



CITY OF MONTCLAIR
PLANNING COMMISSION MINUTES

REGULAR ADJOURNED MEETING
Monday, October 27, 2008

SOUTH CONFERENCE ROOM
5111 Benito Street, Montclair, California 91763

CALL TO ORDER

Chairman Flores called the meeting to order at 7:05 p.m.

PLEDGE OF ALLEGIANCE

Commissioner Lenhert led those present in the salute to the flag.

ROLL CALL

Present: Chairman Flores, Vice Chairman Vodvarka, Commissioners Johnson, Lenhert, and Sahagun, Community Development Director Lustro, City Planner Diaz, Associate Planner Lai, and Deputy City Attorney Holdaway.

Excused: Associate Planner Frazier-Burton

MINUTES

The minutes of the August 25, 2008 meeting were presented for approval. Commissioner Lenhert moved, Commissioner Vodvarka seconded, there being no opposition to the motion, the minutes were approved 5-0.

ORAL AND WRITTEN COMMUNICATIONS

None.

AGENDA ITEMS

6.a PUBLIC HEARING - CASE NUMBER 2008-23

Project Address: 5113-5123 Brooks Street
Project Applicant: Barbara N. Adair Trust
Project Planner: Jim S. Lai, Associate Planner
Request: Approval of Tentative Parcel Map No. 19104 to split an industrial property into two separate parcels to encompass two existing businesses in the M-2 zone

Associate Planner Lai reviewed the staff report.

Chairman Flores opened the public hearing; no comments were heard. Chairman Flores closed the public hearing.

The two property tenants were present at the meeting and introduced themselves to the Commission.

Commissioner Vodvarka commented that he was concerned about the hazards of the materials piled up along the back fence and asked whether it could be cleaned up.

Chairman Flores commented that he also was concerned about the pile up and asked staff whether there was a condition addressing the issue to make sure it gets done.

City Planner Diaz stated that Condition No. 4 requires the two new property owners each submit an application for their own particular business and that will include reorganizing, cleaning-up the sites, and finding the height for the pallets, getting approval from the Fire Department, etc. Commissioner Vodvarka commented that he did not want the business owners to feel that he was picking on them, he just wanted them to be safe.

Commissioner Lenhert moved that, based upon evidence submitted, there will be no significant impact on the environment as a result of the construction and operation of the proposed single-tenant industrial building and that a DeMinimis finding of no impact on fish and wildlife and that the project is categorically exempt per Section 15315 of California Environmental Quality Act (CEQA) in that the project is a minor land subdivision involving four or fewer parcels, that all services and access to the site are available in the area, and that the subdivision is in conformance with the General Plan and zoning designation for the site, Commissioner Johnson seconded, there being no opposition to the motion, the motion passed 5-0.

Vice Chairman Vodvarka moved to recommend City Council approval of Tentative Parcel Map No. 19104 under Case No. 2008-23 per the submitted plans and as described in the staff report, subject to the 10 conditions of approval, seconded by Commissioner Lenhert, there being no opposition, the motion passed 5-0.

1. This approval is for Tentative Parcel Map No. 19104 to create two parcels from a 2.33 acre site in the M-2 zoning district, commonly known as 5113-5123 Brooks Street, per the submitted map and summarized on the table below:

<i>Tentative Parcel Map 19104</i>	
<i>Parcel</i>	<i>Size</i>
1	36,900 SF (.85 acre)
2	64,437 SF (1.48 acre)

2. The tentative parcel map shall expire three years from the date of the Planning Commission resolution unless extended under Government Code §66452.6. The final parcel map shall be filed with the City Engineer and shall comply with the Subdivision Map Act of the State of California and all applicable ordinances, requirements, and resolutions of the City of Montclair.
3. Prior to filing the original signed final map with the City Engineer, the applicant shall submit to the City the following documents, requiring approval of the City Engineer, at least 60 days before the filing of the original signed final map, in order to permit review pursuant to Government Code §66456.2:
 - a. Certain improvements for the Brooks Street frontage of the subject property may be required to comply with State and/or City disabled-accessible requirements for ramps, street access, and parking to the satisfaction of the City Engineer. Disabled-accessible path of travel shall be maintained through drive approaches.
 - b. Dedication to the City of Montclair and/or other public agencies easements for water, storm drains, sanitary sewers and other utilities may be required.
 - c. Execution of a Subdivision Agreement with the City of Montclair containing provisions for performance and payment bonds for all work within the public rights-of-way and a monumentation bond for tract monuments in accordance with the Subdivision Map Act.
 - d. A letter of non-interference from any utility company that may have rights of easement within the property boundaries.
 - e. "Will-serve" letters from all utilities serving the site. The subdivider/developer will be required to coordinate with the various public utilities for the necessary improvements for said utilities to service the site.
4. Prior to filing the original signed final map with the City Engineer, the applicant shall conduct a Phase I environmental analysis of the entire site, to be performed by an environmental consulting firm acceptable to the City, to determine whether any contamination is present on the site. Any and all clean-up as required by the results of said analysis shall be completed prior to acceptance of the final tract map by the City for recordation. All clean-up activities shall be in compliance and completed in accordance with all applicable local, state and federal regulations.

