MINUTES
SARATOGA PLANNING COMMISSION

DATE: Wednesday, July 11, 2007
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA
TYPE: Regular Meeting

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

ROLL CALL

Present: Commissioners Cappello, Hlava, Kundtz, Nagpal, Rodgers and Zhao
Absent: Commissioner Kumar
Staff: Director John Livingstone, Contract Planner Heather Bradley, City Arborist Kate Bear and Assistant City Attorney Jonathan Wittwer

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – Regular Meeting of June 27, 2007.

Motion: Upon motion of Commissioner Nagpal, seconded by Commissioner Rodgers, the Planning Commission minutes of the regular meeting of May 27, 2007, were adopted with corrections to pages 2 and 9. (5-0-1-1; Commissioner Kumar was absent and Commissioner Kundtz abstained)

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 July 5, 2007.

CONSENT CALENDAR

There were no consent items.

REPORT OF APPEAL RIGHTS

Chair Hlava 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).

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PUBLIC HEARING - ITEM NO. 1

Application #07-319 (510-06-069) Adams, 19358 Saratoga-Los Gatos Road: The applicant requests Design Review Approval to construct a new two-story, single-family residence, including a basement, and to allow a height exception of approximately three feet. The total floor area of the proposed residence and garage will be approximately 5,013 square feet. The lot size is approximately 1.9 acres and the site is zoned R-1-40,000 **This item will be continued to a date uncertain.** (Suzanne Thomas)

Chair Hlava advised that Item No. 1 was to be continued to a date uncertain.

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PUBLIC HEARING - ITEM NO. 2

APPLICATION #07-342 (286-10-043) McDonald's USA, LLC, 18578 Prospect Road: The applicant is requesting Design Review Approval and modification to a previously-approved Conditional Use Permit to occupy an existing 4,090 square foot vacant commercial building previously occupied by Krispy Kreme doughnut. Design Review Approval is necessary to allow minor exterior modifications to the building. The lot size is 2.14 acres and the site is zoned CN (Commercial Neighborhood). **This item will be continued to a date uncertain.** (Heather Bradley)

Chair Hlava advised that Item No. 2 would also be continued to a date uncertain.

City Attorney Jonathan Wittwer advised Chair Hlava of the need to open the public hearing to see if anyone present wishes to address the Commission.

Chair Hlava opened the public hearing for Agenda Item No. 2.

Motion: **Upon motion of Commissioner Nagpal, seconded by Commissioner Kundtz, the Planning Commission CONTINUED TO A DATE UNCERTAIN Design Review Approval and Modification to a previously approved Conditional Use Permit (Application #07-342) to allow a McDonald's restaurant to establish in the former Krispy Kreme location at 18578 Prospect Road, by the following roll call vote:**

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

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PUBLIC HEARING - ITEM NO. 3

APPLICATION #07-160 (510-03-012) Labio, 15211 Bellecourt Drive: The applicant requests Design Review Approval to construct a new two-story residence of approximately 6,008 square feet (including garage) with an approximately 2,267 square foot basement. The proposal includes demolition of the existing 2,365 square foot residence. The maximum impervious coverage is approximately 34.4 percent of the site. The maximum height of the proposed buildings is 26 feet. The lot size is 45,784 square feet and the site is zoned R-1-40,000. (Heather Bradley)

Contract Planner Heather Bradley presented the staff report as follows:

- Advised that a letter has been distributed this evening that was received from the neighbors to the rear after the reports had already gone out to the Commissioners.
- Explained that the applicant is seeking Design Review Approval to allow the construction of a 6,008 square foot home on a 45,780 square foot lot.
- Added that an existing house would be demolished and the new home with basement constructed. The architectural design is Contemporary Mediterranean including stucco walls, a slate tile roof and stone veneer wainscoting.
- Stated that this property is heavily wooded. She explained that 32 of 86 trees on site would have to be removed, one of which is actually on the neighboring property that is being removed with the permission of that neighbor.
- Reported that at Tuesday's site visit the applicant's Arborist recommended the removal of Tree 29, a coastal redwood, due to poor health and proximity to the house. The City Arborist (Kate Bear) has recommended retention of that tree.
- Said that a sport court is being constructed at the rear of the property and the rear neighbor has expressed concern about noise, view shed and removal of Trees 66 and 67, both of which are coastal live oaks.
- Said that the City's Arborist has recommended that grading activity for the sports court be kept at least 10 feet away from those two trees, which is incorporated into the conditions of approval.
- Stated that staff can make the determination that this project is Categorically Exempt under CEQA and that Design Review findings can be made in the affirmative.
- Recommended approval.

