

**FINAL MINUTES
REGULAR PLANNING COMMISSION MEETING
AUGUST 25, 2009
CORTE MADERA TOWN HALL
CORTE MADERA**

COMMISSIONERS

PRESENT:

Chair Bruce Mace
Commissioner Richard Esteb
Commissioner Patrick Pagnillo
Commissioner Peter Schwartz
Commissioner Sloan Bailey

STAFF

PRESENT:

Robert Pendoley, Planning Director
Dan Bell, Senior Planner
Nancy Salcedo, Minute Recorder

1. OPENING

A. Call to Order

B. Pledge of Allegiance

C. Roll Call

All the Commissioners were present.

2. PUBLIC COMMENT: NONE

3. CONSENT CALENDAR: NONE

4. CONTINUED HEARINGS: NONE

5. NEW HEARINGS

A. 101 CASA BUENA DRIVE, CONDITIONAL USE PERMIT APPLICATION NO. 09-003, PATTERSON TRUST (OWNERS) (DR. RITA MELKONIAN M.D., APPLICANT)-To allow a new Medical Use and a Variance to parking standards. (Zoning: C-3 Highway Commercial District.) (Planner: Dan Bell)

Senior Planner Bell presented the staff report for which he used a slide presentation. He explained that the applicant is requesting a Conditional Use Permit and Parking Variance to establish a new medical use in the office building located at 101 Casa Buena Drive. Medical and dental offices and clinics are listed as conditional uses in the C-3 District.

He explained that the review of the development history of the building was important in understanding the application and the on-site parking situation. In 1959 the Corte Madera Board of Adjustments approved construction of the 6,012 sq. ft. two-story commercial building with a total of 22 on-site parking spaces. In 1975 the Board of Adjustments approved a Parking Variance to allow 16 spaces where 22 were required due to a subsequent road widening of Casa Buena Drive where 4 uncovered parking spaces fronting Casa Buena Drive were lost. The Variance granted also allowed one of the 4 covered parking spaces to be converted to office space, resulting in 3 remaining covered spaces and 13 uncovered.

The current property owner purchased the building in 1986. The current owner claims that at that time a second covered parking space had already been converted to office use. There is no record on file to show that a permit was issued for the conversion. In 2004, the current owner converted the 2 remaining covered parking spaces to office use. Nor is there is a permit on file for that conversion.

The primary concern with the applicant's request for a Conditional Use Permit for new medical office space to replace general office space at this site is to determine the net parking requirement.

The current Zoning Ordinance (adopted in 1994) increased the parking requirement for medical uses from 1 space/225 sq. ft. to 1 space/150 sq. ft. of gross floor area, and for the first time required a Conditional Use Permit for medical uses. This change made it more difficult for a medical use to replace a general office use, as subsequent replacement uses must have an equal or lesser parking requirement than the existing uses. The 1975 parking variance that allowed 16 on-site parking spaces is still in effect, so long as the same conditions exist as existed in 1975.

The Zoning Ordinance requires additional on-site parking spaces based on the differential between the old general office use and the proposed medical use. On the second floor, the proposed medical use is replacing 1,460 sq. ft. of general office space. This change would require 4 additional parking spaces since medical use requires on-site parking at 1 space/150 sq. ft. verses the 1 space/250 sq. ft. of gross floor area required for general office use.

On the ground floor the proposed medical use would take over 595 sq. ft. of space currently used by Urgent Care (a like-kind exchange) and occupy the 950 sq. ft. of office space that had been illegally converted from 3 covered parking spaces. The proposed medical use in the 950 sq. ft. on the ground floor would trigger an additional 6 spaces plus the three spaces lost in the illegal conversions.

The net result of this proposed medical use is that 13 additional spaces are required in addition to the 16 parking spaces legally authorized in 1975, for a total of 29 spaces on site. Anything less would require a Variance. The applicant is requesting a Parking Variance for 18 on-site parking spaces where 29 are required. Senior Planner Bell reviewed the proposed Parking Plan, and explained that the applicant was informed that such a severe Variance is customarily unwarranted, since variances are intended to resolve hardships associated with physical conditions on the site, not characteristics of uses.

The applicant wishes to argue in favor of the Conditional Use Permit based on actual parking demand data characterized by the proposed medical use and each of the uses remaining within the building. The applicant's primary argument is that the proposed medical use would only operate an average of 15 hours per week, which includes one doctor, two employees and a maximum of two patients per hour, notwithstanding the sizable 3,005 sq. ft. space, a relatively large medical office. The applicant has provided a parking demand analysis, and argues that 18 parking spaces would be adequate for this medical use and the uses remaining in the building.

