

**FINAL MINUTES
REGULAR PLANNING COMMISSION MEETING
NOVEMBER 24, 2009
CORTE MADERA TOWN HALL
CORTE MADERA**

COMMISSIONERS

PRESENT:

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

STAFF

PRESENT:

Bob Pendoley, Planning Director
Dan Bell, Senior Planner
Larisa Roznowski, Associate Planner
Nancy Salcedo, Minute Recorder

1. OPENING

A. Call to Order

B. Pledge of Allegiance

C. Roll Call

All the Commissioners were present with the exception of Commissioner Schwartz.

2. PUBLIC COMMENT:

Martin Dielik said was speaking on behalf of his fiancée, wife Cindy VanDeVere, the owner of 107 Redwood Avenue, regarding the Commission's approval of the project at 113 Willow Avenue. He said he and his fiancée are the adjoining property owners and the ones most impacted by the decision. He said he was preparing photographs showing the shading and other impacts of the proposed residence on their residence to present at the meeting, but that he never received notification. He learned of the project's approval in attempting to contact the owner after the story poles went down. He went to Town Hall and requested to file an appeal, but then learned that the appeal period has expired. He asked if there were some way to have their input considered, as there are potential changes to the project that would make their lives easier.

Planning Director Pendoley provided background. He explained that the 10-day appeal period had closed, but that they can appeal that decision, and file an administrative appeal. He said the Commission should hold off on discussing evidence until a public hearing.

Chair Mace explained that the Town does notice everyone within 300', and that Commission approvals have a 10-day appeal period. He asked about the location of Mr. Deilik's property in relation to the subject property.

Mr. Deilik said they are at a 90-degree angle to subject property, to the right and around the corner. His fiancée added that the proposed roof is in their sun line and the windows look into their bedroom.

Chair Mace said they cannot take testimony this evening, but said that Mr. Deilik should file an appeal if he so chooses.

3. CONSENT CALENDAR: None

4. CONTINUED HEARINGS:

- A. 502-518 TAMALPAIS DRIVE, DESIGN REVIEW APPLICATION NO. 09-019 AND SIGN PERMIT APPLICATION NO. 09-001, TOWN OF CORTE MADERA (PROPERTY OWNER) BARBER SIGN COMPANY (DESIGNER)-**
To allow a revised Master Sign Program for the Park Madera Center. (Zoning: C-1 Local Shopping District) (Planner: Larisa Roznowski)

Associate Planner Roznowski presented the review of the Design Review and Sign Permit application to amend the existing Master Sign Program at Park Madera Center. The Park Madera Center has an existing sign program that was approved in 1982, and was amended in 1994 and 1999. She reviewed slides depicting the locations of the existing and proposed signs. She added that there are a number of additional unpermitted signs that will need to be removed.

She reviewed updated Master Sign Program and the Master Identification Sign, a 100 sq. ft. double-sided, internally illuminated sign at the driveway entrance. She explained that Elevation A-1 allows for one internally illuminated sign for each tenant with a total sign area of 1 sq. ft. for each linear foot of building frontage. Elevation A-2 depicts the proposed one sq. ft. of non-illuminated sign per each linear foot of building frontage for each tenant. The freestanding sign for Tamalpais Travel, as approved February 22, 1994, will not exceed 5' in height and 16 sq. ft. in total sign area, and will continue to

be permitted in the same location. Elevation B-1 depicts the proposed 32 sq. ft. "Pet Club Food and Supplies" internally illuminated sign facing the street. Elevation B-2 shows one 12 square foot, non-illuminated sign. Elevation C-1 allows for 1 double-sided, under-canopy, non-illuminated blade sign per tenant not to exceed 3 square feet. Elevation C-2 depicts one non-illuminated for each tenant not to exceed 1 sq. ft. for each linear foot of frontage. The Directional Sign proposed is a single-sided, non-illuminated sign at the rear of the complex not to exceed 12 sq. ft. on area and 5'-6" in height.

The proposed amended program provides an attractive and cohesive design for all signs on the property. Because the two freestanding signs will be in the same location as the existing freestanding signs, the proposal will not significantly or adversely affect the views, sunlight or privacy of nearby residences. The updated look of the Master Sign Program would be harmonious with existing and future development adjacent to the site. No landforms or vegetation will be disturbed, and the signs are appropriate to the functions of the site. All aspects of the Master Sign Program will provide for safe and convenient access to the property.

