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REGULAR MEETING OF THE
PLANNING COMMISSION
CULVER CITY, CALIFORNIA

March 9, 2005
7:00 P.M.

Mike Balkman Council Chambers

MEMBERS PRESENT: D. Scott Malsin, Chair
Sheila M. Thomas, Vice-Chair
Maureen M. Muranaka, Commissioner
Marcus Tiggs, Commissioner

ADVISORY PRESENT: Sherry Jordan, Senior Planner
Joseph Montoya, Assistant Planner
Bryn Morley, Special Counsel
Carol Schwab, City Attorney
Heather Iker, Deputy City Attorney
Deborah Fox, Attorney at Law

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CALL TO ORDER

Chair Malsin called the meeting to order at 7:02 p.m.
The Pledge of Allegiance was led by Joseph Montoya, Assistant Planner.
Roll Call. Tiggs, Muranaka, Thomas, Malsin present.

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PUBLIC COMMENT

None.

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PUBLIC HEARING

PH-1. Appeal of Denial of an Administrative Variance for 3970 Shedd Terrace.

Moved by Commissioner Tiggs, seconded by Commissioner Muranaka and
unanimously carried, to continue the matter to April 13, 2005.

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PH-2. Zoning Code Amendment, ZCA P-2004144, for PETsMART, 10900 through
11140 Jefferson Boulevard and 5711 Sawtelle Boulevard.

Commissioner Tiggs moved, seconded by Vice-Chair Thomas and unanimously carried, to receive and file the affidavit of mailing of notices.

Mr. Montoya presented the staff report.

- Staff is comfortable approving the majority of changes the applicant is requesting to the proposed option of approval with the exception of a request to allow the veterinary component to permit emergency-type services and possible overnight stays.*
- Staff has no problem entertaining basic medical services but does not believe this intensity of use would be compatible with the intent of a shopping center zoned C-3A or the other types of uses listed in that zone.*

Chair Malsin called for Commissioners' questions of staff.

Commissioner Tiggs

- If approval of veterinary services is recommended, what solution would there be for this veterinary clinic if an animal's condition worsened?
- Why is staff concerned about allowing animals to be boarded overnight for the limited purpose that might be required for the health and safety of an animal receiving care?

Chair Malsin

- Did staff receive calls or correspondence from the public on this issue?

Mr. Montoya

- As with humans, if emergency-type service is required, it should be obtained at a more appropriate facility such as a hospital or emergency center rather than at an outpatient clinic. The treatment of seriously ill or injured animals is not intended in the C-3A Zone so it is reasonable to expect that those animals requiring an increased level of care should be transported to an animal hospital to receive that care.*
- Staff believes the City would prefer allowing overnight boarding of animals only in areas that are not commercial but rather industrial or in stand-alone buildings that are less likely to interrupt long-term or after-hours activities in the adjoining uses. This type of use could create a nuisance that the City would not want in a commercially zoned area.*
- The Land Use Element of the General Plan is a very strong document which provides the right to determine that in a specific community, neighborhood, or zone a particular type of use is not compatible.*
- This use is not being restricted or prohibited because it is allowed in other zones in Culver City, providing a reasonable ability to encourage that type of use elsewhere within the city.*
- A number of return mail notices were received, but no one has called or written regarding this matter.*

Chair Malsin opened the Public Hearing.

Allan Abshez, representing the Applicant

- PETsMART is in general agreement with the option Mr. Montoya has brought forward with the exception of the restriction on overnight boarding. Initially, that restriction was agreeable since the plan is for a day care and veterinary facility, but the veterinary facility requires the ability to allow an overnight stay.
- PETsMART is focused on providing walk-in care of customers and believes the majority of this type of business will be vaccinations and spaying and neutering services; however, there is no distinction between a veterinary clinic and a veterinary hospital so they are requesting the ability to board an animal overnight if the doctor deems it necessary rather than creating a situation where an animal requiring emergency care cannot be treated.

Chair Malsin called for questions from the Commissioners.

Vice-Chair Thomas

- What types of pets does PETsMART plan to sell?

Chair Malsin

- Did the original application indicate that PETsMART wished to board pets receiving veterinary care overnight?

Mr. Abshez

- PETsMART sells birds, fish, small reptiles, and small animals such as hamsters.
- There was no intent to have overnight boarding when PETsMART originally filed their application. They requested an Administrative Use Permit and applied the exact language in the Code permitting veterinary clinics and hospitals in the C-3 Zone, which allows this type of overnight stay; so it was assumed those same rights would be perceived and granted. When staff recommended that no overnight boarding be permitted, clarification was sought after conferring with the veterinary service that it is necessary to include that provision for the health of the animals.

It was moved by Vice-Chair Thomas, seconded by Commissioner Tiggs and unanimously carried, to close the Public Hearing.

Chair Malsin requested staff's response.

