MINUTES
SARATOGA PLANNING COMMISSION

DATE: Wednesday, August 23, 2006
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA
TYPE: Regular Meeting

Chair Rodgers called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Commissioners Cappello, Hunter, Kundtz, Nagpal, Rodgers and Zhao
Absent: Commissioner Hlava
Staff: Director John Livingstone, Associate Planner Lata Vasudevan, Assistant Planner Suzanne Thomas, Public Works Director John Cherbone and Assistant City Attorney Jonathan Wittwer

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – Regular Meeting of August 9, 2006.

Motion: Upon motion of Commissioner Hunter, seconded by Commissioner Nagpal, the Planning Commission minutes of the regular meeting of August 9, 2006, were adopted with a correction to page 4. (6-0-1; Commissioner Hlava was absent)

ORAL COMMUNICATION

There were no Oral Communications.

REPORT OF POSTING AGENDA

Director John Livingstone announced that, pursuant to Government Code 54954.2, the agenda for this meeting was properly posted on August 17, 2006.

REPORT OF APPEAL RIGHTS

Chair Rodgers announced that appeals are possible for any decision made on this Agenda by filing an Appeal Application with the City Clerk within fifteen (15) calendar days of the date of the decision, pursuant to Municipal Code 15-90.050(b).

CONSENT CALENDAR

CIP conformance with the General Plan

Mr. John Cherbone, Public Works Director:

- Explained that he is presenting for the Commission's review, the annual update CIP project list that includes 10 new projects for fiscal year 2006-07.
- Reported that the Commission's role is to determine if the projects of the CIP are consistent with the City's General Plan.
- Said that a list of said projects is included in the packet and includes corresponding General Plan goals and policies.
- Said he was available for questions.

Commissioner Hunter asked about a project with no corresponding General Plan connections identified.

PW Director John Cherbone explained that the project in question is simply a maintenance project with no specific General Plan element tie in.

Commissioner Hunter asked why this review is necessary.

PW Director John Cherbone replied that it is part of State Law to have CIP's go to the Planning Commission to certify General Plan conformity and that no project included is out of character with the City and its General Plan. He reminded that the General Plan is the master plan for a community.

Commissioner Hunter questioned the $50,000 in funding for Village related project.

PW Director John Cherbone said that the specific use of these funds has not yet been identified. No specific improvement has been identified yet and there is some flexibility in how the funds would be used in the Village.

Commissioner Nagpal asked where the $50,000 figure came from, as her document does not included dollar amounts.

PW Director John Cherbone explained that the information was provided at the CIP meeting at which Commissioner Hunter was in attendance.

Commissioner Nagpal asked if the use of the funds for Village improvements would come before the Commission when specific use is defined.

PW Director John Cherbone replied sure, if the issue requires such a review and/or of the proposal does not meet General Plan standards. He added that the funds for the Village are mainly for small improvements and how the funds will be spent will be left to the people involved in overseeing the activities of the Village.

Chair Rodgers asked if there is some process for setting priorities for these funds.

PW Director John Cherbone reiterated that if an issue requires Commission review, it would be brought to the Commission for consideration.

Chair Rodgers asked if the Commission might be able to recommend some use such as an updated traffic study near the Corinthian Corners center. Is there some mechanism for the Planning Commission to recommend priorities?

PW Director John Cherbone replied yes. Commissioners, either as individuals or a group, have the opportunity to provide suggestions to Council. In the end, it is Council who determines how CIP money gets spent.

Commissioner Hunter asked if the State audits a City's CIP.

PW Director John Cherbone replied that not to his knowledge but that the State could elect to do so if it felt it was necessary.

Commissioner Cappello asked why fund improvements to soccer fields located outside the City?

PW Director John Cherbone said that these fields are located within Saratoga limits.

Commissioner Nagpal asked if a motion is required.

PW Director John Cherbone replied yes as there is a Resolution to be adopted.

Motion: **Upon motion of Commissioner Nagpal, seconded by Commissioner Cappello, the Planning Commission adopted a Resolution recommending that Council find the City of Saratoga CIP to be in conformance with the Saratoga General Plan. (6-0-1; Commissioner Hlava was absent)**

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PUBLIC HEARING - ITEM NO. 1

APPLICATION #06-206 (403-28-069) NGLIEM, 18344 Baylor Avenue: The applicant requests Design Review Approval to remodel the first floor with an approximately 321 square foot addition and construct a second-story addition consisting of approximately 753 square feet. The total floor area of the proposed residence will be approximately 2,974 square feet. The maximum height of the proposed residence will not be higher than 26-feet. The net lot size is 7,840 square feet and the site is zoned R-1-10,000. (THERESE SCHMIDT)

City Attorney Jonathan Wittwer:

- Explained that the applicant has requested a continuance.
- Suggested that the applicant be allowed to come forward to clarify if they are proposing a redesign or are simply requesting additional time.

- Said that if the request is to allow redesign with the current proposal being withdrawn, the clock would start again as it relates to Permit Streamlining requirements.

Commissioner Hunter asked if the neighbors who are here tonight would still be allowed to talk.

City Attorney Jonathan Wittwer said that if the applicant intends to redesign his proposal then taking public testimony this evening on the current design would not be an efficient use of time.

Commissioner Cappello asked City Attorney Jonathan Wittwer to explain what would constitute a redesign versus simply tweaking the current design. He asked if it were up to the Commission to decide that distinction.

City Attorney Jonathan Wittwer replied yes.

Commissioner Nagpal ask if there would be a new application processed if this is a redesign.

City Attorney Jonathan Wittwer replied no. It would proceed under the same application number.

Chair Rodgers asked if the applicant or a representative is here tonight.

Director John Livingstone replied that the applicant might not be here. He explained that an email message was received this afternoon in which the applicant requested a continuance to allow some design changes and to please reschedule consideration to the next meeting.

Chair Rodgers asked Director John Livingstone for suggestions on how to handle this since there are people here this evening.

City Attorney Jonathan Wittwer said that there is no evidence as to whether this applicant is planning just a simple redesign or is starting all over. He said to go ahead and take testimony since this was noticed as a public hearing.

Chair Rodgers asked if there is a staff report.

Director John Livingstone presented the staff report as follows:

- Said that the applicant is seeking Design Review Approval to allow the remodel of the first floor with 321 square foot addition and a 753 square foot addition to create a new second floor with a total FAR of approximately 2,974 square feet.
- Explained that the maximum height would be 26 feet. The lot is 7,840 square feet and the zoning is R-1-10,000.
- Recommended that the Commission deny this proposal without prejudice.

Chair Rodgers asked Director John Livingstone for alternative actions available to the Commission.

Director John Livingstone said that the item could be continued or staff could be instructed to work with the applicant on a revised design.

Chair Rodgers opened the Public Hearing for Agenda Item No. 1.

City Attorney Jonathan Wittwer asked that the record show that the applicant has been called for and has not appeared.

Commissioner Kundtz added that the applicant has sent an email asking for a delay to the next meeting.

Ms. Janet St. Clair, Resident on Purdue Drive:
- Explained that her street backs onto Baylor Avenue and she shares a back fence with this property.
- Reported that her heart sinks when she thinks about two-story homes in this area that is a single-story area.
- Advised that she has a 25-foot long bank of floor to ceiling windows overlooking her back yard.
- Stated that she does not want a two-story house overlooking her home.
- Said that the whole mood of their neighborhood is peaceful.
- Said that the bulk of a two-story home is offensive and intrusive to the peacefulness of the neighborhood.
- Added that she has no objection to additions as long as they are not second story additions.

Commissioner Kundtz asked Ms. Janet St. Clair if she had any discussion with the applicant about her concerns.

Ms. Janet St. Clair replied that she has not and does not know the applicant.

Commissioner Nagpal asked if there is a homeowners' association (HOA).

Ms. Janet St. Clair said that her home was developed as Sunland Park. She purchased her home 20 years ago and received CC&Rs but they may have expired.

Commissioner Nagpal advised that several neighborhoods in the City have single-story overlay designations that prevent two-story homes from being constructed. She asked Ms. Janet St. Clair if her neighborhood has considered undergoing any such effort.

Ms. Janet St. Clair replied no. She added that the HOA technically no longer exists. She added that the development was built when this area was still in the County. The area was incorporated into Saratoga approximately 25 years ago.