She concluded that staff believes the proposed, amended Master Sign Program will provide welcome improvements. Staff is recommending that the Commission approve the Design Review Application by hearing public testimony and adopting the attached resolution with findings and conditions.

Commissioner Bailey recused himself as he lives within a 500' radius of the project.

Chair Mace asked for a presentation from the applicant.

Robert Rogers with Barber Sign Company said this is one of the most challenging locations that they have ever encountered, with the property's location and age. He added that all illumined signs are halo-illuminated. He provided an example, and added that illumination would be of the equivalent brightness of a Christmas tree in one's window. He said there would be a dimmer switch installed, and if there are concerns from residents, they can be mitigated.

Chair Mace noted that the proposal would result in a large Master Identification Sign out in front of the center, and that it would be illuminated.

The applicant said that the background would be a diffuser white for a soft-glowing effect.

Commissioner Esteb asked about illumination timers.

The applicant explained that these have not yet been established with the property management company.

Chair Mace called for public input.

Malcolm O'Neil of 511 Tamalpais Drive said he and his wife would be more impacted by the proposed signs than any one in the room, as they live directly across the street. He said the Pet Club sign is too bright, and that he was concerned about the amount of proposed illumination.

Marlene O'Neil of 511 Tamalpais Drive added that years ago, Pet Club was their only sign problem. She said they had an agreement with the property management company, and that the lights are turned off at 9 p.m. now, which is fine.

Commissioner Esteb said the Commission has discussed illuminated signs before, and asked for a consensus of the previous discussions.

Planning Director Pendoley said the Sign Ordinance prescribes that lights must be off by 11 p.m. or after business closing whichever is later, but that the Commission could be more restrictive. The biggest concern is the timing of the lighting.

Commissioner Pagnillo said he agreed.

Commissioner Esteb said if it has a dimmer, the Commission could review the project's impact 2 weeks after installation and get the neighbor's feedback.

Chair Mace asked the sign maker about the square footage of the backlit portion of the Master Sign.

The applicant said it totaled 60 square feet.

Chair Mace said that is his concern, as the white area would be glowing. There are a lot of homes in this area. He asked if there were also new digital monitors on the pumps at the adjacent gas station, and whether they are part of the design process.

The applicant explained that there is a dimmer switch to adjust brightness, and that this sign doesn't face the residential area. He added that a halo-lit sign emits very little light.

Chair Mace said the Master Sign would be highly visible in this low-lit area. He asked if there were a similar sign the Commission could view for perspective.

The applicant said that the only sign done locally recently is at the Jaguar dealership. Chair Mace said the issues for him are the hours and the brightness, which he cannot visualize without seeing an example.

Planning Director Pendoley said it would be appropriate to put a monitoring condition on the project, and hold a hearing after 30 days from installation to review appropriateness.

Chair Mace said 60 square feet of illuminated plastic seems excessive. He asked if staff could look into this and the gas pump monitors.

Planning Director Pendoley said the gas pumps are located on a separate property, and are not before the Commission tonight.

Commissioner Esteb asked for a constructed sample. He added that the Computer store sign could be worse for neighbors than the Master Sign.

Bill Hester, the leasing agent with Keegan and Coppin, explained that he had urged the center to update their signage to attract people to the center and attract better tenants over time.

Chair Mace asked about illumination and hours of operation.

Mr. Hester said the main sign needs to be illuminated until 10 pm. He added that after negotiations with staff, the proposed sign has gotten smaller, and that it would be harder to read the tenant names from a passing vehicle.

Chair Mace said that might be a good reason to look at a sign example. He asked fellow Commissioners, who were in agreement.

MOTION: Moved by Commissioner Esteb, seconded by Commissioner Pagnillo to continue the hearing to the December 8, 2009 Planning Commission Meeting.

Ayes: Commissioners Mace, Pagnillo, Esteb.
Noes:

Abstain: Commissioner Bailey.
Absent: Commissioner Schwartz.

B. 300-700 ROBIN DRIVE; 100-200 UPLAND CIRCLE, GENERAL PLAN AMENDMENT No. 09-001, ZONING ORDINANCE AMENDMENT No. 09-005, TENTATIVE PARCEL MAP No. 09-001, CONDITIONAL USE PERMIT APPLICATION NO 09-006, AND VARIANCE APPLICATION NO. 09-005, STELLAR CORTE MADERA, L.L.C. (PROPERTY OWNERS)-To convert the Madera Vista Apartment Complex to condominium ownership. (Zoning: R-2 Low-Density Multiple Dwelling District) (Planner: Dan Bell)

Senior Planner Bell presented the staff report for which he used a slide presentation. He explained that 18 months ago the Commission approved a major Design Review for the Madera Vista Apartment Complex. Six months ago the applicant approached Town staff to inquire about the possibility of converting the apartments to individual ownership. He explained that there hasn't been such a conversion in some time, and it is a complex Conditional Use Permit process. In August, the applicant filed an application for condominium conversion.

