

Wednesday, October 13, 2021

This meeting was conducted via teleconference in accordance with Governor Newsom's Executive Order N-29-20, approved AB 361, and COVID-19 pandemic protocols.

CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

The teleconference meeting of the Planning Commission of October 13, 2021 was called to order at 7:01 p.m. by Chair Brown.

The Pledge of Allegiance was led by Commissioner Allen.

Staff Members Present: Ellen Clark, Director of Community Development; Melinda Denis, Planning and Permit Center Manager; Julie Harryman, Assistant City Attorney; Stefanie Ananthan, Recording Secretary

Commissioners Present: Commissioners Nancy Allen, Matt Gaidos, Ken Morgan, Jeff Nibert, and Chair Justin Brown

Commissioners Absent: Commissioner Pace

AGENDA AMENDMENTS

There were no agenda amendments.

CONSENT CALENDAR - *Consent Calendar items are considered routine and will be enacted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker card for that item.*

1. Actions of the Zoning Administrator

2. Approve the meeting minutes of September 8, 2021

Commissioner Allen noted clarification to the last paragraph on page 8 of 10 to replace the first sentence with "In responding to Mr. Williams' comments in response to six-story developments, Commissioner Allen asked if Mr. Williams thought six-story developments were appropriate for Pleasanton's smaller scale Downtown."

Commissioner Nibert clarified 'builder' should be 'buildings' in the last sentence of the first full paragraph on page 8.

Commissioner Morgan noted clarification to the second to last paragraph on page 6 as follows: "Commissioner Morgan discussed the opportunity to continually improve... Commissioner Morgan expressed confidence that **criteria for medium density** future projects would **serve Pleasanton's needs** ~~meet desired criteria. He requested staff consider standards for higher density projects.~~ **He suggested that staff take extra time and effort to develop standards for higher density projects since we have less experience with those projects.**"

Commissioner Nibert moved to approve the Consent Calendar with the proposed changes to the September 8, 2021 Meeting Minutes. Commissioner Morgan seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Allen, Brown, Gaidos, Morgan, and Nibert
NOES: None
ABSENT: Commissioner Pace
ABSTAIN: None

The Actions of the Zoning Administrator were approved, as submitted.

The Meeting Minutes of September 8, 2021 were approved, as amended.

MEETING OPEN TO THE PUBLIC

- 3. Public Comment from the audience regarding items not listed on the agenda –**
Speakers are encouraged to limit comments to 3 minutes.

There were no members of the audience wishing to address the Commission.

PUBLIC HEARINGS AND OTHER MATTERS

RECUSAL

Director of Community Development Ellen Clark recused herself from the item due to the appeal being of her decision and she was placed in a virtual waiting room.

- 4. P21-0820, Erica Jasso/Sculptsations, 560 Main Street –** Appeal of the Director of Community Development's determination denying an exception to the Active Ground Floor Use Requirement for Sculptsations in an existing ground floor tenant space located at 560 Main Street. Zoning is C-C (Central Commercial) District, Active Ground-Floor Overlay

Planning and Permit Center Manager Melinda Denis presented the specifics of the item in the Agenda Report.

Commissioner Nibert asked if a third application could be submitted. Ms. Denis clarified the first application was denied and not appealed and the second application included 25 percent retail.

Chair Brown inquired if the appeal period for the first application expired. Ms. Denis confirmed that it had expired.

Commissioner Nibert inquired if the second appeal period was still open. Ms. Denis explained the first denial was not appealed and appeal of the second denial was currently before the Commission. Assistant City Attorney Julie Harryman stated the second application could have been withdrawn rather than appealed.

In response to Chair Brown, Ms. Denis stated the appeal period was 15 days.

Commissioner Morgan asked if the retail space was increased in the appeal. Ms. Denis explained there was miscommunication between the applicant and her architect whereby the original proposal was 14 feet, which was denied because it did not meet the minimum 25-percent requirement, and the second application increased the retail space beyond the minimum required to 32-percent.

Commissioner Allen asked the definition of multi-use business, referencing a hair salon selling shampoo, etc. Ms. Harryman suggested the Commission consider whether the business was ancillary or multi-use, referencing the neighboring Iron Horse Realty selling candles and home décor. Ms. Denis confirmed there was no definition for multi-use.

