

## Attachment A: Excerpt of the Draft Minutes of the Planning Commission meeting of January 19, 2012

### Item 7A: Public Hearing

Consideration of Amendments to the City's Zoning Code Related to Large Family Day Care, Accessory Structures, Fences in the Residential Single-Family View Preservation Overlay District, and Paving in Residential Front Yards. (Barros)

**Senior Planner Barros** presented her staff report via a PowerPoint presentation and explained the staff recommendations for:

**1) Large Family Day Care:** Small Family Day Care operations are not regulated, but for facilities that care for up to 14 children, the California Health & Safety Code enables cities to impose regulations and assess impacts of the operation on the neighborhood. Since the 1980s, the San Leandro Zoning Code has contained a series of standards used to judge whether Large Family Day Care is appropriate to a residential neighborhood. The assessments of neighborhood impacts are based on proximity to other Large Family Day Care providers, the amount of legally permitted on-street parking, street width, traffic volume and the availability of employee parking.

**Senior Planner Barros** said several instances have arisen in which a day care operator's home didn't have sufficient frontage to provide the 32-foot minimum requirement (basically to accommodate two vehicles) for on-street parking. The proposal is to use an administrative review by the Zoning Enforcement Official (ZEO) for providers who don't meet that requirement, or other criteria, rather than imposing the burdensome process of applying for a conditional use permit (CUP) and appearing before the Board of Zoning Adjustments (BZA). As with CUPs, Senior Planner Barros explained, the administrative exception process enables the City to impose conditions of approval. She pointed out that it would cost from \$2,000 to \$4,000 to receive a CUP, whereas the more agile residential administrative exception process would cost about \$420.

In response to **Commissioner Dlugosh**, Senior Planner Barros said that up to six or eight children, depending on whether any of them are infants, can be cared for in an unregulated day care operation. A Large Family Day Care facility may care for up to 14 children.

**Commissioner Fitzsimons** asked whether the rationale behind the criterion requiring a certain amount of curbside parking involved areas for pickup and dropoff. Senior Planner Barros explained that the 32-foot minimum basically accommodates two cars. If a provider had no on-street parking available in front or in a driveway, she added, the City probably would deny the exception because that could create an undesirable impact on traffic. She said that when the City sent a courtesy notice about this hearing to the homeowners' associations, the Marina Gardens' HOA president called to express concerns about double-parking. Senior Planner Barros told her that the volume wouldn't be like what it is with a school, and that the police could enforce provisions of the Vehicle Code if such situations were to arise.

**Commissioner Rennie** said concerns that San Leandro's regulations may not meet the California Health & Safety Code standards governing Large Family Day Care operations distracted him somewhat from the purpose of the proposed amendment. Senior Planner Barros explained that the Health & Safety Code does allow communities to establish

reasonable standards, noting that those already in the code have been reflected in San Leandro's regulations since the 1980s and staff wasn't looking to change them but only to simplify the process.

**Commissioner Rennie** asked for confirmation that with the change, a simpler, over-the-counter process would kick in for providers who don't quite meet the criteria specified rather than the CUP/public hearing process. Senior Planner Barros said that his understanding was correct, but administrative exceptions aren't handled over-the-counter. Notice would still go to immediate neighbors, the ZEO would make the decision, and letters would go to neighbors to inform them so they could comment or object. Any ZEO decision, whether administrative or not, may be appealed to the BZA, and from that level, to the City Council. In response to a further question from Commissioner Rennie, Senior Planner Barros said that she isn't aware of any recent appeals of any ZEO decisions or CUPs in terms of Large Family Day Care operations.

**Chair Collier** said that the notice area should encompass neighbors within 300 feet of a Large Family Day Care operation, and not be confined to the immediate neighbors. In the instance she has in mind, she said that there are only two adjacent neighbors, because the lot backs up against the creek, and the annoyance comes from the unsupervised, misbehaving children walking by other neighbors' homes going to and from school. Senior Planner Barros said that the proposal would require additional text to expand the notice area, but, she pointed out, the immediate neighbors would include three across the street from the subject address, one on either side, and three behind.

**Commissioner Dlugosh** asked about the increased cost to the applicant if the notice area were to be expanded. Senior Planner Barros said that the current pricing is based on notifying the adjacent neighbors and the fee schedule might have to change for this particular type of administrative exception to ensure cost recovery for an expanded radius.