Ms. Doris Chen, Resident on Purdue Drive:
- Explained that she moved into her home in July.
- Said that shortly thereafter she received notification from the City about this proposal.

- Advised that privacy impacts to a bedroom, living room and kitchen in her home would result from having a second story overlooking her home.
- Reported that she lived previously in a two-story home and could see into her neighbors' home from her second floor.

Commissioner Kundtz asked Ms. Doris Chen if she had any discussion with the applicant and/or if the applicant ever approached her.

Ms. Doris Chen replied no.

Mr. Joe Ploshay, Resident on Baylor Avenue:
- Said that his neighborhood was designed for single-story ranch-style homes that offer privacy on the whole back side of the homes.
- Added that he bought his home based on a single-story concept 18 years ago to enjoy privacy in his backyard.
- Said that a two-story would impact sunlight in his yard in the mornings when he likes to spend time there. It would also hide view of trees in the neighborhood.
- Stated that all homes in the neighborhood have made attempt to keep to a single story.
- Reported that he initially discussed the project with the applicant and was shown plans that included no windows overlooking his property. Later plans did have windows there, which he considers to be a bit of a bait and switch tactic.
- Said that he later signed a letter of opposition to this project and sent two emails.

Mr. David Grus, Resident on Baylor Avenue:
- Said that he is a 32-year resident.
- Added that there is a wonderful sense of community and neighborliness in his neighborhood.
- Advised that the former neighbor in this house was the original owner who died in 2004. The property was subsequently sold to the current owners.
- Said that he has met the new neighbors and was surprised when they later cut down a large eucalyptus tree in front.
- Said that there have been countless remodels in the neighborhood but none of them two-story.
- Said that two-story homes do not fit within this subdivision of single-story houses.
- Said that he did a remodel in 1988, going from 1,500 to 2,900 square feet. They worked hard to stay single-story by going with a large belowground family room with light well.
- Stated that a 26-foot high house is like living next door to a docked ocean liner. It would block sunlight.
- Said that he is aware of only one partial second story nearby that was constructed prior to the area's annexation into Saratoga.
- Begged the Commission not to set precedent here by allowing this two-story addition.

Mr. Richard Schultz, Resident on Baylor Avenue:
- Said that he lives across the street and is in opposition to a two-story that would spoil the look of the neighborhood.

- Said that this design looks like a giant ship and is the worst example of what a two-story house can do.
- Advised that he signed a covenant when he bought his home limited him to a 1.5-story home.
- Reported that a single-story overlay was once considered.

Commissioner Nagpal said that this design is a worse example but that some two-stories are nicely designed. She asked Mr. Richard Schultz if he could support a two-story if there were significant design changes.

Mr. Richard Schultz said that as he lives across the street he is not as directly impacted as the adjacent neighbors. He said he does advocate the applicant working with his neighbors.

Commissioner Hunter said that it appears there are approximately three two-story houses in Sundland Park but not on Baylor or Purdue.

Mr. John Commons, Resident on Purdue Drive:
- Said that their neighborhood is one of single-story homes. There are only three homes more than single-story.
- Said that the area offers a private and spacious feel that a multi-story home does not fit into.
- Said that he moved in two months ago and would not have purchased, or at least paid what he paid for his home, with a two-story overlooking the back of his home.
- Stated that two-story homes have impact on neighbors. The values of surrounding homes are impacted.
- Added that he feels strongly that this neighborhood should predominately stay single-story in order to preserve privacy.
- Urged the Commission not to approve this request.

Commissioner Nagpal asked Mr. John Commons if he was provided with anything that advised him he could not build more than a single-story addition.

Mr. John Commons said nothing official but reiterated that this is predominately a single-story neighborhood.

Ms. Gail Poffenberger, Resident on Baylor Avenue:
- Reported that she participated on the HOA for several years.
- Said that the neighborhood consists of 200 homes and only three of them are two-story. They are the exception to the rule and not the trend.
- Said that the HOA was incorporated when they petitioned to be incorporated into the City of Saratoga. The HOA disbanded because of a lawsuit against it. However, that does not impact the CC&Rs that the owners signed when purchasing their homes.
- Stated that she has an issue with two-story homes. The design creates a huge wall for her eastern view.
- Reported that this owner took down a huge eucalyptus tree that might have screened this two-story addition.

- Said that Saratoga is inconsistent in upholding CC&Rs.
- Added that she too has a 19-foot expanse of windows facing her rear yard.

Commissioner Kundtz asked City Attorney Jonathan Wittwer to address the issue of CC&Rs for Ms. Gail Poffenberger.

City Attorney Jonathan Wittwer advised that the City does not enforce CC&Rs. They are a private civil matter.

Commissioner Kundtz added that the Commission has no authority to enforce CC&Rs but rather it is up to the HOA to enforce them. He added that language in CC&Rs tend to drive toward litigation or arbitration to resolve disputes.

Mr. Paul Menard, Resident on Purdue Drive:
- Said that he likes his ranch-style neighborhood.
- Said that he sides with the speakers who have spoken against two-story homes.
- Stated that a two-story home is not appropriate for this neighborhood.
- Added that he is not opposed to expansion by single-story addition.

Chair Rodgers asked City Attorney Jonathan Wittwer if the Commission should express its views on this project or not.

City Attorney Jonathan Wittwer said that if the item is to be continued, he recommended waiting until all evidence is heard. He added that he does not know right now what the applicant's intent is as far as the changes to the existing design.

Commissioner Hunter said that Sundland Park is a marvelous place. She said she is inclined to keep Baylor a one-story neighborhood and that the applicant might be encouraged to keep his home single-story.

Commissioner Kundtz said that staff could counsel the applicant on the comments received tonight.

Commissioner Nagpal said her concern is that several Design Review findings cannot be met. She suggested an improved design to meet required findings. She said that staff should advise the applicant that they need serious neighbor meetings and that she would like to see those efforts stepped up.

Commissioner Zhao said that it appears that it might be possible to allow a 1.5-story home in this neighborhood. She suggested having this applicant work with the neighbors.

Commissioner Cappello:
- Said that options appear to include denial or making recommendations for staff to work with the applicant further.
- Said his opposition is not based on this being a two-story but rather it is to the excessive bulk and incompatibility with the neighborhood.
- Stated that neighbors are against a second story.

- Cautioned those in attendance that the only way to prevent two-stories outright is to initiate a Single-Story Overly for this area.
- Said that without such an overlay, the applicant could come forward with a design that overcomes the bulk issues.

Commissioner Hunter reported that Saratoga Woods, located near Prospect, did obtain a Single-Story Overlay District designation.

Chair Rodgers:
- Said that the neighbors could discuss with Director John Livingstone how a Single-Story Overlay District can be accomplished.
- Added that she disagreed with Commissioner Cappello's belief that the Planning Commission might be forced to accept a two-story design.

Commissioner Nagpal:
- Pointed out that the maximum height proposed for this two-story is 21 feet versus the maximum allowed height of 26 feet.
- Cautioned that one could see a single-story house at an 18-foot height.
- Reiterated the need for a proposal that is consistent with the neighborhood and of good design.

Chair Rodgers pointed out that a 1.5-story home could be made to look like a single-story home from the front elevation.

Chair Rodgers closed the Public Hearing for Agenda Item No. 1.

Motion: **Upon motion of Commissioner Kundtz, seconded by Commissioner Hunter, the Planning Commission CONTINUED consideration of Application #06-206 for a two-story residential addition to a home located at 18344 Baylor Avenue to the next regular Planning Commission meeting of September 13, 2006, by the following roll call vote:**
AYES: Cappello, Hunter, Kundtz, Nagpal, Rodgers and Zhao
NOES: None
ABSENT: Hlava
ABSTAIN: None

Chair Rodgers asked that the applicant provide a picture of the home's elevation at the next hearing.

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PUBLIC HEARING - ITEM NO. 2

APPLICATION: #06-428 (389-12-019) – CAZUELAS AUTHENTIC MEXICAN FOOD (tenant)/QUITO VILLAGE GROUP, LLC (property owner) – 18804 Cox Avenue: The applicant requests a Conditional Use Permit to establish a restaurant in an existing approximately 950 square foot vacant tenant space in the Quito Village commercial complex.

