MINUTES OF THE REGULAR
PINOLE PLANNING COMMISSION

February 25, 2019

A. CALL TO ORDER: 7:06 P.M.

B. PLEDGE OF ALLEGIANCE AND ROLL CALL

Commissioners Present: Brooks, Kurrent, Thompson, Chair Wong
Commissioners Absent: Hartley
Staff Present: Winston Rhodes, Planning Manager
Justin Shiu, Contract Planner
Alex Mog, Legal Counsel, City Attorney’s Office

C. CITIZENS TO BE HEARD

There were no citizens to be heard.

D. CONSENT CALENDAR

1. Planning Commission Meeting Minutes from January 28, 2019

MOTION to approve the Planning Commission Meeting Minutes from January 28, 2019, as shown.

MOTION: Kurrent SECONDED: Thompson APPROVED: 4-0-1
ABSENT: Hartley

E. PUBLIC HEARINGS:

1. Conditional Use Permit 18-11: Bear Claw Bakery and Café Alcohol Sales

Request: Consideration of a use permit to sell beer, hard cider and wine within an approximately 1,800 square foot existing bakery and café.

Applicant: Teresa Stott
Bear Claw Bakery and Café
2340 San Pablo Avenue
Pinole, CA 94564
Location: 2340 San Pablo Avenue (APN 401-150-008)

Project Staff: Justin Shiu

Contract Planner Justin Shiu presented the staff report dated February 25, 2019, and advised the applicant had requested a modification to Condition 19 of Resolution 19-02, as follows:

No more than one pitcher of beer shall be served at a time for each party of up to three persons, and the number of pitchers served at a time may be increased by one for every three additional persons in the party in excess of three. Pitchers shall be removed by employees prior to serving the next round of pitchers.

For example, a party of two to three persons may be served one pitcher at a time. A party of five persons may be served one pitcher at a time. A party of six persons may be served two pitchers at a time. A party of nine persons may be served three pitchers at a time.

Mr. Shiu recommended the Planning Commission adopt Resolution 19-02, approving a conditional use permit for alcohol sales for on-premises consumption within the building interior only, subject to the conditions of approval as shown in Exhibit A to the staff report, as modified.

Responding to the Commission, Mr. Shiu clarified that Condition 19 had been intended to address potential concerns with one or more people purchasing multiple pitchers of alcohol.

Planning Manager Winston Rhodes explained the condition had been added given the multiple alcohol establishments in the vicinity of the establishment and was intended as a way for the applicant to control the amount of alcohol consumed by one party at one time. The condition had been discussed with the applicant who was comfortable with regulating the number of pitchers of alcohol, as modified.

Mr. Shiu added the hours of operation had been provided by the applicant in the project description and as outlined in Condition 12; as part of Condition 19, there were no plans to include a requirement for signage identifying the condition restrictions although a condition could be added upon direction from the Planning Commission.

PUBLIC HEARING OPENED

TERESA STOTT, Bear Claw Bakery and Café, 2340 San Pablo Avenue, Pinole,
explained she had not managed a drinking establishment but came from a family that operated several bars and a disco in the City of San Francisco. Her son would operate the business and they will have an employee who has had 15 years of experience with alcohol sales. She preferred that signage not be required to identify the restrictions on the sale of alcohol pursuant to Condition 19 and stated the request for modification to that condition was to allow some flexibility. She also clarified the hours of operation were as identified in the application with the bakery to be open from 6:00 A.M. to 2:00 P.M, and with the café to reopen at 5:00 P.M. The business was described as a casual European pub for families and would reconfigure the interior to allow for more seating. Food was the primary item and alcohol sales offered a nice amenity adding to the atmosphere. The business would have local small brews and only four taps. She acknowledged an expansion of the hours of operation could be considered.

RAFAEL MENIS, Pinole, supported the application from the Bear Claw Bakery and Café since the City Council had made a finding of public necessity to show the request would not cause undue impact to another business serving alcohol in the same region, which was in fairness to the business and would ensure marketplace competition. He asked whether Condition 19 would also be imposed on other businesses in the same region or just apply to the subject application.

DAVID RUPORT, Jr. Pinole, supported the applicant’s request and suggested that Bear Claw Bakery Café was an ideal fit for the City. He also supported an extension of the hours of operation, had expressed the same comments with the City Council, and hoped the Planning Commission would favorably support the request.

Mr. Rhodes commented that whether or not Condition 19 was imposed on similar businesses in the future would depend upon the direction from the Planning Commission. Commissioner Kurrent pointed out the condition could not be retroactively imposed on previously approved applications.

PUBLIC HEARING CLOSED

The Planning Commission discussed Conditional Use Permit 19-02, and offered the following comments, recommendations, and/or direction to staff:

- Consensus to strike Condition 19 given concerns with enforcement, the condition was too restrictive, and the applicant was the only business where the condition would apply.

- Opposed an expansion of the hours of operation to 11:00 P.M. given that the environment of the establishment was primarily food extending the hours of operation could change the environment. Supported the applicant’s proposed hours of operation but recommended they be modified to
Wednesdays through Fridays and Saturdays, 12:00 P.M. to 10:00 P.M. (Kurrent)

- Recommended the hours of operation be expanded to 11:00 P.M. (Thompson)

JOHN JAMES STOTT, Owner, Bear Claw Bakery and Café, suggested extending the hours of operation beyond 10:00 P.M. in the future could prove useful given plans to serve food from local vendors. There was no intention at this time to remain open beyond 10:00 P.M. but it would be nice to have the flexibility to extend the hours from 10:00 to 11:00 P.M. When asked, he was not opposed to the hours of operation being extended to 11:00 P.M. and restricting the sale of alcohol to 10:00 P.M.