**2) Accessory Structures** (in RS, RD and RM Districts): Senior Planner Barros said she's added a maximum area dimension to the language about lot coverage for accessory structures, and distilled the language related to the maximum height and minimum setbacks into an easier-to-follow table that clarifies the text and eliminates inconsistencies regarding the height and location parameters for setbacks. She said that in response to a BZA member who was particularly concerned about smaller accessory structures requiring no setback, she changed the proposed language to specify that only accessory structures up to eight feet in height and not requiring a building permit under the San Leandro Building Code would qualify for no setback. At this point, she said, accessory structures of less than 120 square feet do not require a building permit, but she didn't want to indicate a specific size in case the Building Code changes.

As Senior Planner Barros explained, the proposal also includes additional language that allows residential garages to be less than five feet from the property line. She explained that in many cases property owners who have no setbacks on their existing garages, primarily in the North Area, come to the permit counter because they want to replace their garage and move it back somewhat. Because the current Zoning Code requires a five-foot setback; it forces them to shift the driveway over, creating more impervious surface in the rear yard, and to lose yard space as well. This change would give those homeowners more flexibility, she said.

Additionally, in response to a BZA member comment, she revised the proposed text to enable sending requests for exceptions to the BZA for a CUP in cases where the ZEO considers a project beyond the scope of the administrative exception process.

**Commissioner Rennie** said that he's very appreciative of the way the proposal has been set up, for staff and residents alike, and noted that sometimes tables are a better way to present information than text alone.

In response to **Commissioner Fitzsimons**, Senior Planner Barros said that setbacks for a primary structure are 20 feet in the front, 15 feet in the rear and 5 feet on each side.

**Chair Collier** suggested that the section on height and setbacks for accessory structures specify where the height is to be measured – at the midpoint between the ridge and the eave. She said that the Uniform Building Code and the International Building Code no longer provide that information. Senior Planner Barros said that because there are so many styles of roof, including some with no ridges, the proposed language refers to another section of the Zoning Code. She said that roof heights are very explicitly defined, along with graphic depictions of four different types. She said that at the permit counter, staff routinely flip to those definitions when working with residents. Chair Collier said it was not her experience at the Building Permit counter, where she spent nearly 30 minutes waiting for four employees to find the appropriate section of the Code. Noting that Building staff even sent her to the library, which doesn't have an updated version of the Building Code, she said the information about roofs should be readily available, perhaps as a handout. Senior Planner Barros said that the planning department has an accessory structure handout, and can add the appropriate section of the Code regarding height to that handout.

**3) Fences in the Residential Single-Family View Preservation Overlay District (RS-VP):** Senior Planner Barros noted that the Bay-O-Vista view preservation district overlay was created in Zoning Code amendments in 2001. She pointed out the area on a map, indicating that it encompasses the area south of Lake Chabot Road, Estudillo Avenue and north of the unincorporated area that is included in the View Preservation Overlay District. She noted that the residential single-family neighborhoods in the flat area north of Estudillo Avenue around Chabot Park are not part of it. In the RS-VP District, all additions are subject to design review. In 2007, a change in fencing regulations in Bay-O-Vista required any fencing above three feet to be made of glass. The proposed change would make that regulation more flexible because certain fencing proposals in some RS-VP areas – particularly around Benedict Drive and in the hills where homes on a ridge are all side-by-side – have no view implications at all.

Rather than requiring homeowners in this situation to go through the time, expense and hearing involved in obtaining a fence-modification permit, she said the proposed change would enable the ZEO to look at the context of the home, and if there are no view issues, authorize solid fencing without glass at the top.

**Commissioner Dlugosh** asked how the situation would be handled in homes that might have views on the sides rather than straight out from the property. Senior Planner Barros said that all of those views would be considered viewshed. Commissioner Dlugosh said that when the glass fencing issue in Bay-O-Vista was under consideration, the Planning Commission was not addressing side-yard fences, but only view fences. Senior Planner Barros suggested that the side-fence application was an unintended consequence, but the change now proposed would make it less problematic.

**Commissioner Fitzsimons** asked about the test for whether a view is involved – a neighbor complaining or a staff decision? Senior Planner Barros said that the City generally would learn about the problem if someone puts up a fence and a neighbor complains about it, but sometimes people come to the permit counter saying they want to build a fence. She added that a Benedict Drive resident is holding off on fencing plans

now, awaiting the outcome of this proposal to avoid having to go through the fence-modification-permit process.

In response to a question from **Commissioner Fitzsimons**, Senior Planner Barros said that particular residents in the RS-VP District could put up solid fences that block only their own views.

**4) Paving in Residential Front Yards:** The Zoning Code includes language about driveways and parking in residential districts, Senior Planner Barros said, but the provisions aren't explicit in indicating the amount of paving allowed. That has contributed to excessive paving becoming a bone of contention. The proposed amendments would limit installation of paving/impervious surfaces to a maximum of 50% of the front setback, avoiding situations of homeowners paving over their entire front yards. Senior Planner Barros said that she surveyed aerial photos of homes all over the City and found that paving typically doesn't exceed 40% of the front-yard area. The proposed changes would still allow a solid driveway and walkway, but prohibit paving over the rest with impervious materials. At the BZA meeting, she said, she was asked whether homeowners could use pervious pavers. Yes, they could, she explained, but someone going to the expense of installing pervious pavers would probably invest in landscaping as well.

