

DRAFT

**MINUTES
SARATOGA PLANNING COMMISSION**

DATE: Wednesday, December 10, 2008
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA
TYPE: Regular Meeting

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

ROLL CALL

Present: Commissioners Cappello, Hlava, Kumar, Rodgers and Zhao
Absent: Commissioner Kundtz
Staff: Director John Livingstone, Assistant Planner Cynthia McCormick, Assistant Planner Michael Fossati and Assistant City Attorney Jonathan Wittwer

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – Regular Meeting of November 12, 2008.

Motion: Upon motion of Commissioner Rodgers, seconded by Commissioner Hlava, the Planning Commission minutes of the regular meeting of November 12, 2008, were adopted with edits to pages 15,18,21,22 and 26. (5-0-1; Commissioner Kundtz 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 December 4, 2008.

REPORT OF APPEAL RIGHTS

Chair Cappello 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

There were no Consent Calendar items.

PUBLIC HEARING - ITEM NO. 1

APPLICATION #CUP08-0014 (517-09-060) – Maria Tran, 14554 Big Basin Way: The applicant is requesting Conditional Use Permit approval to establish a restaurant in an existing 1,700 square foot vacant tenant space. Knitting Arts formerly occupied the space. The gross lot size is approximately 5,400 square feet and the site is zoned CH-1. (Michael Fossati)

Mr. Michael Fossati, Assistant Planner, presented the staff report as follows:

- Read a change to Section 1 of the draft resolution on the middle of page 2, “After careful consideration of the proposed use and exhibits submitted in connection with this matter, the exemption from CEQA is approved and required findings being made that the application of CUP 08-0014 for a Conditional Use Permit approval for Teas the Season, LLC, is hereby granted subject to the following conditions.”
- Reported that the applicant, Ms. Maria Tran, is requesting Conditional Use Permit approval to operate a restaurant in the Village.
- Explained that per Code requirements, a Use Permit is required. The scope of this project is such that it is Categorically Exempt under CEQA.
- Stated that the project site is located at 14554 Big Basin Way and the tenant space consists of approximately 1,700 square feet and includes a small kitchen, office, retail/café area, a private party area and a bathroom.
- Added that approval is also required for the proposed outdoor seating in both the front and rear of the tenant space.
- Advised that staff has calculated approximately 450 square feet of potential outdoor seating area available.
- Said that a neighbor notification mailing was sent out and the applicant has submitted signed forms for several neighboring businesses in the Village.
- Advised that the upstairs neighbor raised an issue about potential heat and ventilation impacts from this proposed use. Staff advised this neighbor of the Code requirements for proper hoods that are specifically designed to move heat away from the building as well as to stimulate ventilation. The tenant was satisfied with this mitigation and had no further comments. No other comments were received.
- Explained that the proposed hours of operation are included in the staff report and the applicant is asking for extended evening hours between 6 and 9 p.m. on weekends.
- Stated that the parking requirement is waived as long as surplus parking remains available. He added that 450 square feet would be deducted from the parking surplus as a result of the added outdoor seating area. This leaves approximately 2,500 square feet in available parking surplus.
- Reported that a six square foot sign has been submitted for review and is in the report as Attachment 6.
- Concluded that staff finds this request to be consistent with Code and with the Village Plan.

Commissioner Zhao asked how many seats could be accommodated in 450 square feet of outdoor space.

Planner Michael Fossati said that it would depend upon the furniture used. He explained that the applicant plans to utilize the rear courtyard first and expand into the frontage area in the future.

Commissioner Kumar asked if the front seating is proposed as optional.

Planner Michael Fossati replied correct. He reiterated that it is not planned immediately but they would like the option to have it in the future.

Commissioner Kumar asked if the impacts of the front outdoor seating area on the adjacent tenant had been discussed with that tenant.

Planner Michael Fossati reported that the adjacent tenant is hoping that this project is approved. They are excited and signed off on the notification form as supportive.

Commissioner Kumar asked if they had no problems with the proposed outdoor seating in relation to their access to their front doorway.

Planner Michael Fossati explained that Rockwood Design uses the side door rather than the front. He added that these two tenants have a good rapport and can get anything worked out.

