

Planning Commission Staff Report

February 13, 2008 ~~January 9, 2008~~

Item 6.a.

SUBJECT: PUD-81-28-05M

APPLICANT: City of Pleasanton

OWNER: Mitch Pereira, Eric Hoff

PURPOSE: Application for a major modification to an existing PUD development plan to consider whether an existing, six-foot tall masonry wall along a portion of the westerly property line between Pleasanton Station/Railroad Square and Hap's Restaurant should be retained

GENERAL PLAN: Downtown Specific Plan and Retail/Highway/Service Commercial, Business and Professional Offices

ZONING: PUD (Planned Unit Development) – C - O (Commercial – Office) District and Downtown Revitalization District.

LOCATION: 30 W. Neal Street

ATTACHMENTS:

1. Exhibit B, Conditions of Approval
2. Exhibit A, Wall and Gate Plan and Elevations
3. Location Map
4. E-Mail from Nelson Fialho to Mitch Pereira dated 6/28/06
5. Letter from Mike Madden to the City of Pleasanton dated 7/10/07
6. Letter from Mitchell Pereira to Nelson Fialho dated 8/9/07
7. Letter from Nelson Fialho to Mike Madden dated 8/13/07
8. Letter from Nelson Fialho to Mitch Pereira dated 8/13/07
9. Letter from Jerry Iserson to Mitch Pereira dated 9/7/07
10. Letter from Mitch Pereira to Michael Connors dated 9/9/07
11. E-mail from Mitch Pereira to Jerry Iserson dated 9/14/07
12. E-mail from Jerry Iserson to Mitch Pereira dated 9/26/07
13. Letter from Mitch Pereira to Jerry Iserson dated 10/2/07
14. Letter from Jerry Iserson to Mitch Pereira dated 10/9/07
15. Zoning Permit, Drainage Plan, Exhibit B, Letter from Judge Gale, and Plan for Revocable Access Permit from 1967 Hap's Addition

BACKGROUND

Pleasanton Station is a commercial building located at 30 W. Neal Street which received PUD development plan approval in 1981 to convert it from the former Southern Pacific railroad station to a mixed retail/office building. In 1990 the City approved a design review application to reconstruct the parking lot by allowing changes to the access, circulation, and landscaping for the Pleasanton Station parking lot.

Haps restaurant is a long-time Pleasanton establishment located at 122 W. Neal Street which was remodeled in 1967 and then again in 1999. A conditional use permit for the sale of alcoholic beverages after 10:00 pm was also approved in 1999. The property has no rear or side public access, and refuse service and restaurant deliveries at the rear/eastern side of the restaurant have been via the Pleasanton Station parking lot. The Hap's property is owned by Mike Madden, and Mike Connors is the owner of the restaurant business.

On September 5, 2000, the City Council approved PUD-81-28-4M, a major modification of the Pleasanton Station PUD Development Plan for a 7,865 square foot, two-story commercial/office building located at 55 West Angela Street. This new building is known as Railroad Square. The new Railroad Square building is located on what was formerly a portion of the Pleasanton Station parking lot, and the two buildings share parking on this lot. Mitch Pereira and Eric Hoff are the principal owners of both Pleasanton Station and Railroad Square, although the two buildings now exist on two separate parcels.

PROPOSAL

The proposed application is a modification of the PUD development plan to consider approval of an existing six-foot tall masonry wall with a gate that was constructed by Mr. Pereira along an approximately 30-foot portion of the property line that separates the Pleasanton Station property from the adjoining Hap's Restaurant property and along an approximately 12-foot portion of the property line that separates the Railroad Square property from the Hap's property. The wall is constructed of split-faced block and is a tan color. The gate leads from the east side/rear of the Hap's Restaurant property to the concrete pad located in front of the trash enclosure on the Railroad Square property. A chain link fence mostly covered with vines extends along the remaining portion of the property line between Pleasanton Station and Hap's; that fence has existed for a number of years.

Mr. Pereira proposed the wall, which is solely on the Pleasanton Station property, as part of the building permit review process for the new Railroad Square building, and City staff signed off the plans in the spring of 2006, thus approving the wall. Soon after, the wall was built. The wall, and the process the City used to approve it, was challenged by Mr. Madden, who believed that the correct approval process was not followed by staff in

allowing the wall, and that the correct process would have been a PUD modification with public notification.