The primary requirements include that the property must be in compliance with the General Plan, resulting in the proposed General Plan Amendment. The General Plan calls the property Medium-Density Residential. The complex was built under higher density allowed at the time of construction. First the applicant would need to be successful in obtaining a high-density designation and applying it to this property. The only other property with this designation is owned by the town, with a density allowance of upwards of 25 units per acre. The problem with applying the high-density designation to the Madera Vista complex is that the General Plan's narrative is not consistent with the Madera Vista development. This single-purpose high-density designation is applied only to areas where one-half of units are affordable. This project would not meet that definitive language. The applicant is requesting that this language be relaxed to provide a more efficient economic use of the land. The General Plan amendment includes a text change to the Land Use Designation, and a map amendment.

The Zoning Ordinance Amendment is being requested to accommodate the existing residential density of 17.7 units per acre at the site. The Town's Zoning Ordinance does not have a higher density zoning district than R-2. The applicant is requesting the Establish a new R-3 High-Density District with a density equivalent to the site's existing density. If the property were rezoned to R-3, it would not allow additional development.

The other part of Zoning Ordinance Amendment request is an in-lieu affordable housing fee that is proposed as an option to the current requirement that 25% of units shall be available to low and moderate income families. The applicant is asking that the language to be changed to include an in-lieu fee to mimic language that is applied to new development.

The formula to determine the in-lieu fee was provided in the October 27, 2009 staff report. The 2003 formula has been increased for this project to reflect 2009 conditions (a 5.7% increase), and the anticipated in-lieu fee would amount to approximately \$1.5 million to the Town's affordable housing fund.

Along with the Parking Variance, amendments would bring the property into conformance with density. This property was developed under the parking requirements in effect at the time of construction. There are 201 on-site spaces. Today's parking standards would require 265 on-site spaces. A survey of Marin local jurisdiction's current parking regulations shows that most jurisdictions do not distinguish between apartments and condominiums regarding on-site parking requirements. Attachment 5 is a study by the Concord Group and commissioned by the applicant concluding little appreciable differences between parking ratios for apartments and condominiums. The existing on-site and on-street parking spaces have served the complex for 46 years without negative impact to public welfare or neighboring properties. The Parking Variance would be granted to allow the existing conditions.

Staff recommends approval of the attached resolutions in Attachment 12 pertaining to General Plan and Zoning Ordinance amendments and Parking Variance regardless of whether the CUP is approved for the condominium conversion.

It is a lengthy process to get a Conditional Use Permit approved, and a major threshold of vacancy rates exceeding 5% has to be met. At the last meeting the Commission requested a survey of occupancy rates in the lower Ross Valley. The applicant has provided a survey showing this has been met, and conclusions drawn are open for discussion. Existing tenancy and recent vacancy history is required to be submitted as part of the application.

A Deficiency Report having an analysis of each building and comparing it to today's building code must also be completed and submitted to the Town as part of the application, and distributed to any future buyer. The Town Building Official has said he is satisfied with the completeness of this report.

Building 7 has been remodeled and is in better shape than the remaining 6 buildings. The applicant is proposing to renovate and upgrade the remaining six buildings to this same level of improvement with additional improvements including reducing sound transmission. After reviewing the report, the Commission would have to make a Finding that some or all of the building code deficiencies are acceptable to approve the CUP and condominium conversion.

He concluded that the Tentative Parcel Map is requested only if the CUP for the condominium conversion is approved. The Map has been completed and reviewed by the Public Works Department. If approved by the Commission, it would then require a Final Map.

Chair Mace asked for questions of staff. Hearing none, he requested a report from the applicant.

Seth Mallen, applicant provided a copy of email transmittals to the Commission, and described slides depicting the true condition of Building 7. He noted Senior Planner Bell had done a great job of outlining their request. Bringing the property into conformance and gaining approval to allow a condominium conversion are important to the applicants financially and for the building's repair. He said if damage to the property were to occur and exceed 50% of the value of improvements, the code wouldn't allow the owners to rebuild what is there, and that the complex would have to rebuild to a lower density. This non-conforming aspect would cause alarm at the future refinancing of property. The property was originally built in conformance, and then down-zoned twice. He claimed that a loophole grandfathered existing non-conformities, but that provision was eliminated in the 2009 General Plan update.

