

DESIGN REVIEW BOARD MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
June 11, 2008
6:00 p.m.

BOARD MEMBERS

Robert Avellar, Chair	Vacant, Vice Chair
Ted J. Smith	Don Woodrow
Diane Bloom	Vacant

The meeting was called to order at 6:05 p.m.

ROLL CALL

Present: Chair Avellar and Boardmembers Bloom, Smith and Woodrow

Absent: None

INTRODUCTIONS

Staff Present: Jonelyn Whales, Hector Lopez, Assistant City Attorney Carlos Privat

Chair Avellar gave an overview of the procedures for speaker registration and public hearing functions and procedures. He noted any decision approved may be appealed in writing to the City Clerk within ten (10) days, or by Monday, June 23, 2008 by 5:00 p.m. and repeated the appeal period after each affected item.

APPROVAL OF MINUTES

April 23, 2008, May 14, 2008:

ACTION: It was M/S (Smith/Woodrow) to approve the minutes of April 23 and May 14, 2008; unanimously approved.

APPROVAL OF AGENDA

ACTION: It was M/S (Avellar/Smith) to approve the agenda; unanimously approved.

CONSENT CALENDAR

Chair Avellar noted that the Consent Calendar currently consisted of Items 4, 5, 6 and 7. Items 1, 2 and 3 were added to the Consent Calendar because they were recommended for hold over by staff and Items 4, 5, 6 and 7 were recommended to be withdrawn and discussed.

ACTION: It was M/S (Smith/Woodrow) to approve the Consent Calendar as Items 1, 2 and 3; unanimously approved.

Consent Items Approved:

1. **DR 1103502 – Artisan Cove Live/Work Project on Marina Way South** - PUBLIC HEARING to consider a request for Design Review approval to construct seven light industrial buildings ranging in size from 5,400 square feet to 14,000 square feet and a ±2,300 square foot community building located on the west side of the 900 block of Marina Way South, between Wright Avenue and Regatta Boulevard (APN: 560-260-054). The project will include the development of 51 live/work units and 13 industrial/commercial units on a 253,346 square feet (5.82 acres) parcel. David M. Spatz of Marina Way Properties, LLC, owner/applicant. Staff Contact: Hector Lopez. Tentative Recommendation: Hold Over To 6/25/2008.
2. **DR 1103130 – Two-Story Single-Family Residence on Tremont Avenue** - PUBLIC HEARING to consider a request for Design Review approval to construct a new ±2,400 square foot two-story residence located on Tremont Avenue between Contra Costa Avenue and California Street in the Tiscornia Estates planning area (APN: 558-282-020). SFR-3 (Single-Family Low Density Residential) Zoning District and General Plan Designation. Robert Clear, owner; Stuart Littell of Stuart Construction, applicant; L2 Studio of San Francisco, architect. Staff Contact: Janet Harbin. Tentative Recommendation: Hold Over To Date Uncertain.
3. **DR 1102710 – Construct Single-Family Dwelling on Montana Street** - PUBLIC HEARING to consider a request for Design Review approval to construct a new ±3,167 square foot single-family dwelling on Montana Street between Buena Vista and Nevada Avenue (APN: 556-141-002). SFR-3 (Single-Family Low Density Residential) Zoning District. Bulmare Gonzale, owner/applicant. Staff Contact: Jonelyn Wales. Tentative Recommendation: Hold Over To Date Uncertain.

Items Heard:

5. **DR 1104619 – Hampton Inn Hotel on Meeker Avenue** - PUBLIC HEARING to consider a request for Design Review approval to construct a four-story, 125 room hotel on the vacant lots located at 2020 Meeker Avenue (APNs: 560-170-003 & 560-170-017). The application includes a request to exceed the allowable floor area ratio. R&D/Business and Commercial Office (Knox Freeway/Cutting Boulevard Corridor Specific Plan) Zoning Districts. Harbour Gate Partners, L.P., owners; HBF Holdings, LLC, applicant. *Staff Contact: Lina Velasco.* Tentative Recommendation: Recommend Approval to the Planning Commission.

