



**TOWN OF TIBURON
PLANNING COMMISSION
1505 Tiburon Boulevard
Tiburon, CA 94920
Regular Meeting
Action and Approved Minutes
April 26, 2006 – 7:30 PM**

ACTION MINUTES

CALL TO ORDER AND ROLL CALL At 7:30 PM

Present: Chairman Kunzweiler, Vice Chairman Fraser, Commissioner O'Donnell
Absent: Commissioner Aquirre, Commissioner Collins

ORAL COMMUNICATIONS

Persons wishing to address the Planning Commission on any subject not on the agenda may do so under this portion of the agenda. Please note that the Planning Commission is not able to undertake extended discussion, or take action on, items that do not appear on this agenda. Matters requiring action will be referred to Town Staff for consideration and/or placed on a future Planning Commission agenda. Please limit your comments to no more than three (3) minutes. **There Were None**

COMMISSION AND STAFF BRIEFING

Staff Update
Commission Information Items

PUBLIC HEARINGS

1. 761 Hilary Drive: Review of Conditional Use Permit #19908 granted to expand the facilities for an existing church (St. Hilary Catholic Church) and school; Assessor Parcel Nos. 055-253-20 and 055-221-06 **Found Use to be in Conformance with Conditional Use Permit 3-0**
2. 642 Tiburon Boulevard: Conditional Use Permit to operate a Large Family Day Care Home serving up to 12 children; Lars Bergholdt and Lara Bisserier, owners and applicants; Assessor Parcel No. 055-171-25 **Approved with Conditions 3-0**

MINUTES

3. Planning Commission Minutes - Meeting of April 12, 2006 **Adopted as Amended 3-0**

ADJOURNMENT 9:15 PM

APPROVED MINUTES NO. 934

PLANNING COMMISSION

April 26, 2006

Regular Meeting

Town Council Chambers

1505 Tiburon Boulevard, Tiburon, California

The meeting was called to order at 7:30 p.m.

ROLL CALL

Present: Chair Kunzweiler, Vice-Chair Fraser, Commissioner O'Donnell

Absent: Commissioners Aguirre and Collins

Staff Present: Community Development Director Anderson, Planning Manager Watrous and Meeting Recorder Creekmore

ORAL COMMUNICATIONS

There were none.

COMMISSION AND STAFF BRIEFING

Community Development Director made the following announcements:

- The next Kol Shofar CUP meeting will be scheduled for May 10;
- The next Planning Commission meeting is a workshop with the Town Council and is scheduled for May 2;
- The Town Council approved the Tiburon Glen Development Project and they approved no tree planting on Gilmartin Drive and instead opted for a combination of other sites on the peninsula;
- The Town Council adopted both Zoning Ordinance text amendments as forwarded by the Commission. Copies have been sent to HCD letting them know that the Town believes the Housing Element is in total compliance and requesting confirmation;
- A summary of the Town Council and Design Review Board workshop will be placed in the Commissioner's mailboxes;
- A list of planning-related materials prepared by the Institute for Local Government has been distributed to the Commission; please let Staff know of any items you wish to have purchased;
- Staff will hold interviews for the new Assistant Planner position on May 5 and hopes to have the new hire on board by June.

Commissioner O'Donnell announced that he has previous relations with the applicants for both items but that he can certainly judge both items fairly.

Planning Manager Watrous stated that it has been determined that there is no legal conflict of interest that would preclude Commissioner O'Donnell from acting on either of the applications.

PUBLIC HEARING

1. 761 Hilary Drive: Review of Conditional Use Permit #19908 granted to expand the facilities for an existing church (St. Hilary Catholic Church) and school; Assessor Parcel Nos. 055-253-20 and 055-221-06

Planning Manager Watrous presented the Staff report.

Father James Tarantino, pastor of the Parish of St. Hilary, commented on the controversy surrounding CYO activities and the gymnasium and said that not only will the applicant be in compliance but that two-thirds of CYO players are from the local community and that the players have been performing very well. He commented on the Staff report and said that the record should reflect that the community approached the church to request the [previously-granted] modification to the Conditional Use Permit and CYO activities.

The public hearing was opened and closed. There were no comments.

Commissioner O'Donnell commented that previous contentions between the church and the community have dissipated and that renovations have served the community fabulously.

Vice Chairman Fraser applauded the efforts of the community and the church to work together.

Chair Kunzweiler echoed the comments of his fellow commissioners.

The Planning Commission agreed by unanimous consent that there are no needed changes to the Conditional Use Permit at this time.