Commissioner Allen asked what are the attributes the Commission should consider that define an active use versus a non-active use business. Ms. Harryman responded that is more a rhetorical question and one for the Commission to discuss because there is no definition set forth in the Pleasanton Municipal Code (PMC); the Commission should make a determination as to what makes a business multi-use and what makes the retail component 'retail.'

Chair Brown discussed the solitary use of the term "multi-use" in the PMC. Ms. Harryman provided the definition of use and accessory use. Ms. Denis discussed the definition in the Downtown Specific Plan for active ground floor use. Chair Brown asked and confirmed the definition stated that active ground floor uses did not include personal services.

Commissioner Allen inquired if the matter could be appealed to the City Council. Ms. Harryman confirmed the Planning Commission's determination could be appealed to the City Council.

Chair Brown referenced page 9 of the agenda report regarding the timing for vacated space and asked when the property was actually vacated. Ms. Denis stated the actual dates were unclear. She stated staff was not aware of 'for lease' or 'for rent' signage and confirmed that staff had asked the property manager for the information, but it was not provided.

Commissioner Nibert stated he heard January 2020 mentioned as the date the space was vacated. Ms. Denis clarified the property was vacated in early 2020, and staff was unaware specifically when the previous tenant vacated the space or canceled the business license.

Chair Brown discussed the definition of active ground floor use and requirement for evidence that the space was vacated, but no specification regarding business license cancellation or discontinuation of rental payments. Ms. Denis confirmed that information had not been provided.

Chair Brown asked if Sculptations was currently operating in the space. Ms. Denis suggested asking the applicant.

THE PUBLIC HEARING WAS OPENED

Applicant Erica Jasso provided a presentation highlighting difficulties with opening her business; retail space at 32 percent, 7 percent above the 25 percent minimum; retail products and services offered; hours of operation; signage; staffing; and layout and design.

Chair Brown thanked the applicant for providing her personal story and presentation.

Pleasanton Downtown Association (PDA) Executive Director Zac Grant provided public comment in support of the appeal and expressed concern with the difficulty imposed on the applicant.

Commissioner Gaidos inquired whether the applicant conducted business in another location prior to occupying the current space. Ms. Jasso confirmed that she was previously occupying an upstairs space in the same building, which she outgrew. Commissioner Gaidos asked the services offered. Ms. Jasso stated she provided facials, body sculpting, and brow and lip wax. She clarified the space on the plan marked "temporary treatment area" was not temporary and was mislabeled. She explained the \$25,000 she had spent for the improvements including additional partition to increase retail space.

Commissioner Allen inquired about the office reception area and if there was a waiting area. Ms. Jasso responded that she had not designated a particular space or lobby for customers to wait inside, but rather advised them, in light of the current pandemic, to wait in their vehicle. Commissioner Allen inquired whether the applicant was designating any seating for customers. Ms. Jasso stated she did not want to encourage a lobby area but there was a space along the window sill for seating if necessary. Commissioner Allen inquired about how the applicant would differentiate from other personal services as an active use business rather than a personal services business. Ms. Jasso stated she was not able to distinctively differentiate but explained that she sold a variety of products other than beauty related items.

Commissioner Morgan thanked the applicant for her hard work in trying to meet the City's requirements, which could be confusing and somewhat subjective. He inquired whether there would be retail salespersons. Ms. Jasso responded there would always be staff and the business would never be unattended. Commissioner Nibert thanked the applicant for providing the information. He inquired whether the applicant had a business plan or projection for sales in the future, including retail versus services. Ms. Jasso responded that she did not have those projections.

Commissioner Nibert mentioned he recently passed the store frontage. He questioned the length of time the space was vacant and why the landlord had not provided documentation to establish a timeline. Ms. Jasso responded she could not speak for her landlord but she was an existing tenant with a positive history of paying rent. Commissioner Nibert suggested the landlord could have written a letter outlining the timeline of when the previous tenant vacated the space or whether a letter of recommendation could be provided.