Michael Stanton, Stanton Architecture in San Francisco, gave a brief description of the project, stating the project is expected to be a hotel with limited service and no full-service restaurant. Public space includes a breakfast area, one meeting room, a modest exercise room and a swimming pool screened from Meeker Avenue. He said drawings show the basic configuration and the design is intended to pick up the better elements of the adjacent Long's complex, with brick, pre-cast concrete and some trellis work. He presented the palette of materials, said the entrance and porte-cochere is slightly asymmetrical to the building in order to put it closer to the designated traffic area and to leave undisturbed an area of soil to the west of it.

A sample materials board was passed around showing a champagne colored metal roof, continuous brick face, cement plaster finish, window frames and masonry elements at the enclosure around the swimming pool. He said Hampton Hotels demands certain window and a louver assembly for the air-conditioning unit. He also discussed metal canopies in several places such as over the breakfast area and the porte-cochere, described the façade which will

include pilasters to differentiate the rhythm of the façade, an East-West cement plaster wall with sections that poke out, and trellis to suggest balconies.

Public Comments:

RODNEY MELGARD, said he was representing an adjacent property owner, Eberline Laboratories on 2030 Wright Avenue and would be bounded by the hotel on its south and west sides. He provided a historical background of the laboratory buildings and its provision of services and consulting to government agencies, radio-pharmaceutical firms, and property developers and to the nuclear fuel cycle industry, stating cleanliness and control of contamination are vital for their operation. While they do not object to the development per se, they would like their concerns and requests to be part of the official record. Primarily, they felt the proposed hotel was overbuilt for the site and the neighborhood, as 4 stories with a height of about 45-50 feet and an overall length of 350 feet. He believed it did not conform to the FAR allowed in the General Plan and requested the bulk and height of the project be reconsidered and the variance denied. The adjacent laboratory performs analytical analysis on samples that are irreplaceable. Results have legal implications and protection of samples is necessary for their business operation to continue. Several months ago an adjacent field was graded, causing damage to laboratory samples, and analysis by their 33 workers had to be repeated at great expense. The laboratory would require binding assurances that during construction of the project, that the lab and the air intake filters would not be subject to dirt or debris. They require that the construction contractor must mitigate entirely any contamination from air born dust, dirt or debris.

Boardmember Woodrow referred to the proposed height of the project, agreed that a 50-foot high building would require a variance from the Planning Commission.

Michael Stanton, Architect, said a nearby building on 23rd Street is 60 feet high with stacks, and Mr. Melgard also said it was an obvious industrial building. Boardmember Smith said the Design Review Board has no jurisdiction over it because it is a State building.

Chair Avellar asked Mr. Melgard whether the height would cause problems of shadows obstructing windows, and Mr. Melgard said it would not.

Boardmember Woodrow questioned Mr. Melgard whether their company was the one that put isotopes in the groundwater. Mr. Melgard felt isotopes were caused by Mother Nature if they existed. All groundwater is radioactive and that is why they treat and purify it. Boardmember Smith questioned the former building to the west of the laboratory facility which dumped illegally, and Mr. Melgard said they owned and built that building in 1965 and used it for a manufacturing plant for microwave ovens and they were sold to the semi-conductor industry. He said they sold the property to Dale Summers who proceeded to go into the recycling business, which later became a Super Fund site which was then cleaned up.

Boardmember Bloom added that they had met with Planning Commissioners Virginia Finlay and Charles Duncan regarding the landscaping, and received an e-mail from the landscape architect on this project, it does need to be revised, and she questioned how this could be done.

Mr. Melgard agreed the size of the building was a little overwhelming, said he would be glad to work with staff and his facilities manager could work with the developer to mitigate dust and such.

Applicant - Rebuttal

Mr. Stanton noted that the last speaker's comments concerned zoning issues and CEQA issues rather than design issues. He felt the hotel was not overbuilt but well-proportioned, and that an economically viable, bigger hotel would benefit Richmond. He did not believe the height limit was excessive, thinks that the last speaker's concern was the underlying zoning for a hotel and for air quality, and he did not feel qualified to address those issues. The other issues raised relate to temporary disruption during construction. He said the project intended to be fully compliant with all State requirements and such issues were not related to design.