Commissioner Kundtz asked about how Condition 14 can be enforced. It requires that during construction trees be watered every three weeks.

Planner Heather Bradley advised that the conditions are copied onto the construction drawings and the contractor will be required to supervise the activities on site. She added that the City's Arborist would review the condition of the trees.

Commissioner Nagpal asked if the City Arborist would be making comments this evening or is she just available in the event there are questions.

Planner Heather Bradley replied whichever the Commission prefers.

Chair Hlava opened the public hearing for Agenda Item No. 3.

Mr. Labio, Applicant and Property Owner:

- Thanked the Commissioners for their site visit.
- Explained that he and his wife started this project early last year.
- Assured that it was their goal to comply with all City regulations and no exceptions to regulations have been requested.
- Added that another goal had been to create a home that is energy efficient. It includes features such as natural light, preservation of as many trees as possible to provide shade and natural cooling, good insulation including walls, windows and foundation as well as use of energy efficient appliances.
- Said that they will use green building techniques.
- Reiterated that much effort has been put to tree preservation.
- Stated that since the first design, the sports court has been reduced, the lawn has been confined to an area to the rear of the pool and in-law structure.
- Advised that they secured the services of Landscape Architect Jeffrey Heid.
- Recounted that they have considered a variety of locations for the sports court in order to minimize the need for tree removal.
- Added that during the site visit, he had forgotten to show the trees located at the front of the property including seven Douglas fir, a grove of cedars, a grove of redwoods at the southeast corner, and a large tree (#21) on the northeast corner that is being preserved by rerouting drainage.
- Said that the house was originally proposed for further to the left and up.
- Said that of the 31 trees slated for removal, 9 are unhealthy and 22 are healthy.
- Pointed out that while that sounds like a lot of trees for removal this property has 86 trees and that does not include smaller trees that are not surveyed.
- Reported that this is a one-acre property that is actually overcrowded with trees. They are preserving 55 of the existing trees and adding 10 new trees.
- Assured that a lot of work has been done to preserve trees and care will be taken to place new trees on site.

Commissioner Zhao asked Mr. Labio if he has had the chance to read his neighbor's letter.

Mr. Labio:
- Explained that he had met with the Michaels at their home for a one-hour meeting. They expressed three areas of concern. One was the potential removal of Trees 66 and 67 due to a negative impact on privacy with that removal.
- Added that he could still try to save Trees 66 and 67.
- Said that as for privacy impacts, a grove of trees between the two properties provides a lot of screening between the properties.
- Said that the level of the sports court is lower than the neighbor's property and a retaining wall would be used.
- Informed that he was thinking perhaps a wood fence could also be added although he believes it would be hard to see this sports court from their property.
- Suggested that the noise from his sports court would be less of a noise impact that a dog or to kids playing in a yard pool.
- Added that the court would not be in 24/7 use. He said that one hour a day would be a best case.
- Said that noise can be mitigated and would only be heard from the edge of their property.

- Said that if this remains a big concern, he is willing to consider alternate designs in consultation with Planner Heather Bradley and City Arborist Kate Bear.

Commissioner Nagpal asked Mr. Labio if he is willing to save Trees 66 and 67 as well as Tree 29.

Mr. Labio said he was willing to preserve Trees 66 and 67 but is not comfortable with retaining Tree 29. He added that Tree 29 is described in his Arborist's report as being in deteriorating condition that is already a moderate hazard to the existing house.

Commissioner Nagpal asked if Trees 56 and 57 are being removed to accommodate other landscaping there.

City Arborist Kate Bear explained that they are being removed due to poor health.

Commissioner Nagpal sought clarification from City Arborist Kate Bear that of the 31-32 trees being removed, only 10 are because of poor condition.

City Arborist Kate Bear replied yes. She added that even if there were no construction proposed those trees should be removed due to decay and/or poor health.

Commissioner Nagpal asked if the conditions require retention of Tree 29.

City Arborist Kate Bear replied yes.

Chair Hlava asked City Arborist Kate Bear to elaborate on the statement made that this property in general has too many trees and that crowded trees affect their health.

City Arborist Kate Bear agreed. She said that this is a heavily forested lot with large trees, with trunks ranging between 15 and 30-inches in diameter. The trees shade each other out to a point that there are not enough branches growing and nutrients in the soil are stressed.

Chair Hlava asked if preserving the cedar and redwood groves are worthwhile.

City Arborist Kate Bear replied yes.

Chair Hlava said that Trees 66 and 67 look really nice. Since they are so close to Trees 62 through 65 could the two trees be removed without problem? She added that on the other hand these are really nice trees so maybe the sports court could be moved a bit so they can stay.

