

CITY OF CAMPBELL PLANNING COMMISSION
MINUTES

7:30 P.M.

TUESDAY

SEPTEMBER 27, 2016
CITY HALL COUNCIL CHAMBERS

The Planning Commission meeting of September 27, 2016, was called to order at 7:30 p.m., in the Council Chambers, 70 North First Street, Campbell, California by Chair Dodd and the following proceedings were had, to wit:

ROLL CALL

Commissioners Present:	Chair:	Cynthia L. Dodd
	Vice Chair:	Yvonne Kendall
	Commissioner:	JoElle Hernandez
	Commissioner:	Philip C. Reynolds, Jr.
	Commissioner:	Donald C. Young

Commissioners Absent:	Commissioner:	Ron Bonhagen
	Commissioner:	Michael L. Rich

Staff Present:	Community Development	
	Director:	Paul Kermoyan
	Senior Planner:	Cindy McCormick
	Associate Planner:	Stephen Rose
	City Attorney:	William Seligmann
	Recording Secretary:	Corinne Shinn

APPROVAL OF MINUTES

Motion: Upon motion by Commissioner Reynolds, seconded by Commissioner Kendall, the Planning Commission minutes of the meeting of September 13, 2016, were approved with correction to a name on page 3. (5-0-2; Commissioners Bonhagen and Rich were absent)

COMMUNICATIONS

Director Kermoyan listed the desk item(s):

1. Two items for Agenda Item No. 2.

AGENDA MODIFICATIONS OR POSTPONEMENTS

None

ORAL REQUESTS

None

CONSENT

None

DISCLOSURES

None

PUBLIC HEARINGS

Chair Dodd read Agenda Item No. 1 into the record as follows:

1. **PLN2016-219** Public Hearing to consider the application of Aaron Winklebleck for a Site and Architectural Review Permit (PLN2016-219) to allow a 629-square-foot addition to an existing 1,265-square-foot, single-story, single-family residence on property located at **1045 Normandy Drive**. Staff is recommending that this item be deemed Categorical Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Cindy McCormick, Senior Planner*

Ms. Cindy McCormick, Senior Planner, presented the staff report.

Chair Dodd asked for the SARC report:

Commissioner Kendall provided the Site and Architectural Review Committee report as follows:

- SARC reviewed this item on September 13, 2016, and was generally supportive.
- Advised that SARC had questioned whether the garage needed updates and it was determined that none were required.

Chair Dodd asked if there were questions of staff. There were none

Chair Dodd opened the Public Hearing for Agenda Item No. 1.

Chair Dodd closed the Public Hearing for Agenda Item No. 1.

Commissioner Young:

- Explained that SARC was satisfied that the converted garage had been taken care of and that the detached carport was being removed.
- Stated that this project looks good. The findings and conditions are good to go.

Chair Dodd agreed that this seems to be a straightforward request and asked for a motion.

Motion: **Upon motion of Commissioner Young, seconded by Commissioner Reynolds, the Planning Commission adopted Resolution No. 4332 approving a Site and Architectural Review Permit (PLN2016-219) to allow a 629-square-foot addition to an existing 1,265-square-foot, single-story, single-family residence on property located at 1045 Normandy Drive, subject to the conditions of approval, by the following roll call vote:**

AYES: **Dodd, Hernandez, Kendall, Reynolds and Young**

NOES: **None**

ABSENT: **Bonhagen and Rich**

ABSTAIN: **None**

Chair Dodd advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

Chair Dodd read Agenda Item No. 2 into the record as follows:

2. **PLN2016-293** Public Hearing to determine if a nonconforming use (formerly known as Cardiff Lounge) has been discontinued for a continuous period of six months (PLN2016-293) on property located at **260 E. Campbell Avenue**. Staff is recommending that this item be deemed Categorical Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Stephen Rose, Associate Planner*

Mr. Stephen Rose, Associate Planner, presented the staff report.

Chair Dodd asked if there were questions of staff.

Commissioner Reynolds asked the City Attorney if a posting on a door of a closure is accepted by the Courts.

City Attorney William Seligmann responded that such a posting together with a mailing notification to the last known address is sufficient to serve as noticing.