Commissioner Kumar said that the back area is a quiet spot. He asked if the front outdoor seating area would include chaining the furniture in place to prevent it from being moved onto the front sidewalk.

Planner Michael Fossati said that the plan is not yet specific for the front outdoor seating area. He added that the conditions call for high quality outdoor furniture.

Commissioner Kumar said he is not concerned for loss of furniture as much as preventing the encroachment of the furniture onto the sidewalk thus impeding pedestrian passage.

Commissioner Rodgers asked if the hours of operation need to be specified in the conditions.

Planner Michael Fossati replied no.

Commissioner Kumar asked how many extra parking spaces are required.

Planner Michael Fossati reminded that there is a parking surplus in this District so no additional parking is required. However, staff will remove the outdoor seating square footage from the parking surplus square footage total available.

Commissioner Zhao asked if language should be added to the conditions requiring the outdoor seating to be approved by the Community Development Director.

Planner Michael Fossati replied yes.

Commissioner Kumar pointed out that the parking surplus provision is in effect until February 2009. He asked how and when it gets applied to this Use Permit.

Planner Michael Fossati explained that the surplus is tied to this application once the submittal is deemed to be complete.

Commissioner Kumar asked how an application is deemed complete.

Planner Michael Fossati replied that an application is deemed complete once the applicant has submitted all required materials for Planning Commission consideration. This project was deemed complete in mid-November.

Commissioner Hlava:

- Said that the outdoor seating requested for the back of this tenant space does not do much to enhance the appearance of the street.
- Asked if that back outdoor area was not directly located off the kitchen.
- Stated that her preference would be to have only the front outdoor seating. It is a perfect place and is more visible to foot and vehicular traffic.
- Said that she hopes the applicant will address this issue.
- Supported the requirement that the Director approve the outdoor furniture.

Commissioner Rodgers:

- Asked if Attachments 4 and 5 are considered a part of the referenced Exhibit A.
- Suggested that Attachment 6 (the sign request) also be included.
- Said that it behooves the City to allow the maximum number of hours and outdoor seating space possible in case this business takes off better than they expect.

City Attorney Jonathan Wittwer said that there are no specified hours in the conditions of approval as recommended by staff to offer the applicant some flexibility.

Commissioner Rodgers asked if end hours could/should be imposed.

City Attorney Jonathan Wittwer said that is up to the Commission.

Commissioner Rodgers asked if that means that it could go all night.

City Attorney Jonathan Wittwer said as it is right now, yes.

Commissioner Rodgers asked again if all attachments are part of Exhibit A.

Planner Michael Fossati replied yes.

Chair Cappello opened the public hearing for Agenda Item No. 1.

Ms. Maria Tran, Applicant:

- Thanked the Commission for their time.
- Explained that they plan to try out evening hours as well as front patio seating. The back patio is an additional option if customers want more privacy.
- Assured that they want outdoor seating at the front also.

Commissioner Kumar asked Ms. Maria Tran if she has spoken with the owners of Rockwood Designs.

Ms. Maria Tran said not personally. She explained that the landlord had told her that the front patio is mostly for the use of her tenant space.

Commissioner Kumar asked when the front or back outdoor seating would be implemented.

Ms. Maria Tran replied that it would depend on when they open.

Commissioner Kumar asked if they would start with both.

Ms. Maria Tran said that they may in order to see what their patrons like best.

Commissioner Zhao asked Ms. Maria Tran if she has a plan for the outdoor seating, as the Commission generally likes to see a conceptual layout of what they are approving.

Ms. Maria Tran said that they do not have a specific plan for the furniture or layout yet.

Chair Cappello reminded that this sort of detail has been left to the discretion of the Director in the past.

Commissioner Zhao agreed.

Chair Cappello asked about the request for extended hours between 6 and 9 p.m. and whether that is for Fridays, Saturdays and Sundays.

Ms. Maria Tran said that it would be for Fridays and Saturdays to start with Sundays later on.

Chair Cappello asked about the rest of the week.

Ms. Maria Tran said it would depend on business.