The restaurant will face Cox Avenue and will be located between the existing Sushi 2-2 Train and Shamrock Shoe Repair businesses. The site is zoned CN. (SUZANNE THOMAS)

Assistant Planner Suzanne Thomas presented the staff report as follows:

- Advised that the applicant is seeking approval of a Conditional Use Permit to allow the establishment of a new Mexican restaurant within an existing commercial space.
- Described the space as consisting of 950 square feet located in the Quito Village commercial complex, a 274,000 square foot center at Cox and Paseo Pasado.
- Explained that there are several restaurants in this center but no Mexican restaurant.
- Reported that this tenant space has been vacant for two years.
- Said that the proposal meets the objectives of the zoning and that findings to support this Use Permit can be made.
- Said that the restaurant would have both inside and outside dining as well as to-go service. Breakfast, lunch and dinner would be served. There would be 18 indoor seats and 4 outdoor seats.
- Informed that the parking was surveyed several times and found to be ample.
- Said that the same signage would be used with a simple name change.
- Advised that neighbors within 500 feet were notified and the applicant personally contacted 50 neighbors. No negative comments were received.
- Explained that alcohol service would be sought in the future, which would require additional approvals.
- Said that findings can be made and recommended approval.

Commissioner Hunter asked if the hours to 6 p.m. on Sunday were chosen by the applicant or imposed on them.

Planner Suzanne Thomas replied that the applicant chose the hours.

City Attorney Jonathan Wittwer said that the conditions of approval don't include hours of operation and the owners are not restricted to the hours they proposed.

Chair Rodgers pointed out that this is a service-oriented center.

Planner Suzanne Thomas advised that the site manager says that this restaurant is a good use for this tenant space that has been difficult to find a retail use for.

Chair Rodgers opened the Public Hearing for Agenda Item No. 2.

Mr. Gil Ortez, Representative of Applicant:

- Advised that he is the owner's son. His mom will operate Cazuelas Authentic Mexican Food.
- Explained that she chose Saratoga because of the lack of Mexican restaurants.
- Said that they have received great support from the neighbors and thanked the Commission for the opportunity to address them.
- Said he would be available for any questions.

Commissioner Nagpal thanked Mr. Gil Ortez for the site visit.

Chair Rodgers closed the Public Hearing for Agenda Item No. 2.

Chair Rodgers described the required criteria to support this use including the finding of the use not being detrimental to the health, safety and welfare of the community, imposing conditions to ensure compliance and finding that the use would not adversely impact the nearby properties.

Commissioner Kundtz said that he can make all findings and welcomes this restaurant to the City of Saratoga. Suggested adding a condition to allow future sale of alcohol.

Commissioner Hunter said that this is a marvelous addition and also welcomed the owner to Saratoga. She assured that she would send everyone to enjoy this restaurant.

Commissioner Cappello said he was sold once he heard about the dish made with chocolate. He said he lives two miles away and plans to frequent this new restaurant. He asked if the liquor sales would be just beer and wine.

Director John Livingstone said that the specific type of alcohol sales license is obtained through ABC (Alcohol Beverage Control).

Commissioner Nagpal asked if the issue of alcohol sales would come back to the Commission.

Director John Livingstone replied that allowing alcohol sales could be made part of this Use Permit if the Commission is supportive so the applicant would not have to come back in the future. He added that although a Use Permit runs with the land, any new owners would have to process their own ABC license.

Commissioner Zhao said she could make the findings and thinks this will be a nice addition to the area. It is a good fit for the location and space and she supports this application.

Commissioner Nagpal said that she is completely supportive but is thrown off by the addition of alcohol sales, as she wasn't thinking about it.

Commissioner Kundtz said that this would be facilitating an opportunity for them to apply for a liquor license. He added that ABC determines what kind of license is to be granted.

Commissioner Nagpal asked if there is any liquor sold nearby.

Commissioner Kundtz reported that the Chinese and Sushi restaurants serve beer.

Mr. Gil Ortez said that beer and wine are sold at both restaurants. He added that they would not include a full bar. However, in order to be able to sell Margaritas, they need a hard liquor license. They plan to have only beer, wine and Margaritas.

Chair Rodgers pointed out that if issues come up, the Commission has continuing jurisdiction.

Director John Livingstone agreed that changes to the use could trigger a return to the Planning Commission.

Commissioner Nagpal said that there was no mention of liquor sales in the notice.

Director John Livingstone said that it typically is not included in the description.

Commissioner Cappello advised that there would be a 30-day posting of the site by ABC.

Chair Rodgers said that she is glad to have this new Mexican restaurant in Saratoga.

Motion: **Upon motion of Commissioner Cappello, seconded by Commissioner Nagpal, the Planning Commission adopted a Resolution approving a Conditional Use Permit (Application #06-428) to allow the establishment of a restaurant in an existing 950 square foot vacant tenant space in the Quito Villages commercial complex on property located at 18804 Cox Avenue as modified to allow inclusion of liquor sales with proper ABC licensing, by the following roll call vote:**

AYES: Cappello, Hunter, Kundtz, Nagpal, Rodgers and Zhao
NOES: None
ABSENT: Hlava
ABSTAIN: None

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PUBLIC HEARING - ITEM NO. 3

APPLICATION: #06-367 (503-24-064) – LEE, 14493-14495 Big Basin Way (Saratoga Cleaners): Request for Design Review Approval to construct an addition of an 879 square foot commercial tenant space at the first floor level, a 620 square foot three-car garage and a 1,377 square foot apartment at the second floor level of an existing two-story structure located in the CH-1 zone. The existing 3,224 square foot structure consists of a service establishment at the street level and two apartment units at the second floor. The 4,277 square foot site is located in Parking District No. 3. (LATA VASUDEVAN)

Associate Planner Lata Vasudevan presented the staff report as follows:

- Advised that the applicant is seeking Design Review and Conditional Use Permit approvals for a two-story addition to an existing building containing Saratoga Cleaners.
- Reported that the existing building includes two apartments above commercial space and a carport at the rear.
- Said that the applicant is seeking a two-story addition that includes street level retail, a 620-square foot three-car garage and a 1,377 square foot apartment above.

- Said that the proposed beige stucco would match existing. Dark windows and awnings would be incorporated with the molding painted to match around the windows.
- Stated that the garage would be wood and painted to match. The façade of the new commercial space would match the existing storefront.
- Distributed the color board and advised that pavers would be incorporated in front of the storefront and side.
- Said that staff is recommending that replacement doors with wood or wood-like appearance be used. Additionally, staff is suggesting wood roll-up side door and wood carriage style garage door. However, the applicant prefers not to do as staff recommends in relation to doors.
- Recommended approval with all doors being wood as approved by the Community Development Director prior to issuance of building permits.
- Added that staff is recommending that the door to the trash enclosure by replaced with a solid wood door.
- Said that this mixed-use building includes commercial and living spaces. These are conditionally permitted uses in the CH-1 zoning. The project meets standards except for the 20 units per net acre standard that would result in an allowance for just two living units for a lot this size and not the three proposed.
- Stated that staff is recommending approval of a variation on density in exchange for entering into a deed restriction that requires the two existing living units to be restricted as low income BMR (Below Market Rate) rental units. However, the applicant has indicated an intent to deed restrict just one unit.
- Explained that staff is recommending that both units be deed restricted to allow the proposed variation in density. These two BMR units would help the City achieve the goal of affordable housing units established in the Housing Element.
- Added that the maxed FAR is allowed to be increased with provision of BMR units. The applicant wants to have an added bonus 10 percent of space in the new unit with this provision of BMR unit(s).
- Distributed a sheet outlining the HUD income limits for the various affordable housing categories. It requires that only 30 percent of income be directed to rent.
- Explained that Parking District 3 was established in 1988 and assessments were made. Since February, a new Ordinance was adopted allowing all parking requirements to be relaxed in the CH zone with no requirement for the provision of off-street parking be required for projects approved between March 1, 2006, and February 2009.
- Stated that at that time 40,890 square feet of parking surplus was identified as available for allotment against new development in the Village. With this project, 2,270 square feet would be removed from the current balance of parking surplus square footage calculation.
- Said that the Public Works Department has reviewed the proposed restriping of the parking area and has approved the proposal. The re-striping would result in no reduction in parking provided.
- Stated that a condition of approval is imposed that will require that the cost of any repairs to the parking area resulting from construction be covered by this project.
- Said that neighbors were notified but none responded to the applicant's attempts.
- Reiterated that both Design Review and Conditional Use Permit approvals are required.
- Described the Use Permit findings. The first is finding the project to be consistent with the zoning district. That finding can be made. The second is that the project would not be

detrimental to health, safety and welfare or be injurious to the area. That finding can be made, as the conditions will ensure that no detriment results. The third is that the project complies with the CH-1 zoning and mixed-use standards. This finding can be made provided that a variation of standards based on density is approved with the condition requiring deed restriction of two existing residential units as low-income. It also helps meet the City's Fair Share of Housing.