Chair Brown inquired whether the applicant was currently operating out of the new or old space. Ms. Jasso stated she was not currently working. Chair Brown inquired whether the applicant had used the new space. Ms. Jasso responded that she had not. Chair Brown mentioned the prior tenant had vacated the space around March 2020 and confirmed the space had not been operated out of since early 2020.

THE PUBLIC HEARING WAS CLOSED

Ms. Harryman clarified the decision of the Planning Commission could be appealed to City Council.

Chair Brown further clarified the Planning Commission was deciding on the appeal of the Director of Community Development's determination denying an exception, and the Commission's decision could be appealed to the City Council.

Commissioner Morgan stated the appeal was an example of why he voted to change the ordinance to 100 percent active use because it was subjective and caused confusion. He further stated he was amenable to approving the business because the applicant had met the requirements of the ordinance.

Commissioner Allen agreed with Commissioner Morgan that the ordinance should be changed because it was confusing and subjective. She further stated she was compassionate towards the applicant but she could not support the appeal because she did not view the business as multi-use. She referenced the hair salon she uses and discussed the retail portion of that salon. She stated the products were complimentary to the services provided, therefore it was not a multi-use business. She questioned whether it was an active use or simply personal services salon. She discussed approval of Iron Horse Realty and the variety and significantly more products sold versus that proposed by Sculptations. She reiterated her inability to support the appeal.

Commissioner Gaidos stated he understood the distinctions made by Commissioner Allen and intent of the Downtown Specific Plan. He discussed the criteria for length of vacancy and efforts to lease the space. He suggested granting the use with a condition that the front 50 percent be retail space. He discussed Iron Horse Realty indicating the retail appeared subsequent to its services.

Commissioner Nibert concurred with the public comments provided by Mr. Grant regarding multi-use and indicated he felt the business was active use regardless of whether the retail was ancillary or accessory to the personal services. He stated he would be in support of approving the appeal and supporting the business.

Chair Brown asked Commissioner Nibert to clarify why he felt the business was multiple uses. Commissioner Nibert responded the retail met the active use requirement.

Commissioner Morgan responded that, to him, multi-use meant there were two different types of customers, retail and treatment services. He stated the proposed business had a point of sale, sales person and retail hours of operation.

Chair Brown stated he arrived at the meeting not knowing how he would vote, and with an open mind. He expressed concern with an active ground floor use space that had been vacant for a year and a half. He discussed his role as a Planning Commissioner and intent of active ground floor use. He stated his decision and recommendations were made based on the current code, which was awkward and ambiguous. He read the definition of active ground floor uses and the question was whether the retail aligned to personal services, was it a personal service with ancillary retail products. He stated he wished the property owner had provided information on the vacancy and expressed empathy to the applicant.

Commissioner Allen discussed her background in marketing and product development. She stated her decision could be modified if there were two separate businesses, walk in traffic, and Sunday operating hours. She discussed the pending ordinance and possibility of setting a precedence to deny other salons.

Chair Brown asked who of the City Council continued the second reading of the ordinance; Ms. Denis responded Councilmember Narum.

Commissioner Gaidos referenced the active ground floor use requirements for multi-use spaces and the need to consider each application individually. He stated the space was unique in that there were two closed off rooms for clients and suggested the entire front portion be retail.

Chair Brown asked about the black line at the 21.5-foot mark. Ms. Denis stated the wall was not permanent.

In response to Commissioner Allen, Commissioner Gaidos confirmed his suggestion to require 50 percent retail space.

In response to Chair Brown, Commissioner Gaidos suggested the entire front room be retail as a compromise. Chair Brown stated that would prevent the applicant from increasing her space.

Commissioner Nibert stated he found the application met the retail requirement and that increasing to 50 percent seemed outside the Commission's purview. He discussed the intent of the applicant to promote the retail space.

Chair Brown stated he understood the skepticism but stated the application could not be judged based on Iron Horse Realty. He asked if there was potential for setting a precedent. Ms. Harryman discussed the existence of precedent in planning but stated each case was considered individually. She referenced the public comment provided by the PDA President regarding the City Council's potential action, which would render potential precedent mute.

