



PLANNING COMMISSION MINUTES
Regular Meeting
June 7, 2012

West Hollywood Park Public Meeting Room – Council Chambers
625 N. San Vicente Boulevard, West Hollywood, California 90069

1. CALL TO ORDER:

Chair Bernstein called the meeting of the Planning Commission to order at 6:35 P.M.

2. PLEDGE OF ALLEGIANCE: Anne McIntosh led the Pledge of Allegiance.

3. ROLL CALL:

Commissioners Present: Aghaei, Altschul, DeLuccio, Huebner, Yeber, Vice-Chair Buckner, Chair Bernstein.

Commissioners Absent: None.

Staff Present: Francisco Contreras, Senior Planner, Melissa Antol, Long Range and Mobility Planning Manager, Roderick Burnley, Project Development Administrator (Acting Housing Manager), Christ Hogin, Assistant City Attorney, and David Gillig, Commission Secretary.

4. APPROVAL OF AGENDA.

ACTION: Approve the Planning Commission Agenda of Thursday, June 7, 2012 as presented. **Moved by Commissioner DeLuccio, seconded by Commissioner Huebner and unanimously carried.**

5. APPROVAL OF MINUTES.

A. May 17, 2012

ACTION: Approve the Planning Commission Minutes of Thursday, May 17, 2012 as presented. **Moved by Commissioner DeLuccio, seconded by Vice-Chair Buckner and unanimously carried; notating the abstention of Chair Bernstein.**

6. PUBLIC COMMENT.

STEPHANIE HARKER, WEST HOLLYWOOD, reminded the public the new budget 2012-2014 is currently on-line at www.weho.org. She stated Councilmember D'Amico will be holding a meeting at Plummer Park on Saturday, June 9, 2012 at 10:00 a.m. to go over the budget and to hear any issues or concerns. She encouraged public participation. She stated her support for Item 9.B. – Zone Text Amendment regarding reasonable accommodations.

CATHY BLAIVAS, WEST HOLLYWOOD, commented and stated her concerns regarding the upcoming Plummer Park renovation. She stated her support for Item 9.B. – Zone Text Amendment regarding reasonable accommodations.

7. ITEMS FROM COMMISSIONERS.

Chair Bernstein wished Anne McIntosh all the best regarding her departure from the City of West Hollywood as Community Development Director – Deputy City Manager. He stated Target® is currently selling Pride t-shirts, and all of the revenue will benefit the Family Equality Council. He presented a t-shirt to Jeanne Dobrin.

8. CONSENT CALENDAR. None.

9. PUBLIC HEARINGS.

A. Zone Text Amendment

Airspace Subdivisions:

Francisco Contreras, Senior Planner, provided an oral and visual presentation and background information as presented in the staff report dated Thursday, June 7, 2012.

He provided a detailed history, stating airspace subdivisions are similar to condominium subdivisions, except they allow multiple ownerships in one structure without a common lot. Condominium subdivisions require that each independent ownership share an undivided common interest in the common areas; with airspace subdivisions, an undivided common interest requirement does not exist. Instead, common maintenance is regulated by an association based on a recorded set of agreements (CC&R's or other management documents).

In an airspace, or three-dimensional subdivision, the property is divided into three-dimensional lots instead of two-dimensional lots. An interest in each three-dimensional lot may be bought, sold, and financed just like a conventional lot. Real property lines are recorded to separate spaces within a single building. Legal agreements recorded with the subdivision define how the lots and uses will function once interests in the individual components are sold. This approach helps to allocate the costs of operating a building more fairly.

Airspace subdivisions can benefit mixed-use projects because it allows owners of the project's residential component to be separated from owners of the commercial component in the same building. For example, the commercial portion of the building can remain outside of the homeowners association's rules and regulations.

Also, when seeking financing for a mixed use project, developers can seek investors for the residential component separately from the commercial component. Many investors are only interested in financing commercial projects or residential projects, but not projects where these uses are combined because they are uncertain of the risk involved with the other type of use.

Airspace subdivisions also allow a developer to seek investors or agencies that will fund the affordable housing component in mixed use projects since these will be separately-recorded lots within a larger project. Without airspace subdivisions, the developer will have to seek financing for the entire project from sources that are willing to handle the risk of a large mixed-use project with all of these various components. With airspace subdivisions, developers can seek financing from investors that only want to invest in each of the separate components since they will only be responsible for that component and not the others.