Staff agrees. In 2006, staff should have required a formal application with notice to the neighboring property owners. To correct this, this matter is being processed as a PUD Major Modification so that the proper public hearing process can be followed, notwithstanding the fact that the wall has been constructed. Since the current application is the result of a City error and was not submitted by Mr. Pereira (who believes that he has already obtained the necessary City approval), the City of Pleasanton is the applicant.

Figure 1 below shows the existing wall that is the subject of this application along with the gate leading to the concrete pad in front of the trash enclosure serving Pleasanton Station/ Railroad Square.

ANALYSIS

Mr. Pereira told staff that he requested the wall to prevent Hap's Restaurant employees from crossing the property line onto the Pleasanton Station parking area. According to Mr. Pereira, there have been occasions when Hap's employees disposed of oil and grease on his property, which then entered the on-site storm drain. Mr. Pereira also stated that he wanted a wall to prevent storm water from Hap's property from draining onto the Pleasanton Station/Railroad Square property, since the storm drain improvements on that site do not have the capacity to handle Hap's runoff. These and other issues have created friction over time between the representatives of the two properties.



Figure 1, Masonry Wall with Gate, Chain Link Fence with Vines

Before approving the wall, Mr. Pereira discussed these issues with City staff, which encouraged Mr. Pereira to continue discussions with Mr. Madden and Mr. Connors and to attempt to work out a solution between the two parties. According to Mr. Pereira, discussion occurred but the friction between representatives of the two properties continued, and he believed that the wall was needed to prevent Hap's employees and their delivery trucks from entering the Pleasanton Station parking area. Mr. Pereira and his consultants then submitted the request for the wall to the City in conjunction with construction drawings for the trash enclosure for their new building at 55 W. Angela St; Planning staff signed off on the wall on June 5, 2006, and it was constructed soon after.

In signing off the wall, staff considered it to be an extension of the existing chain link fence already separating a portion of the two properties and was told that dialogue between the two property owners and/or tenants had occurred with respect to the proposed wall. Staff also felt that the wall would be beneficial by screening Hap's trash dumpster and would limit the opportunity for any continued un-neighborly behavior. Furthermore, the wall was to be located entirely on the Pleasanton Station property, not on the common property line. Nevertheless, the correct process for considering a change to the existing PUD development plan such as was proposed would have been as a formal PUD modification.