Commissioner Reynolds said that the applicant hadn't directly notified the City of their closure but rather posted a notice on their door.

City Attorney William Seligmann said that it doesn't matter when the City became aware of this business being closed. It simply matters how long that business has been closed.

Commissioner Young asked staff when such an action as this (loss of grandfathered status due to six-month closure of a use) has been enacted.

Planner Stephen Rose replied that he had not found other such cases during his research.

Commissioner Young asked if the remodel done had included building permits.

Planner Stephen Rose replied no. The work done was without permits but represented minor cosmetic work including addition of wallpaper and the reupholstering of furniture.

Chair Dodd asked about the Valentine's Day event held on February 14th. She questioned whether Cardiff has ever been just a special events location at times.

Planner Stephen Rose replied no. He added that they would have special events in addition to their regular business operations.

Chair Dodd opened the Public Hearing for Agenda Item No. 2.

Sam Ramirez, Operator of the Cardiff Lounge:

- Reported that he has been the operator of the Cardiff for the last 15 years and believes he has done a pretty good job of it.
- Advised that problems arose between him and his partner. The partner misled ABC (Alcohol Beverage Control) regarding the business lease and the liquor license issued to this use. ABC contacted City Planning and the City provided the resolution that had been issued for their Conditional Use Permit.
- Stated that Cardiff has been an icon for the Downtown Area.
- Admitted that he hated to see it closed even for a few days and reopening was ultimately delayed because of people misleading ABC.
- Reiterated that he and Cardiff have been a part of this community for a long time. Campbell has a great Downtown.
- Concluded that he was available for any questions.

Commissioner Young asked Mr. Ramirez if it would be a hardship for him to come into conformance with current Code standards.

Sam Ramirez replied that it would if they would have to close at midnight. He reminded that they have invested a lot of money in their recent upgrades including stocking much nicer quality spirits.

V. Meharu, Investor, Cardiff:

- Stated that Sam Ramirez covered most of his points.
- Explained that he is a primary stakeholder in this business.
- Added that he had created a timeline to explain what has occurred to require their temporary closure. Due to the turmoil caused by a previous partner, the closure was longer than they had anticipated. They would have reopened two months earlier.
- Assured that they are good tenants and part of this community. They have 20 plus employees both full-time and part-time.
- Added that he has invested his life savings in this endeavor.
- Concluded that he was available for questions.

Chair Dodd closed the Public Hearing for Agenda Item No. 2.

Commissioner Reynolds:

- Said that this is a tough situation to consider. There are lots of dates to compute to determine just when they closed and when they reopened.
- Suggested it might be worth considering whether the length of closure is all that far off the required timeframe that the City would win in the event of a legal battle. It seems there are several questions about dates that could be raised in a legal matter that might not be worth the expense of litigation for the City.
- Said it might be better to give these operators the benefit of the doubt.
- Pointed out that oftentimes things can go sideways between business partners. No crimes have been committed but simply this represents a business transaction between partners that went in a bad direction.
- Said when he looks at the data it doesn't seem like the Yelp information can be confirmed. Therefore he's looking at March 8th as the date when the notice of closure was posted.
- Said that the next question is when the first transaction of alcohol sales made. It was on August 26th. There are both grand openings and soft openings for such a business. He counts 171 closed dates using March 8th through August 26th, which is under the 180 days (six month) standard.
- Said that he would feel differently if they had gone way beyond six months and/or if ABC had shut them down. That would be a different story.
- Concluded that this should be an easy decision to make.

Chair Dodd said she is not so sure and advised that it is not the charge of the Planning Commission to determine the cost of potentially litigating a matter under its consideration.

Director Paul Kermoyan:

- Reminded that the operator has given testimony about the circumstances that have occurred that were beyond his control.

- Added that staff observed the closed sign on this business frontage on February 26th.
- Reported that afterwards staff reached out to Sam Ramirez several times by email.
- Advised that the reason Planner Stephen Rose checked Yelp was to try and obtain more information about the closure.

City Attorney William Seligmann:

- Agreed that it is not the Commission's purview to predict what happens with possible litigation.
- Advised that the Planning Commission makes its determinations using existing Code.
- Said that the Commission can consider the on-going efforts to keep the business operating.