The environmental analysis report shall be approved by the Director of Community Development. The applicant shall be responsible for staff and City Attorney costs associated with this review.

5. Applicant/developer shall comply with all requirements of the Subdivision Map Act and Montclair Municipal Code.
6. At least 90 days prior to anticipated recordation of the final map with the County of San Bernardino, the applicant shall submit to the City for review and approval as to form and content, three (3) copies of the Mutual Access and Maintenance Agreement. Said agreement shall address, at a minimum, such issues as mutual access and parking, maintenance of common access areas, cross-lot drainage and other matters affecting both parcels.
7. Each parcel to be created under this parcel map shall provide sufficient off-street parking per the M-2 Zoning Code. Each lot shall have a minimum of one van-accessible disabled-accessible parking stall with path-of-travel from the public sidewalk.
8. Obstruction of the required parking stalls, disabled-accessible path-of-travel shall not be allowed at all times. All outside storage affecting the parking stalls and drive aisles shall be removed within ten (14) days from Tentative Map approval
9. Existing businesses shall obtain an approved Conditional Use Permit (CUP) to allow outdoor storage on these respective properties within 45 days of final map approval by the City. If approved, any outside storage and/or industrial operation shall be conducted within a fully fenced-in area. Fence materials visible from public view shall consist of masonry block walls, tubular steel or wrought iron and the planting of climbing vines, shrubs and trees along the street or railroad frontages.
10. The applicant shall agree to defend, at its sole expense, any action brought against the City, its agents, officers, or employees because of the issuance of this approval; or in the alternative, to relinquish such approval. The applicant shall reimburse the City, its agents, officers, or employees for any damages, loss, court costs and attorney fees that the City, its agents, officers, or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve applicant of its obligations under this condition.

6.b WORKSHOP – SECOND UNIT ORDINANCE

Project Address: Citywide

Project Applicant: City of Montclair

Discussion regarding proposed Second Unit Ordinance

City Planner Diaz stated the workshop was intended to open up dialogue and introduce the Commission to the idea of second dwelling units in the City of Montclair. It has been a long-delayed item that needed to be taken care of since 2003 when the State enacted

new legislation which required cities to either adopt the state's requirements for second dwelling units or come up with their own requirements consistent with the State's standards. His understanding was that throughout the years there has not been a big push for the second dwelling units so there are not a lot of them, but we still have to conform. Staff's thinking was, because the state gave us some wiggle room to develop our own ordinance that addresses our own concerns rather than deal with the state's criteria, to review a draft ordinance. For background purposes, City Planner Diaz reviewed the staff memo that was included in the agenda. He stated that when the law passed, it took all discretionary review away from the cities and counties and that means in the past we would have required a special use or conditional use permit. It is now deemed to be a ministerial action and we are supposed to come up with criteria and as long as people meet the criteria, they have some assurance that they can get their projects approved and that is what staff is trying to do now is give the Commission a glimpse at what staff is proposing and without any further ado, want to talk about it and answer any questions the Commission may have. The city attorney is present and has already reviewed the document so far, but staff is open to any questions about the proposal.

