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2
3 **MINUTES OF THE REGULAR**
4 **PINOLE PLANNING COMMISSION**

5
6 **September 24, 2018**
7

8
9 **A. CALL TO ORDER:** 7:04 P.M.
10

11 **B. PLEDGE OF ALLEGIANCE AND ROLL CALL**
12

13 Commissioners Present: Brooks, Hartley, Martinez-Rubin, Tave, Chair Wong
14

15 Commissioners Absent: Kurrent, Thompson
16

17 Staff Present: Winston Rhodes, Planning Manager
18

19 **C. CITIZENS TO BE HEARD**
20

21 There were no citizens to be heard.
22

23 **D. CONSENT CALENDAR**
24

25 1. Planning Commission Meeting Minutes from July 23, 2018
26

27 **MOTION** to approve the Planning Commission Meeting Minutes from July 23,
28 2018, as shown.
29

30 **MOTION: Brooks**

SECONDED: Hartley

APPROVED: 5-0-2

ABSENT: Kurrent, Thompson
31
32

33 **E. PUBLIC HEARINGS:**
34

35 **1. Conditional Use Permit 16-08: Maria's Daycare**
36

37 **Request:** Consideration of a use permit request to expand the day care
38 capacity of an existing small family day care home for up to 8
39 children to a larger family daycare home for up to 14 children
40

41 **Applicant:** Maria Magana
42 1191 Marlesta Road
43 Pinole, CA 94564
44

45 **Location:** 1191 Marlesta Road (APN 402-133-009)

Project Staff: Winston Rhodes, Planning Manager

Planning Manager Winston Rhodes presented the staff report dated September 24, 2018, and reported the Department of Social Services had periodically visited the site. Having viewed the Department's website prior to the meeting, he had learned there had been five public reports between 2016 and 2018, all of which he read into the record. Staff had also contacted the Pinole Police Department about noise complaints in conjunction with the use, and had found that since 2016, there had been two calls for service; one in 2017 and another in 2018, which were also detailed for the record. In addition, correspondence had been received from Pinole resident Gina Chan, copies of whose email had been provided to the Planning Commission, and who had requested the item be continued to provide her and another neighbor the opportunity to discuss a course of action regarding the agenda item.

Mr. Rhodes recommended the Planning Commission conditionally approve a Conditional Use Permit (CUP) to allow a large family day care home for up to 14 children at 1191 Marlesta Road, subject to the conditions included in Exhibit A to the staff report.

Chair Wong reported for the record that he served as the Chair of a Board of Directors for a non-profit day care located in the unincorporated El Sobrante community, and Mr. Rhodes confirmed that the Chair had no conflict of interest in this case.

Responding to the Commission, Mr. Rhodes clarified Attachment C, the site plan/floor plan of the home which had been provided by the applicant, and which had identified two play areas. Attachment F, photographs of the outdoor play area, provided further details on the proposed outdoor play area.

Mr. Rhodes reiterated that all code violations and deficiencies had been resolved since the application had initially been proposed in 2016, as detailed in the staff report; clarified the applicant had not yet applied for a large family day care license with the California Department of Social Services since the applicant must go through the local process first; the application would be conditioned to comply with applicable federal and state laws as well as local regulations; the City had complied with the minimum required legal public hearing noticing requirements; the Planning Commission could decide whether or not to continue the item as requested by one of the neighboring property owners after opening the public hearing; the property owner was required to sign the application or provide a letter of authorization to support the CUP request, which had been provided; and suggested there was adequate off-street parking available on Marlesta Road during the year.

PUBLIC HEARING OPENED

Gisela Botello, identified herself as the assistant and sister to the applicant, Maria

1 Magana, and had worked at the day care facility since 2011. She explained the
2 expansion would help the day care address a waiting list and provide after school
3 care, was unaware of some of the issues identified in correspondence related to
4 parking or garbage, and stated the facility was respectful of its neighbors.
5 Interpreting for Ms. Magana with the help of Commissioner Martinez-Rubin, who
6 asked questions in Spanish, she explained that parents were aware of the driveway
7 space for parking use; it was rare for two daycare parents to arrive at the same
8 time; daycare parents were on-site no more than two minutes to either drop-off or
9 pickup their children; there were no plans for afternoon daycare family social
10 gatherings; and in the event a child was harmed in the play area in the front yard
11 that child would be brought inside to be cared for to avoid disrupting the neighbors.
12

