



MINUTES

REGULAR MEETING OF THE PLANNING COMMISSION OF THE CITY OF SANTA MONICA

WEDNESDAY, February 1, 2017
7:00 P.M.

CITY COUNCIL CHAMBERS
ROOM 213, CITY HALL

1. **CALL TO ORDER:** Chairperson Anderson called the meeting to order at 7:11 p.m.
2. **PLEDGE OF ALLEGIANCE:** Commissioner Kennedy led the Pledge of Allegiance.
3. **ROLL CALL:** Present: Amy Anderson, Chairperson
Mario Fonda-Bonardi
Nina Fresco
Jennifer Kennedy
Leslie Lambert
Jason Parry

Absent: Richard McKinnon

Also Present: Russell Bunim, Associate Planner
Susan Cola, Deputy City Attorney
Kyle Ferstead, Commission Secretary
Paul Foley, Principal Planner
Tony Kim, Principal Planner
David Martin, Director of Planning & Community
Development Department
Regina Szilak, Associate Planner
Ariel Socarras, Associate Planner
Jing Yeo, Manager, City Planning Division
4. **PLANNING DIRECTOR'S REPORT:**
Mr. Martin gave the Director's Report. He encouraged the Commission to use their City issued e-mail exclusively for City business. He announced the upcoming Commission meetings as follows: February 15 – Lincoln Boulevard Neighborhood Corridor (LiNC) Streetscape Plan; Bike Plan Update and Mobility Discussion, Development Review and Tract Map for 1613 Lincoln Boulevard, and two Tract Maps for 122 Strand Street and 1035 21st Street; March 1 - Development Review for 1325 6th Street and 1430 Lincoln Boulevard (Fire Station land swap properties) and Zoning Ordinance Policy Items Discussion #2; and March 15 – Zoning Ordinance Policy Items Discussion #3.

Commissioner Lambert commented that she will be away the first two weeks of May, but could adjust her schedule if staff has firm dates for the Downtown Community Plan meetings. Mr. Martin responded that the schedule is still to be determined.

5. PLANNING COMMISSIONER ANNOUNCEMENTS: None.

6. APPROVAL OF MINUTES:

6-A. December 14, 2016

Commissioner Parry made the motion to approve the minutes for December 14, 2016 as submitted. Commissioner Lambert seconded the motion, which was approved by voice vote.

7. STATEMENTS OF OFFICIAL ACTION: None.

8. PUBLIC HEARING: *Continued from January 18, 2017*

8-A. 1530 Second Street, Conditional Use Permit 16ENT-0128. The applicant requests a Conditional Use Permit (16ENT-0128) to allow alcohol service (ABC Type 47 – On-Sale General Eating Place alcohol license) in conjunction with a proposed 3,200 square foot, 102 seat restaurant (Avery). [Planner: Gina Szilak] **Applicant: Full of Flavor, LLC. Property Owner: Sunshine Enterprises, LP.**

Chair Anderson stated this public hearing was continued from January 18, 2017, and the hearing closed at that time. Commissioner Lambert asked that the public hearing be reopened. Commissioner Parry made a motion to reopen the public hearing with speaking time limited to one minute per person. Commissioner Fonda-Bonardi seconded the motion, which was approved by unanimous voice vote.

The following members of the public addressed the Commission: Nicole Phillis ([Rent Control Boardmember and Commissioner on the Commission on the Status of Women]; Gabriella Rosco [CLUE – Clergy and Laity United for Economic Justice]; Andy Moss [CLUE]; Danielle Wilson [Unite Here! Local 11]; Jerry Rubin; Jonathan Nikfarjam; and Gerry Peck [Short Hotel General Manager]. One speaker, Fatima Murrieta, waived her time to speak.

