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**MINUTES OF THE REGULAR  
PINOLE PLANNING COMMISSION**

**October 22, 2018**

**A. CALL TO ORDER: 7:02 P.M.**

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

Commissioners Present: Hartley, Kurrent, Martinez-Rubin, Tave\*, Thompson,  
Chair Wong  
\*Arrived after Roll Call

Commissioners Absent: Brooks

Staff Present: Winston Rhodes, Planning Manager  
Alex Mog, Assistant City Attorney

**C. CITIZENS TO BE HEARD**

There were no citizens to be heard.

**D. CONSENT CALENDAR**

1. Planning Commission Meeting Minutes from September 24, 2018

Commissioners Kurrent and Thompson reported that although they had not been present for the September 24, 2018 Planning Commission meeting, they had reviewed the meeting on-line, and were qualified to vote on the meeting minutes.

**MOTION** to approve the Planning Commission Meeting Minutes from September 24, 2018, as shown.

**MOTION: Hartley                      SECONDED: Thompson                      APPROVED: 5-0-2**  
**ABSENT: Brooks, Tave**

**E. PUBLIC HEARINGS:**

1. **Conditional Use Permit 16-08: Maria's Daycare (Continued Public Hearing from September 24, 2018)**

**Request:** Consideration of a use permit request to expand the day care capacity of an existing small family day care home for up to 8

1 children to a larger family daycare home for up to 14 children

2  
3 **Applicant:** Maria Magana  
4 1191 Marlesta Road  
5 Pinole, CA 94564  
6

7 **Location:** 1191 Marlesta Road (APN 402-133-009)  
8

9 **Project Staff:** Winston Rhodes, Planning Manager

10  
11 Planning Manager Winston Rhodes provided an overview of discussions held on  
12 October 11, 2018 between the applicant Maria Magana, City staff, and Gina Chan,  
13 a neighbor opposed to the project. A summary of recommendations requested by  
14 Ms. Chan during the October 11 meeting had been included in the Planning  
15 Commission packet. The Planning Commission had been provided copies of a  
16 revised Attachment A, Revised Draft Resolution to the October 22, 2018 staff  
17 report, with changes to Conditions of Approval contained in Exhibit A identified in  
18 redline strikeout.  
19

20 Correspondence had also been received via e-mail after the October 11, 2018  
21 discussions between Maria Magana and Ms. Chan related to staff's attempt to  
22 summarize the meeting with a request from both parties to confirm the accuracy as  
23 to how staff had characterized the meeting. A reply had been received from Ms.  
24 Chan with her own summary of the meeting, copies of which had been provided to  
25 the Planning Commission. Ms. Chan also submitted an e-mail to the Planning  
26 Commission and the City Council this date, which included her request that the e-  
27 mail be read into the record, which was done at this time.  
28

29 Mr. Rhodes responded to seven items that had been outlined in Ms. Chan's  
30 meeting summary of the October 11, 2018 discussions and explained why staff was  
31 not in agreement with the requested revisions that had been detailed in her e-mail.  
32 In response to Ms. Chan's most recent e-mail received October 22, he clarified an  
33 agreement had not been reached between the two parties at the October 11, 2018  
34 discussion. In an effort to clarify each person's recollection of the meeting, Ms.  
35 Chan was of the opinion there had been agreement on most of the seven items  
36 although Ms. Magana was of a different opinion. The recollections of both parties  
37 had been included in the Planning Commission packets. Since the September 24  
38 Planning Commission meeting, staff had looked closer at State law which  
39 influenced the creation of the conditions of approval in terms of regulatory  
40 limitations on the proposal to expand the day care facility to a large family day care.  
41

42 In terms of State law, Mr. Rhodes reported that the City may consider the  
43 management of parking both on-site and in the vicinity, and the Planning  
44 Commission may consider noise in terms of imposing conditions relative to noise  
45 related to the expansion of the day care use, although issues not related to the day  
46 care facility when it was done operating for the day would be addressed through

1 code enforcement.  
2

3 Mr. Rhodes clarified the amount of front and rear yard that could be paved pursuant  
4 to the Pinole Municipal Code (PMC). While the site plan was not precise, the area  
5 in the rear yard behind storage areas would be pervious surface that was not  
6 paved; the front yard area immediately adjacent to the front playground area was  
7 also impervious. There had been no concerns raised as to the amount of drainage  
8 from the property from any of the neighbors or from multiple site visits to the  
9 property. There was an area in the rear of the property that would not be used by  
10 the day care. The applicable parking standards for the residence require two off-  
11 street parking spaces, one of which must be covered. In this case there would be  
12 two covered parking spaces off-street, room for three parking spaces in the front of  
13 the garage behind the sidewalk, and one uncovered parking space in the side yard  
14 immediately adjacent to the garage.  
15