He reiterated that their request for a new R-3 District is intended to permit the rebuilding of the existing 126 units, not increase density or alter affordable housing requirements.

A Parking Variance is requested to bring the property into conformity the original parking provisions legally approved when the project was developed. The code has since changed. The property has operated well on the existing parking scenario, and that the owner is seeking to make it legally conforming. He listed justification for each of the Variance Findings required. He said the special circumstances and hardship are bedrock and slope of site. He said they are not asking for a granting of a special privilege. He argued that the proposal would not be hazardous to neighboring property, since conditions would not change. Parking requirements were identical for both uses

in study they've done. He added that the project has used on-street parking spaces for over 40 years.

He said the Town's Zoning Ordinance encourages preservation of open space and architectural design, which is hindered if a large parking structure were built. Traffic volumes and flows are not being affected. History shows that the Town did not intentionally make this property non-conforming.

He argued that a condominium conversion would increase the Town's tax base, and result in in-lieu affordable housing fees paid. He said the conversion would improve the life safety and the appearance of the property. He argued that the ability to continue with the renovation project is dependent upon this approval.

He said the conversion would not impact affordable housing, as this apartment complex is not an existing affordable housing project. The conversion would create home ownership opportunities for area.

He said the applicants are a rental housing company who don't normally do condo conversions. He said rents have changed insignificantly over past years. He explained that the second page of his package depicts both existing residents, and those who've moved in since the current owner purchased the property. The cumulative number of new residents and their corresponding rents shows a 2.3% increase in the applicant's first year of ownership, a 3.1% increase the following year, and a decrease of 2.37% in 2009, concluding that levels have stayed roughly the same. He said existing residents rents increased 3% the first year, then 2.79% the next year, then this year the stayed the same. The 18-month outlook shows that rents increased 1.4% for new tenants and decreased 2.7% for existing tenants.

Occupancy rates were 93.465% the first year, then went down to 92.86% the second year, then decreased again to 85.37% with building construction. The fire in Building 2 took 18 units off-line, which dropped to occupancy to 84.44% occupied. In February of 2009, Building 1 went off-line and Building 4 will be offline at end of month, and concluded that occupancy is 86% as of today.

To address Commissioner Mace comments, he provided itemized square foot figures for units. And concluded that all units meet or exceed square footage requirements. He said the applicant had provided everything they had regarding tenant age and handicap status.

He said the estimated sales price is challenging to predict. Market study shows comparable units selling for as high as \$755/sq foot, with the average price at \$510/sq, foot. He said there is not a lot of new condominium product in the area. The project would sell at the upper end of pricing structure, financing with conventional mortgages.

He said the applicants were asked to provide a list of tenants likely to be displaced because of renovation itself-excluding a potential conversion. Building 7 would be those people served by a 180-day notice to vacate and a right to purchase. He said they had provided a full rental history, which they supplemented with information from the previous owner.

He said they had been asked to verify rent charges to three specific residents, which he summarized. Cindy Wanin moved out March 2008. Her rent was originally \$1575, which increased to \$1875, then increased to \$2210. There was a rent charge incorrectly applied that was later credited. Joan Handley's partial first months rent pro-rated for the first 18 days was \$1170. Her monthly rent was \$1950, which increased to \$2050. He said the applicants have no record of Catrina Villicord as a legal resident, but she may be a sub-lease.

He said it was a challenge to determine the rental vacancy rate in the area. There are 3,332 rental units in the lower Ross Valley. The survey covered about 40% of the supply of the lower Ross Valley.

Building Code Conformity requires a report describing the difference between existing buildings and a new building, which is difficult. He reviewed the deficiency reports in terms of Fire, structural and ADA requirements listed in the RJA report for buildings 1-6.

Commissioner Bailey asked if the plan were to fix the deficiencies noted.

The applicant said they planned to fix some of the deficiencies. He said that structurally buildings do not meet code, but the report concludes the buildings meet 80% of today's current code. He said the owner proposes to fix the sound transmission issue going forward. He listed the fixes to Building 7 that were corrected, including separation, and a new path of egress was improved, but that the ADA deficiency was not corrected, though the stairwells were improved. He said they did not go to full plumbing upgrade. The electrical panels do not meet code, which they plan to correct in buildings 1-6.