Commissioner Lambert disclosed she watched the entire prior hearing for this application from home. She asked about parking availability for the restaurant and if the hotel has surplus parking. Associate Planner Gina Szilak introduced herself and stated there was appropriate parking available for the restaurant use in the hotel and valet parking will be available all hours the restaurant is open. Commissioner Lambert asked if the hotel has a Certificate of Occupancy. Ms. Szilak answered in the affirmative. Commissioner Lambert asked if, in staff’s estimation, the hotel can be legally occupied and used. Ms. Szilak answered in the affirmative. Commissioner Lambert asked about the issue with the Coastal Commission. DCA Cola responded that to date the City has not heard anything that would prohibit the hotel from being

occupied. Commissioner Lambert commented on a submission received by the Commission stating the building permit for the restaurant tenant may be subject to the Coastal Commission and it is up to the tenant to figure this out. DCA Cola stated this would be an independent inquiry if and when they do seek to remodel and occupy the space. This would be for a Coastal Development Permit and would separate from the hotel permits. Commissioner Lambert commented that the hotel, which is currently advertising an on-site restaurant as a “hotel restaurant,” should not be doing so and asked if Code Enforcement could explore the issue. She asked for confirmation that the CUP will never be allowed to transfer to the Shore Hotel per a condition of approval. DCA Cola answered in the affirmative.

Commissioner Kennedy commented on the drafted Conditions of Approval and questioned how it can be guaranteed that a subsequent tenant of the restaurant space will abide by the approved conditions when the Director of Planning can approve a new tenant without public review. DCA Cola explained the condition was written with the intention for the CUP benefit for the applicant or subsequent tenant other than The Shore Hotel. She stated any violation would be treated like any other Code Enforcement violation.

Commissioner Lambert asked staff to confirm that the two neighborhood groups (Downtown Neighborhood Association and Downtown Santa Monica, Inc.) have weighed in on this application. Ms. Yeo answered in the affirmative.

Additional *ex parte* communication disclosures that occurred in the last two weeks:

- Commissioner Parry disclosed he spoke with Kathleen Rawson at Downtown Santa Monica Inc. for about five minutes regarding timing logistics on January 24, 2017; he spoke with Danielle Wilson with Unite Here! Local 11 for about ten minutes on Wednesday, January 25, and again on Tuesday, January 31 regarding the findings for approval and how the restaurant could be impacted by the pending litigation; and he spoke with Jon Farzam with the Shore Hotel for about fifteen minutes on February 1 regarding the relationship between the applicants and the hotel.
- Commissioner Fonda-Bonardi disclosed spoke with Mr. Farzam on February 1 and with Denny Zane on February 1.
- Commissioner Fresco disclosed she spoke with Kathleen Rawson at Downtown Santa Monica Inc. on Thursday, January 26, and to Danielle Wilson on Friday, January 27, 2017.
- Commissioner Kennedy disclosed she spoke with Danielle Wilson on January 19, in the morning, regarding the prior night’s public hearing and what effects an approval or denial would have on Coastal Commission proceedings; on Monday, January 30, she received a call from Kathleen Rawson at Downtown Santa Monica Inc. regarding their support for the application.
- Commissioner Lambert disclosed she met with Kathleen Rawson at Downtown Santa Monica Inc.; spoke with Elena Cristopoulos (DNA); and with Danielle Wilson twice on the telephone and received many e-mails from opponents and supporters of the application.
- Chair Anderson disclosed she had a ten minute conversation with Danielle

Wilson of Unite Here on the morning of Tuesday, January 24, 2017.

Commissioner Kennedy expressed her confusion regarding Condition #10 from the hotel's original approval and that was brought up in the 2011 CUP hearing for another restaurant in the hotel. She explained that the Condition has to do with determining if the new use would cause a change in character of the limited amenity hotel and that stated it was not relevant because the use was changed on Ocean Avenue. She asked staff when the Condition following the appeal hearing and if it is relevant for this application. DCA Cola responded that this issue is not called out on the agenda and she unable to explain the context from that prior hearing. She stated the Commission needs to focus on the required findings needed for the specific item agendized. Commissioner Kennedy asked if, based on the testimony and information provided, it is staff's opinion that the restaurant operator will be truly independent of the hotel operation. DCA Cola responded there has been no evidence, other than hearsay, presented which suggests that Full Flavor LLC has any affiliate interests with the Shore Hotel.