- Stated this project is consistent with approval of a variation of standards for density.
- Recommended approval through the adoption of the draft resolution with the added conditions as shown on Exhibit A that requires all doors to be wooden as approved by the Community Development Director, that the trash enclosure door be replaced with a wood self-closing door to the satisfaction of the Director; that a 10 percent bonus in square footage be added to the third unit, that the two existing dwelling units be deed-restricted as BMR, that all units remain rentals and that landscaping and awnings be maintained at all times.

Chair Rodgers commended Planner Lata Vasudevan for her well-done presentation. She suggested that questions be segmented to each issue.

City Attorney Jonathan Wittwer advised that additional language would need to be added to condition 3 that requires the low-income rental units be retained in perpetuity.

Chair Rodgers asked if there are questions on the issue of variation of standards to allow the third residential unit.

Commissioner Nagpal thanked staff for the excellent report and presentation. She asked by how many square feet this project was over the allowed maximum density.

Planner Lata Vasudevan said she would need to calculate how large the lot would have to be in order to accommodate three units without a variation to standards in density.

Commissioner Nagpal pointed out that it appears the applicant does not want to restrict two living units as low-income.

Director John Livingstone explained that there is a 10 percent bonus offered with designation of BMR units that would allow an additional 120 square feet in the new living unit.

Commissioner Nagpal asked if the surplus parking is intended for both residential and commercial.

Planner Lata Vasudevan said that it is intended for all development in the CH zoning districts.

Commissioner Nagpal asked about proposed signage.

Planner Lata Vasudevan said that they are not currently proposing new or modified signage. To do so would require processing of a Sign Permit.

Commissioner Nagpal asked if the CUP is for both the commercial and residential aspects of this mixed-use project.

Planner Lata Vasudevan said each zoning district outlines uses that are permitted by right and those permitted with issuance of a Use Permit.

Commissioner Nagpal stated that it is staff's recommendation that two units be deed-restricted in order to give a variation of standard.

Planner Lata Vasudevan replied correct. She added that staff is recommending that the two existing residential units be low-income units through a deed restriction.

Commissioner Nagpal thanked Planner Lata Vasudevan for her work.

Commissioner Hunter said it wasn't as complicated last time because the mixed-use and parking ordinances hadn't yet been enacted.

Chair Rodgers said that with the previous application the applicant purchased parking before this Ordinance went into effect. She asked how much that saves in not having to provide parking or pay an assessment.

Planner Lata Vasudevan said that the value of each parking space changes based upon a CalTrans index that changes each quarter. The range is between $19,000 and $26,000 per space. The applicant bought three spaces with the last application.

Commissioner Hunter asked if there would be any lost parking spaces when turning the carport into a garage.

Planner Lata Vasudevan advised that through re-striping there would be no reduction. These spaces would remain compact spaces.

Chair Rodgers asked for any Design Review questions.

Commissioner Hunter asked staff if both retail space doors are proposed to be wooden.

Planner Lata Vasudevan replied correct.

Commissioner Kundtz asked if the garage door being wood is included as well.

Planner Lata Vasudevan replied correct as well as the doors at the side.

Commissioner Nagpal said she was surprised there has been no neighbor input.

Commissioner Hunter said it made her hair stand on end when she heard that fact.

Commissioner Nagpal asked if something specific is in mind when requesting more durable awning materials.

Director John Livingstone said that there are a lot of awnings in a row. Even newer ones could already use washing or maintenance. He said that there are more permanent materials that could be used but he would suggest leaving the final decision to the architect rather than as a condition of approval.

Commissioner Nagpal verified that the historic aspect of this site is solely based upon the limestone walls. She pointed out that the architect had at one point described this as a modern-style building.

Planner Lata Vasudevan said she would defer to the architect on this distinction.

Chair Rodgers asked if sandblasting is how these limestone walls could be cleaned.

Planner Lata Vasudevan said that the architect could explain this further.

Chair Rodgers asked if there are standards for performing the sandblasting.

Director John Livingstone said that there are appropriate times, control of dust, permits and construction standards to be met.

Chair Rodgers opened the Public Hearing for Agenda Item No. 3.

Mr. Warren Heid, Project Architect:

- Said that he is the representative for property owner Mr. Gin Lee.
- Said that with the 2003 application he represented the Lee Family but Mr. Gin Lee is now the sole owner of this property.
- Said that this project was approved before and is the same design as originally approved.
- Said that he sat on the Heritage Commission for eight years. He stated that the only historic thing about this property is the limestone.
- Added that the only way to get the paint off the limestone is to use sandblasting.
- Said that staff is requiring wood front doors, awnings and carriage style doors for the garage.
- Pointed out that the design was acceptable before as submitted.
- Said that the modern design is reflected in a square rectangular modern style building.
- Advised that buildings in Saratoga are mixed in style.
- Said that he is trying to maintain the existing appearance.
- Reminded that the laundry/cleaners have in and out patrons and that wooden doors don’t hold up as well.
- Informed that the new fire station has aluminum doors.
- Added that the doors along the side are fire doors and Fire wants them to be fireproof doors.
- Stated that everything is monochromatic except for the awnings, which are a solid brown.

- Explained that the trash enclosures were built to look alike as part of Parking Districts 1, 2 and 3.
- Reiterated that the Village is eclectic with many different styles. This is a modern building and they are trying to preserve the limestone that came from a local quarry. The building was construction in 1894.

Commissioner Hunter questioned why no one in the Village was reached about this proposal.

Mr. Warren Heid said he would defer this question to Mr. Gin Lee.

Commissioner Nagpal asked Mr. Warren Heid why he opposes staff recommendation for the use of wood appearing doors. She said that they would be a good design element to put into this building and would result in a design we all can be proud of.

Mr. Warren Heid said that he would be happy to work with the Director to make this requirement work.

Commissioner Nagpal asked if Mr. Warren Heid is concerned with the durability of the front doors.

Mr. Warren Heid said that many people come to commercial retail locations. It would be irresponsible for him to put in something that would not last.

Commissioner Kundtz said he has noticed that these doors to the cleaners have been propped open each day for over 20 years.

Mr. Warren Heid said maybe in summer but not winter.

Commissioner Kundtz said that there is a wooden façade on the counter at the cleaners.

Mr. Warren Heid said he is not trying to argue with the Commission but rather just be practical as to what would work best for his client.

Commissioner Cappello asked Mr. Warren Heid if he is opposed to the garage door style proposed by staff.

Mr. Warren Heid advised that along Turkey Trot Lane is a fire door. He added that they are trying to keep a monochromatic look to this building in order to match the limestone.

Chair Rodgers asked Mr. Warren Heid if there is any way to dress up the façade facing the alley and area behind the building.

Mr. Warren Heid said that there would be awnings across the back. It will have a simple but harmonious appearance.

Chair Rodgers reminded that this back elevation faces the Saratoga Inn.

Mr. Warren Heid said he would work with Director John Livingstone and his client to address these issues. He said it was a pleasure to have an office here in Saratoga.

Mr. Gin Lee, Property Owner and Applicant:
- Stated that his only concern was placing a deed restriction on the two existing residential units.
- Said that requirement is too extreme.
- Added that he studied the issue of BMR requirements and usually it represents 10 to 15 percent of a project density while this requirement would represent a 50 percent assignment of BMR units on him.
- Suggested having one BMR unit as this has an effect on financing and resell of this property.

Commissioner Nagpal asked Mr. Gin Lee if he studied BMR standards in Saratoga.

Mr. Gin Lin said he studied Cupertino, which has a 10 to 15 percent range requirement for BMR units.

Commissioner Nagpal asked Mr. Gin Lee if he might prefer limiting his project to two units and not require a variation of standard.