Boardmember Woodrow voiced concern with lighting, stating that Drawing A.1 shows a space by the northeast corner for a path to walk to Long's. Drawing A-RR made clear that the light did not reach that way. He suggested it would be good to add a light on that path. Secondly, light is needed in that area for safety because it's quiet at night, it has quick access to the freeway, and people sleep in their cars.

Chair Avellar then questioned the bio-swales and their depth as there were a couple of hot sites. He expressed concern whether the swales tied into groundwater which can come as high as 7 feet above sea level and he questioned whether there was a danger of contaminants.

Mr. Stanton referred to lighting improvements and proposed bollards at the street level instead of overhead parking lot lights which would accentuate the location to people. Regarding the bio-swale issue, he broke it into 2 parts – location and direct filtration into groundwater, which he discussed away from the microphone and described on plans, stating the locations of the bio-swales relative to the potential hot spots were fairly far away.

Ms. Velasco responded regarding the water table that the hot spot is far away, and the bio-swales are about 1 to 1.5 feet deep and staff does not anticipate problems in reviewing the construction plans.

Chair Avellar questioned and confirmed the height ordinance was regulated at 50 feet in the area and the applicant is measured at about 46.5 feet.

Boardmember Woodrow pointed out that the traffic study showed a map of Fremont instead of the site at figure P.1.; Meeker/Wright/23rd St area. Ms. Velasco apologized and noted the document for the Planning Commission would be corrected.

Boardmember Woodrow also questioned the noise charts, and noted that peaks of noise did not fall into commute times. He said trains do and will yield more noise because they most likely will double as soon as Port of Oakland finishes its plan and as soon as the railroad puts in its fourth track for Santa Fe lines. Ms. Velasco said the project review included noise measurements and the tables referred to are the result of those. They wanted to see first whether this use was compatible with the existing noise level, and then State law also requires that a hotel has a certain interior noise level which is what the mitigation measure shows. There is an additional noise analysis that needs to be completed for the construction of the project to comply with interior noise levels. She said there is adjacent residential south of the railroad and they get a lot freeway noise from trucks on I-580.

Boardmember Woodrow questioned whether Ms. Velasco was confident that the report explains noise and whether company plans accommodated for the noise. She said it is required by State law as part of the mitigation and for the hotel to get its certification.

Boardmember Smith expressed a desire for more and better uses and specifically a restaurant to attract people to the area.

Mr. Stanton concurred, and replied that it is a chicken & egg situation: the adjacent mall has a pad designated for a restaurant but the builders say the restaurant will be built after the hotel is built. Boardmember Smith felt people would not walk two blocks in the rain from the hotel to the restaurant, and felt there was a need for a restaurant in that area, and that some Hampton Inns had that.

Chair Avellar asked about two portions of the brick façade and dormers on windows. He also felt that the entry looked lopsided with brick elements only on the right, and suggested adding brick to the stucco façade. He also asked about landscaped berms at the parking lot to screen the undersides of cars. Mr. Stanton said he would reconsider these elements and incorporate them for the Planning Commission. Chair Avellar also questioned, and the applicant discussed, the monument sign, window options, canopies, natural light and lit signage at night.

Boardmember Bloom questioned landscaping and whether it would be installed up to the level of the building, stating that a revised plant list was received by email, but she felt it needed review.

Boardmember Bloom questioned the timing for landscaping, and Ms. Velasco said the goal was for the project to go July 3 to the Planning Commission and there was time to set up a meeting and have a revised plan based upon comments. Boardmember Bloom said Planning Commissioners believed the project was important given what would happen in that area, and she requested the planting be up to the level of the building, she said she would soon leave town on a trip, but agreed to email the landscape architect to discuss a design and a revised plant list.

The public hearing was closed.

Boardmember Woodward expressed concern about proceeding based on comments from Boardmembers and believed the applicants needed to return with their changes. Board members discussed their concerns about substantive issues: the project as it related to the General Plan, the lot, a planting plan and all the points raised by Chair Avellar. He suggested the applicants return to the Design Review Board prior to being heard by the Planning Commission on July 3, 2008. Ms. Velasco said the Board could review it on June 25, 2008 to meet the July 3 Planning Commission hearing.

The public hearing was re-opened. City Attorney Privat suggested the Board continue the public hearing to a date certain.