Chair Young:

- Said that the Campbell Municipal Code is pretty clear. The intent is to have non-conforming uses come into compliance rather than kept non-compliant in perpetuity.
- Stated that he counts 182 days when looking at the material provided.
- Stated that having this business brought into conformance with current standards brings us opportunities.

Commissioner Hernandez:

- Stated that the issue before this Commission is straightforward in terms of the Code.
- Added that the intent is to bring non-conforming uses into conformance when the opportunity comes up. It's time to take that opportunity.
- Said that may be unfortunate for this operator but they have been "grandfathered" for many years. They had every opportunity to communicate with the City on what was going on. This is the point of these provisions in the Code.
- Stated the question is whether they were operating or not during that time frame. It is clear that they were not operating. It's pretty straightforward.

Commissioner Kendall:

- Agreed with Commissioner Hernandez.
- Pointed out that Mr. Meharu has indicated that he is a new owner with a new license. This is a new operation and license. The old one closed and a new one is opening with a new ABC license.
- Stated that this use has been closed longer than the minimum 180 days.
- Added that this is not intended as a penalty but simply the way the Code is written. It can be addressed with processing of a new Conditional Use Permit. That doesn't mean that it has to have a midnight closure although the Commission has been pretty strict. However, the Commissioner considers each request independently.
- Concluded her belief that this business was closed for more than 180 days.

Commissioner Reynolds:

- Asked Director Paul Kermoyan to clarify dates. The City observed the posted closure notice on February 26th while the staff report indicates March 8th.

Planner Stephen Rose clarified that March 8th is the date the photograph was taken of the sign but that he had first observed it on February 26th.

Commissioner Reynolds asked staff which closing date the Commission is going with.

Chair Dodd said that when the sign was first seen indicating the business was closed as seen by staff.

Commissioner Reynolds asked what day is considered the reopening.

Commissioner Hernandez said that August 26th is the date on the first receipt, which is 182 days.

Chair Dodd said that the question is whether this is the time to bring a non-conforming business into compliance with current Code.

Planner Stephen Rose said that the range of dates is between February 26 and August 26, 2016. On August 26th, the business had a “super soft opening”. A flyer from the business owner indicated February 29th as the date the keys were returned to the property owner.

Commissioner Hernandez added that this doesn’t mean that this operator cannot re-establish their use but there is a process to follow. It’s unfortunate that the closure slipped outside of the six-month time frame.

Commissioner Young:

- Said that he believes the 180 days have been met. He referenced Items 13, 14, 16 and 17.
- Said that he can codify the soft opening as August 26th even without sales receipts.
- Stated that the draft resolution, with conditions, has been met.

Commissioner Kendall questioned Commission Young about Item 13.

Commissioner Hernandez said that there is no proof of sales.

Commissioner Kendall said that they turned on the “open” sign on August 27th. If you count between February 26th and August 26th, that is 182 days.

Chair Dodd said she believes this is an opportunity to bring a non-conforming business into line with current standards. It is not a penalty but rather an opportunity for us. She pointed out that our Downtown is constantly evolving.

Motion: Upon motion of Commissioner Kendall, seconded by Commissioner Hernandez, the Planning Commission adopted Resolution 4333 determining that a nonconforming use (formerly known as Cardiff Lounge) has been discontinued for a continuous period of six months on property located at 260 E. Campbell Avenue, with the following changes:

- Change Item 13 date to August 26th

by the following roll call vote:

AYES: Dodd, Hernandez, Kendall and Young

NOES: Reynolds

ABSENT: Bonhagen and Rich

ABSTAIN: None

Chair Dodd advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR

Director Paul Kermoyan provided the following update to his written report:

- Reported that the Fence Exception that had been appealed to Council was upheld.
- Reported that Chair Dodd and Commissioner Young would be attending the CalAPA Conference in Pasadena in October.

ADJOURNMENT

The Planning Commission meeting adjourned at 8:20 p.m. to the next Regular Planning Commission Meeting of **October 11, 2016**.

SUBMITTED BY:



Corinne Shinn, Recording Secretary

APPROVED BY:



Cynthia Dodd, Chair

ATTEST:



Paul Kermoyan, Secretary