He explained that the Planning Commission does have some discretion when evaluating the parking requirement for a specific use. Section 18.20.030 of the Zoning Ordinance states, "For a use not specified in the schedule, the same number of off-street parking spaces shall be provided as are required for the most similar specified use." The unique characteristics of Dr. Melkonian's proposed medical use could arguably be interpreted as a combination of medical and storage space on the ground floor and office space on the second floor for the purposes of determining real parking demand. Storage requires 1 space/800 sq. ft. of gross floor area.

The Commission has additional discretion in that the upper and lower floor parking demand for the proposed medical use need not be additive since the two floors would not be used simultaneously. Section 18.20.020(4) says that the sharing of spaces on the same site can be allowed with a "different hours of operation" provision.

If this interpretation were acceptable to the Commission, the parking analysis would be different. On the upper floor, the proposed office portion of the medical use would be

replacing general office, in a like-kind exchange, which would require no additional spaces. On the ground floor the proposed medical use would take over 595 sq. ft. of space currently used by Urgent Care (a like-kind exchange) and a split of medical/storage use would occupy the 950 sq. ft. space illegally converted, which would require 2 additional spaces. The additional spaces on the ground floor could be waived by incorporating the "different hours of operation" provision. In this scenario, a variance may be not applicable, and parking could be governed by the Conditional Use Permit.

If this interpretation is acceptable, approval of a Conditional Use Permit would be based on the specific operational characteristics of Dr. Melkonian's medical practice and only like-kind types of businesses could replace the businesses included in this approval. Typically, a detailed monitoring report would be required.

If the Commission does not agree with all or part of this interpretation, the covered parking spaces lost could be restored by reconverting the 950 sq. ft. of space on the ground floor to 3 covered parking spaces.

He concluded with staff's recommendation that the Commission hear the description of proposed uses and determine whether they are compelling facts to find that a parking variance is not applicable. Such a determination should be articulated in detail to provide staff direction to develop necessary findings and conditions for a final vote at a subsequent hearing.

Chairman Mace asked if the Commissioners had questions of staff.

Commissioner Esteb asked how many spaces would be required if the building remained office space with no medical use, and whether the building was in compliance at the time the office use ended.

Senior Planner Bell explained that only since 1994 have medical office uses required additional parking.

Planning Director Pendoley said the original Variance is the controlling factor in the parking requirement.

Senior Planner Bell said the caveat is that the violation requires returning the three converted parking spaces. If no project were proposed, staff would cite the property for this violation.

Commissioner Schwartz asked how space is defined within the building.

Senior Planner Bell said it is defined purely by gross square footage. Listing the upstairs as general office, and downstairs as a combination of medical and storage uses is the only way to get out of the need for a Variance by way of a properly conditioned Use Permit.

Commissioner Schwartz asked for clarification regarding the calculation of aggregated spaces required.

Senior Planner Bell explained that with the “shared use” analysis does not have to add the parking requirement for the medical use on both floors. Therefore, while the upper floor uses require 6 spaces and the downstairs uses require 5, the scenario requiring 5 spaces could be omitted.

Chair Mace said the construction work on the second floor would involve the Building Department, and asked who performed the parking analysis.

The applicant said Mohamed Sadrieh was the architect who performed the analysis.

Chair Mace asked whether the purchaser in 1986 had the existing problem with conversions, which Senior Planner Bell confirmed was stated by the owner.

Chair Mace asked for the applicant's presentation.

Dr. Melkonian, of 21 Tamal Vista said she has been in practice for 19 years, and moved to Corte Madera 6 years ago. She said she is a sub specialist in gynecology and urology, and that her practice is based on referrals. Her clients come from throughout the Bay Area. The patient rooms are dedicated for specialty treatments, and because of the type of her practice, she wants a big space. Her practice has generated over 6,000 charts she is legally required to keep for 10 years, and she is short of storage. She said she is not in Corte Madera full time, but that she has practices in San Francisco and Petaluma, and that she is often in hospital. Only the receptionist remains in office when she is elsewhere, as she brings her staff with her. She anticipates being in Marin Tuesdays for a 1/2 day in and Wednesdays 1/2 to full day, with no work on Fridays. She also said that although the space is large, she couldn't be up and down stairs at once. Examining rooms are limited to the 950 sq. ft area downstairs. She said she is proposing a use with fewer clients than the previous occupant of the building, and added that she would be replacing a very busy church on the second floor with 10-15 people coming to meetings.