ACTION: It was M/S (Woodrow/Smith) that DR 1104619 be continued to June 25, 2008 at 6:00 p.m. to address comments that have been made and requested by the Design Review Board; unanimously approved.

6. DR 1104464 – IMTT Facility Storage Tanks on Cutting Boulevard - PUBLIC HEARING to consider a request for Design Review approval to install three above ground storage tanks at the existing IMTT facility located at 100 Cutting Blvd. (APN: 560-290-004). Port/Maritime (Knox Freeway/Cutting Boulevard Corridor Specific Plan) Zoning District. IMTT, owner; TRC, applicant. Staff Contact: Lina Velasco Tentative Recommendation: Conditional Approval.

Jonathan Shire, TRC, gave a brief presentation of the project, stating the existing IMTT facility has been in operation as a Tank Terminal since the early 1950s. He showed a rendition with the 43 existing tanks and the 3 proposed tanks at the south end, stating the tanks would be 56 feet in height, which is 16 feet below the height limit. The facility stores and distributes various bulk liquids including petrochemical products, vegetable oils, fuel oils, etc., which are shipped in and

out by pipeline or ship. The tanks would be connected to the existing infrastructure to add capacity and would hold gasoline, jet fuel or diesel, with a capacity of about 100,000 barrels each, with the smaller one being 110 feet in diameter and the larger at 116 feet in diameter. He showed on the drawing where the facility would cover less than 3 of the facility's entire 22 acres.

Mr. Shire said there are required permits with the BAAQMD permit, building and fire permits and the CUP from the City of Richmond. The southernmost tank has a portion within a hundred foot shoreline band under the jurisdiction of BCDC; they would issue a permit once the City use permit was issued. He then gave detailed information about the tank design and compliance to standards in an environmentally conservative fashion, and spoke of some state of the art features such as single column design for the internal floating roof which has less emissions than a multi-column design, the cone-top tank and drain dry design. The tanks will be connected to the existing fire control infrastructure, and they had met with the Fire Marshall to satisfy his concerns. Also, there is a redundant saltwater system of fire supply at the south end. Geotechnical investigation was completed. The tanks will be supported on pre-cast piles and concrete raised foundations.

There were no public speakers.

Boardmember Bloom questioned what would happen in that area in the event of a large earthquake, considering the petrochemicals and with the addition of the 3 tanks putting that much more pressure on the plot of land. She questioned whether it increased safety concerns, given all the underground pipelines. Mr. Shire replied that the purpose of the geotechnical investigation is to meet seismic standards and he then introduced the lead design engineer, Anthony Ramirez.

Anthony Ramirez, TRC Project Director overseeing engineering and design for the project, stated that as part of the initial study in the application they supplied the geotechnical investigation. He said they did 3 CPT borings to determine soil types, existing conditions, and he gave details about the number and 45 deep piles and all design considerations have addressed the potential of earthquakes.

BREAK

Chair Avellar called for a brief recess while Boardmember Smith left the dais, and thereafter, reconvened the regular meeting.

Boardmember Bloom asked whether the new tanks have a higher volume than the existing ones, and expressed concern about their proximity to the water. Mr. Ramirez replied that there's an existing tank on the facility close to 100,000 barrels, and added that in 2005 an EPA oversight was completed. A slurry wall about 6 feet tall tied into the Bay muds that surround the entire tank farm. He reiterated actions TRC had taken such as the CPT drillings and he showed a draft preliminary design prepared by Mr. Ramirez, which was made part of record.

Ms. Velasco believed that some of issues discussed by the Board would be better addressed by the Planning Commission. Chair Avellar clarified that there could be architectural questions about the existing slurry wall and confirmed with TRC that it was the existing above ground berm.

Chair Avellar asked why the tanks were white whereas the other tanks are light brown and said white would stand out and mar views. Mr. Shire said white was chosen because it is the highest reflector and would maintain the coolest temperature. Ms. Velasco noted that the site was only visible from Santa Fe railroad channel, much of which is developed, it would not be seen from the Bay, and this was important as well to BCDC. She noted it was also within the Port area. Mr.