2. 642 Tiburon Boulevard: Conditional Use Permit to Operate a Large Family Day Care Home serving up to 12 children; Lars Bergholdt and Lara Bissierier, owners and applicants; Assessor Parcel No. 055-171-25

Community Development Director Anderson presented the Staff report.

Vice Chairman Fraser asked how it is determined that an intersection becomes more dangerous than it already is.

Community Development Director Anderson replied that he does not think that there are any simple improvements that could increase the safety of the intersection, other than CalTrans requiring a right-turn-only from Bayshore Terrace. He said that the Staff's approach on this application has been to try to keep the levels of impact from the Large Family Day Care Home to a level where they mimic the existing impacts from the Small Family Day Care Home which is not subject to Town regulation. In response to a question by Commissioner Fraser, Anderson said he believed the speed limit is 40 miles-per-hour along that part of Tiburon Boulevard.

Chairman Kunzweiler referenced Item 7 of the Staff report and asked how vehicles exiting the property would be regulated to avoid forming a queue along Bayshore Terrace. Community Development Director Anderson replied that if a second client vehicle was exiting the subject property, they would have to wait in the parking area of the property until the first vehicle had cleared the intersection, in order to avoid queuing.

Chairman Kunzweiler referenced Item 8 and asked if the operator of the center would be required to inform clients that they must make a right turn when exiting the property. Community Development Director Anderson replied that the operator would make it clear that part of the privilege of being a client is to comply with that requirement.

Lars Bergholdt, owner and applicant, gave an overview of his application and noted that he has created his own set of conditions in an effort to address noise, traffic, and parking issues. He explained that those conditions include limiting the number of children from 14 to 12 (noting that two children are permanent residents of the property) and requiring that two children would have at least one or more siblings, which would reduce the number of potential cars from 14 to 8. He said that a small day care license, which the center has been operating under, allows for eight children. He said that he monitored traffic for a one-week period and provided the results along with pictures of the parking situation to the Commission. He said that parking has never been an issue at the center and with the additional conditions he has set, he does not foresee any parking issues in the future. He said that he sent correspondence to his clients requesting that they make a right turn onto Tiburon Boulevard followed by a left turn on Rock Hill Drive during peak traffic periods.

Mr. Bergholdt said that in terms of noise, he is permitted have up to eight children playing outside from 7:00 a.m. to 6:00 p.m., seven days a week, but that he will limit the number of children allowed to play outside to six and only during the intervals of 10:00 a.m. to 12:00 noon and 3:00 p.m. to 5:00 p.m., weekdays only. He said that he will have a side fence installed, as required by the State, before children at the large family day care will be permitted to play outside. He noted that there is a large demand for day care centers in Tiburon and that under State law the center is permitted to provide care for more children than what he is proposing to limit the center to.

Vice Chairman Fraser asked what are the center's current hours of operation. Mr. Bergholdt replied that it operates from 7:30 a.m. to 6:00 p.m., weekdays only and reiterated that outside play is limited to the hours of 10:00 a.m. to 12:00 noon and 3:00 p.m. to 5:00 p.m.

Chair Kunzweiler said that he likes the idea of having two children with siblings but asked Mr. Bergholdt how he plans to address what will happen when one of the children leaves the center to begin school. Mr. Bergholdt said that he realizes that he may have to drop a client to satisfy this requirement.

Steve Brady, Tiburon resident, said that his property is adjacent to the center and expressed concerns over traffic safety. He said that as an attorney who specializes in highway design cases, he recommended that the Town retain a safety consultant before making a decision on the application. He noted Town Engineer Bernardi's memo regarding Police Chief Odetto's traffic safety concerns and said that he has almost been hit by parents dropping off their children at the center. He said that the intersection is one of the most dangerous in Tiburon and that even a slight increase in traffic puts kids and their parents in more danger. He urged the Commission to observe the traffic conditions for themselves at 8 a.m. before making a decision on the application.

Mark Lomas, Tiburon resident and property owner adjacent to the center, said that he has been communicating with Mr. Bergholdt and Mrs. Bissierier regarding the sound-proof fence. He asked the Commission if they could provide any information regarding materials or other details about the fence.

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Community Development Director Anderson replied that he had discussed this matter with a few acoustic consultants and his research indicated that a fence which would cut noise appreciably, approximately 5 to 8 decibels, would typically be at least 6 feet high, with no cracks or gaps even at the bottom, and either 2 layers of 1-by overlapping redwood boards or 2 layers of 5/8-inch plywood.