Mr. Montoya

- *The request to permit overnight stays as necessary for the health and safety of an animal receiving veterinary care is too vague and could be abused by an overly protective pet owner.*
- *The applicant has already leased the building and may be attempting to convince the City to change its policies and procedures in order to allow them to remain in a building which they are legally and financially committed to.*

Commissioner Tiggs

- Having had the benefit of two staff reports, remained unconvinced that granting a zoning code amendment for this pet store/veterinary services/day care use is contrary to the General Plan language.
- Views the Land Use Element of the General Plan a bit differently because it also indicates that identified ranges of uses be encouraged.
- The applicant has agreed to a Conditional Use Permit (CUP) for the veterinary and day care components as recommended by staff.
- Was unaware that the applicant had already leased the premises and indicated that is not a factor in his decision.
- If PETsMART is allowed to provide veterinary services, he does not have a problem with the language allowing an animal to be boarded as necessary for health and safety, finding the language is very clear not vague as staff contends.
- The inclusion of a definition of "boarding" would be appropriate.

Vice-Chair Thomas

- Would like to see a viable use at the end of that shopping center because it is always preferable to have an occupied commercial space rather than a vacant one; however, this use will be directly across the street from relative competitors which makes it unclear that PETsMART will be of economic value in terms of drawing more tax dollars to the City.
- Diversity is an important mechanism in creating a healthy viable environment, and this use does not provide that diversity.
- Staff should consider developing percentage thresholds for types of uses in specific areas to assist with these kinds of decisions in the future since there are currently no set standards which address whether there are too many of a particular type of use in a given area.
- A veterinary assistant or other attendant must remain with the animal if an overnight stay is required.
- Supports the notion of determining if this use will work but would like a safety valve so it is not preserved in perpetuity and, since a conditional use permit would run with the land, would be inclined to implement a zoning code amendment which could be changed back if so desired in the future.
- The zoning code amendment should specifically indicate that only one use of this type is permitted in this zone and that it is not attached to this parcel if amended in the future.

Commissioner Muranaka

- One of the most important considerations is to preserve and emphasize the retail element of this site and, if Option 2 is ultimately approved, it should be with the clear understanding that the veterinary and day care components are ancillary to the retail element.

- Not in favor of eliminating the CUP requirement because of the nature of the proposed use and the fact that the public needs adequate opportunity to provide input.
- Hesitant to permit a use that might discourage prospective tenants from leasing space in the center.
- A sunset provision can be drafted into the zoning code amendment which would address the concern of allowing the use in perpetuity.
- The air change requirements in 43-E2 need to apply to all areas in the building where animals are kept.

Chair Malsin

- Inclined to permit the uses as requested by the applicant.
- Questioned the last-minute request for overnight boarding of animals because of public noticing issues and the considerable amount of rewriting of the ordinance, not because it will necessarily create a problem.
- The limited amount of space devoted to the sale of small live animals is not a concern, and he is pleased the applicant has chosen to further limit the amount of space devoted to non retail uses from what they originally submitted in their preliminary site plan.
- PETsMART is a well-run business which is strong enough to attract people to the shopping center and will be an asset to the community.
- While the opportunity exists to utilize the Code as a tool, it does not necessarily mean it should be used arbitrarily to deny reasonable use of a piece of property.
- Does not believe that because pet store was not included in the list of permitted uses in the C-3A Zone that it falls outside the general range of intended uses.

Ms. Jordan

- *A requirement for a CUP could be implemented requiring future applicants to come before the Commission for consideration of whether this is an appropriate use for that center or a condition could be included in a CUP indicating that when this type of uses desists for a reasonable period of time, the CUP ceases and, if another pet store comes into that location, they would be required to reinitiate the process.*

Commissioner Thomas moved, seconded by Commissioner Tiggs, to adopt Resolution No. 2005-P004 recommending to the City Council adoption of the Negative Declaration and approval of an amendment to Title 17, Zoning, Article VIII.A Retail Shopping Center (C-3A) Zone, Section 37-45.A., Uses Permitted, to add "pet day-care", pet store", and "veterinary" uses.

The motion carried 4:0.

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PH-3. Zoning Code Amendment, ZCA P-2005007, for Signs in the Public Right of Way.

Commissioner Muranaka moved, seconded by Commissioner Tiggs and unanimously carried, to receive and file the affidavit of notice of the Public Hearing.

City Attorney Carol Schwab introduced Heather Iker, Deputy City Attorney and Deborah Fox, of Fox & Sohagi, both assisted in this matter. Carol Schwab then provided an overview of the staff report.