Chair Anderson asked a follow-up question regarding Commissioner Lambert's request for an investigation. Mr. Martin stated Code Enforcement has been notified and will look into the allegations. Commissioner Lambert noted that the hotel website cites the restaurant and on their in-house menus as well mentioning take-out food service. Ms. Cola stated Code Enforcement can look into any violations.

Commissioner Parry asked if it would be appropriate to add a requirement that Code Enforcement issues be resolved prior to issuance of the CUP for Second Street. DCA Cola responded that the applicant has no control over what the hotel does and such a requirement would not be appropriate.

Commissioner Fonda-Bonardi commented that the hotel was approved as a moderate priced hotel but that condition has be waived. Mr. Martin responded that the hotel exercised their waiver from that condition.

Chair Anderson closed the public hearing.

Commissioner Lambert made the motion to approve the CUP 16ENT-0128 and Statement of Official Action. Commissioner Parry seconded the motion.

Commissioner Fresco stated she cannot support the motion because she cannot make the necessary findings and because the Coastal Commission has pending action with the hotel. Chair Anderson commented on the series of findings that must be met to approve the CUP and that specifics would be needed to deny the application.

Commissioner Kennedy stated she also cannot support the motion. She expressed agreement with Commissioner Fresco and finds the way the applicant describes the use of the restaurant, which will primarily serve hotel guests, conferences and events during film markets, does not meet her comfort level for the community and will not be neighborhood-serving.

Commissioner Parry commented on Finding #3 and Commissioner Fresco's comments. He stated the restaurant use is permitted and the parcel is physically suitable for the proposed use. He asked for consideration of a friendly amendment that in addition to the one-year compliance report, there be a compliance report required after seven years if there is new residential development within 500-feet of the site. Commissioner Lambert asked for clarification, then agreed to the amendment.

Commissioner Lambert commented it would have been useful for staff to provide information on the Coastal Commission issues regarding this site. Chair Anderson noted that the concerns are in regards to hotel practices and a pending lawsuit, but are separate from the CUP application before the Commission.

Commissioner Fonda-Bonardi stated his appreciation of looking broadly at projects, however this is the first time since he has been on the Commission that a site is being reviewed while litigation is pending. He commented on aspects of the relationship between the hotel operator and restaurant operator, including the payment of rent to the hotel. He concluded by saying this CUP for alcohol should be treated like every other such application.

Commissioner Parry agreed that the alcohol CUP is the only issue before the Commission and the restaurant is a permitted use for this site. He stated his appreciation and respect for the efforts made for social and economic justice, however that effort is not appropriate for the matter at hand.

Commissioner Kennedy stated she will vote against the motion based on the uncertainty of issues raised by Commissioner Fresco and she cannot make Findings #3 and #9. She expressed concerns with information given in the 2011 Planning Commission staff report which was given for this application.

The motion was approved by the following vote:

AYES: Anderson, Fonda-Bonardi, Lambert, Parry; NOES: Fresco, Kennedy;
ABSENT: McKinnon.

9. PUBLIC HEARINGS:

- 9-A. **2121 Cloverfield Boulevard, Conditional Use Permit 16ENT-0172.** The applicant requests approval of a Conditional Use Permit to allow the sale of alcohol with three Alcoholic Beverage Control (ABC) licenses (Type 21, 41, and 86 Licenses) in conjunction with the operation of a new grocery store (365 by Whole Foods Market) and ancillary restaurant located in the Mixed Use Boulevard Low (MUBL) District. Pursuant to Santa Monica Municipal Code (SMMC) Section 9.31.040(B), a Conditional Use Permit (CUP) is required for the sale and dispensation of alcoholic beverages. [Planner: Russell Bunim] **APPLICANT: Mrs. Gooch's Natural Food Market, Inc. (DBA 365 by Whole Foods Market).** **PROPERTY OWNER: GRT Portfolio Properties Cloverfield, LLC.**

The Commission had no *ex parte* communication disclosures for this project.