Mr. Bergholdt said that it would be in both Mr. Lomas' and his own best interest to build a sound-proof fence. In response to traffic safety concerns, he said that his clients are safe and cautious drivers. He provided the Commission with photographs of ongoing construction work at Mr. Brady's property and said that vehicles related to that construction pose their own hazard to traffic on Tiburon Boulevard. He said that he thinks that what he is proposing for the facility is very fair and added that if he is unable to meet the sibling requirement that he will reduce the number of children at the day care. He concluded by stating that the day care provides a much-needed service to the community.

Commissioner O'Donnell asked Mr. Bergholdt if he has another business in addition to the day care facility. Mr. Bergholdt replied that he is also a child safety consultant and added that he also writes articles related to child safety.

Jay Jacobson, Tiburon resident, said that he has concerns about traffic safety and pointed out on the photographs provided by Mr. Bergholdt that the reason for some of the traffic safety problems is that there is no opportunity for vehicles to slow down before entering Bayshore Terrace. He suggested that if a wider shoulder of Tiburon Boulevard were paved near the Bayshore Terrace intersection, it would give drivers an opportunity to pull off the travel way sooner and get out of the way of through traffic. He also suggested that the speed limit be reduced to 35 miles-per-hour. Chair Kunzweiler informed Mr. Jacobson that the road is under CalTrans jurisdiction and is not under the Commission's purview. In response to concerns raised by Mr. Jacobson regarding parking violations, Chair Kunzweiler recommended that he contact the Tiburon Police Department.

There being no further comments, the public hearing was closed.

Commissioner O'Donnell said that he is in support of the application. He said that he recognizes the traffic hazard with the turn on Bayshore Terrace, but that he thinks it is an inherent problem that exists with or without the small increase in traffic associated with the day care. He said that the voluntary restrictions that the applicant has placed on the facility are a benefit, and that he does not know that the Commission has the jurisdiction to require a traffic study. He said that Tiburon is in dire need of day care and that the applicants are doing an adequate job of providing a service to the community. He said that the application is suitable for a day care facility for 12 children.

Vice Chair Fraser asked what is the Town's authority as it relates to the impact of day care centers on the surrounding neighborhood. Director of Community Development Anderson replied that for a large family day care home, the Town can require a Conditional Use Permit. He explained that there are a limited number of specific categories that the Town can address through "reasonable" conditions, those being spacing and concentration, noise, traffic, and parking. He said the Town does not have the usual amount of latitude normally associated with Conditional Use Permits. He confirmed that the Town is pre-empted from any discretionary permit process for small family day care homes.

Vice Chair Fraser said that he does have concerns with traffic safety. He acknowledged that the intersection is unsafe, but that he is unsure as to how to mitigate it. He said that he is not convinced

that a couple of cars will make a significant difference but that he would like to have a shorter use permit review timeframe to allow for feedback from neighbors and the applicant. He said that he would like the resolution to be as thorough as possible in regards to the fence issue and that it should be very specific in its requirement to meet acoustical standards.

Chair Kunzweiler noted that Commission is in agreement with concerns regarding safety issues. He noted that the voluntary limitations suggested by the applicant essentially take the impact of the application back to those of a small day care home use. He said he sees some challenges with the limitations, particularly the residency restriction. He suggested that the applicant impose an “8-car daily” restriction to address traffic safety concerns.

The Commission agreed to modify the review timeframe to six months in order to evaluate any adverse conditions that may arise.

Chair Kunzweiler recommended that Item 3 be modified to require that the fence be approved by a town-appointed acoustic engineer. He recommended that Item 5 be modified to limit outdoor use to the hours of 10 a.m. to 12 p.m. and 3 p.m. to 5 p.m., weekdays. He also recommended that “no more than 8 vehicles or 10 children not living with the applicant” be included as an additional limitation in the resolution, with direction to Staff to finalize the precise condition wording along these lines.

M/S O’Donnell/Fraser (passed 3-0) to approve the resolution as amended.

MINUTES

3. Planning Commission Minutes –Meeting of April 12, 2006

Amend the following:

Page 3, Item 2, paragraph 4, last sentence: Include “without addressing the paving issue. He said that at last year’s review, the Commission agreed improvements to the parking lot were needed as such. He believes the condition should remain as previously agreed.”

Page 4, Item 3, paragraph 4, sentence 1: Correct misspelling of “testimony”.

M/S Fraser/O’Donnell (passed 3-0) to approve the minutes as amended.

ADJOURNMENT

The meeting was adjourned at 9:00 p.m.

JOHN KUNZWEILER, CHAIRMAN
Tiburon Planning Commission

ATTEST:

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SCOTT ANDERSON, SECRETARY