Shire agreed to take into consideration comments of Chair Avellar for a different color but also said BAAQMD might have some requirement as to the tank color due to temperature.

Boardmember Woodrow questioned whether the tanks were steel, and Mr. Shire confirmed that they were steel, progressively thicker at the bottom and thinner towards the top.

Boardmember Woodrow expressed appreciation for the single column design and asked if the column could be seen from the road, to which Mr. Shire replied they would not. Boardmember Woodrow also said he would not ask his questions about the piles, as they had been told they could not do that, so he would not raise public safety concerns.

There were no public speakers, and the public hearing was closed.

ACTION: It was M/S (Woodrow/Smith) to recommend to the Planning Commission approval of DR 1104464 with the staff's 4 findings and 3 recommendations, with the additional written condition to soften the colors of the tanks; unanimously approved.

Ms. Velasco noted that for the record, the item is a recommendation to the Planning Commission and not appealable; however, there is a Conditional Use Permit the project is subject to.

7. DR 1104277 – Two-Story Addition to Single-Family Residence on Thunderhead Court - PUBLIC HEARING to consider a request for Design Review approval to construct a ±1,502 square foot two-story addition to the existing 1,366 square foot residence located at 4917 Thunderhead Court (APN: 431-411-018). SFR-3 (Low Density Residential) Zoning District. Sal Russo, owner; Deilly Echeverri, applicant *Staff Contact: Hector Lopez* Tentative Recommendation: Conditional Approval

Chris Anderson, Anderson Construction, said he took over the contract as of January 1 and said a six-month delay has been frustrating. He said they have been dealing with the Neighborhood Advisory Council which has made suggestions regarding how the house should be designed, and they have met them more than halfway at a significant cost to their client, Mr. Russo, upwards of \$8,500 in design changes.

Mr. Anderson said the architect has met requirements of setbacks and height variances, Mr. Russo discussed the project with neighbors and received letters back and read a letter into the record from neighbors Joan and Brian Rexall supporting the project, citing similar remodels in the area, that a refusal to grant approval would be discriminatory and giving their permission to present their letter in meetings. He then presented photographs of other one- and two-story houses on Thunderhead Court which he gave to staff. He said they had taken away the possibility of the client's view from the roof and a deck and reduced the original design by 850 square feet to be in line with the 2,866 square foot size of neighborhood homes.

Public Comments:

BEHLE ESTCHEREZ, spoke in favor of the project.

Boardmember Bloom asked what the typical square footage of homes in the pictures were and where the prospective house would fit in. Mr. Anderson restated that the project's square footage was about 2,800 square feet and homes ranged between 1600 to 3100 square feet. Boardmember Smith confirmed that a house 2 doors down was 2,866 square feet and was completed last year.

Boardmember Woodrow asked for street numbers in the pictures, and confirmed that all the houses shown were on Thunderhead Court.

TANYA BOYCE read a portion of a letter from a Thunderhead Court neighbor and expressed her agreement that the owner has a right to fix his home, and no one has the right to tell him what it should look like as long as he meets development standards. She was embarrassed by the obstructions over a period of a year and further stated that it is in the best interests of the community to allow people to improve their property.

JOHN LISENKO spoke against the request, stating that neighbors' main concern was preservation of views and view preservation is a relevant design standard issue that should be considered in the approval. He entered into the record a sketch that recommended an alternate design in the loft area.

JEFF MARTIN expressed disagreement with staff finding number 2 regarding views and privacy, asked that the owner not build over the garage to maintain his views and privacy.

Boardmember Smith remarked that the applicant had decreased the size of the house, but Mr. Martin said the impact on his view had not changed.

VICTORIA MARTIN said she had sent a letter to Mr. Mitchell asking for the opportunity to contribute to a resolution about the views, but she was not invited to meetings with staff, she found out about the hearing from Eleanor Loynd, requested timely and effective communications to people who were involved, and confirmed with Boardmember Smith that she lived next door to Mr. Russo.

ELEANOR LOYND expressed concern with the size of the lot, fence height restrictions, the fact that the design of the house was out of character with the neighborhood, said the May Valley Neighborhood Council should be identified in the staff report.