He said protections for current residences include the opportunity to purchase their unit and provision of relocation expenses if they choose not to purchase.

Chair Mace asked for public comment.

Dave Coury of 301 Corte Madera Avenue said diversity of housing is an important element. He said the proposal feels like spot zoning to bail the applicant out of a bad real estate deal. An in-lieu fee of \$1.5 million does not buy a lot of affordable units, but that conversion should provide 25% of units available as affordable housing. He said the most glaring error in the applicant's proposal was the vacancy report. He said he owns a triplex in San Rafael and had a vacancy of 0 when a tenant left, so he does not see how a claimed 5% vacancy rate can be supported. The nature of rentals is beneficial to the Town, so people can come and go. The idea to "rebuild and do a condominium conversion before the units burn and cannot be rebuilt" is a bit like cutting down a tree before it is hit by lightning. The Town doesn't get an adequate benefit with this proposal. Currently the affordable housing restriction is land not money. Finding a place for \$1.5 million worth of units will be difficult.

Commissioner Bailey asked if Mr. Coury had more evidence for occupancy rate trends.

Mr. Coury said real estate professional Michael Burke would be able to provide better information.

Chair Mace said the applicant's study includes only complexes with 70 or more units. He asked Mr. Coury about the differential between vacancy rates at smaller versus larger complexes.

Robert Hicket of a non-profit housing organization in Northern California said rental housing is dear in Marin. The Town would be giving up something important, and it is not easy to replace rental housing. He acknowledged that condos are more accessible for purchase than single family homes, but said that now it is harder to access condominium. He suggested that the Town find a way to make this property a conforming use in a way that doesn't undermine incentives for affordable housing and one that allows for density increases only where affordable housing is proposed. He advised the Commission to consider the in-lieu fee formula, as the assumptions are out-dated. He said construction cost has gone up faster than median income in last 6 years. The County of Marin conducted an analysis of what it costs to build affordable housing, and their survey of multi-family home construction cost was \$250,000-\$400,000/unit. The building cost of \$300-\$500/sq. ft. is typical in Marin County. The in-lieu fee of \$1.5 million nets just 5 affordable units, which is a trend to be aware of.

Hearing no more public comment, Chair Mace brought the discussion back to the Commission level.

Chair Mace said the condo conversion is hinged upon the General Plan and Zoning Ordinance Amendments, Parking Variance, Tentative Map and CUP. He referred to the staff report page 4 to clarify the applicant's issue raised regarding a non-conformance clause dropped in the 2009 General Plan update.

Planning Director Pendoley said the conformance issue designation was removed in 1989 including the verbiage on non-conformance, which was completely removed 15 years ago.

Chair Mace clarified that the applicant's request does alter affordable housing inventory, though applicant stated it did not.

Commissioner Esteb said it is correct to make the property conforming. The problem is the text of the high-density residential district as proposed would wipe away all affordable housing incentives.

Commissioner Pagnillo said he disagreed, saying the Commission should do its best to make this a legal conforming property.

Commissioner Bailey said Senior Planner Bell's staff report was excellent. He said the issue of interpretation of statutory understanding was impossible for him to ignore. He said there may have been an intention all along to have a grandfathering of existing properties. He said he would have no difficulty making it conforming, but that the deeper issue is the affordable housing incentive. He said he was not sure it would be fair to impose that constraint on a property that is not currently involved with it.

Chair Mace said he sees no problem with making this property conforming. He said the density designations skipped from R-2 to high-density, and asked if there were a reason the Ordinance lacked the inclusion of a middle ground.

Planning Director Pendoley said the goal was to preserve existing land use designations and boundaries. He said the high density designation is in plan, but is created for a high density property that is 100% affordable.

Commissioner Esteb said the issue of affordability should be removed from this property. An R-3 designation would be appropriate for this property, and perhaps another designation for affordable housing densities.

Planning Director Pendoley said the language proposed for this consideration would allow to the Commission to apply an overlay, so that it could use this designation on an

affordable housing property or a market rate property. The General Plan designation gives flexibility of applying such zoning strategies.

Chair Mace said increasing density is not an issue, but that this proposal suggests creating a designation to take care of similar properties. If we give away benefits for development, those should be tied to affordable housing. Creating the R-3 designation include should include a discussion regarding how the designation may fit some other properties where the density is a possibility. He noted that the Town would not mandate this on applicable properties, but that they can apply to come under it.

Commissioner Pagnillo said he agreed with the “other relevant properties” argument and that through administrative oversight, they have become a non-conformity.