City Arborist Kate Bear said that she likes Trees 66 and 67 a lot. They are beautiful oaks but they will not survive construction of a court in that location The fact that there are so many oaks on site is the only reason she would support removal of these two to allow the sports court.

Commissioner Nagpal said that she is very protective of trees and thinks that Trees 66 and 67 are good species. She told Kate Bear that it seems like she would like to preserve those trees perhaps through a redesign of the sports court.

Mr. Labio said he is willing to do so with input from Heather Bradley and Kate Bear.

Commissioner Nagpal asked about Tree 73 too.

Mr. Labio said that he is not able to preserve Tree 73.

Commissioner Nagpal asked if the court could be moved more to the north or east.

Mr. Labio said it might be possible to reduce the length and width of the sports court while still achieving a functional court.

Commissioner Rodgers asked about relocating the court vertically instead of horizontally.

Mr. Labio said that the court needs to be parallel to the rear boundary but perhaps could be made a bit more diagonal. He said that he thought that might be the way to save Trees 66 and 67 and perhaps also give more setback distance to the Michaels' property.

Commissioner Rodgers asked if the lawn and sports court could be swapped.

Mr. Labio said he always had thought of seeing lawn from the house but he could consider that option. He reiterated that he is open to looking at relocation of the sports court and will try to save Trees 66 and 67.

Commissioner Zhao asked Kate Bear how she feels about removal of Tree 29.

City Arborist Kate Bear said that it is going to be impacted by construction and may need to be removed and mitigated instead of retained. She said it might not be possible to preserve Tree 29. She said that perhaps the basement would need to be redesigned to be further from this tree.

Commissioner Rodgers asked Kate Bear about Tree 45.

City Arborist Kate Bear said that Tree 45 is a very nice oak. She advised that Mr. Labio is trying to preserve it by redesigning his sports court. She cautioned that this is a difficult site and other trees could be impacted if the lawn and sports court positions are switched.

Commissioner Rodgers asked Kate Bear to list her order of preference as far as retention of Trees 28, 45 and 66.

City Arborist Kate Bear said that Tree 45 is her first choice tree. Tree 28 is second and Trees 66 and 67 are ranked third. Tree 74 is after all of those.

Commissioner Nagpal asked Kate Bear if she believes any others are worth preserving.

City Arborist Kate Bear replied no, she has gotten what she has asked for.

Ms. Debbie Ellis, Consulting Arborist for the Applicant:

- Said that she originally looked at the trees on this property in January in order to prepare an appraisal of value.
- Said that she was called back last week to look again at three trees (29, 45 and 74).
- Advised that she compared her notes from the last visit with this more recent and found that Tree 29 had declined noticeably. It is not in good condition as evidenced by the depth of older needles. There is branch flagging, which equals dead branches.
- Added that she is very leery in keeping Tree 29 even without new construction on site. She said that she is not comfortable with the safety of this tree near a house. She said that now is the time to take it out.

Commissioner Rodgers asked that it be placed onto the record that there are no additional people in the audience this evening.

Commissioner Cappello expressed support for the applicant getting together with the City Planner and Arborist to relocate and/or reduce the sport court.

Mr. Labio said that reduction is his preferred option. If that were not possible, he would consult with Heather and Kate for relocation options.

Chair Hlava closed the public hearing for Agenda Item No. 3.

Commissioner Cappello asked what would happen if the applicant works further with staff to find a satisfactory location for the sports court and such a location is not found.

Planner Heather Bradley said that per Condition 6, the issue would be brought back to this Commission. She added that the applicant is proposing shifting the court more toward the street.

Commissioner Cappello asked if this requires five feet or a more significant distance.

Planner Heather Bradley said that distance would be determined by the City Arborist in order to preserve Trees 66 and 67.

Commissioner Rodgers cautioned that relocation should not impact Tree 28.

Commissioner Kundtz pointed out that not one word was raised on the issue of the house itself. He said that he finds it lovely and compatible with the neighborhood. He concluded that he could make the findings to support the house itself.

Commissioner Nagpal said that of more concern was the issue of trees on this site.

Commissioner Rodgers said that she agrees with Commissioner Kundtz. She made a suggestion to split the heating/cooling zones of the house. One zone to serve the formal areas that may not be used as often and the other zone to serve the family spaces.

Commissioner Zhao said that this is a very nice design and the applicant made a real effort to save trees on his property. She expressed support for the plan to use green building techniques. She concluded that she too could make the necessary findings to support this project.

Commissioner Cappello said he agrees. However, the sports court is a significant element of the Design Review process. He added that he could make findings for the rest of the project.