Rebuttal - Applicant

Mr. Anderson presented the permit for the third garage, referred to pictures taken from the kitchen window and said they took the house down from a two story to a one story as well as a 4:12 roof to allow the view from their kitchen window. He spoke of the cost of design changes over the existing garage, and concluded that they made many changes to appease the neighborhood council.

Deilly Echeverri, owner, said the project was approved in January and met all requirements of the City of Richmond.

Boardmember Smith referred to a photo and questioned clarification on the public's objection.

Boardmember Bloom asked for clarification about an unnumbered photograph "view from neighbor's window" with a redwood fence and a story pole indicating second story and a red pencil line showing height. She stated her confusion about the neighbor's objection, as the view appeared to be intact.

Chair Avellar asked staff whether the FAR was met, and Mr. Lopez replied that there was no such requirement or any square footage requirement; only setback and height limits. He said the lot was double the size of the requirement, or 10,000 square feet and the lot meets all height and setback limits.

Boardmember Bloom asked for clarification on the lot size and Chair Avellar noted that the legal minimum lot size in Richmond is 5,000 square feet and the State is 6,000 square feet.

The public hearing was closed.

Boardmember Woodrow commented that the issue of views comes up repeatedly as a major concern; however, there are no grounds in City law to restrict plans based on someone's view being changed. He said the place to clear this up is with City Council and he suggested neighbors address their concerns with that body.

Chair Avellar made a motion to approve the project and Boardmember Woodrow seconded the motion, and Boardmember Smith abstained. Attorney Mary Renfro interjected that a motion must be carried with 4 affirmative votes, so there would have to be a re-vote either to deny or to approve but it would require 4 votes.

Boardmember Woodrow asked Boardmember Smith why he abstained and Boardmember Smith did not provide a reason. Boardmember Woodrow noted this is a problem the Board faces because the City has not addressed the quorum issue.

Boardmember Bloom believed this was unacceptable as the Board's hands are tied with the quorum issue, and it would continue to happen. She would prefer to see the Board refuse to re-vote and wants some special ability for the project to get passed. Ms. Velasco said since the project was initially approved by the Board for a greater size, by nature of the appeal, City Attorney Privat said the process was started all over.

Chair Avellar said the project had initial design issues, but they were not flagrantly outside the norm. However, what the Board has now is a situation which he believes is approvable and requested consideration for another vote.

ACTION: It was M/S (Avellar/Woodrow) to approve DR 1104277 two story addition to a single family residence on Thunderhead Court with staff's four findings and six recommendations; unanimously approved.

4. DR 1104549 – Additions to Single-Family Residence on Panama Avenue - PUBLIC HEARING to consider a request for Design Review approval of a ±126 square foot eastern addition on the east side, plus a ±60 square foot addition on the west side of an existing 1,052 square foot single-family dwelling, and construction of a 640 square foot accessory building on the rear property line at 6101 Panama Avenue (APN: 510-121-024). SFR-3 (Low Density Residential) Zoning District. *Staff Contact: Jonelyn Whales* Tentative Recommendation: Various.

Boardmembers Smith and Bloom asked for clarification of what was expected of them for this project and Ms. Whales said staff has presented a total of four options for the project which are identified in the staff report. City Attorney Privat said staff's recommendation is to deny the project which is listed on the last paragraph on page 7.

The applicant/owner said the Planning Department assisted him greatly and he believed he followed the Building Code.

Boardmember Woodrow confirmed with Ms. Whales that staff visited the property to observe the planned work and then found another structure at the rear property line. She confirmed it was built without a building permit, per the County Assessor records. It began as a 215 square foot greenhouse, but it was increased in size to 646 square feet and it has with new siding. It is also

habitable and not a greenhouse. She clarified that the owner would need to re-apply or reduce the size to conform to the accessory structure guidelines of the zoning ordinance. City Attorney Privat said the Board would need to deny the design review permit approval as it is now and the applicant would need approval of a variance from the Planning Commission.

Boardmember Woodrow confirmed the applicant would not have to tear down the structure.

Public Comments:

CINDY WEIR said her neighbor built a house in his backyard, it started out as a garden house and grew, and her concern was that it is on the property line right against their fence and is a fire hazard.