Mr. Gin Lin said he prefers restricting one unit as BMR with the variation of standard. This still equals 30 percent in BMR units.

Commissioner Nagpal asked if Mr. Gin Lee is referring to construction financing.

Mr. Gin Lee replied correct.

Commissioner Kundtz said that this seems to be of greater consequence to the project than does the issue of type of door to use. They are separate issues.

Chair Rodgers said she wanted the Commission to discuss the Use Permit first and Design Review after that.

Commissioner Hunter asked if the 10 percent bonus could be considered even if only one unit is restricted as BMR.

Commissioner Nagpal replied with the granting of a variation of standard.

Chair Rodgers asked Planner Lata Vasudevan if the third residential unit is in excess of the number allowed.

Planner Lata Vasudevan replied yes.

Chair Rodgers:
- Clarified that the first issue is the number of units allowed on this lot acreage.

- Said that the applicant is asking for a third unit.
- Added that staff is suggesting two deed restricted BMR units if the third unit is to be approved.

Planner Lata Vasudevan replied correct.

Director John Livingstone added that Code does allow that. A variation of standard looks at the benefit to the City. In this case, having two deed restricted low-income housing units helps the City meet its housing requirement.

Commissioner Cappello said it appears that the way to limit the deed restriction to one unit is to eliminate the added 10 percent bonus in square footage or eliminate the third unit.

Director John Livingstone:
- Suggested that the Commission concentrate on the number of units and number of deed restricted units.
- Said that the 10 percent bonus square footage would be considered separately.
- Added that a chief issue is that of two versus one restricted BMR unit.
- Advised that there is no floor area requirement in this commercial zone.
- Said that if no extra unit were allowed, the space could still be constructed as office space or added to the two existing units.

Commissioner Nagpal said it appears that the number of dwellings allowed per net acre is the issue. It requires a variation of standard to allow three with the suggested deed restriction on the existing two units as the trade off.

Mr. Gin Lee said he was confused at this point. He added that he could make two bigger units instead of having three.

Director John Livingstone agreed that this is an option. Right now the use of the site is what the Commission is discussing. Mr. Gin Lee could keep the existing two residential units and add space to those two units and/or construct office space on the new second floor above the new retail.

Commissioner Hunter questioned Mr. Gin Lee as to whether no one in the Village looked at his plans.

Mr. Gin Lee reported that he physically dropped off paperwork.

Commissioner Hunter said that she hoped the Village is friendly and wants to be a part of the process. She said this lack of input is distressing to her.

Mr. Gin Lee reminded that no one was at the first hearing either.

Commissioner Hunter advised that there is an existing email system available to reach more than a hundred Village businesses that could have been used to outreach to them.

Commissioner Nagpal asked about story poles.

Planner Lata Vasudevan said that they are not required.

Commissioner Hunter said the City might consider story poles for all projects in the future.

Commissioner Cappello asked Mr. Gin Lee if it came to the point this evening where the deed restriction on two units is what the Commission is recommending, would he prefer a continuance to calculate the impacts on the project.

Mr. Gin Lee said he would need more time to think about the deed restriction on two units.

Chair Rodgers restated that Mr. Gin Lee would need more evaluation if the decision were to require two units be deed restricted. She pointed out that Mr. Gin Lee saves a lot of money by not having to purchase parking spaces.

Mr. Gin Lee pointed out that he has to pay $20,000 for park fees.

Planner Lata Vasudevan said that Mr. Gin Lee is correct. There is an in-lieu park fee of approximately $20,000.

Chair Rodgers said it appears Mr. Lee is saving on parking fees in order to pay park fees.

Mr. Gin Lee said he is not really saving any money when thinking about it.

Director John Livingstone:
- Reiterated that the applicant has expressed an interest in one BMR unit versus staff recommendation for two.
- Added that the Commission could discuss this difference and based upon their direction it may lead to the next decision.

Chair Rodgers closed the Public Hearing for Agenda Item No. 3.

Chair Rodgers asked the Commission to discuss the Use Permit first. She added that a variation of standards is a trade off to help meet affordable housing units.

Commissioner Kundtz asked if staff is confident that the applicant is satisfied with a one-unit BMR requirement concept?

Director John Livingstone said that it appears Mr. Lee is supportive of only one deed restricted unit. If the Planning Commission appears to be on the road to requiring two BMR units, the applicant may want a continuance to look at other options.

Chair Rodgers:
- Said that the applicant wants three units.

- Added that the applicant is willing to deed restrict one of those units while staff is recommending deed restrictions on two as BMR units.
- Advised that another option available to the owner is to merge the two existing units into one unit and construct one new unit.

Director John Livingstone agreed that the applicant might want a continuance to do minor redesign.

Commissioner Cappello stated that if the Commission comes to the conclusion that three dwelling units offers an advantage to the Village, the requirement for a deed restriction on two of those units may prevent this from going forward. He asked what the ramification might be if only one unit is deed restricted.

Director John Livingstone replied none.

Chair Rodgers pointed out that in that case the City would receive no advantage for offering the 10 percent bonus in density.

Commissioner Hunter said that the City is currently losing some affordable units and these could replace a couple of those lost units.

Commissioner Cappello said that allowing the additional unit without the advantage of two BMR units may be setting a precedent but it may be unique to this site based upon its location.

Commissioner Zhao said that is the reason that staff is requested two units be deed restricted.

Director John Livingstone said that it was his understanding that the applicant initially offered BMR units and they wrote their report based upon that offer. The applicant wants just one BMR unit. He added that he did not think this requirement for deed restriction was unreasonable when it results in an allowance for a third unit for the project.

Commissioner Cappello asked if the restriction specifies the number of units.

Director John Livingstone replied yes. He added that the City is short by about 50 low-income-housing units.

Planner Lata Vasudevan explained that the State through ABAG (Association of Bay Area Governments) specifies the number of housing units each city should supply to help achieve the regional housing needs.

Commissioner Zhao asked if there is any additional benefit if the owner agrees to two deed restricted units.

Commissioner Nagpal explained that the benefit for the owner is having three units instead of the allowed two.

Chair Rodgers suggested a straw pole to determine where everyone stands on this issue.

Commissioner Nagpal:
- Said that this is a difficult question.
- Added that this is clearly a variation of standard where two units would be allowed here. If three units are allowed, she supported standing by staff's recommendations for two being deed restricted as BMR units for low-income.
- Stated that this still makes this a viable project, as affordable units are still pretty high rents.
- Restated her support for the staff recommendations.

Commissioner Zhao agreed. Said that if there are three residential units she supports the staff recommendation for two BMR units.

Commissioner Cappello:
- Said that he would like to see this project go forward particularly the retail space while the unit on top is secondary.
- Stated his preference to back off on the requirement for a deed restriction for two units to one BMR unit if it prevents this project from going forward.
- Added that he prefers a continuance to allow the applicant time to do more analysis.

Commissioner Kundtz said that this is a terrific project that balances the City's and owner's interests. He said that two BMR units may be onerous on the property owner and that he would support this project with one BMR deed restricted unit.

Commissioner Hunter expressed her agreement with Commissioner Cappello's comments.

Chair Rodgers said she agreed with Commissioner Nagpal's position. This project could serve as precedent to future development in the Village. Two units should be restricted as BMR units in order to obtain the third unit.

Commissioner Hunter agreed saying that she did not want to affect the Village down the road.

Commissioner Cappello said that a deed restriction is not required for the third unit. Either one or two units would be required to be deed restricted in order to get a variation on standards.

Director John Livingstone said that the Commission could elect not to have any deed restricted units if the project could still be found to be of sufficient benefit to allow a variation for the third unit.

Commissioner Zhao said that the benefit of the deed restriction to the owner is getting the third unit.

Commissioner Cappello added that preservation of the limestone walls and having a building constructed on the vacant lot are also benefits to the City. He said that the issue of one versus two deed-restricted BMR units must be weighed against those benefits too.

Chair Rodgers reminded that the density standard allows just two units here without a variance of standards. Granting a variance to standards to allow the third unit without deed-restricting BMR units would offer no trade off to the City by this applicant.

Director John Livingstone said that the State-required density ordinance is in effect for projects over five units. This project is not large enough to benefit from the State density bonus requirements.