Planning Director Pendoley said the affordability issue could not be applied retroactively to any property.

Chair Mace said it is important for the Zoning Ordinance to be horizontally consistent to avoid spot zoning.

Planning Director Pendoley said this must be addressed carefully. This proposal does not trigger CEQA review, as it is not proposing any new growth at the subject property. The Town attorney said this would be a complex project if it affected multiple properties, and the Commission is laying groundwork for it if adopt high-density language for this land use designation.

Chair Mace said to address general plan changes, not spot zoning to a certain project but something that is beneficial to the town of Corte Madera. He said it is agreeable to allow this property's conformance, but to allow density at the upward reaches of the range will require a developer to help the Town of Corte Madera meet its' State-imposed affordable housing criteria.

Planning Director Pendoley said the Town Attorney said there is no way to create a single zoning district that would make this complex conforming, that wouldn't trigger CEQA review. He said the Commission may not want to create development potential for these properties, and may want look at each individually. He said that, while there is no easy answer for this tonight, adopting a General Plan Amendment does give a good starting point. The Town Attorney said if the use is changed, it cannot be restored. The precisely proposed density numbers make this property legal non-conforming without triggering a CEQA review.

Commissioner Pagnillo said a benefit to the Town is that a conforming property can rebuild all 126 units if necessary, rather than a reduced density corresponding to current code.

Chair Mace said he didn't have a problem with making Findings for the Parking Variance.

Commissioner Esteb asked if Robin Drive is privately owned, which was denied.

Commissioners agreed they could make the required Findings for the Parking Variance.

Chair Mace asked about the Zoning Ordinance Amendment regarding the in-lieu fee.

Commissioner Bailey asked how the money would be used.

Senior Planner Bell said the money goes into a fund held until someone proposes an affordable housing project. The fund is established by ordinance and can only be used to build affordable housing.

Commissioner Bailey asked if there were currently land available for such a proposal.

Planning Director Pendoley said the potential housing sites are areas designated on the general Plan Map in blue, which over time will be designated for development. As well as old Corte Madera Square.

Commissioner Bailey asked if staff agreed that \$1.5 million would only fund construction of 5 units, which was confirmed.

Senior Planner Bell said the fee is consistent with that levied in other cities, and mimics the formula in the Zoning Ordinance for new construction.

Commissioner Esteb said if we allow payment of in-lieu fees, we get 5 affordable units, but if we don't, we get 32 units. Over time our 5 units could be reduced to 2 with increased construction costs.

Commissioner Pagnillo said he has no interest in the condominium conversion, and that it is not in the best interest of the Town.

Chair Mace said the Town has a State mandate to provide 244 affordable units.

Planning Director Pendoley said that figure has been adjusted down to 187 units.

Chair Mace said 25% is a large piece of a development. There is a lot of money in condominium conversion, and in-lieu fees don't seem commensurate. The in-lieu fee seems too easy of an out.

Commissioner Esteb said he agreed, and that the Commission should not address this unless it is interested in approving the condominium conversion.

Senior Planner Bell said staff has not yet done a thorough survey on in-lieu fee rates.

Planning Director Pendoley said affordable condominiums have tended not to work out well in the Marin County's experience. The Housing Authority said resale price is controlled, which becomes a problem for the homeowner. People will borrow to secure the property and are automatically underwater because of the price control. It is probably best to do inclusionary units as rentals. He said staff would recommend an in-lieu fee in place of requiring affordable condominiums.

Chair Mace said more study was needed on the in-lieu fee, but that he could approve General Plan Amendment tonight.

Senior Planner Bell said the General Plan Amendment and Zoning Ordinance are recommendations to Town Council while the Parking Variance is a Commission decision.

Chair Mace said the Commission may want to hold off on in-lieu fee decision, as the CUP and in-lieu fee issue may be best discussed together.

Chair Mace said the rental vacancy and unit report number supplied by developer is 5.2%. Our ordinance says the Commission must consider the rate in relation to all properties in the Lower Ross Valley, yet the developed picked out only 6 complexes with 70 units or more. He said the Commission would need a more definitive vacancy study.

Commissioner Pagnillo said whether 5 % vacancy in a large or small complex is unimportant, as all places are at full capacity.

Senior planner Bell said it appears to be a question of methodology.

Chair Mace agreed and said it would be necessary for the applicant to supply a vacancy report in keeping with methodology specified in the Zoning Ordinance. He recommended a consultant be chosen by the Town to compile a report to be paid for by the developer.