Commissioner Morgan mentioned in a typical salon, the products were in a side space and are not right in front. He stated the applicant had the products in a larger space and that is enough for him to deem this as a multi-use.

Commissioner Allen stated she had a different perspective from Commissioner Morgan and referenced retail space in other salons. She expressed concern that considering ancillary products in the first 25 percent as multi-use and potential for setting a precedent.

Commissioner Allen moved to deny the appeal and support staff recommendation. The motion died due to lack of a second.

Commissioner Gaidos moved to approve the applicant's request as outlined in Exhibit C but require the minimum of 50 percent of the space as retail, which would be the entire front room of the floor plan diagram. The motion died due to lack of a second.

Commissioner Allen asked if Commissioner Gaidos was willing to require prominent signage. Commissioner Gaidos stated he felt the A-frame sign was appropriate.

Chair Brown indicated his hesitation because the applicant had moved to the space to obtain additional room for treatment.

Commissioner Morgan moved to approve the business with the caveat that more prominent signage be added. The motion died due to lack of a second.

Ms. Harryman inquired about the proposed additional signage. Ms. Denis stated A-frame signs were not allowed and discussed the process for obtaining approval for free standing sidewalk signs. She suggested not encouraging A-frame signs, rather modifications to existing signage.

Commissioner Allen asked about the proposed decal. Ms. Denis presented the applicant's proposed addition of beauty, health and wellness products. Commissioner Allen asked if the Commission should define the sign size and amount of display space.

Chair Brown stated product placement seemed sparse. Commissioner Allen agreed there was not enough product. Commissioner Morgan concurred the retail was sparse but tastefully done and not for the Commission to determine.

Commissioner Morgan moved to grant the appeal for a retail and personal service multi-use in a ground floor tenant space and direct the applicant to provide more prominent signage highlighting the retail and personal service uses.

Commissioner Nibert seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Brown, Morgan, and Nibert
NOES: Commissioners Allen and Gaidos
ABSENT: Commissioner Pace
ABSTAIN: None

Resolution PC-2021-15 approving Case P21-0820 was adopted as motioned.

ARRIVAL

Ms. Clark re-joined the meeting.

MATTERS FOR COMMISSION'S REVIEW/ACTION/INFORMATION

5. Reports from Meetings Attended (e.g., Committee, Task Force, etc.)

Commissioner Nibert mentioned his attendance at the League of California Cities monthly Planning and Community Development meeting. He announced the Academy for Commissioners on March 16-18, 2022 in San Ramon and call for proposals due by November 1, 2021. He also announced the webinar tentatively scheduled for November 30, 2021 to discuss implementation of SB9. He discussed concerns expressed regarding the timing for meeting Regional Housing Needs Allocation (RHNA) allocations and rezoning. He stated the League of California Cities encouraged Planning Commissioners and Community Development Directors to attend the monthly meetings.

Ms. Clark discussed SB9; she also noted that rezoning pursuant to the Housing Element is required within one year, if the City is not timely in adopting its housing element.

6. Actions of the City Council

Ms. Clark provided a brief overview of the items listed in the report.

7. Future Planning Calendar

Ms. Denis gave a brief overview of future items for the Commission's review.

Ms. Clark stated an overview of new State legislation would be presented to the City Council at its November 2 meeting and encouraged the Commission to view the meeting.

MATTERS INITIATED BY COMMISSION MEMBERS

Commissioner Morgan thanked Commissioner Allen for suggesting ground floor retail be changed from 25 to 100 percent and hoped the City Council would be encouraged to approve the ordinance.

Commissioner Nibert thanked staff for preparing the Commission to make decisions.

Chair Brown announced the Halloween Spirit Run on October 31 at 8:30 a.m.

Commissioner Nibert reminded residents of the Ghost Walk.

Commissioner Allen stated she was proud of the Planning Commission team for its focus on doing the right thing while considering the PMC.

Ms. Harryman expressed appreciation to the Commission for being respectful to each other and staff.

Commissioner Morgan thanked Commissioner Allen and Chair Brown for their leadership.

ADJOURNMENT

Chair Brown adjourned the meeting at 9:33 p.m.

Respectfully submitted,

Stefanie Ananthan
Recording Secretary