Vice Chairman Vodvarka asked if this would include garage conversions. Director Lustro stated that a garage conversion would only be considered if the existing parking can be replaced on the property and meet Code. City Planner Diaz stated that would be the first step. The second step would be that the subsequent change to the garage meets the architectural compatibility with the home. What they are proposing is not to allow two front doors on a house any longer. They would have to come up with a way to have a door off to the side where it is less discreet and does not distract from the appearance of the main house. Vice Chairman Vodvarka asked about the conversions where they left the garage door on. City Planner Diaz answered that staff would require the garage doors to be removed and replaced with a suitable wall, finish, windows or anything that would enhance the architecture of the house. City Planner Diaz stated that we always find out about them and they will have to correct those situations. Vice Chairman Vodvarka commented that if we had a law that stated a home be inspected before it was sold, they would catch those, but up until that time, they are going to get away with it. Commissioner Lenhert asked about the electrical and stated that he felt the biggest problem with the conversions is the electrical because most of the attached garages have one circuit that comes in. City Planner Diaz stated that one of the requirements of the second dwelling units is that they have to get building permits in order to complete the project. The issues of electrical and plumbing will have to be up to Code in order to accommodate the second unit because if you look at the definition of a second dwelling unit, they are supposed to provide for complete, independent living quarters. In some cases they will have to install plumbing or electrical or do all of it to make sure it is compatible. Commissioner Lenhert commented that three years ago, an entire family burned to death because of an illegal garage conversion because they could not get out. He inquired about 11.23 c and stated that he thinks the unit should be set up based on the number of square feet the lot has. No cramming a second unit on an itty bitty lot. City Planner Diaz asked the Commission to review 11.23 f where staff has attempted to try to address that. In criteria a couple pages ahead, any property that is asking for a second unit needs to meet the minimum lot requirement, both in total lot area and in dimensions for a legal lot in any district and zone.

Commissioner Lenhert stated that some of the lots in the city are small already. Director Lustro replied that a too small lot may not be entitled to a second unit. Commissioner Sahagun asked if the state is allowing us to "tweak" the requirements and, if so, maybe setback and lot size requirements are something we could tweak so that Commissioner Lenhert's concerns are taken care of and we just will not allow a second unit on the small lots. Director Lustro asked the Commission to remember that if the City Council adopts the ordinance, it doesn't automatically entitle every property owner in the city a second unit. The property still has to meet all the Code requirements that are defined in either the zoning code or contained within this proposed ordinance and there is going to be many lots in the city that can't comply with all the criteria that is laid out in the ordinance because, as Commissioner Lenhert stated, maybe it is a good sized house or the lot is small, which precludes them when you start looking at setbacks, building separation, and probably the most important thing, lot coverage. Even with a modest sized house and two-car garage where someone has added a patio cover over time, it starts to constrain many of the lots. It is not a right to have a second unit. Commissioner Lenhert stated that if you stick a second unit in the back on some of the small lots, there would be nothing left. Director Lustro replied that the ordinance gives some criteria for locational aspects on a second unit and these are minimum. If the structure can't meet the minimum standards and there is nowhere to squeeze it in and what you're looking at is a minimum square footage for a second unit of 400 square feet, like a two-car garage, a pretty good-sized structure, there will be many lots that will not be able to qualify and if they don't meet the criteria, they are not entitled to one. City Planner Diaz stated that lot coverage would also be a requirement. Commissioner Lenhert inquired about 11.23 b and why second units cannot be separately metered. Director Lustro replied that we do not want them to be in different names. They can be rented but are intended to be either mother-in-law units but also contained in the ordinance is that the property owner needs to live in one of the houses, they cannot both be rented. City Planner Diaz stated that since 2003, the city has only approved four second units and it is only intended to provide supplemental housing, not to convert single-family neighborhoods into multi-family neighborhoods. We are doing this because, on the one hand, the state is requiring it, and we also want to have some control over what it is and how we review and approve these things. One of the requirements is that the property owner needs to live in one of the units to make sure that it doesn't turn into a rental community and rather it is just supplemental housing for a loved one or a college student. The idea of keeping the utilities all in one is an incentive to keep control over what is happening.

Chairman Flores asked about his own personal property that has an attached garage and alleyway so if he was to convert the garage to whatever is legal, he would have plenty of parking in his front yard and driveway, actually if he did it, he would only be adding one more car, do you have to have a garage for your new unit. City Planner Diaz answered that you need to have a garage for your main house and if you choose to convert your existing garage into your second unit and it meets the size criteria that has been laid out in the ordinance, then you will have to build another two-car covered parking for your particular property and, at that point, that means that some people are not willing to do all that or cannot fit it on their property, then they cannot have a second unit. This particular ordinance encourages covered parking, but we cannot require covered parking for the second unit. However, you still have to have two covered

parking spaces minimum for your primary unit. Commissioner Lenhart asked about his property which is 130 feet wide by 415 feet deep. City Planner Diaz replied that there would be one additional unit allowed. You can have your primary house and one second unit. Commissioner Lenhart said he could beat that because it was subdivided into two lots before the city became a city. City Planner Diaz stated that if you have two legal lots and you can meet the criteria, then the second lot could have a second unit.