Associate Planner Russell Bunim gave the staff presentation.

Commissioner Fresco asked staff about the floor plan and whether children would be allowed inside the fenced dining area. Mr. Bunim stated children are allowed in restaurants that serve alcohol, so they would be permitted in the fenced area. Commissioner Fresco asked if the outside seating can be seen from Pico Boulevard and if most of the seats are outside. Mr. Bunim answered in the affirmative to both questions.

The Applicant Team included Valerie Sacks with Liquor License.Com and Ben Shearer, a Whole Foods representative. Ms. Sacks made the presentation.

Commissioner Lambert asked Ms. Sacks if she had concerns about the condition limiting alcohol sales to 35% of the gross revenue and how this will be regulated in the restaurant operation. Ms. Sacks responded that she is not concerned as percentages of alcohol sales are usually lower for restaurants.

Commissioner Fresco asked about the open space and whether the restaurant would have table service. Mr. Shearer stated the restaurant will be “fast-casual” dining and alcohol will either be served at the order station or at the table. Commissioner Fresco asked if staff will be on the floor at all times. Mr. Shearer answered in the affirmative.

Commissioner Kennedy asked Mr. Shearer to compare the proposed operation with the downtown Los Angeles operation. Mr. Shearer explained the downtown Los Angeles store has a full bar and is very popular as both a restaurant and bar. Ms. Sacks stated the license for this location is a Type 41, not a full bar license.

Commissioner Parry commented that his only issue is with the drinking cups and why non-disposable cups are being requested. Ms. Sacks stated the request is for convenience in the tasting area. She explained that the permit allows for very small portions to be served and disposables would be desirable over non-disposables. Commissioner Parry asked if the request is to amend Condition #14. Ms. Sacks answered in the affirmative.

The following members of the public addressed the Commission: Mohammad Taherian, Jerry Rubin, Saheb Singh, David Lee, Oscar de la Torre (for Pico Neighborhood Association), and Patrick O'Rourke.

Two members of the public, Luis Gomez and Eric Joseph, were not present when their names were called.

Ms. Sacks spoke in response to the public comment.

The Commission did not have any follow-up questions for the Applicant Team.

Commissioner Parry asked staff if would have any problems creating an exemption for disposable containers within Condition #14 for the instructional tasting. Mr. Bunim answered in the negative.

Commissioner Fresco expressed concern regarding the adjacency of Virginia Avenue Park and a school to the proposed use, particularly with people “hanging out” and alcohol being left unattended on tables in the outdoor dining area. Commissioner Kennedy asked staff if there are any conditions that address Commissioner Fresco’s concern or could a condition include provision for tables being cleared quickly. Mr. Bunim responded that CUPs for restaurants with outdoor dining are routinely approved and the Applicant is required to submit a Security Plan as part of their application as well as complying with the State Alcohol Beverage Control (ABC) regulations. Ms. Yeo cited Condition #30 which requires the removal of debris from a walking radius around the establishment. Commissioner Fresco asked if the Applicant has consulted with the Police Department. Mr. Bunim responded that the Security Plan is reviewed for compliance by the Police Department.

Chair Anderson closed the public hearing.

Commissioner Fonda-Bonardi made the motion to approve the application with an amended condition that the tasting area can use disposable cups. Commissioner Lambert seconded the motion.

Commissioner Fresco asked that Condition #25 be amended to say the Security Plan pay special attention to the alcohol use in the open patio area. Ms. Yeo suggested the following: “the Plan shall address the physical and operational security issues with particular attention to the outdoor alcohol service area and considering the proximity of schools and parks.” Commissioner Fresco agreed to the wording. Commissioners Fonda-Bonardi and Lambert agreed to the friendly amendment.