Chair Cappello said it appears that they will close on Mondays and Tuesdays.

Ms. Maria Tran said that is planned right now but could change.

Chair Cappello asked Ms. Maria Tran if she would object to a condition of approval establishing a minimum number of operational hours.

Director John Livingstone cautioned that the City should not force a business to be open. He reminded that this is a new business for them. He added that start and close hours could be imposed and allow the applicant to work within that range.

Commissioner Zhao asked Ms. Maria Tran if this is her first shop.

Ms. Maria Tran replied yes.

Mr. Chendru Idnani, Resident on Bellgrove Circle:

- Suggested that it might be safer to have the outdoor seating in front enclosed within fencing.
- Questioned what kind of restaurant this would be? Vietnamese? Chinese?

Ms. Maria Tran explained that they would operate an English Tea Room serving scones, sandwiches and a variety of teas.

Chair Cappello closed the public hearing for Agenda Item No. 1.

Chair Cappello:

- Stated that the concept for this business is nice and will be unique and lend itself nicely to the historic Village.
- Said that his concern is over operational hours and the need to revitalize the Downtown and increase foot traffic.
- Added that businesses in the Downtown should be open in the evenings to give people a reason to come there in the evenings.
- Concluded that it is his intent to try and have assurances of evening hours in the Village, especially on weekends.

Commissioner Rodgers said that this business would be a nice draw for the Village and that her husband would be happy with the scones.

City Attorney Jonathan Wittwer said that this business couldn't legally be required to be open assigned hours. They can, however, be given a range of allowable operational hours within which they can choose to operate.

Commissioner Rodgers said that there are retail items they can sell from teas to teapots, etc.

Commissioner Hlava:

- Stated that retail sales do not require a Use Permit so those types of items are covered.
- Pointed out that any intensification to the approved Use Permit would require a return for a Modification.
- Added that she is okay with the conditions as written but would like to see the outdoor seating implemented in the front.

Commissioner Rodgers said that she did not want this applicant to have to come back to increase her hours through a Modification process.

City Attorney Jonathan Wittwer said that there are no limits on hours right now within the conditions of approval.

Commissioner Zhao:

- Said that she likes the concept of a teashop.
- Added that it is a nice addition to the Village.
- Suggested that the subject of fencing the outdoor seating area, final selection of furniture and whether said furniture should be chained or affixed should be left to the discretion of the Director.

Commissioner Rodgers pointed out that another restaurant was required to fence its outdoor seating area as an ABC (Alcohol Beverage Control) requirement since they serve alcohol to customers sitting there.

Chair Cappello said that is correct.

Commissioner Hlava said that this building is U-shaped and that the need for a fence is not an issue here.

Commissioner Kumar:

- Said he is more comfortable allowing the Director to finalize the layout of the outdoor seating.
- Added that he was also supportive of not restricting hours but rather leaving that up to the applicant.
- Stated that he likes the name of this business, Teas the Season, which is particularly appropriate at this time of year.
- Advised that he has seen a similar type of place in Santana Row and it looks very elegant.
- Said that this would be nice for the ambiance of Saratoga.
- Expressed his support for this application.

Commissioner Hlava asked if any changes are required to the resolution in regards to the outdoor seating.

City Attorney Jonathan Wittwer:

- Suggested adding text to Condition 1, "... and shall allow outdoor restaurant seating in front and in back."
- Suggested adding to Condition 6, "The outdoor seating area intensity, configuration and safety shall be subject to prior approval by the Community Development Director and shall be cleaned regularly."

Motion: Upon motion of Commissioner Hlava, seconded by Commissioner Zhao, the Planning Commission approved a Conditional Use Permit (Application #CUP08-0014) to establish a restaurant in an existing 1,700 square foot tenant space on property located at 14554 Big Basin Way, as amended, by the following roll call vote:

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

Chair Cappello congratulated the applicants and wished them good luck.