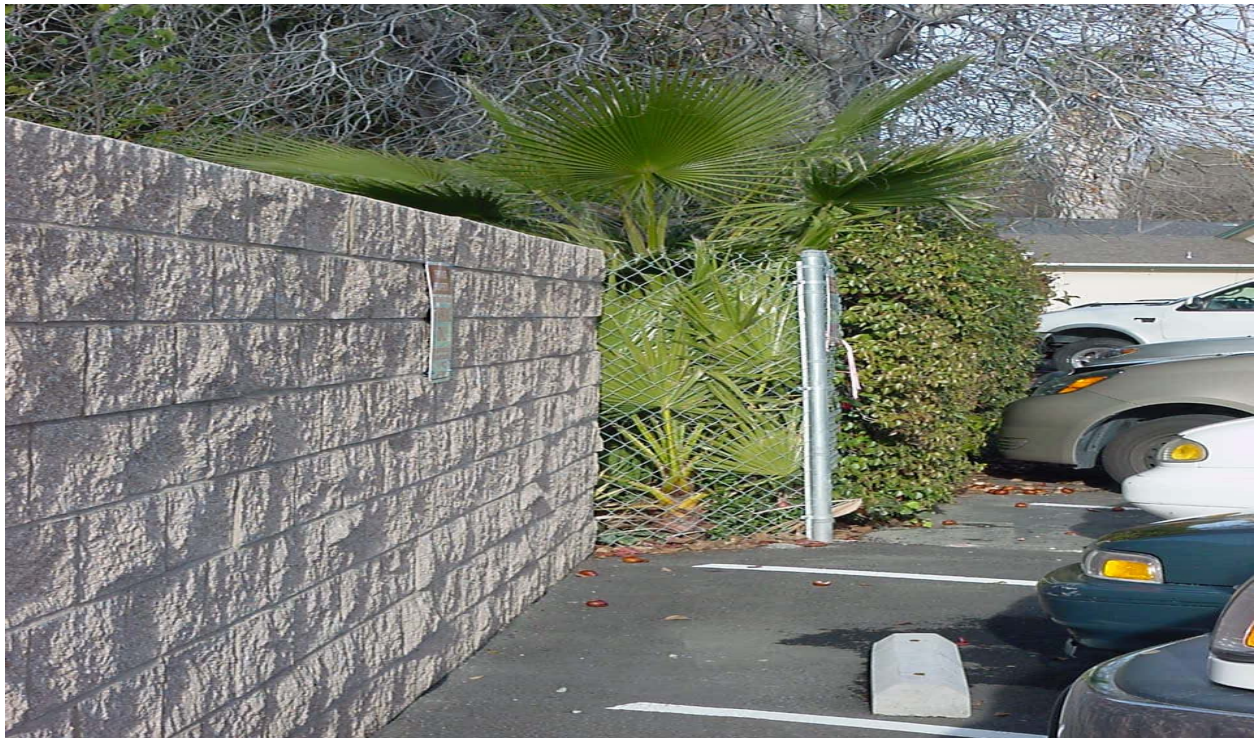


Figure 2, Transition from Masonry Wall to Vine Covered Chain Link Fence

Hap's Issues: After the wall was constructed, Mr. Madden and Mr. Connors contacted City staff stating their opposition to the wall, mainly because their access to the trash area was now blocked. A series of meetings took place in the summer of 2006 between City staff and the two parties in an attempt to work out a solution. A number of issues were addressed, including the following points expressed by Mr. Madden in his letter dated July 10, 2007 (attached):

1. *"The wall seriously compromises the ability of restaurant patrons to exit Hap's Restaurant in the event of an emergency and also restricts emergency workers free access to our property."*

There is an emergency access door located at the southeast side of the Hap's building. As part of the 1967 approval for the Hap's addition, Judge Gale, former owner of the adjacent property at 62 W. Neal St., provided a revocable permit to the owners of Hap's to allow use of an 8-foot wide strip of land on his property between his building and Hap's Restaurant for emergency ingress and egress. Although the City has no records to indicate the status of this revocable permit, the strip of land cannot function as an emergency access since it is fenced off where it would connect to the Neal Street sidewalk. Furthermore, the strip of land is unpaved and would not provide a clear path in the event of an emergency in Hap's. Finally, since it's a revocable permit, there is no certainty that it would be maintained for emergency access (as apparently it was not).

In order to meet Code emergency egress requirements as part of Hap's 1999 remodeling, the Building Department required that an emergency egress gate be provided from the rear of Hap's to the Vaughn property parking lot located at 400-420 Main Street to the west of the Hap's site. That gate does not currently meet Code requirements for emergency egress since it swings inward rather than outward, but that could be easily corrected. Even if the gate were to be modified to conform to the Building Code, Mr. Madden believes that the overall safety of Hap's customers has been compromised as a result of the wall obstructing what had previously been an open area for emergency access. However, there is no easement of record on the Pleasanton Station or Railroad Square properties for such emergency access, and Mr. Pereira feels that he should not be responsible for providing this access to Hap's customers on his property, especially since there are other means to achieve such access.

Staff is aware that Hap's representatives may believe that they have a legal right such as a prescriptive easement to cross the property line onto the Pleasanton Station or Railroad Square properties for emergency egress; however, this is a civil matter not within the City's jurisdiction to determine. Staff notes, moreover, that the situation at the rear/side of Hap's before construction of the wall did not provide a totally unobstructed path of exit due to the presence of Hap's trash dumpster and grease containers, the presence of parked cars on the Pleasanton Station side of the property line, and the presence of the chain link fence and the Gale Building (62 W. Neal St.) along a portion of the same property line.

Nevertheless, the construction of the wall does, from a practical point of view, further complicate emergency egress from the rear/side portion of Hap's in the event of an emergency. Even though Hap's could re-build the gate leading to the Vaughn property to the west so as to meet Code egress requirements, staff believes that that means of egress is not as desirable as coming straight out from the rear of the restaurant due to the distance and lack of a direct route from Hap's rear door.

Staff has concluded that the changed circumstances due to the presence of the wall results in a need to provide an additional, more direct and more obvious emergency access way from Hap's side/rear door.

