

**Planning Commission Minutes  
Community Chambers  
Wednesday, August 26, 2009, 7:00 p.m.**

Commissioners Present: Mark Braly, Greg Clumpner, Lucas Frerichs, Rob Hofmann, Kris Kordana, Mike Levy, Terry Whittier

Commissioners Absent: Ananya Choudhuri

Staff Present: Mike Webb, Principal Planner; Eric Lee, Assistant Planner; Lynanne Mehlhaff, Planning Technician

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**1. Call to Order**

Chairperson Braly called the meeting to order at 7:01 p.m.

**2. Approval of Agenda**

The agenda was approved by consensus.

**3. Staff and Commissioner Comments (No action).**

There were no staff or Commissioner comments.

**4. Public Communications**

There were no public communications.

**5. Consent Items**

- A. Planning Commission Minutes of May 27, 2009**
- B. Planning Commission Minutes of June 3, 2009**

**Action:** Commissioner Whittier and Vice-Chairperson Levy pointed out corrections to the minutes of May 27, 2009 on pages 2 and 3. Commissioner Whittier moved approval of the May 27, 2009 minutes with the noted corrections.

**AYES:** The minutes of May 27, 2009 and June 3, 2009 were approved by consensus 7-0.

## **6. Public Hearings**

### **A. PA #65-08, 642 F Street, Demolition #05-08, Design review #32-08, Minor Modification #06-08; (Eric Lee, Assistant Planner)**

Public Hearing to consider approval to demolish an existing 250 square-foot detached garage/storage building and construct a new 501 square-foot detached accessory dwelling unit for the property located at 642 F Street. The project proposes a rear yard setback of zero feet along the alley for a portion of the new structure, a height of 16 feet at its peak, and a Minor Modification to increase the square footage of the accessory structure to 501 square feet. The project includes site improvements for parking space off the alley. The covered parking will be provided by a detached open trellis with a three-foot rear setback and six-inch side setback.

Eric Lee, Assistant Planner, presented the staff report.

Chairperson Braly opened the public hearing.

Steve Ferguson, applicant, said he was helping the owner with the design of the accessory structure. He answered questions regarding the eaves at the 0 setback. He said they could design the eaves of the accessory structure so they wouldn't impact the setbacks.

Chairperson Braly closed the public hearing.

Commissioner Hofmann read the findings for the Minor Modification and said he felt the increased size wasn't "necessary" for this project and was concerned by staff interpretation of the ordinance. He was also concerned with #3 of the Downtown Davis Traditional Neighborhood Guidelines which explicitly states that there needs to be a clear reason for exceptions to go above the square footage allowed for an accessory structure. Staff responded and read the language from the code sections and pointed out that the Planning Commission has the discretion to make the determination of what is necessary for specific and limited circumstances.

Staff and the Commission discussed the code and intent of the project to have a more functional and livable second unit with the additional 44 feet.

Vice-Chairperson Levy said that he would like the City Attorney to give interpretation to the word "reasonable" and to have clarification on what it means in the future so people know what to expect. Staff said the interpretation of what is reasonable is a decision that is before the Commission and must be decided based upon the merits and circumstances of the project.

**Action:** Commissioner Whittier moved approval with the condition that there would be no overhang of the eaves into the alleyway. Commissioner Clumpner seconded the motion. Commissioner Hofmann said he couldn't make the minor modification consistency finding and therefore would vote no.

AYES: Whittier, Clumpner, Frerichs, Kordana, Braly

NOES: Hofmann, Levy

The motion passed 5 to 2.

**B. PA #62-08, 525 Rowe Place, Midtown Animal Clinic, Conditional Use Permit #09-08, Design Review #28-08; (Lynanne Mehlhaff, Planning Technician)**

Public Hearing to consider approval of a Revised Conditional use Permit and Design Review to allow construction of a new two-story building and demolition of the existing building at 525 Rowe Place. The project proposes to build the new 5,301 square foot two-story building in the existing parking lot (southeast corner) of the parcel while still operating the animal clinic in the existing building. The hours of operation, number of employees and number of employees and clients will remain the same during construction as well as for the proposed new building. The new parking lot will be built in place of the existing building after the new building is complete. The new parking lot will contain 16 parking spaces. The owners have made parking arrangements for employees and clients during construction of the new building.

Lynanne Mehlhaff, Planning Technician, presented the staff report.

Chairperson Braly opened the public hearing.

Joe Wicentowich, of Scholar Architecture, clarified the amount of LEED points they were trying to achieve with the building design.

Cliff Gravem, owner of Midtown Animal Clinic, explained the parking situation of the project.

Bob Mustard, a neighbor near the business, was concerned with parking spillover from the business as well as during construction. He said that Bernard's Tire next door stacks a lot of cars and the parking could be a problem. He was also concerned with noise mitigation in the walls with convalescing dogs overnight. He suggested skylights for a second story light source.

Chairperson Braly closed the public hearing.

Commissioners discussed the parking lot design and ways to achieve more spaces with the landscaped islands.

**Action:** Commissioner Clumpner moved approval of the Conditional Use Permit and Design Review with a revised Condition #18, Parking, to state that prior to the issuance of a building Permit, the applicant shall work with Community Development Department staff and the City Arborist to explore opportunities to provide as many standard parking spaces, 9' x 18' as possible. Commissioner Hofmann seconded the motion.

**AYES:** Whittier, Clumpner, Frerichs, Kordana, Braly, Hofmann, Levy  
The motion carried unanimously 7 to 0.

Planning Commission recessed at 8:45 p.m.  
Planning Commission reconvened at 8:50 p.m.