PUBLIC HEARING - ITEM NO. 2

APPLICATION #PDR08-0002 (503-16-027) – East Estates Drive Properties, LLC, 13216

Pierce Road: The applicant requests Design Review approval to demolish an existing home and construct a new two-story single-family dwelling with a total floor area of approximately 5,159 square feet. The height of the proposed home is less than 26 feet. The applicant will plant at least 9 trees to replace trees previously removed. The gross lot size is approximately 42,750 square feet and the site is zoned R-1-40,000. (Cynthia McCormick)

Ms. Cynthia McCormick, Assistant Planner, presented the staff report as follows:

- Provided a change to Condition 17(i) on page 5 as follows, "... to the maximum extent reasonably feasible."
- Explained that the applicant is seeking approval to allow the demolition of an existing home and the construction of a new two-story, single-family residence consisting of approximately 5,159 square feet and a height less than 26 feet. One gas fireplace is proposed.
- Informed that the Heritage Preservation Commission reviewed the existing home on this property on April 8, 2008. The home was found not to be historic.
- Reported that a Study Session was held on October 21, 2008, where several neighbors attended. Several design iterations were considered including reducing the balcony area; reducing the number of windows; reducing the square footage on both the first and second floors; increasing the second story setbacks and adding additional trees for privacy.
- Said that based on feedback from the neighbors and Commissioners at the Study Session, the applicant has made additional modifications to their project. Earth tone colors have been chosen for the roof tile and exterior paint. Cedar trees have been proposed in lieu of cypress trees and landscape pruning would be minimized along the driveway.
- Reported that a color board is being distributed.
- Said that staff is recommending that the Planning Commission approve PDR08-0002 and find the project to be Categorically Exempt from CEQA.

Commissioner Rodgers thanked Planner Cynthia McCormick for sending this project to a Study Session, as it seems to have done some good.

There was a few minute delay as the applicant attempted to get his computer presentation operable.

Commissioner Kumar asked where the retaining wall is going.

Planner Cynthia McCormick showed the location on the site plan.

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

Mr. Mike Chin, Project Architect:

- Said that the project site is located near the corner of Pierce Road and Saratoga-Sunnyvale Road.
- Advised that they set up story poles depicting this approximately 5,100 square foot residence, 2,900 square feet being the first floor and the rest a second floor.
- Stated that this is a lot with a 17 percent slope. The building is being set on an area at the front that slopes by approximately 10 percent.
- Assured that they would retain the oak trees onsite and plan to plant additional native trees.
- Advised that they would implement green building policies.
- Reported that they have spent almost a year and made many changes to their project. The original design had a larger second floor that has been reduced so the home appears less bulky. They also reduced the second floor balcony, reduced the height of the living room ceiling and stepped down the family room to follow the contour of the site.
- Provided slides of 3-D renderings of the proposed house.
- Reported that the Civil Engineer for this project is available for grading and drainage questions.

Commissioner Kumar asked about the retaining wall proposed for the front near the driveway and asked about the old retaining wall in the back. Would it stay or go?

Ms. Cymbal, Project Civil Engineer, said that there would be two retaining walls on the property, the one in front and one behind the house. A back one will be taken out and not replaced, as it is no longer needed.

Mr. Leo Lan, Resident on Pierce Road:

- Said that his concern is the removal of some landscaping in order to widen the driveway per Fire Code requirements.
- Added that this removal would impact their privacy.
- Asked that this landscaping be preserved and/or reinstalled following construction.
- Said he hopes the landscaping can be kept in place during construction to hide the construction vehicles from view as seen from his home.
- Suggested that the proposed trees appear to be located too close to power lines.

Ms. Karen Battia, Resident on Pierce Road:

- Said that her home is located in front of this one and she wants to make sure that proper drainage is in place.
- Asked the minimum sized driveway width required.

Mr. Roy Overlich, Resident on Surrey Lane:

- Commended staff and his new neighbors.
- Pointed out that the issues raised have already been taken care of.

Mr. Mike Chin, Project Architect, advised that the current grading conditions on site would be retained.

Ms. Cymbal, Project Civil Engineer:

- Said that drainage would be disbursed on the hillside.
- Added that runoff would be disbursed and discharged on site. There would be no concentrated runoff except from the driveway, which cannot be avoided.
- Assured that they would maintain the pre-existing conditions using storage, swales and/or trenches.
- Advised that they would work with a Soils Engineer on this issue.
- Explained that the minimum width of a driveway is 14 feet. She explained that they have added a one-foot shoulder to allow two cars passing room.