Chair Rodgers said that it is a 4-2 vote for two units being deed-restricted as BMR units.

Director John Livingstone suggested the Commission now discuss Design Review.

Commissioner Kundtz:
- Said he appreciates the concept of a monochromatic building but he also likes the accent offered by the brown awnings.
- Added that he likes the idea of wood doors to help preserve the rural character of Saratoga.
- Suggested the applicant work with staff on the issue of doors so that something utilitarian but appearing like wood could be selected.

Commissioner Hunter:
- Reported that she was on the Planning Commission when this project originally was approved.
- Added that she is fine with the proposed awnings.
- Said that she too likes the use of wood doors.
- Said that with this update the Saratoga Inn would have a better view.
- Stated that the trash enclosure is most unattractive.
- Said that this project offers a nicer design than before.

Commissioner Kundtz pointed out that the entry to the Saratoga Inn is a wooden door.

Commissioner Cappello said that he hates giving design recommendations to an architect but he likes the idea of a contrasting color to a door. Suggested that something be selected that is functional but still has the look of wood if at all possible.

Commissioner Zhao said she had no strong opinion on the door when it comes to wood versus aluminum although wood is more fitting with the area while she agrees about the practical use of aluminum.

Commissioner Nagpal:
- Stated she was delighted to see Architect Warren Heid back and expressed her appreciation for all he has done for Saratoga, helping to make it better.

- Suggested allowing the architect to work with the Community Development Director to find doors that give the appearance of wood while still meeting the owner's practical needs.
- Added that she would like to see wood.
- Said that she is okay with awnings and appreciates the owner's agreement to maintain them properly.
- Supported staff recommendations including those relating to the trash enclosure.

Director John Livingstone pointed out that commercial grade wood doors could still be fire rated.

Chair Rodgers:
- Stated that she likes this design and finds it to be a nice addition to the Village with the new building and renovation.
- Said that the limestone walls will be fantastic and she likes the proposed awnings although she is not fond of plastic or metal awnings instead preferring canvas.
- Said that it is important to dress up the back elevation that is currently disreputable.
- Suggested wood or wood-like materials.
- Agreed that it is time to upgrade the trash enclosure.
- Said she would be happy to see this project get started quickly.

Director John Livingstone:
- Said it appears that a majority of the Commissioners are in support of deed-restricting two units and leaving the resolution as it is.
- Added that it would be up to the Planning Commission to allow the applicant to approach and make any requests.
- Outlined options as including approving as is, denying, continuing or approving with changes.

Chair Rodgers re-opened the Public Hearing for Agenda Item No. 3.

Chair Rodgers asked Mr. Gin Lee for his preference this evening. She could call the question and he could appeal the parts he does not like, he could withdraw and work with the Director to iron out a few of the last problems including the final number of units.

Mr. Gin Lee said his preference is a continuance.

Motion: **Upon motion of Commissioner Hunter, seconded by Commissioner Nagpal, the Planning Commission CONTINUED consideration of Application #06-367 to the next regular meeting on September 13, 2006. (6-0-1; Commissioner Hlava was absent)**

Chair Rodgers call for a break at 10:22 p.m.

Chair Rodgers reconvened the meeting at 10:27 p.m.

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PUBLIC HEARING - ITEM NO. 4

APPLICATION: #04-177 (386-35-069) – NEXTEL/SPRINT, 19550 Prospect Avenue/12033 Miller Avenue – Church of the Ascention: Nextel/Sprint requests Conditional Use Permit approval to locate a wireless facility at the aforesaid address located in the R-1-10,000 zone. The project consists of the installation and operation of cellular antennas concealed within three poles. Related equipment cabinets will be installed in a proposed enclosed area attached to one of the buildings on the property. This application was initially presented as a public hearing on August 24, 2005. At this public hearing, the Planning Commission voted to continue this item to a date uncertain. The current proposal – antennas concealed within the three poles – is a revision to the originally proposed monopine that was presented at the August 24th public hearing. (LATA VASUDEVAN)

Associate Planner Lata Vasudevan presented the staff report as follows:

- Advised that Sprint/Nextel is seeking approval of a wireless facility at the Church of the Ascention.
- Said that the application was originally filed in June 2004 and heard by the Planning Commission in August 2005, at which time a monopine was proposed. At that time, the proposal was continued to a date uncertain to work on issues of appearance and location near residences.
- Said that in April 2006, a Study Session was held and a three-flagpole design concept was proposed.
- Stated that while co-location might be possible at other sites, the applicant feels that this is the final and best proposal.
- Described a typical flagpole as being 8-inches in diameter. These proposed flag poles are 14-inches in diameter.
- Said that there would be one antenna per pole as having two in one pole would require an even wider flagpole.
- Stated that staff finds the flag poles to be too wide and unrealistic in appearance. The proposal is to hang an American, State and County flag on the three respective flagpoles.
- Said that staff finds this is not a complimentary use of the site and that a substantial number of comments have been received in opposition.
- Reported that an email from the applicant was received yesterday and provided to the Commissioners.
- Said that four findings must be made. One is that the location is in accordance with the objectives of the zoning district. Staff does not believe that finding can be made. The next is that the proposed location would not be detrimental to the health, safety and welfare or be injurious to the community. That finding can be made. The third is that this proposal complies with Code. That finding can be made. The fourth is that the proposal would not adversely impact surrounding uses and neighborhood. That finding cannot be made, as the installation of these oversized flagpoles does not integrate aesthetically with the church and neighborhood.
- Reiterated that two of four required findings cannot be made in the affirmative.
- Recommended denial of Application No. 04-177 based on its design.

- Advised that a draft resolution for denial has been provided.

Chair Rodgers reminded that the Commission does not consider health affects from RF exposure as the FCC holds that jurisdiction.

Commissioner Kundtz asked for the height and diameter of the library antenna flagpole.

Planner Lata Vasudevan said that it is a single pole that is 40-feet in height and 11-inches in diameter at the base and 7-inches in diameter at the top.

Chair Rodgers opened the Public Hearing for Agenda Item No. 4.

Ms. Elizabeth Aron, Representative for applicant Nextel/Sprint:
- Said that this proposal consists of one shelter and three flagpoles.
- Assured that there is no impact on the health, safety or welfare of the community.
- Said that this proposal was discussed with the Commission, staff and neighbors at the study session and this was the preferred design.
- Added that until three weeks ago, she thought that staff was in support of this proposal.
- Said that the poles cannot be made slimmer as they are limited by the size of the antennas that need to be housed inside the poles. The size of antennas is limited by their assigned frequency.
- Stated that the City cannot discriminate against any one cellular carrier based on their assigned frequency and corresponding equipment requirements.
- Asked that the Commission be realistic.
- Said to fit an antenna within a pole, that pole must be larger than the antenna with enough room to have that antenna rotate.
- Clarified that the library flagpole is 11-inches in diameter and holds a 6-inch diameter antenna. Their proposal is for a 14-inch diameter flagpole with an 8-inch diameter antenna.
- Said that it is not an option to put several antennas into one flagpole.
- Pointed out that having flags at churches is common. The Church of the Ascention feels it is appropriate. There is currently a flagpole on site with no City objection.
- Reminded that this hearing began last year.
- Said that she takes issue with staff's analysis and it is not being made clear exactly what the adverse impact is.
- Stated that they have moved placement of these flagpoles further away from residences.
- Said she has a legal question as the fourth finding stated by staff is not in the original report or in Code.
- Asked for approval of this cellular installation of three flagpoles and a small equipment enclosure and assured that it is the only site that would fill the gap in their network
- Said that a decision today is their preference, specifically an approval.
- Advised that she is accompanied by an RF Engineer to answer technical questions.

Commissioner Kundtz asked if this is the last request from Nextel for Saratoga installations.

Ms. Elizabeth Aron said that there are no additional plans in the five-year plan.

Commissioner Nagpal asked about the analysis of other sites. She asked if a site is expected to provide 100 percent coverage.

Ms. Elizabeth Aron said that none of the other proposed sites offered 100 percent coverage and none were located within their ring.

Commissioner Nagpal asked how many sites are in locations that are not optimal.

Ms. Elizabeth Aron said that they couldn't always get optimal sites.

Commissioner Nagpal said that it appears from the report provided that coverage would be 85 percent.

Ms. Elizabeth Aron said she needed to correct that to 75 percent.