13 Ms. Botello clarified the outdoor play areas; access would be from a back door in a
14 bathroom adjacent to the living room; there were no plans to throw daycare children
15 birthday parties on the property and past issues with noise complaints had been
16 clarified; during inclement weather the after-school children would be allowed to
17 play in the living room area; and there was a separate area for infants and toddlers.
18 The outdoor play areas would be fenced to separate them from the storage areas
19 and would be equipped with outside toys. It was also clarified that existing bird
20 cages on the property would be kept away from children's' activities and be located
21 on the other side of the fenced play area. The front porch area was surrounded by
22 a fence with foam blocks, toys, and a play house.
23

24 Mr. Rhodes clarified that the front porch area had been built prior to the adoption of
25 the City's Zoning Ordinance, had been used since 2011 as an outdoor play area,
26 was covered and enclosed, and the children could be monitored from the rest of the
27 front of the property.
28

29 Ms. Magana also responded through the interpreter about neighbors' concerns with
30 garbage (i.e. dirty diapers). She explained that dirty diapers were placed directly in
31 the garbage can on premises.
32

33 Maria Elena Flores, Pinole, explained she had recently purchased the home next
34 door. She reported there was a fire hydrant in front of her home which always had
35 a car parked next to it, and while she understood the parked vehicle was not related
36 to the day care, it suggested there was inadequate parking. While the current noise
37 from the day care was tolerable, she stated if more children were allowed there
38 would be more noise. She clarified with staff the operative hours for the day care
39 facility would be Monday through Friday from 6:30 A.M. to 6:00 P.M., and no
40 weekends. She also expressed concern with a lack of privacy between her
41 property and the applicant's property and recognized she might have to consider a
42 taller fence on her property.
43

44 GINA TU CHAN, 1232 Marlesta Road, Pinole, stated she had lived in her residence
45 since 1991, had not had an opportunity to review the staff report, had submitted an
46 email to the City for consideration, and explained that there were a number of

1 people going in and out of the subject property in addition to family members, which
2 raised concerns with the adequacy of parking. She also questioned the number of
3 restrooms in the home if the day care were expanded in size; whether there would
4 be 14 children on-site at all times or whether the number would be staggered
5 throughout the day; expressed concern with the potential for an increase in the
6 noise impacts related to the care of older children; commented that parties were
7 held almost every weekend at the property which ran beyond midnight at times and
8 while the Police Department had been notified, their response at times was poor.
9 She requested additional time to allow her and her attorney the ability to review the
10 staff report. She also suggested the applicant should be required to carry
11 insurance for the day care operation and asked that timelier public notification be
12 provided to the neighbors.
13

14 Responding to public comment with the help of Commissioner Martinez-Rubin, who
15 asked questions in Spanish and interpreted for Ms. Magana, the following
16 responses were provided by Ms. Magana: licensing would be for 14 children total
17 whether at the home or taken to school, at any given day there would be 14
18 children total; there were two and a half bathrooms on the property; a half
19 bathroom would be available for the primary use of the children; not all children
20 used the bathroom since some were in diapers; and if there was a need for another
21 bathroom beyond the half bathroom another was available in the home provided
22 the child was supervised. There were four vehicles including her sister's vehicle
23 that belonged to the family; one would be parked at the entry to the side yard that
24 led to the space where the children were located, one would be stored in the
25 garage, and two others belonging to the family used on-street parking. Other
26 vehicles owned by others used on-street parking for days at a time without being
27 moved, impacted her day care use, and had current license plates and could not be
28 removed by the Police Department. The driveway accommodates two vehicles to
29 park for drop-off or pickup of children. She otherwise questioned how there could
30 be complaints about noise from someone who no longer lived in the neighborhood.
31

32 On the question of whether or not to continue the public hearing, through the
33 interpreter Ms. Magana had no problem continuing the hearing although she would
34 have liked the matter to be resolved.
35

36 Mr. Rhodes clarified that if the public hearing was continued to date certain re-
37 noticing to the public would not be required. The issue of whether a day care use
38 should be allowed on the site was not under the purview of the Planning
39 Commission. By right, the applicant was entitled to a small family day care facility
40 pursuant to state law. Nuisance issues associated with the operation of the day
41 care would be enforced thorough the Pinole Municipal Code (PMC). The applicant
42 has requested an expansion of the existing small family day care from 8 to 14
43 children and the City could review noise or parking issues and whether the use
44 violated any provisions of the Zoning Code in the R-1 Zoning District, but could not
45 restrict the number of people who lived or visited the property. As to the adequacy
46 of the space needed for a large family day care facility, it would be reviewed and

1 approved by the state prior to the issuance of a large family daycare permit.