Mr. Mike Chin, Project Architect:

- Said that some of the trees and/or bushes along the driveway will need to be cut to widen the road but can be replanted after construction.

Chair Cappello asked Mr. Mike Chin to respond to the issues raised about construction traffic and trees being located under power lines.

Mr. Mike Chin:

- Said that the power lines are at the property line but trees will be planted at least five feet away from the property lines.
- Advised that there is room to park approximately eight vehicles on site during construction in front of the garage.

Chair Cappello asked for clarification that the parking would occur on the property itself.

Mr. Mike Chin replied right.

Commissioner Rodgers asked Mr. Mike Chin if netting would be installed to protect trees.

Mr. Mike Chin replied yes.

Commissioner Rodgers sought clarification that the darker color on the paint sample is for the body and the lighter color is for the trim.

Mr. Mike Chin replied yes.

Commissioner Kumar asked if a Storm Water Retention Plan is in the works.

Ms. Cymbal replied no. That is part of the grading permit.

Mr. Leo Lan returned and reiterated his concern about parking during construction and landscaping to be removed near the widened driveway. He asked that no landscaping be removed until construction is completed in order to retain his privacy.

Mr. Mike Chin reiterated that construction vehicles would be parked on site in front of the garage area.

Chair Cappello closed the public hearing for Agenda Item No. 2.

Chair Cappello:

- Reiterated that Mr. Lan is asking that existing shrubs be retained along the driveway during construction to screen the construction site from view as seen from his home.
- Said that mitigation measures can be up for discussion by the Commission.
- Stated that this is a very nice design and the evolution of the design has been quite beneficial. The Study Session process is quite good. It gives the neighbors the opportunity to express concerns, brainstorm solutions and mitigate concerns.
- Said that the design has moved nicely.
- Commended all parties on their time and effort.
- Said he could make all the findings.
- Said he was open to suggestions on the issues of construction traffic and privacy conditions.
- Said that the most important aspect is that whatever landscaping is removed should be replaced.
- Pointed out that construction is short term and the proposed landscape plan is quite good.

Commissioner Zhao said that most of the neighbors' concerns have been mitigated. She said that this home is well designed. She said that she could make all the findings and is happy with the conditions.

Commissioner Kumar:

- Expressed agreement with Chair Cappello and Commissioner Zhao's comments.
- Said that the applicant has made appropriate changes to their design, reducing the bulk, mass and made the home more compatible with the neighborhood.
- Concluded that this is a good design and he can make the Design Review findings.

Commissioner Rodgers:

- Said that she can make all the findings.
- Pointed out that this is a neighborhood of newer homes and this one will fit in nicely.
- Expressed support for protecting the bushes that are so important to the adjacent neighbor and said doing so is important to maintaining a good relationship with this neighbor.
- Thanked Planner Cynthia McCormick for her work including the Study Session.
- Said that this project will be a good addition to this neighborhood.

Commissioner Kumar said he agrees with Chair Cappello that construction time is temporary in nature

Commissioner Hlava:

- Admitted that she is having a hard time with this project although she appreciates the work done with the neighbors.

- Explained that she has problems with views and privacy and excessive bulk.
- Added that the home should be designed to step down the hill instead of being a new two-story that is sitting on top of the hill and extremely visible.
- Said she would be voting against this project, as she cannot make the necessary findings to support it.
- Stated that she came to the conclusion that this is the wrong house for this site when she went back to the site today.

Commissioner Rodgers:

- Advised that she agrees that normally a house on a slope should step down or be set into the hillside.
- Pointed out that this house would look like a one-story because of the house below it that is higher than originally approved.
- Added that this house has been scaled back so the bulk is reduced.

Commissioner Hlava said that she is glad Commissioner Rodgers thinks that but she does not agree.