- Recommended Condition 11 be modified with the hours of operation from 6:00 A.M. to 11:00 P.M. all week; and Condition 12 be modified to reflect that alcohol would be allowed to be served from 11:00 A.M. to 10:00 P.M., Monday through Friday, or the close of business, whichever was earlier. (Wong)

- Recommended Condition 12 be modified to reflect that alcohol would be allowed to be served from 11:00 A.M. to 10:00 P.M. all week with Condition 11 to be modified accordingly. (Kurrent)

**MOTION** to adopt Planning Commission Resolution 19-02, with Exhibit A: Conditions of Approval, Resolution of the Planning Commission of the City of Pinole, County of Contra Costa, State of California, Approving a Conditional Use Permit (CUP 18-11) to Allow Beer, Wine, and Hard Cider Sales for On Site Consumption in an Existing Approximately 1,800 Square Foot Café Located at 2340 San Pablo Avenue, APN 401-150-008; and subject to modification as follows:

- Condition 11 to be modified with the hours of operation to be Monday through Sunday, 6:00 A.M. to 11:00 P.M. (retaining the last sentence of the condition as reflected in Exhibit A);

- Condition 12 to be modified to reflect the sale of alcohol shall only be sold when the business is open and only during the following alcohol sales business hours of 11:00 A.M. to 10:00 P.M., Monday through Sunday (retaining the last sentence as reflected in Exhibit A); and

- Strike Condition 19 in its entirely.

**MOTION:** Thompson  SECONDED: Brooks  APPROVED: 4-0-1  ABSENT: Hartley

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

F. **OLD BUSINESS:** None

G. **NEW BUSINESS:**

1. **Small Cell Wireless Communication Facility Deployment**
   - **Informational Presentation**
   - **Project Staff:** Legal Counsel Alex Mog

Legal Counsel Alex Mog presented a PowerPoint presentation on Small Cell Wireless Communication Facility Deployment and explained that the same presentation had been made to the City Council. He described the background of Public Utilities Code Section 7901, with the definition of a telephone company having been defined broadly by the California Public Utilities Commission (CPUC) and the courts. He also outlined the Telecommunication Act of 1996; the Shot Clock Rule where local governments must act on a request for authorization to place, construct, or modify a wireless service facility within a reasonable period of time; new Federal Communications Commission (FCC) Small Cell Order; and Small Cell Deployment for new technology. Additional details were provided on local fees under the FCC Order, what had been defined as a reasonable fee, and FCC examples of reasonable fees; aesthetic requirements with an April 15 deadline; and non-fee requirements. The FCC Order was currently being challenged by the City Attorney’s Office, which with the Planning Department, was working to develop and publish design guidelines prior to the April 15 deadline. Staff would return to the Planning Commission during its March meeting for a public hearing to consider changes to the zoning code, and a review of the design guidelines to allow feedback to be forwarded to the City Council.

Mr. Mog and Mr. Rhodes responded to questions from the Planning Commission on the presentation.

Commission concerns included what penalties could occur if the City did not meet the April 15 deadline to publish design guidelines, particularly given the tight timeline to meet the deadline, potential attachment and processing fees as compared to the cost to the City to process a cell facility deployment application, and a suggestion the City could borrow from the guidelines drafted by the City of San Francisco.

DAVID RUPORT, Jr., Pinole, suggested it behooved the Planning Commission to become educated on cell towers given technology was changing fast. He urged the Commission to consider the information from the League of California Cities on the topic, referenced HR Bill 530 which opposed the deregulation of cell towers; stated he had brochures of an event to be held in Diablo to view a presentation of Generation Zapped, emphasized that not only San Francisco, but other local jurisdictions were considering or had in place local regulations on the
reasonableness of installing such technologies, and recommended interaction and
discourse with the cell companies that may want to locate in Pinole.

H. CITY PLANNER'S / COMMISSIONERS’ REPORT

Mr. Rhodes reported the CVS Pharmacy project was now open with a temporary
Certificate of Occupancy (CO) but the Cell on Wheels (COWs) were still in place
given there were active leases in place and issues affecting two parcels which had
created some construction challenges and involved separate building permits. He
identified a number of the improvements yet to be completed as part of the project.
Planet Fitness was open and close to completion, a new yogurt shop was due to
open in the Pinole Vista Crossing Shopping Center, and the Lucky store was
making progress on its renovation. Progress had also been made with DaVita
Dialysis Clinic, which was expected to be completed by the end of the year.

Commissioner Brooks expressed concern with the lack of operable lighting at the
Lucky Shopping Center parking lot which had been inoperable prior to the remodel.

Commissioner Kurrent reminded everyone to submit their Form 700. He inquired of
the status of recruitment for the vacant Planning Commission seats; and Mr.
Rhodes reported that recruitment efforts were ongoing and current Commissioners
whose terms were due to expire were encouraged to reapply.

In response to Commissioner Thompson as to the status of the creek
improvements behind Sprouts, Mr. Rhodes reported the developer required
confirmation in writing from the City that stated the overlay of the trail was a
maintenance activity and would not require an Army Corps of Engineers permit,
although there was a difference of opinion with Country Flood Control staff
regarding other planned improvements. Planned interpretive signage being placed
on private property which did not affect County Flood Control property could be
entertained. He would bring up the issue of the interpretative signage with the
Development Services Director/City Engineer.

I. COMMUNICATIONS: None

J. NEXT MEETING

The next meeting of the Planning Commission will be a Regular Meeting to be
held on Monday, March 25, 2019 at 7:00 P.M.

K. ADJOURNMENT: 8:56 P.M

Transcribed by:

Anita L. Tucci-Smith
Transcriber