16 Mr. Rhodes detailed the history and background of the project since 2016. He  
17 recognized it was common for garages to be used partially for storage regardless of  
18 whether there was a day care use, and in this case there would be four additional  
19 off-street parking spaces provided. The conditions of approval would require that  
20 two parking spaces be located directly in front of the home for pickup and drop-off  
21 rather than on the public street.  
22

23 Assistant City Attorney Alex Mog stated the Planning Commission may impose a  
24 requirement for more parking spaces, although whether those parking spaces were  
25 actually used as a parking space or storage when inside a garage the City had no  
26 enforcement mechanism to ensure.  
27

28 Mr. Rhodes acknowledged the testimony from Ms. Chan, a long-time neighbor who  
29 was no longer a resident of the neighborhood, that there had been a problem with  
30 the existing day care but there was no documented parking problem in the  
31 neighborhood. The expansion of the day care facility would be for more school-  
32 age children, with a maximum of 14 children, who would be picked up from school  
33 and brought to the daycare site after school, which had been cross referenced in  
34 the conditions of approval and included in the project description.  
35

### 36 PUBLIC HEARING OPENED 37

38 Commissioner Martinez-Rubin interpreted on behalf of the applicant Maria Magana,  
39 who explained she had families who may have more than one child but who had  
40 one vehicle, and some families walked to the day care location. She had no  
41 problem with anyone parking in front of her property as long as they did not block  
42 her driveway. Of the eight children in the current day care, not all of them had  
43 families with vehicles; some of the children were infants and some school age. Her  
44 family living at the site had four vehicles in addition to her sister's vehicle that was  
45 parked at the site during daycare hours. Maria Magana has two assistants, her  
46 mother who lives on site, and her sister Gisela who lives in Pittsburg. When the

1 day care was operating, two vehicles were on the property. Clarification was also  
2 provided where parties and social gatherings were hosted on the property four  
3 times a year. The only neighbor Ms. Magana had issues with had been Ms. Chan,  
4 and she had only recently learned that what she was doing had been problematic.  
5

6 Mr. Mog responded to a recommendation for a condition that the additional children  
7 to be served by the day care facility be drop-offs only. He explained that while the  
8 Commission may impose conditions related to parking, traffic control, and  
9 staggering of pickup and drop-offs, imposing a more restrictive condition, such as  
10 what had been proposed, would no longer be about traffic control but fundamentally  
11 change the nature of the business, which was outside the authority of the Planning  
12 Commission pursuant to State law for day care facilities. Reasonable staggering of  
13 pickups and drop-offs could be considered. The Planning Commission may also  
14 consider restricting social gatherings for the day care use to the hours of operation  
15 only.  
16

17 Ms. Magana stated, when asked, that it would not be a problem to limit the social  
18 events associated with the day care to coincide with the hours of operation.  
19

20 The Planning Commission thanked the applicant for meeting with her neighbor and  
21 staff for hosting the meeting location.  
22

#### 23 PUBLIC HEARING CLOSED

24  
25 The Planning Commission discussed the proposed CUP for Maria's Daycare and  
26 offered the following comments, recommendations, and/or direction to staff:  
27

- 28 • Clarified with staff calls of service to the property, as staff had testified during  
29 the Planning Commission meeting of September 24, 2018, involved parties  
30 at the property not related to the daycare use; encouraged neighbors to  
31 discuss any issues with each other before problems arose; and found the  
32 City had done its due diligence with respect to the application. (Wong)  
33
- 34 • Expressed concern with the proposed expansion from eight to fourteen  
35 children, and a commercial business in a residential area; would only  
36 support the expansion if the additional children were limited to drop-offs only,  
37 particularly due to the potential for noise and parking impacts to neighbors;  
38 and recommended Condition 15 be further revised to read: *The existing*  
39 *garage shall be made available to park at least two vehicles for the duration*  
40 *of the large family day care use to mitigate parking in the neighborhood.*  
41 (Kurrent)
- 42  
43 • Supported the Conditions of Approval as shown in Exhibit A to Resolution  
44 18-06, as revised by staff; found the applicant had acted in good faith  
45 meeting with staff and the opposing neighbor; and suggested the conditions

1 were the best that could be crafted based on the law. (Tave)  
2

- 3 • Supported the Conditions of Approval as shown and as revised by staff;  
4 recognized the applicant would likely need to store items in the garage  
5 related to the day care operations and did not support further modification to  
6 Condition 15; expressed concern with micro-managing the business; but  
7 was pleased the applicant would provide more day care opportunities to  
8 Pinole. (Thompson)  
9
- 10 • Supported the Conditions of Approval as shown and as revised by staff;  
11 pointed out the applicant had specified the way she had envisioned the day  
12 care operations as evidenced by correspondence provided to the City which  
13 identified the hours of operation; recognized the children would not be  
14 outdoors at all hours; and having viewed the area suggested there had been  
15 plenty of off-street parking without encroaching on any other resident's use  
16 for those parking spaces. (Martinez-Rubin)  
17
- 18 • Supported the Conditions of Approval as shown and as revised by staff;  
19 recognized the City may impose conditions related to noise and parking but  
20 could not control the timing for the pickup and drop-off of the children; and  
21 recognized the limited public comment other than one resident in opposition  
22 who no longer lived in the neighborhood, and one neighbor who was neutral.  
23 (Hartley)  
24