Commissioner Parry asked for clarification on the disposable cups only being permitted for the tasting area. Commissioner Fresco answered in the affirmative.

Commissioner Fonda-Bonardi commented it will be good to have a market returning to the area, and it is well placed. He noted that the neighborhood is gentrifying and is of the opinion that the adjacent liquor stores will not suffer from this business. Commissioner Kennedy commented she heard the public concerns. She stated the City has a strong push to have residents support local businesses, and the smaller businesses should not suffer from this approval. Commissioner Parry expressed his sympathy for larger businesses crowding out smaller ones, but he does not see over-concentration of types that are different.

The motion was approved by the following vote:

AYES: Anderson, Fonda-Bonardi, Fresco, Kennedy, Lambert, Parry;

ABSENT: McKinnon.

[The Commission took a break from 8:56 p.m. to 9:07 p.m.]

10. DISCUSSION / STUDY SESSION: *Public Input Permitted*

10-A. Initial discussion regarding potential modifications to Zoning Ordinance standards related to Accessory Dwelling Units. [Planner: Tony Kim]

Principal Planner Tony Kim gave the staff presentation.

Commissioner Lambert asked staff to explain what “integrating existing accessory building standards into Accessory Dwelling Unit (ADU) standards” means. Mr. Kim explained this means adding appropriate language from Section 9.21.020 to Section 9.31.030 of the Santa Monica Municipal Code. Commissioner Lambert noted that in Section 9.21.020, paragraph (b) says accessory buildings can be converted to ADUs if they are in compliance, which she found confusing. Ms. Yeo commented that this anticipates situations where there might be guest house, a spare bedroom, or other type of accessory structure. She stated that this issue was previously discussed by the Commission.

The following members of the public addressed the Commission: Scott Schonfeld, Daniel Jansenson, and Andrew Hoyer.

Chair Anderson stated the Commission would go through the list of issues compiled by staff and make comments and recommendations. Ms. Yeo asked that the Commission give direction for research, alternative language, and the like. She stated additional hearings can be held on these issues and for amending the Code.

- **Parking Exemptions**

Commissioner Fresco suggested that on parcels with non-conforming parking, the site should have two parking spaces. Commissioner Lambert commented that it seems self-defeating to require additional parking.

- **Allowable Size of ADUs**

Deputy City Attorney Cola commented for the record that Santa Monica is a Charter City and can impose its own statutes on ADUs.

Commissioner Fonda-Bonardi commented that 650 square feet (sf) is a one-bedroom unit and questioned if that is what the City wants to incentivize. He also commented that 900sf is a typical two-bedroom unit, and 1200sf is a three-bedroom unit. He suggested using a ratio for determining ADU size based on a percentage smaller than the main dwelling unit.

Commissioner Fresco commented that 650sf is a good start, and a larger ADU could be allowed with a discretionary review, maybe up to 1200sf. Commissioner Lambert stated she has a hard time understanding the 250sf limit above the garage

and asked for the rationale for this restriction. She commented that 250sf is not worth the bother of construction. Mr. Kim explained that the Zoning Ordinance limits two-story accessory structures to 650sf, with a maximum of 250sf on the second floor. He stated the intent is to carry over the existing accessory building standard to ADUs. He stated an ADU must be subordinate to the primary structure. Commissioner Lambert stated she understands the sideyard setback requirement but not the rear yard and interior sideyard setbacks.

Commissioner Parry commented the staff report notes it may be more appropriate to look at the single-family district standards first. He asked staff when that might occur. Mr. Martin responded that City Council has directed staff to look at the overall R-1 standards; however, no date has been set, but it is in the pipeline. Commissioner Parry commented on the current standards which address massing in the district and how it relates to other properties. He expressed his comfort with moving forward with the current proposal in terms of size.