Motion: Upon motion of Commissioner Zhao, seconded by Commissioner Rodgers, the Planning Commission granted Design Review Approval (Application #PDR08-0002) to demolish an existing home and construct a new two-story single-family dwelling on property located at 13216 Pierce Road, as revised, by the following roll call vote:

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

PUBLIC HEARING - ITEM NO. 3

APPLICATION #CUP08-0015 (389-12-017) – Sunnyvale Operating Company, LLC, 12900 Saratoga Avenue: The applicant is requesting Conditional Use Permit approval to establish a sleep clinic and research center in an existing 5,875 square foot tenant space. Its normal business activities will be done during standard business hours, except for sleep tests that take place from 11 p.m. to 7 a.m. the following day. The building envelope size is approximately 22,751 square feet and the site is zoned P-A. (Michael Fossati)

Mr. Michael Fossati, Assistant Planner, presented the staff report as follows:

- Read a small change to page 2 of the resolution, “After careful consideration of the proposed use and exhibits submitted in connection with this matter, the exemption from CEQA is approved and required findings being made that the application CUP2008-0015 for a Conditional Use Permit approval for Sunnyvale Operating Company, LLC, is hereby granted subject to the following conditions.”
- Explained that the applicant is seeking Conditional Use Permit approval to allow the operation of a sleep clinic in the P-A Zoning District.

- Reported that Code requires that medical uses that provided direct medical services between the hours of 1 a.m. and 6 a.m. obtain approval of a Use Permit by the Planning Commission.
- Said that this project is Categorically Exempt under CEQA.
- Said that the assigned address for this use is 12980 Saratoga Avenue. The tenant space consists of approximately 6,000 square feet within a 22,000 square foot building. The tenant space will contain a lobby, office/file room, technician room, break room, two exam rooms and 10 diagnostic rooms.
- Added that the diagnostic rooms are set up like typical residential bedrooms.
- Advised that the parking requirement is 29 spaces. Per the applicant the daytime parking need would be between six and eight spaces. In the evening hours, the maximum needed would be 15 spaces. There are a total of 428 spaces provided on site so the existing lot can accommodate this use.
- Said that the office hours would be between 9 a.m. and 5 p.m. The clinic hours would be between 8 p.m. and 9:30 p.m. to allow clients access to the building. After 9:30 p.m., no one else would be allowed to arrive or leave, except for emergency purposes.
- Said that no signs are proposed yet but all signs would have to comply with the provisions of the Sign Ordinance.
- Stated that neighbor notification forms were sent within 500 feet of the site. The applicant has submitted signed forms from various neighbors in the area.
- Reported that staff also notified the El Quito Neighborhood Association. While no official reply was received their members are supportive of this use.
- Said that the required findings can be met.

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

Mr. Roo Zaida, Founder of American Sleep Medicine, introduced himself to the Commission.

Mr. Ed Roush, Applicant:

- Said that their company has 17 centers nationwide. The closest is located in Sunnyvale.
- Advised that their clinics operate 24/7 and said he would like to make a change to the listed hours within the conditions of approval.
- Said that morning hours are between 8 a.m. and 5:30 p.m., Monday through Friday. However, some patients must be tested from the evening hours into the daytime hours.
- Assured that their business represents a quiet neighbor. Any noise impacts on site would cause their testing to be invalid. They deliberately select sites located near residential because they are quiet areas.

Commissioner Kumar expressed concern about the potential need to call 911 for emergencies that might disturb the neighbors.

Mr. Ed Roush said that patients who are not healthy are referred to a hospital setting. A doctor evaluates patients to determine that they are healthy enough to be tested at their clinic. He added that they have never had to call 911 for a patient undergoing sleep testing.

Commissioner Rodgers asked Mr. Ed Roush if the physicians who test patients for eligibility are on the clinic's staff.

Mr. Ed Roush said that physicians often refer their patients to this program and qualify them for participation. If not, the patient is seen by one of the clinic's physicians.

Commissioner Hlava asked about the request for 24-hour operations, 7 days a week.

Mr. Ed Roush said that while their daytime hours are between 8 a.m. and 5:30 p.m., they also need to be able to operate any time 24/7 in order to conduct the sleep testing. He explained that the clinic performs day studies to either confirm that a patient is able to stay awake or to determine that they have narcolepsy and cannot control their ability to stay awake.