Commissioner Johnson commented that she felt for a period of years people have been adding second units because she remembers from the paint-a-thon and discovering illegal second units, they have been doing it without a permit or not up to code and she thinks the intent of the ordinance so there is a base from which decisions can be made and she liked that and the ordinance sets forth some very specific requirements that make it a granny house. City Planner Diaz stated that she was correct and asked the Commission to remember that staff is not creating a new ordinance because it would be fun, part of the problem is if we do nothing, the state will make us follow their criteria and the state allows up to a 1,200 square foot second unit and it will all have to be approved because we do not have any criteria of our own. What we are trying to do is take their requirements and mold it as we can and create our own document so that it addresses our own concerns for our community.

Commissioner Johnson asked if someone with a larger lot, say a couple acres, wants to build another house on that lot, if they have a big enough lot, they have the right to do that, but not under the granny rule. City Planner Diaz stated, no, they do not have the right to build a second unit on the property unless they split the properties into legal lots. In that case, say you had a two-acre lot, thinking you could build another 1,500 square foot house for grandma, we will say no, only 700 square feet if you do the second unit process and that will be the max. Director Lustro stated that if they are entitled to split their lot and they create two or more legal lots, then they could. Chairman Flores stated that as each request comes in, they will be individually reviewed and not every one of these will be approved.

Commissioner Lenhart asked how requiring the property owner to live in one of the units will ever be enforced. Director Lustro stated through deed restriction, recorded with the County. Commissioner Lenhart stated that someone has one, they build the second one and they sell it, the next people move someone else in the second unit, how are you going to ever know if they are a relative or not, there is no way you are going to know. Director Lustro stated that we may not know but there is a deed restriction recorded against the property that hopefully a buyer would be made aware of, in a perfect world. City Planner Diaz stated that many communities have this particular criteria or this requirement in their second unit ordinances and the way they handle it is if no one knows eventually something is being done wrong and the city gets invited over or code enforcement pays a visit and we discover something different. Whether we have an inspection program later on and we catch them that way. Commissioner Lenhart commented that if the person selling doesn't tell the person buying it, then they won't know. City Planner Diaz stated that if it is part of their deed, it will have to be disclosed to the buyer when they purchase the property. Commissioner Lenhart stated it is just like the thing we went through with the additions and patio covers. City Planner Diaz stated that the idea is to have the criteria for people who want to comply with the

law and we will always have to catch the ones who don't want to. Commissioner Lenhart mentioned a story recently told in the news about a woman being taken to court for illegal conversions. City Planner Diaz commented that he heard the same story and he thought it was out in one of the desert cities and she did not have permits for any of the conversions and no protection under the law.

Chairman Flores stated that he felt this was a good way to approach this and eventually it will work out so that it has a little more teeth to it and every one that comes before you will be a different problem. City Planner Diaz stated that the process is supposed to be as streamlined as possible. They will either meet the criteria or won't and we move on; no public hearings, no public notices. If we normally do not do a public notice for something like this, then we cannot require one for this.

Director Lustro stated that the intention is to take this to the City Council before the end of the year.

Commissioner Sahagun stated that he knows of four homes that have exactly this and he thinks they meet the criteria and they were built before the city was incorporated (Orchard Street). He inquired whether they would be grandfathered in. Are we going to take into account those that were already built? There were no records in our Building Department records because they were built pre-1956. Director Lustro replied that typically something of that vintage (50+ years) where there is no documentation, it is really hard to go after those owners because we have no evidence whether they were built legally or not. Surprisingly, what we've run into on a couple of the situations where you've had either accessory structures or second units built on residential property, when you go through the building jacket, you don't have the original building permit for either the main house or the accessory structure. However, there is sometimes documentation in the building jacket that was purposefully put in there to indicate that it is either accepted as legal or was built legally based on some other evidence and it's always nice to find that. Commissioner Sahagun stated that what triggered remembering the situation is that it needed a new roof as part of the transaction and when they tried to get a permit for the second unit, there was no permit for the second unit itself. Director Lustro stated that what happens is that someone comes in for a permit and you go back through the file, especially something that is 50 years old, and you find another roofing permit for 20 or 30 years ago and you will find that the roofing permit states the main house and a guest house or main house and accessory building and you say to yourself that we o.k.'s it then, we really cannot say no now.