Chair Avellar asked staff whether accessory structures could be built on the property line as long as there's 75% of the back lot, and staff confirmed this as long as it was not higher than 9.5 feet.

STACEY WEIR expressed the same concerns as her sister. She said they were told that there should be at least 3 feet between the structures and the primary house is not 3 feet. She questioned why then can a secondary house be on the property line.

Ms. Whales explained that a secondary structure was similar to a garage which is not habitable. Ms. Weir then reiterated her concerns about the placement of the building and the danger of fires.

GEORGE BLAIR said he lives in the adjacent property and sold the property to the current owner, and had no objection to the proposed structure.

CHRISTOPHER FLYNN said this is not an accessory building, but it is 646 square feet. He said it was built in violation of the building Code, the second livable building on the property is over nine feet, has a zero lot line to the rear and the side and is a fire hazard.

Mr. Privat reminded the Board that questions of the main structure were not before them tonight. Ms. Whales then read the specifications defining an accessory structure and said this what we are discussing is a second unit dwelling that started off as an accessory structure, but was no longer classified as such per the Building Code.

Chair Avellar asked what the square footage limit was for an accessory structure, and Ms. Whales said there is no limit; it would have to be incidental to the actual primary dwelling like a garage, but it cannot be habitable.

Rebuttal - Applicant

Boardmember Smith believed the applicant probably did not understand the complaints and requested a translator. The applicant said they discussed the situation with the Planning Department many times and believed they were following the rules and regulations.

Chair Avellar indicated to the applicant that the structure built was larger than planned and he also asked him whether he had obtained permits, to which the applicant replied he wanted to follow the Code and make the neighbors happy. Chair Avellar confirmed with the applicant's son that he understood his father had no permit for the size of the rear building and this was what was before the Board for consideration.

Ms. Whales said a copy of the staff report was mailed to the applicant and she also gave the applicant's son a copy. She said staff had several meetings with the applicant and felt he was aware of the issues. She pointed out the status update at the end of the staff report prepared by the Building Department showing all the building violations.

Chair Avellar asked staff to clarify recommendations.

Ms. Whales said there were several options: Recommend to the Planning Commission approval of the variance for the rear structure, or deny the project based on the applicant's failure to obtain appropriate building permits, or recommend to the Planning Commission approval of the variance but reduce the size of the structure to meet zoning regulations for second dwelling units.

Boardmembers Smith and Bloom questioned other options in the report about either demolition or whether granting a variance in the staff report meant it could go right up to the rear property line.

Ms. Whales said staff would have to draft findings to support a variance for a second unit, because it exceeds the Code requirements for a second unit. City Attorney Privat agreed different findings other than what was listed in the staff report, as they state they are not satisfactory.

Chair Avellar clarified with the applicant/owner that the structure would need to remove the kitchen, walls, outlets, plumbing, and have the bathroom reduced to a sink and toilet. Boardmember Bloom asked to clarify that the owner understood.

Ms. Whales confirmed that an accessory structure would not require a variance, but the structure would need to be gutted so there were no interior walls separating living spaces. Chair Avellar said the question to them was whether they wanted an accessory structure or a second unit. A second unit would cause them to go to the Planning Commission to get a variance and they would need to reduce the size of the building's footprint.

Boardmember Bloom confirmed with the applicant that their choices were clear. Chair Avellar restated that they could not have an occupied living unit on the property line. The applicant/owner questioned the size of the second unit and the Board indicated the maximum was 640 square feet and it is currently built to 646 square feet which would require a variance. Therefore, the design would need to be modified.

Boardmember Woodrow said the building could not be a place where someone lives, and Ms. Whales said staff has been working with the applicant for a year and a half and believed he understood this process. The Board discussed how much time was needed to consider this request and discussed whether or not to continue the item.

ACTION: It was M/S (Woodrow/Smith) to hold over DR 1104549 to July 23, 2008 at 6:00 p.m.; unanimously approved.
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BOARD BUSINESS

8. Reports of Officers, Board Members, and Staff

Boardmember Bloom questioned and confirmed that approximately 8 items would be schedule for the next agenda. She also voiced concerns with quorum issues and the Board's meeting schedule.

Public Forum - Brown Act - None

The Board adjourned the meeting at 8:48 p.m.