- Staff performed a technical cleanup to resolve and clarify some language issues regarding placement of signs in the right-of-way which the Court found to be vague and additionally has included language to clarify that the prohibition of signs in the right-of-way applies to residential zones.*
- Staff has addressed the types of signs to be authorized for placement as those which regulate traffic and traffic safety; identify or provide directions to streets; help provide access to public services; address safety or emergency issues; promote civic events or activities; display flags or emblems of federal, state or local governmental agencies; and, which promote policy statements of the City and/or Redevelopment Agency, i.e., carpooling and recycling.*

Chair Malsin requested Commissioners' questions of staff.

Chair Malsin

- Why does the recommendation indicate it is best not to include the School District within the list of agencies permitted?

Ms. Fox

- While there is strong argument for including the Redevelopment Agency because it promotes economic growth and a variety of programs within the City, the School District is a distinct and separate entity and, although findings can be made indicating that it is very tied to the City through its authorization in the charter, etc. and therefore, it could be thought of as an appropriate agency. However, the risk management factor is best resolved by not including the School District.*
- Judge Feess, who heard the Davidson case, expressed hesitation on the issues of government speech and the government selecting "favored" speakers; so augmenting the list increases the likelihood that a further determination will be made indicating that speakers are being favored and not be well received by Judge Feess.*
- No published case could be found validating inclusion of the School District one way or the other; so there is no precedent that can be applied to tailor an argument.*

Chair Malsin opened the Public Hearing.

Jeff Cooper encouraged the Commission to endorse Option B.

Vice-Chair Thomas moved, seconded by Commissioner Tiggs and unanimously carried, to close the Public Hearing.

Commissioner Tiggs

Commissioner Tiggs

- Both options resolve the language issue expressed by Judge Feess over the use of controlled, owned, or approved signs.
- Adding exceptions does increase the risk of another constitutional challenge.
- Would like to see the inclusion of the School District but will defer to counsels' advice and recommendation on that issue.

Commissioner Muranaka

- Favored the adoption of Option A because Option B raises the specter of more potential litigation, is highly impractical, and would be an enforcement nightmare.
- The Negative Declaration should be included in the resolution.

Vice-Chair Thomas

- Recommended the adoption of Option A.

Chair Malsin

- Culver City is a welcome respite from the pervasive advertising and other types of signage found on most of the streets of Los Angeles.
- While he has deep respect for the convictions which prompted Ms. Davidson to fight for her understanding of the First Amendment as it applies to Culver City's public rights-of-way, it has created an unfortunate situation on many levels. It has disadvantaged others by provoking the City to address this issue in order to protect community standards and it will create problems for people simply wanting to use the City's banners.
- Culver City is a wonderful place and provides ample opportunity for people to express their opinions.
- People find ample opportunity to place signs visible from the City's commercial rights-of-way by posting them on construction sites, abandoned buildings, et cetera.
- Political candidates cannot buy their way to visibility along the City's streets during campaigns but are motivated to walk through the neighborhoods to earn the trust of the City's residents and businesses thereby enabling them to place their signs in as many locations as possible.
- Very comfortable with Option A as written.

Commissioner Muranaka moved, seconded by Vice-Chair Thomas, to adopt Resolution No. 2005-P008 recommending that the City Council adopt a Negative Declaration finding that the project will not have a significant adverse impact on the environment; and, approve Zoning Code Text Amendment, ZCA P-2004007 to amend various provisions of Sections 37-78.C and D of Title 17 as amended.

The motion carried 4:0.

CONSENT CALENDAR

CONSENT CALENDAR

C-2. Secretary's Report.

Commissioner Muranaka moved, seconded by Commissioner Tiggs, to receive and file the Secretary's Report. The motion carried unanimously.

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C-2. Approval of Minutes.

Vice-Chair Thomas moved, seconded by Commissioner Tiggs and unanimously carried, to approve the minutes of January 12, 2005 and February 9, 2005 as amended.

Vice-Chair Thomas moved, seconded by Commissioner Tiggs, to approve the minutes of January 26, 2005 as amended. The motion carried 3:0 with Commissioner Muranaka abstaining.

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ITEMS FROM STAFF

Ms. Jordan advised the Commissioners of their upcoming meetings and agenda items.

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ITEMS FROM PLANNING COMMISSION

Chair Malsin indicated he has noticed a number of construction sites that are covered with graffiti and requested a standard condition of approval be incorporated that requires applicants to remove graffiti on their project sites.

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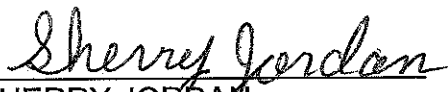
ADJOURN

Commissioner Muranaka moved, seconded by Commissioner Tiggs and unanimously carried, to adjourn the meeting at 9:39 p.m. to March 23, 2005 at 7:00 p.m. in the Mike Balkman Council Chambers at City Hall.



D. SCOTT MALSIN, CHAIRPERSON
PLANNING COMMISSION
CITY OF CULVER CITY, CALIFORNIA

ATTEST:


SHERRY JORDAN
Senior Planner