Commissioner Kennedy commented on her understanding that the Housing Commission has recently been discussing the affordability issue and asked staff if they have been contact. Ms. Yeo stated staff gave a presentation to the Housing Commission and affordability of ADUs was brought up. She also stated the Planning staff will work closely with Housing staff on various options within the constraints of State law. Commissioner Kennedy commented on Mr. Schonfeld's comments regarding pre-fabricated housing, which are modern and efficient to construct. Commissioner Fresco agreed that pre-fab housing can be compatible and felt the language should not be changed.

Chair Anderson commented favorably on Commissioner Fonda-Bonardi's idea about unit size and felt that 650sf is too small. She suggested expanding to 900sf would be good or using the ratio method for the main residence. She stated these units should be approved ministerially and that she also does not understand the 250sf second story provision. Commissioner Fonda-Bonardi responded that the 250sf provision is left over from the two-story accessory building provisions and prevents the accessory building from looming over the neighbor's yard. He commented on other options such as retaining a small front house as the ADU and adding a larger residence in the rear if the property was of the appropriate size.

Commissioner Fresco commented on the idea of ratios between structures which she felt creates an inequity because some areas have really large homes and "lot coverage is still the lot coverage."

Commissioner Lambert commented that if pre-fab units are promoted, types of materials should not be too specific.

Commissioner Kennedy asked if staff can provide photographs and overlays to help the Commission visualize differences when this issue returns. Ms. Yeo responded that staff can provide Accessor's information.

- **Integrating existing accessory building standards into ADU standards & having separate ADU standards that are not tied to accessory building standards**

- **Timing of Garage Conversions to ADUs**

Chair Anderson commented that for the two bullet points above, it might be cleaner to define the standards for ADUs in the ADU section, which may be a better way to organize new structures versus conversions. Commissioner Kennedy expressed the opinion that there is a benefit to having separate sections. Ms. Yeo stated that the existing Code already distinguishes standards and thresholds. Chair Anderson commented that what seems to be missing is the ability to convert an existing accessory structure to an ADU. Commissioner Fresco commented on the differences between converting a garage versus other accessory buildings, some require setbacks and some do not. Commissioner Lambert questioned the different setback requirements. Commissioner Fresco explained the problem with garage setbacks in terms of conversions and when a garage is demolished. Ms. Yeo clarified that garages can be built on the property line, but if other structures are converted, then setbacks apply. Commissioner Fonda-Bonardi proposed that at the time of the ordinance approval all existing garages be covered, but not allow newly built garages to convert to ADUs. Commissioner Lambert expressed concern with setting a cut-off time and the ineligibility to convert garages. Commissioner Kennedy stated her concern is for the long-term ADU resident and their quality of life.

- **Conversion of non-garage accessory structures to ADUs**

No specific comments or recommendations.

- **Enforcement process for owner occupancy requirement**

Commissioner Fonda-Bonardi commented he likes the idea of the owner living on-site and allowing one rental unit, but this should be waived for the multi-family districts. Commissioner Fresco was of the opinion that both units could be rented. Commissioner Parry commented on the character of a neighborhood which is about the built environment, not who is living there. He felt this issue should be relaxed. Chair Anderson agreed with Commissioner Parry.

Chair Anderson asked the Commission if there are other areas staff should look into. Commissioner Fresco commented on the 24-foot height limit, which prohibits a peaked roof which may be wanted to match the main building. Commissioner Fonda-Bonardi asked his colleagues if removing the location constraints could be considered. The rest of the Commission agreed.

11. FUTURE COMMISSION AGENDA ITEMS:

Commissioner Fonda-Bonardi asked for scheduling a study session on the seismic retrofit ordinance in the near future.

12. WRITTEN COMMUNICATIONS: None.

13. PUBLIC INPUT: None.

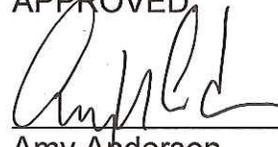
14. **ADJOURNMENT:** The meeting was adjourned at 10:12 p.m.

APPROVED: March 15, 2017

ATTEST:

Kyle Ferstead
Planning Commission Secretary

APPROVED:



Amy Anderson
Planning Commission Chairperson