Staff believes that the new gate leading from the rear of Hap's to the area in front of the trash enclosure on Mr. Pereira's property should provide that additional emergency access. Currently the gate leading to the trash enclosure does not meet Code emergency egress requirements, but it could be modified to comply with the Code. In addition, an emergency access easement would have to be granted by the Pleasanton Station/Railroad Square property owners to the Hap's property owners to allow emergency access from the Hap's parcel to the Pleasanton Station and Railroad Square parcels. Staff believes that this is a reasonable solution that would provide a safe, unobstructed way for Hap's patrons to evacuate the Hap's building quickly and easily. Staff has added a condition of approval requiring Mr. Pereira to provide this easement and to modify the gate to the trash enclosure on the Railroad Square property to meet Code requirements as an emergency access gate.

2. *"The wall has also functionally eliminated the only handicapped parking space servicing our property."*

This is technically correct, although this parking space was located on the Pleasanton Station parking lot. Apparently, Mr. Pereira had an understanding at one time with the former owner of Hap's concerning this issue, but the City is not aware of any recorded document to that effect nor did it require any such agreement. However, staff suggests that the City create a curbside disabled parking space on Neal Street in front of Hap's to replace the previous disabled parking space.

3. *"... [the wall] has severely limited our ability to remove garbage from the restaurant using the best sanitary practices."*

After construction of the wall, a series of discussions took place between staff and the property owners to attempt to resolve the issues. From the City's perspective, the ability of Hap's to have its garbage collected was of primary importance. As a result of these discussions, Mr. Pereira created an opening in the wall at the Hap's/Railroad Square common property line with a gate to allow Pleasanton Garbage Service (PGS) employees to wheel the Hap's dumpster

onto the Railroad Square/Pleasanton Station parking lot and to empty the dumpster into PGS garbage trucks. Mr. Pereira has stated that he will allow garbage trucks to use his parking lot to empty Hap's trash dumpster. However, he has not granted an easement for it. Mr. Madden prefers that the wall be removed so that there would be no obstruction for removal of the trash dumpster, and he believes that he may have legal rights, such as a prescriptive easement, to use the Pleasanton Station/Railroad Square parking lot to get garbage service to Hap's. Again, this is a civil matter not within the City's jurisdiction to determine. Nevertheless, staff believes that Mr. Pereira needs to grant an easement to PGS to ensure that it will have access rights to enter the Pleasanton Station/Railroad Square site for the purpose of emptying Hap's dumpster.

Staff notes, moreover, that the gate itself has not been approved and that the gate includes a hasp for a lock, although there is no lock on it at the present time. It is important that the gate not be locked at any time in order for it to be continuously available for emergency access and to allow PGS employees the access they will need to move the Hap's dumpster from the Hap's site to the concrete pad on the Railroad Square site. Therefore, staff has included a condition that requires the hasp to be removed and that the gate must never be locked or restricted from opening.

Staff notes that Mr. Pereira had previously allowed one of the three new trash enclosure bays he constructed to be used by Hap's. However, Mr. Pereira no longer agrees to allow Hap's to use this enclosure.

Figure 3 shows the rear of Hap's, a portion of the wall and gate, and a portion of the new trash enclosure constructed with the Railroad Square project.



Figure 3, Gate from Haps to the Trash Enclosure

Other Issues: Mr. Pereira has stated that the wall was also necessary to stop storm water runoff from sheet flowing from Hap's property onto the Pleasanton Station/Railroad Square site. He has also filed complaints with the City regarding Hap's non-compliance with the urban clean water requirements that prohibit grease and debris from being allowed to enter the storm drain system.

Regarding the storm water runoff, there is a drainage plan on file with the City from 1967 which shows the Hap's site draining to Neal St., and there is no record of any subsequent drainage plan showing a different drainage pattern. The City may not require one property to accept another property's storm water, so Hap's must either comply with the 1967 plan or find another way to drain its storm water. Any claim to a right to drain across the property line is a civil matter which does not involve the City.

Regarding the urban clean water runoff issues, City staff has inspected the Hap's site and discussed this matter with Mr. Madden and Mr. Connors. With regard to the application at hand, this is a separate matter not related to the issue of whether or not the wall should be allowed to remain.

Downtown Issues: The City discourages walls in the Downtown when they are used to obstruct or divide parking lots since City policy is to encourage that private parking lots be consolidated for maximum efficiency. In this case, the wall does not separate parking lots and therefore does not conflict with any City policies. The wall does contain and screen Hap's dumpster and grease containers, thereby improving the aesthetics of the rear of Hap's from the Pleasanton Station/Railroad Square parking lot.