Commissioner Esteb agreed.

Commissioner Pagnillo said if the occupancy rate were 6 it would not change his vote.

Chair Mace said the vacancy rate is important because the required Findings are specific.

Senior Planner Bell said it would be a peer review study. The methodology calls for this direction.

Commissioner Bailey asked Commissioner Pagnillo whether the occupancy rate at any level would affect his decision.

Commissioner Pagnillo said it would have to be a much higher number.

Commissioner Bailey asked about the cost of a consultant report.

The applicant said another report they had commissioned had cost \$7500.

Chair Mace thanked the applicant for the information delivered.

Commissioner Esteb asked for the Town Building Official's comments on the building deficiency reports.

Chair Mace asked whether the Commission is asked to make reverse findings on these reports.

Senior Planner Bell said the Commission is asked to determine whether it can determine that certain deficiencies are acceptable and others are not by looking at all of them. Building 7 has gone through improvements. There are 6 other buildings.

Mr. Mallen said the buildings would comply with Building 7 plus additional upgrades, such as relocating and replacing electrical panels, grounding for electrical safety, improving sound transmission, and making repairs to curtain walls.

Chair Mace asked for life safety upgrades of Building 7.

Mr. Mallen said sprinklers, fire alarm system, and egress stairwells are upgraded. He said there are major life safety improvements that they may not be able to complete without requested approval.

Commissioner Bailey asked for the Town Building Inspector's input on fire safety issues.

Walt explained the current required improvements and said the original building nowhere meets those requirements. He said it is a big task to try to correct a 45 year old building to today's standards, and the code does not require that.

Commissioner Esteb said Building 7 was gutted and asked what triggers code compliance.

Walt said that if you're leaving what's there, the code doesn't require compliance. A condominium is the same occupancy classification as an apartment with the same requirements. There were no accessibility standards at the time this building was constructed. They have not done anything because the code does not require them to. If you asked them to meet code, you would be asking for a tremendous task.

Chair Mace suggested the individual review the items in the deficiency report.

Walt said that per the building code, any alterations have to conform to new construction with exceptions local ordinance shall permit for residential buildings, so as not to create a hardship for residential buildings, and allow for original methods of construction to repair. Those standards were applied in Building 7. If the condominium conversion were approved, the Town would require that construction be up to code for buildings 1-6, except that which the Commission determines is not required as listed in the deficiency report. He said he couldn't answer what would happen if the Commission didn't require certain improvements.

Senior Planner Bell said there are three deficiency reports by RJA, Murphy Berg Curry, (which said that improvements in Building 7 equal 80 % of minimum improvements required by code), and the Fard Engineering. He said the Fard Engineering report includes electrical, mechanical and plumbing improvements, and that Building 7 is reviewed in subsection A; Buildings 1-6 are reviewed in Section B; and Section C includes what is existing in Building 7 plus additional anticipated upgrades for Buildings 1-6, and those the applicant is offering to do in all buildings if the condominium conversion were approved.

Chair Mace reviewed the items listed in the RJA report.

Commissioner Bailey said the Commission is being asked to make a Finding, yet it lacks the expertise. He asked the Walt to elaborate on what is needed.

Chair Mace agreed he would have a hard time waiving a fire resistant construction, as this is a life safety issue.

Commissioner Esteb agreed.

Senior Bell read the required Finding, and reiterated that the Commission is reviewing the reports to determine if the project with building code deficiencies have been constructed in a manner be suitable for individually owned units.

Commissioner Bailey asked whether the Commission could request them to be a degree safer than what is existing, without requiring code conformance.

Commissioner Pagnillo said conformance would require a huge amount of work.

Commissioner Bailey said knowing what he doesn't know; he could not in good conscience waive the building code requirements.

Chair Mace said he couldn't waive the life safety requirements.

Planning Director Pendoley said they are asking the Commission to waive some or all of the building code deficiencies. He asked if the Commission understood how difficult it would be to bring the building into to compliance.

Walt said it would be difficult. Opening up interior and going to conduit area and using expensive materials throughout entire building that were never used in original construction.

Chair Mace asked about the benefit of requiring a gray area of 80 percent.

Senior Planner Bell said that is the possibility, and in fact Walt did require fire safety improvements as he walked through Building 7.

Walt said code requirements are labor intensive, as the building code places a big burden on builders of multi-family housing.

Commissioner Esteb said it needs to be ADA accessible, since it is in the code.

Commissioner Bailey said that with ADA issues there is a middle way to provide for reasonable progress. He said he'd like to see some effort with some compliance with fire code issues.