Commissioner Nagpal asked if a new installation would ever be made in a site offering 75 percent coverage.

Ms. Elizabeth Aron replied not in her experience.

Mr. Sam Bui, RF Engineer for Nextel/Sprint:
- Clarified that they don't establish a new site that doesn't meet 100 percent coverage.
- Said that the alternative is to build more and shorter distance sites.

Commissioner Nagpal asked for clarification on what the term poor coverage means.

Mr. Sam Bui said that it represents quality of service and what percentage of dropped calls there are.

Commissioner Nagpal asked if the coverage capabilities of the other mentioned sites were evaluated.

Mr. Sam Bui said that they were evaluated.

Commissioner Nagpal questioned whether there are absolutely no alternative sites available to this one.

Ms. Elizabeth Aron:
- Agreed with the report that says there are no viable options to this location to serve their targeted area.
- Added that a variety of factors are considered.

- Explained her background in law and planning and said that they look at sites both from RF as well as planning perspectives.
- Assured that this site is so much superior to any other.

Commissioner Nagpal asked Ms. Elizabeth Aron if she also evaluated using a combination of sites as an alternative.

Mr. Sam Bui said that their cellular network consists of spaced sites that create a jigsaw puzzle. Nextel needs to fill in a specific gap in that puzzle.

Commissioner Nagpal asked Mr. Sam Bui if there is any other combination that would also fill that gap.

Mr. Sam Bui said they have exhausted all other options.

Commissioner Nagpal asked again if there are no other solutions.

Mr. Sam Bui replied no.

Commissioner Zhao asked why three antennas.

Mr. Sam Bui said the frequency of operations and the physics of the antenna design. He said that lower frequency equals larger antennas and higher frequency equals smaller antennas. Nextel equipment is bigger and stronger than that used by MetroPCS, which is what has been installed at the library in a slightly smaller flagpole than they require here.

Commissioner Zhao asked if the have the same PCS band.

Mr. Sam Bui replied no. They have 800 megahertz while MetroPCS has 1800 megahertz.

Ms. Elizabeth Aron reminded that this is a Nextel site and not a Sprint site. Both networks are still being maintained separately.

Commissioner Cappello asked if the five-year plan for either Nextel or Sprint includes any new locations in Saratoga.

Mr. Sam Bui assured that there are no additional installations proposed for Saratoga for either Nextel or Sprint within their current five-year plan.

Commissioner Nagpal asked how it is possible to say that. If the rate of dropped calls were to rise dramatically, how could they be sure they would not need to come back for additional sites to resolve that coverage issue.

Mr. Sam Bui explained that the industry standard is 2 percent dropped calls.

Commissioner Nagpal asked what if the standard changes, perhaps reduced to a standard of 1 to 1.5 percent, might they not have to come back for more sites to meet that standard?

Mr. Sam Bui said he couldn't forecast the future but right now there are no plans within the next five years. That five-year plan has already been submitted.

Commissioner Cappello asked for a prioritization of the objectives of this project. Is it south of Prospect or north of Prospect?

Ms. Elizabeth Aron distributed an exhibit that depicted the coverage objectives. She said that first objective is south of Prospect and the second is Prospect.

Mr. Sam Bui said that coverage takes into account coverage from within a building. Their main objective is for in-building coverage shown on the exhibit as the red area. It includes Miller and Prospect within a quarter mile, give or take.

Commissioner Cappello asked for the current drop call rate in this area.

Mr. Sam Bui said that coverage equals quality.

Commissioner Cappello again asked what is the established desirable drop call rate and coverage standard.

Mr. Sam Bui said they are seeking an improvement for in-building coverage.

Commissioner Cappello again asked what the established drop call rate is.

Mr. Sam Bui said that it would be less than 1 percent with this site. Existing drop call standards are considered proprietary information.

Commissioner Cappello asked why the applicants wanted to move forward despite staff's recommendation of denial.

Ms. Elizabeth Aron:

- Reported that after the original Planning Commission hearing and subsequent Study Session, she went back and prepared a report and forwarded it on to the City's staff planner. While she had input from the community, none was received from the planner.
- Said that staff recommended another site and they had performed an analysis of that site (North Campus site).
- Added that they had been unaware that staff would be against their proposal until just three weeks ago. They did not know why until Friday.
- Reiterated her belief that they are presenting the best case they have. This is the best proposal they have.
- Added that their competitors could use proprietary information on dropped calls against them.

Commissioner Cappello agreed that there has been a lot of neighbor input.

Commissioner Hunter asked why the applicant is not interested in the North Campus. It appears from their analysis that the reason is because the buildings are run down and that there might be changes there.

Ms. Elizabeth Aron said that their main reason is that they did not think that they would receive an approval there. There has been a lot of opposition to anything on that site.

Commissioner Hunter advised that the City voted to retain that site for use by the community and that $500,000 is budgeted for improving it.

Ms. Elizabeth Aron said that there has been no specific idea about the future of that site.

Commissioner Hunter asked if the North Campus site would work to achieve 100 percent coverage.

Chair Rodgers agreed that the future of that site is still uncertain.

Director John Livingstone said that it would be used as a public facility but that final use is an evolving matter. There are different uses proposed but none set in stone.

Ms. Elizabeth Aron reminded that this project began in 2004. Significant time has been spent on analysis and design. It doesn't make sense economically to not go forward for a decision by the City.

Commissioner Zhao asked about the site analysis for coverage from the North Campus site.

Director John Livingstone said that staff had encouraged the applicant to consider use of the North Campus site based upon neighborhood feedback.

Commissioner Kundtz asked if the existing flagpole would be removed.

Chair Rodgers asked Ms. Elizabeth Aron for their target client.

Ms. Elizabeth Aron:

- Explained that their target clients are all of Nextel 's customers. That includes users of their walkie-talkie feature most used by contractors and people out driving a lot. These are industrial strength phones much used by employers with fleets of people sent out.
- Said that there is a higher and higher-level expectation on what it means to have a cell phone.

Chair Rodgers asked Ms. Elizabeth Aron what the advantage is to the 800-megahertz system.

Ms. Elizabeth Aron said that it is just the frequency they were assigned by the FCC.

Mr. Sam Bui said one advantage of the 800-megahertz system is that it travels further. Usage wise there are no advantages.

Mr. Jerry Streb, Representative for Church of the Ascention:
- Said that he is a member of the 600 family parish.
- Assured that if other sites had been viable for Nextel, they would have gone for it and had it approved easily.
- Reported that he measured the antenna pole at Saratoga Library with a string and it is actually 13-inches in diameter not 11-inches as reported.
- Assured that they would be willing to remove their existing flagpole with this installation.
- Disagreed with the assessment that this proposed use of flagpoles is not compatible with the church site and uses.
- Said that this is actually an optimal location.
- Reminded that the North Campus is located closer to residents than here.
- Said that there are five people present this evening in support of this project (he asked them to raise their hands to identify themselves to the Commission).
- Stated that the opponents are just trying to delay this, to drag it out.
- Said enough is enough.
- Asked approval.

Commissioner Kundtz asked Mr. Jerry Streb how tall the light standards in the east parking lot are.

Mr. Jerry Streb said he would only be speculating and did not know specifically.

Commissioner Cappello asked what benefit this installation would have on the community.

Mr. Jerry Streb replied coverage to customers would be improved.

Mr. Paul Fontenot, Resident of Eric Drive:
- Advised that he could provide some feedback on community input.
- Said that the vote against this installation was 47 to 4. The current breakdown is 51 against and 4 in support.
- Stated that this would impact their community.
- Cautioned that once one site goes up more follow.
- Explained that more and smaller sites are the trend.
- Said that we are not facing a situation of less but rather we are facing a situation of more.
- Suggested that they are not saying that they know best but perhaps could suggest less impactful locations.
- Pointed out that there is a cell site located in Villa Montalvo but no one can see it.
- Reminded that 51 members of the local community are against this request.

Commissioner Nagpal said it appears the biggest concern is that it could be visually impacting to the nearby residences. Asked how it was visible from his home.

Mr. Paul Fontenot said that the request went from one monopine to three flagpoles. He said that the tops of the poles would be visible.

Commissioner Nagpal asked Mr. Paul Fontenot if his concern is visual impacts or potential for other sites.