2
3 Mr. Rhodes highlighted the draft conditions of approval shown in Exhibit A and
4 explained how the conditions would be enforced by the City.

5
6 While not unanimous, Planning Commission consensus was to continue the item to
7 the Planning Commission meeting of October 22, 2018, to allow the applicant to
8 have further dialogue with the neighbors. Staff offered neutral space for people to
9 meet in a City Hall conference room to exchange information. The Planning
10 Commission also requested the applicant provide more accurate site plan
11 information as to how the facility would accommodate 14 children.

12
13 Chair Wong allowed additional public comment at this time.

14
15 Ms. Chan clarified that she had lived in her property from 1991 to 2017, but had left
16 since she could no longer bear the parking situation and other nuisances. Her
17 tenant had informed her that the noise issues continued. While the noise impacts
18 occurred after hours, she could not differentiate whether the noise was from the day
19 care facility or the occupants of the home. Noise occurred at all hours and was a
20 nuisance to all neighbors. While it might not be under the purview of the Planning
21 Commission, she sought better code enforcement; suggested the parking plan was
22 unrealistic given the number of vehicles used by the family and the number of
23 vehicles dropping-off and picking up children; questioned the applicant's testimony
24 that parents would be on-site no more than two minutes; and stated that if the
25 nuisance continued she would have to pursue a legal solution.

26
27 Chair Wong reiterated the item would be continued to the next meeting of the
28 Planning Commission scheduled for October 22, 2018 at 7:00 P.M.

29
30 **F. OLD BUSINESS:** None

31
32 **G. NEW BUSINESS:** None

33
34 **H. CITY PLANNER'S / COMMISSIONERS' REPORT**

35
36 Mr. Rhodes reported the Pear Street Bistro had submitted a request to revisit a
37 condition of approval to limit the number of days of live music and staff had the
38 authority to make minor changes to conditions. The request was to allow live music
39 on all Tuesdays, and after staff review and an inspection of the site, and after the
40 resolution of issues related to the Pinole Fire Department, staff would prepare a
41 letter, which would be provided the Planning Commission, to formally allow live
42 music on Tuesdays. He also reported there had been a Ribbon Cutting ceremony
43 for the East Bay Regional Park District (EBRPD) new Bay Trail opening, which had
44 been well attended.

45
46 Responding to Commissioner Hartley as to whether there were any plans to close

1 the gap from Bayfront Park and Pinole Creek Trail, Mr. Rhodes confirmed there
2 had been discussions between City staff and the EBPRD, and he could speak with
3 the City Engineer to learn whether there was more information that could be
4 provided to the Commission.

5
6 Commissioner Hartley expressed concern that the City would be losing three of its
7 big box stores; Kmart/Sears, OSH, and Toys “R” Us. Mr. Rhodes reported on his
8 understanding the property owners were considering different options to meet their
9 needs and the City’s concerns.

10
11 Mr. Rhodes also reported, when asked about the General Plan, that the only
12 mandatory update the City was facing was an update of the Housing Element in
13 2021, with more information to be provided in 2020 on the City’s Regional Housing
14 Needs Allocation (RHNA) from the Association of Bay Area Governments (ABAG).
15 The City’s General Plan had been adopted for a 20-year period, although the
16 Circulation Element might need to be updated sooner given recent changes in the
17 California Environmental Quality Act (CEQA). He also provided an update on
18 Planet Fitness, which was under construction and due to open in the first half of
19 2019; Dr. Lee’s Eye Surgery Clinic had gone through the plan check process but
20 additional information was required and issues remained to be resolved prior to the
21 issuance of a building permit; as far as the DaVita Dialysis Clinic building permits
22 have been issued for both the shell of the building and the interior tenant
23 improvements, which were being done by separate contractors with completion
24 anticipated next year; and the City’s new website was not yet complete and was still
25 a work in progress scheduled for improvements around January.

26
27 **I. COMMUNICATIONS:** None

28
29 **J. NEXT MEETING**

30
31 The next meeting of the Planning Commission will be a Regular Meeting to be
32 held on Monday, October 22, 2018 at 7:00 P.M.

33
34 **K. ADJOURNMENT:** 9:37 P.M

35
36 Transcribed by:

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38
39 Anita L. Tucci-Smith
40 Transcriber
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