Chair Cappello clarified that the clinic needs to operate 24/7 to function. This is not like a conventional business but rather is unique.

Commissioner Zhao suggested leaving the operational hours out altogether.

Commissioner Hlava said that the provision to have the exterior doors locked after 9:30 p.m. until 7:30 a.m. is important. She suggested taking out the limitation between Mondays and Fridays and allowing every day instead.

Director John Livingstone said that there do not have to be conditions or stipulations on when the doors are locked.

Commissioner Hlava said it would help preserve neighbor concerns.

Chair Cappello pointed out that any traffic to this site is coming off Saratoga or Cox. He questioned which neighbors would actually be impacted.

City Attorney Jonathan Wittwer said that one condition might need to be modified that states that this use is typical to an office use.

Commissioner Rodgers agreed that night hours are not typical of a normal medical office.

City Attorney Jonathan Wittwer offered the following language:

- "The after hours use involves occasional patients and technicians not being able to leave the premises while tests are being conducted."
- To Condition 5 add, "The owner/applicant shall be allowed to operate..."
- To Condition 6 modify, "a sign building permit."

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

Chair Cappello pointed out that the overnight use is not occasional but typical.

City Attorney Jonathan Wittwer said that overnight on weekdays would be typical while overnight on weekends would be occasional rather than typical.

Commissioner Hlava:

- Suggested language, "Owner/Applicant shall be allowed to open between the hours of 8 a.m. and 5:30 p.m., Mondays through Fridays. After hours/exceptions shall be allowed occasionally on weekends."
- Added, "Additionally, the applicant may provide direct customer service between 8 p.m. and 7 a.m. so long as on-site access is locked between the hours of 9:30 p.m. and 7 a.m. daily. Exiting is not allowed during those hours except for emergencies."

Motion: Upon motion of Commissioner Hlava, seconded by Commissioner Zhao, the Planning Commission granted Conditional Use Permit approval (Application #CUP08-0015) to establish a sleep clinic and research center on property located at 12900 Saratoga Avenue, as amended, by the following roll call vote:

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

DIRECTOR'S ITEMS

Director John Livingstone:

- Advised that he contacted PG&E per the Commission's request. He advised that PG&E would be sending a representative to the January 28, 2009, PC meeting.
- Reported that the Council is working at filling the PC vacancy and will hold interviews on February 4, 2009.

COMMISSION ITEMS

Appointment of Commissioner to the Housing Element Update Committee

Commissioner Hlava said that appointing a third person from the PC to this Committee might not be necessary.

Director John Livingstone said that he met with the consultant. The next Housing Element Update meeting will be a Study Session with all members of the Planning Commission so having just two members on this Committee may be okay for now.

Village Economic Committee

Commissioner Rodgers reminded that Commissioner Nagpal was also appointed to this Committee and may need to be replaced.

Director John Livingstone said that a joint Council/PC Study Session would be held on this issue.

Silicon Valley Leadership Luncheon

Commissioner Zhao advised that she recently attended a Housing Element luncheon sponsored by the Silicon Valley Leadership Group. She said she would email the program materials to the other Commissioners, as this was quite an interesting event.

Preparation for Retreat

Commissioner Rodgers pointed out that in past years the Commissioners have met before the retreat to establish priorities. Is such a meeting necessary this year?

Director John Livingstone replied no. He advised that with the Housing Element update and two other Ordinance updates as well as several legal issues brought forth by the City Attorney, the choices for new items are narrow. He added that the last list of priorities is still available.

Wood burning Fireplaces

Commissioner Rodgers suggested cautioning applicants about compliance requirements for "spare the air" days as it applies to use of wood burning fireplaces.

City Attorney Jonathan Wittwer advised that it is already included in the conditions that applicants have to follow Federal, State and local laws

COMMUNICATIONS

There were no Communications Items.

ADJOURNMENT TO NEXT MEETING

Upon motion of Commissioner Hlava, seconded by Commissioner Zhao, Chair Cappello adjourned the meeting at approximately 9:05 p.m.

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