25 Mr. Mog provided the background of State law related to day care operations. The  
26 City may allow the day care as a permitted use absent any entitlements, or require  
27 a permit with conditions that could only be based on parking, traffic, noise, and  
28 spacing (no more than two day care operations within a certain distance from one  
29 another), along with standards established by the Fire Marshal for day care  
30 operations. The number of children playing outside at one time could be limited as  
31 a condition, but the site layout had been designed to ensure the play structures  
32 were not against neighbors' fences to minimize noise disruptions. He did not see  
33 that denial of the application could be considered by the Planning Commission  
34 since in his opinion the application met the standards and objectives of the PMC.  
35 He added that denial or revocation of the CUP could be considered in the future if  
36 there was a pattern of violations with any of the conditions of approval.  
37

38 Mr. Mog acknowledged the applicant had provided correspondence which detailed  
39 the project description and which had identified the students' activities as including  
40 one hour outside for play. The Planning Commission may impose a condition to  
41 restrict outside play to one hour, although there was no consensus of the Planning  
42 Commission to impose such a condition.  
43

44 **MOTION** to adopt Planning Commission Resolution 18-06, with Exhibit A:  
45 Conditions of Approval (Revised October 22, 2018), Resolution of the Planning

1 Commission of the City of Pinole, County of Contra Costa, State of California,  
2 Approving a Conditional Use Permit (CUP 16-08) to Allow the Operation of a Large  
3 Family Day Care Home at an Existing Residence at 1191 Marlesta Road, APN  
4 402-133-009, and subject to a revision to the second sentence of Condition 16,  
5 as follows:  
6

7 *These scheduled gatherings shall end by 9:00 P.M.*  
8

9 **MOTION: Thompson      SECONDED: Hartley      APPROVED: 6-0-1**  
10 **ABSENT: Brooks**  
11

12 Commissioner Kurrent stated for the record that he had no choice but to approve  
13 the application although he preferred conditions to limit the expansion to drop-  
14 offs only.  
15

16 Chair Wong identified the 10-day appeal process of a decision of the Planning  
17 Commission in writing to the City Clerk.  
18

19 **F. OLD BUSINESS:** None  
20

21 **G. NEW BUSINESS:** None  
22

23 **H. CITY PLANNER'S / COMMISSIONERS' REPORT**  
24

25 Commissioner Martinez-Rubin reported she had been contacted by a resident  
26 inquiring about the status of public art at Gateway West and the CVS project at  
27 Appian Way and Canyon Drive, and Mr. Rhodes reported that a Development  
28 Agreement (DA) for the Gateway Shopping Center project specifically called out a  
29 requirement to provide public art and a process to review public art. The DA also  
30 provided the option for the applicant to pay a fee in the amount of one percent of  
31 the project valuation towards public art to be placed off-site. The applicant chose to  
32 pay approximately \$50,000 allowing the City Council in the future to use those  
33 funds to create public art elsewhere in the City. The CVS project did not include a  
34 development agreement with a requirement to provide public art and the developer  
35 would not be providing public art on-site or any funds for off-site public art.  
36

37 The owner of the Gateway West property had also agreed that the Pinole Creek  
38 trail would be overlaid and repaired adjacent to the property, which would not  
39 require any permits from the Army Corps of Engineers. The City Engineer had  
40 been in contact with developers about the interpretive signage, bench, picnic area,  
41 and landscaping. More specific information could be provided in the future.  
42

43 Mr. Rhodes announced the Sonoma State University Planning Commissioner  
44 Academy had been scheduled for Saturday, December 1, 2018 from 8:30 A.M. to  
45 1:00 P.M. Interested Planning Commissioners were encouraged to contact staff to  
46 arrange for their attendance.

1  
2 Chair Wong reminded everyone to register to vote with mid-term elections to be  
3 held on November 6, 2018.

4  
5 **I. COMMUNICATIONS:** None

6  
7 **J. NEXT MEETING**

8  
9 The next meeting of the Planning Commission will be a Regular Meeting to be  
10 held on Monday, November 26, 2018 at 7:00 P.M.

11  
12 **K. ADJOURNMENT:** 8:39 P.M

13  
14 Transcribed by:

15  
16  
17 Anita L. Tucci-Smith  
18 Transcriber  
19