Commissioner Bailey asked if any possibility had been considered to squeeze in additional parking.

Dr. Melkonian said the proposal has included additional parking. She said we did not know why this has not been accepted.

Commissioner Bailey asked if any consideration had been given to the possibility of adding more parking beyond what is proposed.

Senior Planner Bell said an additional space had been proposed in the front yard as part of the original proposal but that it was too small and the dimensions were off, so it was dropped.

Commissioner Pagnillo said if there was no exit out back there may be a possibility to add more spaces.

Chair Mace asked when Dr. Melkonian purchased property.

Dr. Melkonian said she has not purchased yet, and is waiting for the permit. She added that when people come to her practice, they spend time in Corte Madera and support the local businesses.

Ava Bernard, the applicant's real estate broker said she been dealing with the property since December, and that during that time she had never witnessed a parking problem. She added that she had visited the neighbors, including Peet's Coffee, Tamalpais Bank, the apartment building across the street and the dentist, and that all had signed a petition in favor of the proposal, which she presented to the Commission. She added that the apartment manager recommended a two-hour parking limit for on-street parking because residents park here to catch commuter buses, and that the manager from Tamalpais Bank also said there was a lot of parking abuse in the area.

Jim Rhodes, representing the Patterson Trust said that the widening of the roadway had displaced some parking, and that the property owner at the time had had to get a Variance to account for spaces lost. He said the Town should not treat all medical uses the same. The unique aspects of Dr. Melkonian's practice would not require a lot of parking, and that requiring one space for every 150 square feet of floor area is not reasonable in this case. Since Dr. Melkonian sees no more than 2 patients per hour, abundant parking exists. He said the Commission should consider the combined use with a good portion for storage, requiring just one space per 800 square feet. It is in the best interest of the Town of Corte Madera to make findings for the Variance. He

said there are a lot of technicalities in the staff report that he assumed were correct. Commissioners have the ability to grant the Variance, and he requested they use discretion and common sense and grant the permits requested. He concluded that Mrs. Bernard's statements of approval from surrounding tenants show that the primary people involved have no objection.

Randy Patterson, owner said his father bought the building in 1986 and that it had been Randy's job to take care of building. He said he converted the third and fourth covered parking space to a commercial space, put in a non-bearing wall to separate and took the garage doors out. He seismically retrofitted the soft story after the Loma Prieta earthquake. He said that to put the 3 lost spaces back would eliminate the ADA compliant parking space and ramp, which now occupy this space. If a new ramp were constructed along side of building where the driveway is, there is not enough room and the ramps would replace grass in the front yard.

Dr. Warren Sifa of the Medical Center of Marin at 101 Casa Buena Drive said the prior music school on the ground floor brings in more traffic than Dr. Melkonian's practice would, and that the combination of two practices would bring a higher level of prestige to the property.

Commissioner Bailey asked if the Town had granted any variance of this nature in recent years. Senior Planner Bell and Planning Director Pendoley both said they knew of none in their time here.

Commissioner Bailey asked how the monitoring would work.

Senior Planner Bell said the Town could require a yearly reporting showing who is occupying the space, and what their experience has shown.

Planning Director Pendoley said if the Commission decided to continue the hearing, staff would then draft conditions, including an outlining of an annual reporting program, which could begin with a six-month report, for the Commission's approval.

Commissioner Bailey asked if a Variance were granted, would it remain in effect if the property were sold.

Senior Planner Bell reiterated that staff was not suggesting a Variance, rather a Conditional Use Permit, but that the Use Permit would run with the land. In the example that the existing clinic on ground floor left, the successor tenant would have to

be a like-kind use. Staff would ensure future business licenses were like-kind exchanges and it would run with the land.

Planning Director Pendoley said it might be difficult for another medical office to follow in the footsteps of Dr. Melkonian's practice with the unique space characteristics.

Commissioner Pagnillo asked whether the Town could ask the Patterson Trust to pay back fees for permits.

Planning Director Pendoley said the mechanism to request this does exist.

Commissioner Pagnillo said he feels the two choices are do nothing and require the 3 covered parking spaces to be restored, or approve Dr. Melkonian's proposal, and that it would be difficult to do anything in between.