Mr. Paul Fontenot said that once a site goes in, more follow. He stated that his concern is future visual impacts.

Commissioner Nagpal warned that this application is about these three flagpoles. She asked Mr. Paul Fontenot if he feels visually impacted by these three flagpoles.

Mr. Paul Fontenot said yes.

Mr. Hui Liu, Resident of Ashton Court:

- Said that the issue of coverage is different from before. Before the standard was coverage from cars and now it is from within buildings.
- Said that he did not want to say that the applicant was not honest but they are changing from what they said before.
- Questioned the level of evaluation over the use of the North Campus site and whether any real effort was made to see if there was interest by the City to allow placement there.
- Suggested that the applicant be required to hire an independent third-party consultant.
- Stated that he can see that this Commission really cares about this community.
- Cautioned that this could affect property prices in this area.
- Expressed his hope that this application would be denied.

Mr. Ron Schoengold, Resident of Saratoga Glen Place:

- Stated that he is a long-term resident of this area and a member of the Church of the Ascention.
- Said he is an advocate for this application and that cellular technology is the future of technology in terms of communication.
- Said that the opposition to this application has cost time and expense on Nextel.
- Said that approving this request is the right thing to do.
- Added that the opponents are asking Nextel to move away from one central optimal location.
- Opined that it is a disservice to business not to have cellular service. It is needed to drive business.
- Stated that Nextel has gone the distance and deserves a vote one way or the other tonight.
- Said that he represents a large majority of people in the community who want good cell phone service that functions from within his house.

- Urged that the Commission vote yes.

Ms. Elizabeth Aron:
- Asked that the Commission give a realistic weight to the forms provided by the opponents, saying that no one really knows what was said to the people who signed it.
- Said that the reason for opposition to this request was left blank on most of the opposition letters.
- Suggested that the focus be on the reasoning behind staff's recommendation for denial, which is stated as being based on design and adverse impact on the community.
- Stated that a flagpole is not inconsistent with the church or community.
- Advised that she is here to get an answer today. No matter what decision is made, this application is likely to go to appeal before Council.
- Reiterated her preference for a decision tonight.

Chair Rodgers closed the Public Hearing for Agenda Item No. 4.

Commissioner Zhao said that the data provided on coverage and drop call rates was not clear.

Chair Rodgers reminded that the applicant has said that they simply have no data that they can share as most is considered proprietary.

Commissioner Nagpal asked the City Attorney to clarify that Finding No. 4 is an appropriate finding for consideration by the Commission despite the applicant's belief that it is not.

City Attorney Jonathan Wittwer said that it is an appropriate finding that was pulled from a different section.

Commissioner Nagpal:
- Said that this is not about cellular technology but appropriate siting for it.
- Questioned the need for this location and whether there might be an existing location nearby to fill the gap in coverage.
- Stated that the applicant's response to that question is yes, absolutely, they need this location.
- Said that it is harder for this Commission to make that determination with the limited coverage data provided.
- Reminded that this is not a permitted use for this zoning but rather a conditional use.
- Said that she feels compelled to look at impacts from the immediate neighborhood.
- Added that she wished that more could be done with respect to getting the neighbors to be more supportive.
- Advised that she supports staff's recommendation for denial, which would allow Council to make any decision about whether to overturn that action on appeal.

Commissioner Cappello:

- Advised that he also couldn't make the findings.
- Said he still does not have a good feel for the benefit to the community regarding coverage.
- Said he was hoping the applicant could have come with a distributed system option.
- Concluded by saying that without some way of quantifying coverage needs, it is hard to support this application.
- Stated his support for the staff recommendation to deny.

Commissioner Hunter:
- Said that she also supports the staff recommendation.
- Stated that she has served on the Planning Commission for a long time and usually there is no opposition to these cell site applications.
- Added that she has never seen so much opposition as has occurred here.
- Said that with the neighborhood angst, she cannot go forward and accept this site.

Commissioner Kundtz:
- Announced that he differs from all of his colleagues.
- Predicted that in the not to distant future, these types of decisions will be taken away from local communities by the federal government.
- Said that a distributed system notion equals smaller profile sites but more of them.
- Said that the flagpoles are consistent with a church and that he could make all findings including Findings 1 and 4.
- Recommended approval of this Nextel proposal.

Commissioner Zhao said that she could make Findings 2, 3 and 4 but not Finding 1 that states that this use is compatible with the zoning district. She expressed her agreement with the staff recommendation.

Chair Rodgers:
- Said that there is a technology and aesthetics combination here.
- Said that Congress enacted the Telecommunications Act, taking issues of health and RF exposure out of our hands to allow telecommunications access to people.
- Stressed the importance of an even playing field to allow all providers to maintain a competitive advantage.
- Said that it is important to have reliable cellular service in Saratoga for its residents.
- Added that the purpose of the Telecommunications Act was to promote competition and higher quality and rapid deployment of new telecommunications technology.
- Said that as far as aesthetics, there are utility poles all along Prospect. This is the best place because it is central and won't require multiple locations. It is the least obtrusive site.
- Reminded that one year ago, the applicant brought forward an application for a monopine. All agreed that it was very ugly. The Commission requested a flagpole design and the applicant designed the site using three poles rather than one very large one adequate to contain all three required antennas.

- Pointed out that the location on this site is significantly shielded by the church and by trees. It is almost impossible to see any house. It will not be inconsistent with residential uses because they are 300 feet away.
- Stated her concern in making any decision simply based upon the number of neighbors who object.
- Agreed that it cannot be clear exactly what these neighbors had been told in order to sign in opposition to this application.
- Said that options for other locations were considered by the applicant and found to be insufficient to meet their needs.
- Reminded that alternative systems use different technology. Cautioned that one cannot take a round peg and put it into a square hole. There is different technology for different providers.
- Disagreed that there is any visual impact.
- Stated that she would vote in favor of the application tonight.

Commissioner Nagpal said that she did not agree with staff on Finding 4 but do agree with staff on Finding 1.

Commissioner Kundtz said that this is a residential community with a church site. The proposed flagpoles would be tucked in between the church building and trees.

Commissioner Nagpal said she is struggling with the number of people who are against this application.

Commissioner Kundtz said that the existing flagpole would come down and that the new ones here would be more secluded.

Motion: **Upon motion of Commissioner Cappello, seconded by Commissioner Nagpal, the Planning Commission adopted a Resolution DENYING a Conditional Use Permit (Application #04-177) for the location of a wireless facility (consisting of antennas concealed within three flag poles) and related equipment cabinets on property located at 19550 Prospect/12033 Miller Avenue (Church of the Ascention), by the following roll call vote:**
AYES: Cappello, Hunter, Nagpal and Zhao
NOES: Kundtz and Rodgers
ABSENT: Hlava
ABSTAIN: None

Commissioner Nagpal wanted it on the record that she did not feel Finding 4 could be made.

Commissioner Zhao wanted it on the record that she could make Finding 4.

Chair Rodgers advised that there is a 15-day appeal period for this item.

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DIRECTOR'S ITEMS

There were no Director's Items.

COMMISSION ITEMS

Commissioner Kundtz asked that the door be reinstalled on the restroom behind the stage. He also asked that if there are more than two items on a Planning agenda that coffee be provided.

Chair Rodgers announced that on September 6, 2006, a joint meeting with Council would be held to consider a proposed development on Big Basin Way. She also advised that the Ad Hoc Committee formed by Council to review the Administrative Design Review Process held its last meeting on Monday and she was able to participate. Their recommendations would be put forward in a report from staff to Council and presented at the September 6th Council meeting.

City Attorney Jonathan Wittwer said he wanted to clarify something about a tie vote. If there is a tie vote for an item, it is generally a denial. However, if only six of seven Commissioners were present for that vote, it would come back to the next agenda so see if that seventh vote would break the tie. However, if that item is appealed, the Planning Commission takes no further action.

COMMUNICATIONS

There were no Communications Items.

ADJOURNMENT TO NEXT MEETING

Upon motion of Commissioner Hunter, seconded by Commissioner Cappello, Chair Rodgers adjourned the meeting at 12:28 a.m. to the next Regular Planning Commission meeting of **September 13, 2006**, at 7:00 p.m.

MINUTES PREPARED AND SUBMITTED BY:
Corinne A. Shinn, Minutes Clerk