According to Senior Planner Barros, in addition to aesthetic reasons, the limit on impervious surfaces helps mitigate against stormwater runoff problems.

**Commissioner Fitzsimons** said his own home would be non-conforming, with a double-driveway leading to an attached two-garage in front of the house. While he said he realizes he wouldn't have to change it now, he asked what the procedure would be to have an exception approved. Senior Planner Barros said that it would require a variance, and it would apply throughout a residential district, to single-family and multi-family structures alike.

In response to **Chair Collier**, Senior Planner Barros said that properties that currently have covered more than 50% of their front yard with impervious surfaces would be grandfathered.

**Chair Collier** opened the public hearing. No speakers came forward.

***Motion to close the Public Hearing***

***Dlugosh/Fitzsimons: 5 Aye, 0 No***

**Commissioner Fitzsimons** said that with regard to the paving, it would be beneficial for information on pervious pavers to be available at the Building Permit counter, because it's worthwhile even for driveways and helps prevent stormwater from draining into the Bay.

In terms of noticing in the context of the Large Family Day Care facility administrative exception process, **Commissioner Fitzsimons** said he agrees with Chair Collier about noticing within a 300-foot radius. In his experience, these facilities can be very disruptive to a neighborhood just in the additional traffic it creates. He estimated that notifying an additional 100 homeowners would increase postage costs by \$48 to \$50, which he would consider a reasonable expectation of a business seeking this type of exception.

**Commissioner Rennie** said that although the proposed language changes don't address the standards per se, indirectly they involve the standards because they

propose exceptions to them. Considering his experience with the State law governing standards for Large Family Day Care operations, he said he's concerned that San Leandro's standards do not conform. Aside from technical and legal concerns, he said there's a practical issue involved when it comes to noticing. He emphasized that the State has not left jurisdictions much room to regulate these facilities. Thus, he said, the wider the notice, the more likely it is that more people will expect action on their objections, and they will be disappointed to learn that the City's doesn't have the latitude to do anything to satisfy them. Although in most cases he said that he favors broader noticing, in this instance it would create mischief through frustration and misunderstanding, so he'd recommend administrative issuance of simple permits to these facilities without noticing and appeals.

**Commissioner Dlugosh** said he objects to expanding the noticing on the grounds that the process already is expensive, and additional postage would be only part of the increased cost.. He said that he could easily imagine adding \$100 to \$150 to a process that he thought was high at \$420. He said that he was disappointed when the State forced jurisdictions to allow Large Family Day Care operations in residential areas without any community input in the first place, but even so, we should not impose such a big financial burden for minor changes when staff can handle them.

**Commissioner Fitzsimons** said that he found Commissioner Rennie's background in this matter illuminating, because he wasn't aware of how little discretion the City has. Also, because no noticing is required of facilities that meet the standards, he agrees that notice need not be provided for exceptions either.

**Commissioner Rennie** said that one thing about San Leandro's process that differs somewhat from other communities is the idea of exceptions to the standards. His concern is that the exception process in itself could well lead to people asking staff to exercise discretion in a way that they cannot.

**Commissioner Rennie** also commended staff for the effort to improve the code.

**Commissioner Dlugosh** suggested one motion recommending approval of the resolution that consolidates staff's proposed Zoning Code amendments, and another motion regarding the issue of Large Family Day Care operations' conformance with State standards.

***Motion to forward a recommendation to City Council  
to direct staff to review Zoning Code standards  
for Large Family Day Care operations for conformance with State law,  
and if not, to revise the standards accordingly for future  
consideration***

***Rennie/Dlugosh; 5 Aye, 0 No, 1 Absent***

***Motion to forward to the City Council a recommendation to approve the resolution proposing Zoning Code amendment changes related to***

***Large Family Day Care  
Accessory Structures  
Fences in the RS-VP District and  
Paving in Residential Front Yards***

***modified to indicate that the Zoning Enforcement Official may, at his discretion, refer applicants with requests for administrative exceptions regarding Accessory Structures to the Board of Zoning Adjustments for a Conditional Use Permit***

***Abero/Fitzsimons; 5 Aye, 0 No, 1 Absent***

**Commissioner Fitzsimons** commended staff for developing a proposal that will simplify the process for people trying to get through the bureaucracy, the focus on finding reasonable solutions, and clarity.