This will be done a case by case basis and a lot of those the building department and us look through old tax records or any old documents to verify that it was there. If it has been recently remodeled, then at that point we determine whether it's good to go ahead or not. The existing second dwelling units which were constructed and have some type of documentation will be legal non-conforming and will be allowed to stay because they have some type of record. The code is not geared to blanketly say that everything out there, whether legal or illegal, gets to stay. We're trying not to say that because we're dealing with it on a case by case basis because clearly some of these improvements might not be at all close to meeting any kind of code requirements. Director Lustro stated that many times what happens is, and this has happened on numerous

occasions where someone has come in for a permit for, as an example, an electrical upgrade and the inspector needs to go to the site to inspect it and the inspectors are told that when they are out on the property, we do not expect them to do a complete walk-through, but if they observe something that appears to be not permittable or illegal, they are expected to let code enforcement know if it is something that has already been completed, and let them deal with it or, if it is under construction, then that inspector needs to deal with it right then and there by red tagging it because you cannot go out there with tunnel vision and let other stuff go. There is a lot of support out there for pre-sale inspections and if this city is ever to implement that requirement it will the various departments much better opportunity to try to catch this stuff before it gets passed on to an unsuspecting subsequent owner who does not have the benefit of full disclosure by the seller or the realtor. Commissioner Sahagun stated that most buyers are not that naïve. Director Lustro stated that most realtors will do their homework and disclose that the patio cover is not permitted so the prospective buyer needs to research that but there are many times that you do not get that; the realtors are not doing their job. Blame can be placed a lot of places and staff's feeling is that if pre-sale inspections are implemented at some point in time, then we have a much better chance of catching a lot of the stuff that has been done illegally and we can avoid situations like what Commissioner Lenhert mentioned, illegal garage conversions, illegal electrical, do not have proper exiting. Commissioner Sahagun stated that this is exactly why people think they are saving money but they do not understand that it is for the purpose of safety.

Commissioner Johnson asked about where we are with respect to pre-sale inspections. Director Lustro answered that in the Code Enforcement Committee meeting one week ago the subject came up and it was not specifically for what we're talking about, the subject came up because the Code Enforcement Committee has instructed staff to prepare a foreclosure ordinance because everything the city is dealing with the number of foreclosures. At the last count, the number was 400 or 4% of the city's total housing stock, but as part of that foreclosure ordinance and it is very detailed, one of the things that was to be included in that ordinance is that if a house is vacant or abandoned for six months or more, one of the requirements of the ordinance is that before that house could be reoccupied, the Building Division, through its inspectors, would be required to a complete inspection of the house inside and out to make sure everything is up to code (electrical, plumbing, room additions, etc.). This would be a comprehensive inspection in the case of the foreclosure ordinance. That discussion led to a general discussion about pre-sale inspections and the mood with respect to pre-sale inspections and the Commission knows Mayor ProTem Dutrey and Councilmember Paulitz are members of the Code Enforcement Committee; believe in what he has heard that two council members are supportive of such an ordinance. The comment that came out of Code Enforcement Committee on Monday was that they wanted to make the 6-month inspection a part of the foreclosure ordinance, they wanted to see once it is implemented how it goes and based on our experience with that they said that they might recommend to come back with a pre-sale ordinance. That is not going to happen in the next couple months but the discussion kind of opened the door for possible discussion later on. You're not going to have 100% support from the Council but when the time comes we will have to see where it goes. City Planner Diaz stated that there a number of logistical issues on how to implement that needs to be worked out. Commissioner Sahagun stated that the Board of Realtors is really against it.

Commissioner Johnson stated that it is of real benefit to the buyer. Director Lustro commented that the one issue that came up is that you have one councilmember involved with the Board of Realtors and that is typically where the opposition has come from in other cities. The point that needs to be made if and when this comes to Council and this goes back to what Commissioner Sahagun stated, this is primarily a life-safety issue that the city if it implements such an ordinance, it is not going to be a money maker for the city, all we are trying to do is cover our costs to go out and do these inspections, nothing more. The interest is that we want to make sure that life-safety is protected in the community to make sure we do not have illegal conversions or illegal work going on inside a house that will potentially contribute to a hazard and tragedy at some point in time. In his personal opinion, he would think that any person involved in the selling of real estate that would stand up in front of an elected body arguing against an ordinance that is promoting life-safety, he wonders where their priorities are.

INFORMATION ITEMS

Director Lustro reminded the Commissioners that if they plan on attending the Best Management Practices tour on October 30th, to please RSVP as soon as possible to Laura or Sharon.

Commissioner Sahagun asked about all the work being done on the streets, specifically on Monte Vista and San Jose, there is a lot of traffic going northbound to Serrano School and they just started work on the turning lane so all the parents go and turn around and he wondered if there was anything they could do. Director Lustro stated that although it is an inconvenience, all the work is being done at night, but the restricted lanes have a very severe impact but the work will not be going on much longer so all he could recommend at this time is to plan ahead.

Chairman Flores adjourned the meeting at 8:11 p.m.

Respectfully submitted,

Laura Berke
Recording Secretary