Walt said it is not required. This site is difficult as the parking structures are not tall enough to allow a disabled van. ADA requirements may require a tremendous amount of work that may blow the project out of the water.

Applicant said sound transmission would be easily addressed in buildings 1-6 as they go together.

Chair Mace continued with the deficiency reports reviewing items, noting that for structural, the Murphy report said the project was within 80% compliance. Walt said this level of compliance as good as possible without new construction.

Mr. Mallen said the owner's insurance requirement dropped substantially with structural improvements they've done.

Walt said some of conditions at the site don't meet the specifics in today's code but they function in the same way.

Chair Mace completed the review of the items listed in deficiency reports and noted the Structural compliance of 80%, and that deficiency reports list 4 major areas of deficiency: fire safety, ADA, sound transmission, and structural.

Walt said regarding the ADA, that partial compliance could be a bad way to go. If the owner was to upgrade all units on interior to ADA standard for clearances, but can't get a disabled van in the parking structure and along the steep topography of the property, there is no benefit.

Commissioner Bailey said not always an all or nothing proposition.

Chair Mace said an independent consultant would be required to study 5% occupancy, and that the hearing could reconvene when the applicant is ready.

The applicant asked for clarification on defining "all" units in the Lower Ross Valley.

Planning Director Pendoley said page 6 of Concord report estimates there are 3,332 rental units in the survey area and 2,739 are in structures with more than 5 units. He said it would be difficult to find the owner for single family rentals, even fourplexes, but that the goal to try to get information on 2,739 units.

Commissioner Esteb said complexes of 12 units or larger have a manager on site.

The applicant said the requirement is for complexes 16 units and larger, and it is a maintenance manager.

Planning Director Pendoley said staff can poll consultants and return to the Commission in 2 weeks. Staff can also poll other local jurisdiction on in-lieu fees.

Counsel for the applicant Jim Abrams suggested Parking Variance Condition of Approval #10, which states that the Variance would only become effective once building permits are given, should be applicable upon approval.

Commissioners agreed.

Mr. Mallen asked the Commissioners if it were possible for them to vote on the General Plan and Zoning Ordinance amendments this evening, as separated from condominium conversion aspect of the proposal.

Senior Planner Bell referred the Commission to Resolution No. 09-017, General Plan Amendment No. 09-001 in Attachment 12 for proposed language and said that a map change would be implied.

MOTION: Moved by Commissioner Pagnillo, seconded by Commissioner Bailey, to adopt Resolution No. 09-017 to recommend to the Town Council approval General Plan Amendment No. 09-001.

Ayes: Commissioners Bailey, Pagnillo, Mace.
Noes:
Abstain:
Absent: Commissioner Schwartz.

MOTION: Moved by Commissioner Esteb, seconded by Commissioner Pagnillo to adopt Resolution No. 09-018 to recommend to the Town Council approval of Zoning Ordinance Amendment No. 09-005 as the resolution pertains to a new R-3 High-Density Residential District as described in Attachment A. (No decision was reached regarding Attachment B. regarding in-lieu fees)

Ayes: Commissioners Bailey, Pagnillo, Mace.
Noes:
Abstain:
Absent: Commissioner Schwartz.

MOTION: Moved by Commissioner Pagnillo, seconded by Commissioner Esteb to approve the Parking Variance Permit No. 09-005 portion of Resolution No. 09-019 at Madera Vista Apartment Complex.

Ayes: Commissioners Bailey, Pagnillo, Mace.

Noes:

Abstain:

Absent: Commissioner Schwartz.

5. NEW HEARINGS:

A. NONE

6. ROUTINE AND OTHER MATTERS

A. REPORTS AND ANNOUNCEMENTS

i. **Commissioners:** Commissioner Esteb attended the Town Council meeting and the Town Council upheld Planning Commission's decision on 501 Corte Madera Avenue and denied appeal. He said he attended the BERST meeting, and that a BERST workshop is scheduled for the Commission's December 8, 2009 meeting.

ii. **Director:** Planning Director Pendoley said the Housing Element workshop last week was well attended.

B. MINUTES:

Planning Commission Meeting Minutes of November 10, 2009 were moved, seconded and approved unanimously.

7. ADJOURNMENT:

The meeting was adjourned at 11:15 pm. The next Planning Commission Regular Meeting is to be December 8, 2009 at 7:30 p.m. in the Corte Madera Council Chambers, 300 Tamalpais Drive.