In addition, airspace subdivisions allow developers to enhance the marketability of a property by making the parts of a building worth substantially more than the whole. From the City's perspective, the sale of commercial properties within a building can result in reassessment at market value, with local agencies benefiting from increased property values.

Staff recommends approval.

Commissioner Yeber questioned if airspace subdivisions would apply to a traditional residential project.

Francisco Contreras, Senior Planner stated that the amendment will only apply to mixed-use projects in commercially zoned lots.

Commissioner Yeber requested clarification regarding Home Ownership Associations (HOAs).

Commissioner Huebner disclosed for the record he spoke with the applicant Jeffrey Seymour. They discussed matters contained solely in the staff report.

Commissioner Altschul disclosed for the record he spoke with the applicant Jeffrey Seymour. They discussed matters contained solely in the staff report.

Commissioner DeLuccio disclosed for the record he spoke with the applicant Jeffrey Seymour. They discussed matters contained solely in the staff report.

Chair Bernstein disclosed for the record he spoke with the applicant Jeffrey Seymour. They discussed matters contained solely in the staff report.

Vice-Chair Buckner disclosed for the record he spoke with the applicant Jeffrey Seymour. They discussed matters contained solely in the staff report.

Commissioner Yeber disclosed for the record he spoke with the applicant Jeffrey Seymour. They discussed matters contained solely in the staff report.

Commissioner Aghaei disclosed for the record he spoke with the applicant Jeffrey Seymour. They discussed matters contained solely in the staff report.

Chair Bernstein opened the public hearing for Item 9.A.:

JEFFREY A. SEYMOUR, WESTLAKE VILLAGE, applicant, presented the applicant's report. He commended and thanked Anne McIntosh, Community Development Director, Deputy City Manager, for her service.

He provided a history of the citywide request for a zone text amendment regarding airspace subdivisions. He stated his client Monarch Development came to him questioning airspace subdivisions. The city currently has no policies that allow airspace subdivisions to take place at this point. He supports this request.

JEANNE DOBRIN, WEST HOLLYWOOD, questioned if this could be allowed retroactively to her building, and if the California Department of Real Estate would need to approve this request.

Francisco Contreras, Senior Planner stated Ms. Dobrin's building is not mixed-use. Also, it would not be retroactive to other buildings at any other time.

Commissioner DeLuccio questioned if other mixed-use buildings can come forward and apply for airspace subdivisions if this was passed.

Francisco Contreras, Senior Planner stated they could apply for a condominium conversion. Instead of applying for a condominium subdivision, they would apply for an airspace subdivision.

ACTION: Close public hearing for Item 9.A: **Motion carried by consensus of the Commission.**

Chair Bernstein moved to: 1) approve staff's recommendation recommending approval to City Council.

Seconded by Commissioner Altschul.

ACTION: 1) Recommend approval to City Council; 2) Adopt Resolution No. PC 12-1008 as presented: “A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD, RECOMMENDING TO THE CITY COUNCIL ADOPTION OF A NEGATIVE DECLARATION AND APPROVAL OF AMENDMENTS TO THE MUNICIPAL CODE TO INCLUDE REGULATIONS THAT GOVERN AIRSPACE SUBDIVISIONS, LOCATED CITYWIDE, WEST HOLLYWOOD, CALIFORNIA;” and 3) Close Public Hearing Item 9.A. **Moved by Chair Bernstein, seconded by Commissioner Altschul and passes on a Roll Call Vote:**

AYES: Aghaei, Altschul, DeLuccio, Huebner, Yeber, Vice-Chair Buckner, Chair Bernstein.

NOES: None.

ABSENT: None.

RECUSED: None.

B. Zone Text Amendment

Reasonable Accommodations:

Melissa Antol, Long Range and Mobility Planning Manager, provided an oral and visual presentation and background information as presented in the staff report dated Thursday, June 7, 2012.

She stated the purpose of the ordinance is to provide a process for individuals with disabilities to make requests for, and be provided with reasonable accommodations in the application of the City’s land use and zoning regulations. Establishment of formal procedures and processes ensures that requests for reasonable accommodation are treated in the same manner as other land use and development requests.

The federal Fair Housing Amendments Act of 1988 and California’s Fair Employment and Housing Act prohibits discrimination against individuals with disabilities in housing and requires that cities and counties take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities.

California law also requires that each city have an approved housing element as part of its General Plan. The State Department of Housing and Community Development (HCD) are responsible for evaluating each city’s housing element to ensure consistency with State Planning and Zoning law. Through the Housing Element, the City is responsible for identifying and removing barriers to encourage the development of various types of housing for households with special needs.