- C. PA #52-08, 2532 Oakenshield Road, Appeal #4-08; (Mike Webb, Principal Planner)**  
Public Hearing to consider a determination by the City community Development Department that is being appealed by a property owner next to 2532 Oakenshield Road. City staff determined that an eight foot tall courtyard wall was built in compliance with the provisions of the City Zoning Ordinance. This determination is being appealed to the City Planning Commission pursuant to Section 40.35.030(5) and Section 40.35.040 of the Davis Municipal Code. In accordance with the municipal code a public hearing has been scheduled before the City planning Commission to make a final determination.

Mike Webb, Principal Planner, presented the staff report.

Chairperson Braly opened the public hearing.

Dianne Swann, appellant and neighbor to the east of the property with the wall, commented on the city handouts. She pointed out that the Fence, Wall, Hedge requirements said that the PD Zoning had special requirements. The Planned Development requirements stated that "fences have a 6'6" maximum height allowed on property lines." She pointed out that the City's letter to rescind the Notice of Violation letter ignored the Village Homes PD requirements. She felt staff was misinterpreting the PD requirements.

She mentioned that the height restriction of walls is for the benefit of neighboring home owners so large houses or walls don't tower over them. She said if the neighbors would concede to some type of modification to the wall, then they would allow the wall to remain in its location. She explained the history of the fence problem and their attempts to mitigate the problem with the neighbors.

Rob Johnston, owner of property next to the appellant, clarified that they built the wall on the property line where a 6'6" fence was previously. He explained how the remodel was to open the house up into the courtyard. He said the Village Homes Architectural Review Board approved their remodel plans and they built the wall by the end of 2003.

Pattie Fong, member of the Architectural Review Board of Village Homes, said no one commented or was opposed at the notified ARB meeting when this wall was reviewed. She said the ARB tried to mediate this issue with the neighbors before but there was no resolution. The ARB said this was a wall and not a fence so therefore it was approved at eight feet.

Yvonne Hunter, neighbor down the street, said she had signed the notice at the time and saw the plans and approved of it.

Alan Jackson, Village Homes Board Liaison to the Architectural Review Board, explained that he helped try to mediate the issue with the neighbors. He said the wall is part of the house and the owners could eventually put a roof on it and enclose the area if they got a building permit. He supported staff recommendation.

Diane Swann, appellant, clarified that they were not shown the plans of the wall when they first signed off on seeing the plans. A page was missing on the wall which they did not know about.

Chairperson Braly closed the public hearing.

Commissioners comments:

- Disappointed that the structure was built in August of 2003 and the neighbors had every opportunity to participate in the process, saw it constructed but waited five years to come to the City to require the next door neighbor to take the structure down.
- Just reading the dates, the neighbors were noticed of the meetings and the City had the plans that showed the wall being eight feet high. The ARB did follow their procedure and noticed all the neighbors.
- If a person was properly notified, it doesn't mean you can come back later and disagree with the decision. It should have been acted on then.

**Action:** Vice-Chairperson Levy moved to sustain the Community Development Department's decision to rescind the Notice of Violation on the grounds that the structure in question is a wall and not a fence and therefore the Village Homes PD zoning or Section 40.27.060(c) do not apply. Commissioner Frerichs seconded the motion.

After some discussion, Vice-Chairperson Levy said he disagreed with staff that there was no distinction between a wall and a fence; a wall was part of the structure of the house and a fence can mark a property line when it isn't the wall of a house.

Commissioner Clumpner said he had concerns that there was no clear definition of a wall and a fence and was uncomfortable with making a distinction so as to settle the issue. He would rather

not declare it a wall or fence but state that it was allowable in the building permit and therefore the City did not err in their findings on this.

Commissioner Whittier substituted the motion stating the Planning Commission deny the appeal based upon the determination that staff did not make an error in its conclusion and that there is nothing in the ordinance which would overturn their decision. Commissioner Clumpner seconded the substitute motion. Vice-Chairperson Levy suggested getting an opinion from the City Attorney on the definition of wall and fence.

The substitute motion to deny the appeal based on the determination by staff was voted on as follows:

AYES: Whittier, Clumpner, Levy, Frerichs, Kordana, Braly

NOES: Hofmann

The motion passed 6 to 1.

Vice-Chairman Levy moved that the basis of the Planning Commission's determination is because the structure is a structure apart from a fence. Commissioner Kordana seconded the motion.

AYES: Whittier, Clumpner, Levy, Frerichs, Kordana, Braly

NOES: Hofmann

The motion passed 6 to 1.

Staff mentioned that the discussion on fences and walls and structures that are dealt with on interior portions of properties should be discussed at a future meeting for guidance for staff.

Vice-Chairperson Levy moved that the staff decision was also appropriate because the request was untimely by the appellant, they waited too long to make their claim that the structure be removed. The motion died due to lack of a second.

## **7. Business Items**

There were no business items.

## **8. Informational Items**

### **A. Planning Commission Schedule**

Mike Webb went over future Planning Commission meeting schedules.

## **9. Staff and Commissioner Comments (continued).**

Vice-Chairperson Levy suggested changing the accessory ordinance in the future to address the circumstance where you have a low FAR on a property and an auxiliary (accessory) structure FAR combined with the primary structure is still lower than the allowable threshold, you could have an exception to allow the auxiliary (accessory) structure to be increased more than the primary structure as long as the total FAR for the property combined was not over the allowable FAR. Then you wouldn't need to do a Minor Modification which was done in the first public hearing tonight.

Commissioner Frerichs said he would not be able to attend the September 9, 2009 meeting due to a work conflict.

**10. Public Communications (continued).**

There were no public communications.

**11. Adjournment to the next regular Planning Commission meeting to be held on Wednesday, September 9, 2009 in the Community Chambers (23 Russell Boulevard).**

The meeting was adjourned at approximately 10:49 p.m.