Commissioner Esteb agreed. One concern regarding the conversion of the 4 covered parking spaces (1 approved) into general office space is the seismic aspect of the construction done without permits or building inspection. The Building Inspector would have to inspect the construction to determine whether it meets the requirements of the Building Code. He added that the applicant states that her practice amounts to 15 hours per week in Corte Madera for now, but there is no way to limit future expansion. He added that public transportation along the Highway 101 corridor could warrant reducing parking requirements.

Commissioner Schwartz said he is familiar with Dr. Melkonian's practice, and agrees with how it is described in the application, but that he doubted clients would arrive by public transportation. He said he has less of an issue of how Dr. Melkonian is proposing to use the building, and that he trusts there would be minimal parking issues. He said the issue he has is how does the Town monitor future owners/tenants.

Commissioner Pagnillo asked about the possibility of a rider that says the use doesn't go with land.

Planning Director Pendoley said there was no such mechanism, but that the Commission does have a great amount of discretion. The Commission could condition the number of practitioners. As part of monitoring the permit, the permit holder signs an affidavit under penalty of perjury. He said it would be unfortunate to commit the Town or the permit holder to perpetual reporting, but that reporting for some reasonable period at six-month intervals would be appropriate. When the Town receives a parking compliant, staff always has the right to inspect with a Conditional Use Permit.

The applicant pays for the time it takes for staff to review the compliance report, and the Commission can require that the report comes before the Commission.

Commissioner Bailey asked about the cost of annual compliance.

Planning Director Pendoley said the cost would be in the 100s of dollars.

Chair Mace listed as issues the illicit illegal use and illegal conversion that took place, and tandem parking space and curb cut to add a spot. He asked who provided the parking matrix. He said a Variance would not work. He said there are not many possible future uses for the property under the proposed use permit.

Planning Director Pendoley said this permit only goes to this use. If there is a change of use, the requirement goes back to the original Variance provisions.

Chair Mace noted the absolute severity placed on any future use. The additive element to circumnavigate the parking issue is troublesome. He said it would be hard to find a like-kind use in this case. He said the construction work and interior work must be verified by the Building Department. There is a reconciliation problem with consistency. He asked if shared hours of operation would be exclusionary of other businesses, and whether this would be verified. He thanked the applicant for her years of business in Corte Madera, and appreciated the thoughts on public transportation. He said the verification of building safety should be borne by the buyer/seller.

Planning Director Pendoley said both the Zoning Ordinance and the Building Code require the non-permitted construction space to be resolved. We would have to verify code compliance with the parking conversion construction. Portions may have to be rebuilt. If the Conditional Use Permit is approved, the Building Department would still open up construction to ensure it was done to code.

Commissioner Bailey said there were positive statements from surrounding businesses, and that it was important to exercise common sense, and have an understanding what is really going to happen here, with a monitoring program in place. He said he is not sure the parking matrix provided was done well, and that it reveals thin logic and several errors. He said he wished the applicant could have squeezed additional spots into the proposal to bring the Conditional Use Permit parking plan closer to what is required by the Zoning Ordinance.

Commissioner Pagnillo asked what would happen if there are problems at the plan monitoring phase.

Planning Director Pendoley said the permit would be brought before the Commission to revoke or review.

Commissioner Esteb said he preferred the option of no curb cut and no tandem parking. He agreed to opening the building for seismic upgrade inspection. He said he would like to leave parking issues and focus on making the building safe, and to provide quality monitoring.

Chair Mace asked what the parking requirement would be if the building were 100 percent general office use.

Senior Planner Bell explained that with the Zoning Ordinance parking requirement of 1 space per 250 sq. ft, the number of required on-site parking spaces would number in the high 20s. The Conditional Use Permit allows the Planning Commission to look at the unique characteristics of the medical use as a combination of office, medical and storage, and secondly, the shared use between up and down stairs. The Conditional Use Permit would reflect this specific analysis only, and any replacement use would have to be similar.

Chair Mace said eventually the use will change, and when it does the next tenant will have to show they will meet the on-site parking requirement, using perhaps off hours, skewed hours, and exclusionary hours.

Commissioner Schwartz said the next owner could be saddled with the need for an additional 10 spaces if it did not conform to the Conditional Use Permit.

Senior Planner Bell said the next owner could go back to the original Variance, so long as all the same conditions exist as existed in 1975.