A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment, as those terms are defined in the Fair Housing Laws. It is considered a form of discrimination when land use laws and policies disadvantage persons with disabilities, and the City fails to make a special exception so that the disabled are treated equally.

Cities grant reasonable accommodations (or modifications) where land use laws would treat disabled people less favorably than persons without disabilities. Such discriminating effect violates federal and state law. Thus, the City must approve requests for accommodations that are both necessary and reasonable. A request is necessary if it affords the disabled individual an equal opportunity to use housing and allows the disabled individual to be treated the same as the nondisabled individual. These fair housing laws require that cities and counties provide individuals with disabilities flexibility in the application of land use and zoning and building regulations, practices and procedures. Local jurisdictions must waive certain requirements when it is necessary to eliminate barriers to housing opportunities.

The text amendment will establish a Reasonable Accommodation Permit application procedure, for processing reasonable accommodation requests that cover zoning and building codes, as well as the City's policies and practices.

Staff recommends approval to City Council.

Commissioner Aghaei requested clarification and questioned if a private individual could submit an application requesting something extra and would a developer have to comply.

Melissa Antol, Long Range and Mobility Planning Manager, stated yes. Even if they are ADA compliant, state law requires they comply with a reasonable accommodation request. She read into the record the following terms that must be met: 1) the housing which is the subject of the request for reasonable accommodations will actually be occupied by the individual with disabilities; 2) it's reasonable and necessary to make the housing available to an individual with disabilities protected under Fair Housing Laws; 3) that the requested accommodation will not impose an undue financial hardship or administrative burden on the cities, defined in the Fair Housing Laws and interpretive case law; and 4) the accommodation will not require a fundamental alteration in the nature of the city's zoning or building laws, policies and or procedures as described under Fair Housing Laws. Both state and federal laws state we need to comply.

Commissioner Aghaei questioned if a tenant could submit a request that the landlord provide additional access, and if the landlord is required to install and pay for this request.

Roderick Burnley, Project Development Administrator (Acting Housing Manager), stated what is being discussed here would not apply to that situation. There are reasonable accommodations and reasonable modifications that govern through the Fair Housing Laws with the tenant/landlord relationship. He stated what is before the commission tonight is the dealing with the rules, procedures and policies related to zoning and planning approvals.

Commissioner Altschul questioned who would be responsible for the financial responsibilities.

Roderick Burnley, Project Development Administrator (Acting Housing Manager), stated a request for modification can be made by a tenant to a landlord at the tenant's expense. There are certain exceptions, but that is not related to what is being proposed tonight.

Christi Hogin, Assistant City Attorney, clarified what is before the Planning Commission tonight is a way to create an exception or modification to the City of West Hollywood zoning rules. This does not govern how buildings generally are made accessible, or the general rules under the ADA where all buildings are made accessible. This would be for a particular applicant who says the only way that he can build a ramp on the right angle to get to his front porch, is to start it in the front yard set-back. However, the rules state under the zoning code the he can't build any structure in the front yard set-back. The city would state that is a reasonable request to have an encroachment into the front yard set-back, therefore, the city would suspend the normal rules that apply to everyone else, and instead allow this person to start the ramp in the front yard set-back, so as it can be built at the appropriate angle.

Chair Bernstein questioned that once the need for the special accommodation went away, would there be a responsibility to remove that item.

Christi Hogin, Assistant City Attorney, stated in order to get this exemption and/or modification, it is actually tailor made for the individual with the disability. If it's reasonably possible, the modifications would be removed and would go with the person.

Commissioner Yeber questioned if we need such a provision if the city is already guided by state and federal law. He provided an example regarding a cell tower citing the zoning ordinance clearly states one thing, but in essence the commission was trumped by federal statutes.

Christi Hogin, Assistant City Attorney, stated the City of West Hollywood is a general law city and only allowed to have statutes that are consistent with the general law. These laws are vulnerable to be challenged to the extent that they are inconsistent. In the past, the city has complied with the city and state statutes for reasonable accommodation, but the city does not have an expedited procedure. This way the city will signal more fairly to those who might be in need of reasonable accommodations.

Roderick Burnley, Project Development Administrator (Acting Housing Manager), also stated this item was included in the Housing Element for the purpose of having this be consistent with state law.

Commissioner Yeber questioned what the recommendation is.