Commissioner Rodgers said that the house design is nice and reiterated her suggestion for heating/cooling zones. She said that removal of trees is a big problem for her. She said upon closer look at Trees 29, 30 and 31 she can see there are more beautiful trees elsewhere so she can compromise with these. She stressed the need to go with Kate Bear's recommendations to retain Trees 45, 28, 66, 67 and 74.

Commissioner Nagpal:
- Agreed with Commissioner Rodgers.
- Reminded that there would be 54 trees remaining on this lot.
- Said that she would rather not doom a tree until that tree is truly doomed so she would save Tree 29 and remove it only if it does not survive construction.
- Reiterated her support of saving Trees 66 and 67. This offers a good compromise.
- Stated that a tennis court should be located at the back rather than closer to the house.

Chair Hlava:
- Said that she absolutely does not like Tree 29 as it is too close to the house and there are no branches on one side.
- Said that she is more inclined to agree with Ms. Ellis on Tree 29 that it is not a good idea to leave it in place.
- Stated that she has no problem with the house design. It does not look too big.
- Advised that she is in favor of retaining Trees 66 and 67 partly for privacy for the neighbors and also because she just can't give up on oaks.
- Informed that a tennis court needs to be facing north and south. If it is east and west facing, someone serving always has sun in their eyes.
- Asked if slightly tipping the sports court on its axis might help.
- Reiterated that Tree 29 should be gone.
- Stated that she can make all necessary findings and said that she appreciates the fact that there are no exceptions and/or variances required. The project meets all rules.
- Pointed out that were it not for the tree issues, this project would have been easily approved.

Planner Heather Bradley asked the Commission to get feedback from Arborist Kate Bear. If Trees 66 and 67 are preserved, there may be an impact on Tree 74.

City Arborist Kate Bear said that Tree 74 is a cedar.

Commissioner Nagpal said that Trees 66, 67 and 74 should all be able to be saved.

Chair Hlava asked Kate Bear for any changes to conditions she might recommend.

City Attorney Jonathan Wittwer offered the following proposed amendments:

- Condition 6 – add text "in addition to the trees required to be preserved per the Arborist Report, Trees 66 and 67 shall also be preserved."
- Condition 1 – add text "the sports court shall be redesigned in accordance with Condition of Approval 6."
- Condition 5 – remove reference of arborist report dated December 27, 2006.
- Condition 1 – remove reference of arborist report dated December 27, 2006.

Commissioner Zhao asked if Arborist Kate Bear can identify how much further and/or smaller the sports court would have to be to preserve Trees 66 and 67.

Arborist Kate Bear said that she would need to look again but the general guideline is five times the trunk diameter, which in this case is 13-inches. She said that the edge of the canopy must be determined, which is done by looking at the tree on site. She concluded that she likes the idea of working with Mr. Labio in finalizing the design of the sport court.

Commissioner Zhao suggested leaving this issue up to Kate Bear to determine which trees to save.

Commissioner Nagpal said that Kate has already done that.

Commissioner Cappello said that she should be given the opportunity to find the best solution.

Chair Hlava said that she is willing to let Tree 29 be removed and asked if the resolution needs to be changed and how.

City Attorney Jonathan Wittwer suggested adding text to Arborist's Condition 1 to read, "Tree 29 may be removed."

Chair Hlava reiterated that proposed changes:

- CDD Condition 1 – says that the sports court will be redesigned per Condition 6.
- Condition 5 deletes the December 27, 2006 arborist report date.
- Condition 6 includes Trees 66 and 67 for preservation.
- Arborist Condition 1 – delete reference to December 27, 2006 arborist report and allow the removal of Tree 29.

Motion: **Upon motion of Commissioner Zhao, seconded by Commissioner Kundtz, the Planning Commission granted Design Review Approval (Application #07-160) to allow a new residence on property located at 15211 Bellecourt Drive, with the amendments to the conditions as outlined by Chair Hlava immediately prior to the motion, by the following roll call vote:**

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

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DIRECTOR'S ITEMS

Director John Livingstone reminded that on July 18th the appeal of the Zambetti project by two different parties would be heard by Council. In August a joint Planning Commission/Council session will be held.

COMMISSION ITEMS

There were no Commission items.

COMMUNICATIONS

There were no Communications Items.

ADJOURNMENT TO NEXT MEETING

Upon motion of Commissioner Cappello, seconded by Commissioner Zhao, Chair Hlava adjourned the meeting at approximately 8:15 p.m. to the next Regular Planning Commission meeting of **August 8, 2007**, at 7:00 p.m.

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