Planning Director Pendoley said the property is grandfathered at 16 spaces, and complies with the Zoning Ordinance as long as it is dedicated to office use. But to get there, the owner must take out the office space in the area of the illegally converted spaces. A problem is built into the property already.

Chair Mace said removing the construction in the area of the lost spaces is inevitable, and that the Variance could not be upheld because of the ADA requirement.

Senior Planner Bell said there was a net reduction of 3 spaces. The alcove parking works if Dr. Melkonian's project has an obligation to replace 3 spaces.

Senior Planner Bell said the Commission does have the discretion of the Conditional Use Permit to go forward.

Commissioner Pagnillo said Dr. Melkonian could go back to the Variance when she is no longer occupying.

Senior Planner Bell said in 5 years if someone new came in and wanted to introduce a new use they could come before the commission and propose one.

Planning Director Pendoley said the parking ratios in the Zoning Ordinance are break even and efficient, and have been effective in practice, but that other options could be put before the Commission.

Senior Planner Bell said regarding the curb cut that the green-painted street parking is 49 linear feet, and with the curb cut, it would go down to 40'. Either way, there are 2 on-street spaces regardless of curb cut.

Planning Director Pendoley said the Commission could not make a decision tonight because staff needed input from tonight's hearing to prepare the appropriate conditions.

Commissioner Schwartz said he would like more information on the parking study.

Planning Director Pendoley said it would be helpful if the Commission could list the issues they would like to see addressed.

Chair Mace said he agreed and itemized: Parking matrix verification

Senior Planner Bell said the preparer is not here tonight, but that he understood that it had been a visual analysis resulting in the matrix. He asked what more the Commission might need.

Commissioner Schwartz said he would like see more documentation on assumptions underlying the analysis, for example that practice over last 20 years has shown.

Commissioner Pagnillo said he would like to get an idea on what the monitoring program might look like, and that he thought its duration should exceed 1-½ years.

Dr. Melkonian asked what more information she could provide about the surveyor.

Senior Planner Bell said he hears the Commission saying they want to ensure the adequacy of document, especially the data pertaining to the emergency medical center.

Commissioner Esteb said the representative from the emergency medical center is here tonight, and suggested the Commission ask him about adequacy of the data pertaining to their practice.

Dr. Sifa of the Marin Medical Center said the parking demand shown in the survey are relatively accurate.

Commissioners agreed they are satisfied with the adequacy of the parking matrix document.

Senior Planner Bell said staff would need time to work on the list of conditions for the Conditional Use Permit and have Dr. Malkonian review the conditions before returning to the public hearing.

Commissioner Esteb said he did not find parking to be an issue.

Planning Director Pendoley said the Zoning Ordinance says all uses shall be parked on site.

Chairman Mace said this is a complex application, with the original Variance and potential for it to apply, the potential Conditional Use Permit, and monitoring of the Use Permit in the future.

Commissioner Schwartz said his primary concerns with the Use Permit are about future replacement uses.

Planning Director Pendoley said the Commission's considerations would be recorded in the findings. He asked for a 30-day continuance.

MOTION: Motioned by Commissioner Pagnillo, seconded by Commissioner Bailey and unanimously agreed to continue the hearing for 30 days.

Dr. Melkonian said the bank has been waiting for the Town's approval for the past 6 weeks, and that they are not going to be happy with another 30 days.

Chair Mace said it is important for the applicant to understand the value of the process she is going through tonight.

Mr. Rhodes asked if the applicant could get assurance that, if conditions are acceptable, the Commission might approve the application.

Commissioner Bailey said the applicant could get a copy of the minutes as verification of the status of the proposal, but that it would be inappropriate for the Commission to represent a decision on something that has not yet been decided.

6. ROUTINE AND OTHER MATTERS

A. REPORTS AND ANNOUNCEMENTS

i. **Commissioners:** Commissioner Esteb attended the Town Council meeting.

ii. **Director:** Planning Director Pendoley added that the Council interviewed candidates for the Citizens Advisory Committee for the Housing Element which will hold its first meeting a week from tomorrow.

B. MINUTES: Planning Commission Meeting Minutes of August 11, 2009 Motioned, seconded and approved as amended. Commissioner Schwartz said recused was misspelled on page 5, and that on page 10 "Chair Mace and he has he heard" contained an extra he.

7. ADJOURNMENT: The meeting was adjourned at 9:08 p.m. The next Planning Commission Regular Meeting is to be September 8, 2009 at 7:30 p.m.