Christi Hogin, Assistant City Attorney, stated this would be a recommendation of approval to City Council. She reiterated this proposed ordinance does not create any new rights that do not already exist. It does not create any new opportunities for applications that don't already exist. The city is already under obligation to reasonably accommodate the disabled, and in the past have made accommodations on an ad-hoc basis. This is just formalizing and reducing to writing and putting in the expedited procedure that the city is required under law to do. We are not creating anything new.

Chair Bernstein opened the public hearing for Item 9.B.:

ROBERT CHERNO, LOS ANGELES, commented on the amount of time it took the City of West Hollywood to actually implement reasonable accommodations. He questioned if there would be any costs related to filing and if there would be appropriate signage at the public counter. He had concerns regarding medical disclosures and HEPA Laws. He stated his support.

JEANNE DOBRIN, WEST HOLLYWOOD, commented on her condominium building and the reasonable accommodations that have been taken. She questioned new construction guidelines.

ACTION: Close public hearing for Item 9.B: **Motion carried by consensus of the Commission.**

Commissioner DeLuccio requested clarification regarding public signage and extensive documentation. He questioned if there is a cost to file.

Melissa Antol, Long Range and Mobility Planning Manager, stated there will be appropriate signage at the public counter. The city is requiring nothing further than what is currently required under federal and state guidelines in response to medical documentation. There is no fee to file.

Commissioner Altschul moved to: 1) approve staff's recommendation recommending approval to City Council.

Seconded by Commissioner DeLuccio.

Vice-Chair Buckner requested clarification that the use will actually go with the individual if they move.

ACTION: 1) Recommend approval to City Council; 2) Adopt Resolution No. PC 12-1023 as presented: "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD, RECOMMENDING CITY COUNCIL APPROVAL OF A ZONE TEXT AMENDMENT TO THE MUNICIPAL CODE TO ADD PROVISIONS FOR 'REASONABLE ACCOMMODATION' FOR PERSONS WITH DISABILITES SEEKING EQUAL ACCESS TO HOUSING, LOCATED CITYWIDE, WEST HOLLYWOOD, CALIFORNIA;" and 3) Close Public Hearing Item 9.B. **Moved by Commissioner Altschul, seconded by Commissioner DeLuccio and passes on a Roll Call Vote:**

AYES: Aghaei, Altschul, DeLuccio, Huebner, Yeber, Vice-Chair Buckner, Chair Bernstein.

NOES: None.

ABSENT: None.

RECUSED: None.

11. **NEW BUSINESS.** None.

12. **UNFINISHED BUSINESS.** None.

13. **EXCLUDED CONSENT CALENDAR.** None.

14. **ITEMS FROM STAFF.**

A. Planning Manager's Update. None.

15. **PUBLIC COMMENT.** None.

16. **ITEMS FROM COMMISSIONERS.**

Commissioner Huebner wished Anne McIntosh all the best.

Commissioner Altschul wished Anne McIntosh all the best.

Commissioner DeLuccio wished Anne McIntosh all the best.

Vice-Chair Buckner wished Anne McIntosh all the best.

Commissioner Yeber wished Anne McIntosh all the best. He announced he was recently appointed as a Planning Commissioner representative to the State Board of the American Planning Association.

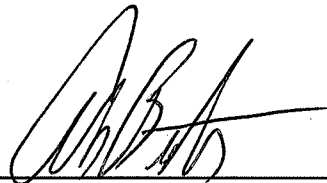
Commissioner Aghaei congratulated Commissioner Yeber on his recent appointment and wished Anne McIntosh all the best.

Chair Bernstein congratulated Commissioner Yeber on his recent appointment.

ACTION: Cancel the Planning Commission meeting of Thursday, July 19, 2012.
Motion carried by consensus of the Commission.

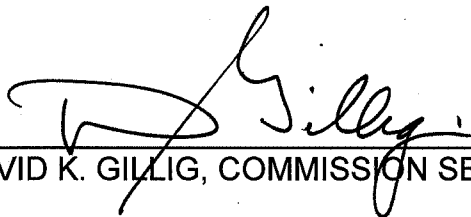
17. **ADJOURNMENT:** The Planning Commission adjourned at 7:35 P.M. to the next regularly scheduled meeting which will be on Thursday, June 21, 2012 beginning at 6:30 P.M. until completion at West Hollywood Park Public Meeting Room – Council Chambers, 625 N. San Vicente Boulevard, West Hollywood, California.
Motion carried by consensus of the Commission.

APPROVED BY A MOTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD ON THIS 21ST DAY OF JUNE, 2012.



ALAN BERNSTEIN, CHAIRPERSON

ATTEST:



DAVID K. GILLIG, COMMISSION SECRETARY