PUBLIC NOTIFICATION

Notices of the Planning Commission's public hearing on this item were sent to business owners and tenants within 1000 feet of the project area. Notification was also provided to the Pleasanton Downtown Association. No comments have been received as of the writing of this staff report.

PUD DEVELOPMENT PLAN MAJOR MODIFICATION FINDINGS

The Zoning Ordinance of the Pleasanton Municipal Code sets forth the purposes of the Planned Unit Development (PUD) District and the considerations to be addressed in reviewing a PUD Development Plan. These considerations would also apply to a major modification of an approved development plan. The Planning Commission must make the following findings that the proposed modification conforms to the purposes of the PUD District, before making its recommendation.

1. Whether the modified development plan is in the best interests of the public health, safety, and general welfare:

The public health and safety require that the wall not restrict access to garbage pick-up or obstruct emergency access to/from Hap's. The presence of the wall has the potential to negatively impact both these issues. Therefore, conditions of approval are necessary to modify the gate leading to the Pleasanton Station/Railroad Square parking lot to serve as a legal emergency access and to record easements allowing emergency access from the Hap's site to the Pleasanton Station and Railroad Square sites and allowing use of the Pleasanton Station/Railroad Square parking lot for Hap's garbage pick-up. With these conditions, the wall will not be detrimental to the public health, safety, and general welfare.

2. Whether the modified development plan is consistent with the Pleasanton General Plan:

The General Plan does not expressly address walls of this type. The Community Character Element addresses aesthetics, and from that perspective, the wall is attractively designed and will screen the back of Hap's Restaurant, its trash dumpster, and grease containers from public view. As conditioned, the gate will allow for emergency access between properties and for garbage collection. Therefore, the wall as conditioned would be consistent with the General Plan.

3. Whether the modified development plan is compatible with previously developed properties located in the vicinity of the plan:

The modification consists of adding a masonry wall six feet in height along a 30 ft. portion of a property line separating a parking lot from the rear/side of a restaurant. The wall is a continuation of an existing chain link fence along that property line. The wall is constructed of split-face masonry block, is tan in color, and is compatible with the materials and finishes of the surrounding area. Therefore, this finding can be made.

4. Whether the modified development plan is compatible with the natural, topographic features of the site:

The wall is located in a developed area in Downtown and does not conflict with any natural topographic features.

5. Whether grading in conjunction with the modified development plan takes into account environmental characteristics and is designed in keeping with the best engineering practices to avoid erosion, slides, or flooding, and to have as minimal an effect upon the environment as possible.

No grading was required to construct the wall.

6. Whether adequate public safety measures have been incorporated into the design of the modified development plan:

As stated above, conditions of approval require that the gate be modified to allow for emergency access into and out of the Hap's site and that permanent easements be provided to ensure that there is emergency access from Hap's to Pleasanton Station/Railroad Square and that Hap's garbage dumpster is able to be wheeled from the Hap's site to the Railroad Square/Pleasanton Station site by PGS employees. These conditions will ensure that adequate public safety measures are taken.

7. Whether the proposed major modification of the approved development plan conforms to the purposes of the PUD District:

The modification to allow the wall will allow the rear of Hap's to be screened from view while preserving garbage collection and emergency access.

ENVIRONMENTAL ASSESSMENT

The proposed project is categorically exempt project from the requirements of the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies the staff report.

CONCLUSION

The wall as constructed and conditioned provides for emergency access to and from the rear of Hap's, allows for Hap's garbage to be picked up, screens the trash area at the rear of Hap's from public view, and is attractively designed. The wall would be an extension of a long-existing property line fence and is not being used to separate or divide parking lots. Moreover, staff hopes that the wall will reduce the friction between representatives of the two properties by limiting the opportunity for contact between them. While staff erred in allowing the wall to be built without using the proper process, this matter is now being corrected, and all issues pertaining to the wall have been addressed with conditions added where necessary. Therefore, staff can support the wall and recommends that the Planning Commission make a favorable recommendation to the City Council.

STAFF RECOMMENDATION

Staff recommends the Planning Commission take the following actions:

1. Make the findings for the major modification of the approved PUD Development Plan stated in the staff report; and,
2. Recommend approval of PUD-81-28-05M to the City Council subject to Exhibit "B", Draft Conditions of Approval.

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