this use is compatible with the intent of the district.

- b. *That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

The event will be held inside an existing building which is part of a commercial shopping center. Both Fire and Police have reviewed this proposal and numerous conditions of approval are incorporated into the permit. There is no reason to anticipate any detrimental or injurious effects of the project.

- c. *That the proposed conditional use will comply with each of the applicable provisions of Chapter 17.72 Use Permits.*

Numerous conditions of approval are incorporated into the permit in order to ensure that the operation of the event will be in compliance with city code requirements.

California Environmental Quality Act (CEQA) exemption

This project is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15301 Existing Facilities, leasing of existing private structures involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Staff believes this will be a great attraction and recommends approval of the seasonal event, subject to the conditions of approval listed in the attached resolution.

Action – It is recommended that the Planning Commission, by resolution, with Exhibit A, pages 1 through 4, approve a conditional use permit, U2017-004 to operate a seasonal actor driven walk through haunted attraction in an existing building at 5530 Newpark Plaza (APN: 901-0111-005).

Attachments

1. Drawings from ScareCo Inc., dated July 25, 2017.

RESOLUTION NO.

RESOLUTION APPROVING U2017-004, A CONDITIONAL USE PERMIT, TO ALLOW FOR A SEASONAL HAUNTED ATTRACTION TO BE HELD FROM SEPTEMBER 28 THROUGH NOVEMBER 1, 2017 INSIDE AN EXISTING BUILDING LOCATED AT 5530 NEWPARK PLAZA (APN: 901-0111-005).

WHEREAS, Ms. Tabitha Barron has filed with the Planning Commission of the City of Newark application for U2017-004, a conditional use permit, to allow for a seasonal haunted house attraction inside an existing building located at 5530 Newpark plaza, from September 28, 2017 through November 1, 2017 in an existing building; and

PURSUANT to the Municipal Code Section 17.72.060, a public hearing notice was published in The Tri City Voice on July 25, 2017 and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on August 8, 2017 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

WHEREAS, the public hearing was scheduled for August 8, 2017 and was adjourned to a regular Planning Commission meeting on August 22, 2017; and

WHEREAS, pursuant to Chapter 17.72 (Use Permits), Section 17.72.070 (Action by Planning Commission), the Planning Commission hereby makes the following findings:

1. That the proposed location of the conditional use is in accord with the purposes of the zoning title and the purposes of the district in which the site is located;
2. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity;
3. That the proposed conditional use will comply with each of the applicable provisions of Chapter 17.72 (Use Permits).

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby approves this application as shown on Exhibit A, pages 1 through 4, subject to compliance with the following conditions:

Planning Division

- a. This approval shall be from September 28, 2017 through November 1, 2017 on Fridays and Saturdays between the hours of 7 p.m. and 12 a.m., and Sundays between the hours of 7 p.m. and 10 p.m. only with a reasonable amount of time for set-up prior to opening and for clean-up after closing, as determined by the Community Development Director.
- b. The volume levels of all sound equipment and speakers associated with this project shall not exceed levels determined to be acceptable by the Community Development Director.
- c. All lighting shall be directed on-site so as not to create glare off-site.
- d. Prior to the event openings, the applicant shall submit written evidence of Republic Services, Inc.'s approval.
- e. If necessary, portable restrooms may be placed in an approved location as approved by the Community Development Director at least 24 hours prior to their placement.
- f. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up. Graffiti removal/repainting and site clean-up shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site shall remain graffiti free.
- g. The event staff shall direct patrons to park their vehicles in the Newpark Plaza parking lot.
- h. Construction equipment, including compressors, generators and mobile equipment shall be fitted with heavy-duty mufflers designed to reduce noise impacts.
- i. Planning inspection is required prior to occupancy.

Fire Department

- j. At any given time, maximum occupant load including staff shall be at 125 occupants. A sign shall be installed showing the maximum occupancy at an appropriate location, as approved by the Deputy Fire Marshall.
- k. The Emergency Access Corridor shall be kept clear for emergency evacuation.
- l. All staff shall be trained for the evacuation procedure.
- m. Exit sign and emergency lights shall be provided with battery backup. A functional test shall be performed prior to start of event.

- n. All fire extinguishers shall be minimum 2A10BC and certified.
- o. Fire inspection is required prior to occupancy.

Police Department

- p. There shall be licensed unarmed security on sight before, during and after each show, to the satisfaction of the Police Chief. The applicant shall provide the Police Department with the names and mobile telephone numbers of the security staff and/or managers, along with the contact name, mobile telephone number, and office telephone number of the on-site person in charge.
- q. A dedicated first aid kit including AED should be on-site at all times.

Building Department

- r. The Emergency Access Corridors shall be free of any obstructions during the time of the event.
- s. There must be an audible and visible alarm at a constantly attended location.
- t. At the time of emergency, activation of alarm must:
 - Activate emergency lighting at one foot candle
 - Stop any conflicting or confusing sounds and visual distractions
 - Activate approved directional exit marking
 - Activate a pre-recorded message, audible throughout, instructing patrons to the nearest exit
- u. Per California Building Code 907.5.2.2, an emergency voice/alarm communication system shall be installed.
- v. Building inspection is required prior to occupancy.

General

- w. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The applicant shall pay the prevailing fee for each additional separate submittal of project exhibits requiring Planning Commission and/or City Council review and approval.

- x. If any condition of this conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this conditional use permit shall terminate and be of no force and effect, at the election of the City Council on motion.
- y. The applicant hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- z. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this project, the applicant shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the applicant (which shall be the same counsel used by applicant) and reasonably approved by the City. Applicant's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code Section 66474.9.
- aa. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The applicant is hereby further notified that the 90-day approval period in which the applicant may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

The Commission makes the findings prescribed in Newark Municipal Code Section 17.72.070, and directs a Notice of Decision be mailed to the applicant and filed with the City Clerk pursuant to Newark Municipal Code Section 17.72.080.

This Resolution was introduced at the Planning Commission's August 22, 2017 meeting by , seconded by , and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson