

**DESIGN REVIEW BOARD MEETING  
COUNCIL CHAMBERS, RICHMOND CITY HALL  
1401 Marina Way South, Richmond, CA  
October 22, 2008  
6:00 p.m.**

**BOARD MEMBERS**

Robert Avellar, Chair  
Ted J. Smith  
Diane Bloom

Don Woodrow, Vice Chair  
Vacant  
Vacant

The meeting was called to order at 6:03 p.m.

**ROLL CALL**

**Present:** Chair Avellar, Vice Chair Woodrow and Boardmember Smith

**Absent:** Boardmember Bloom

**INTRODUCTIONS**

**Staff Present:** Hector Rojas, Jonelyn Whales, Janet Harbin, Richard Mitchell and Carlos Privat

**APPROVAL OF MINUTES**

August 27, 2008

Vice Chair Woodrow referred to page 4, 2<sup>nd</sup> line; “at the end of this street” and asked the street name be inserted by staff.

**ACTION: It was M/S (Avellar/Woodrow) to approve the minutes of August 27, 2008; unanimously approved.**

**APPROVAL OF AGENDA**

**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, November 3, 2008 by 5:00 p.m. and repeated the appeal period after each affected item.

Vice Chair Woodrow asked that Items 3 be heard ahead of Item 1.

**ACTION: It was M/S (Avellar/Smith) to approve the agenda, as amended, to hear Items in the following order; 3, 1 and 2; unanimously approved.**

**CONSENT CALENDAR**

**Chair Avellar** noted the Consent Calendar currently consisted of Item 2 and 3. Vice Chair Woodrow asked that Items 2 and 3 be removed from the Consent Calendar.

**Consent Items Approved:** None

**Items Heard:**

- 3. PLN08-056 – Design Review Permit for a ±400 square foot addition and remodel to an existing single-family dwelling on 33rd Street - PUBLIC HEARING** to consider a request for Design Review Permit to allow construction of a ±400 square foot addition to an existing single-family dwelling on 661 33rd Street (APN: 518-190-012). The project would permit the construction a rear addition. The Zoning District is SFR-3, Single Family: Low Density Residential District. Daniel Ari, owner/applicant. Staff Contact: Kieron Slaughter. Tentative Recommendation: Conditional Approval.

Vice Chair Woodrow said the drawings submitted were supposed to show the front of the building and only one drawing out of three does, and Mr. Slaughter said the copies came out poorly. At the time of the photographs, there was heavy fauna, trees, shrubs. Additional photographs were able to be taken from another lot which did not reproduce well and he said this was the best that could be done.

Vice Chair Woodrow questioned and confirmed that staff supports Exhibit B as provided in the packet and an additional landscape plan was submitted as Attachment 3. Mr. Slaughter noted, however, that the applicant is open to receiving additional advice and recommendations for the landscape plan. Vice Chair Woodrow felt the plans did not suffice or conform to application submittal requirements.

Kieron Slaughter gave the staff report and briefly described the request, stating that the applicant was present to discuss the project.

The public hearing was opened.

Daniel Avi, owner/applicant, said they propose to add a 400 square foot addition to the back of the home and also remodeling the interior of their home with a new bathroom and interior wall, making it a three bedroom home.

Lavren Avi, owner/applicant, apologized for the drawings, but she was given very short notice to find and portray all of the botanical plants and a complaint was received from their neighbor. Daniel Avi said they were permitted to start the project; their plans were approved without design review.

Ms. Harbin said the Avi's were trying to legalize some of the work previously done to the home and staff had not seen exterior changes to the front when they originally saw the rear addition. The addition to the back ended up being a little higher than what was estimated on their plans and this was the reason the project was before the Board tonight. She said the applicants have existing landscaping in front of the home; staff was trying to schedule the item for the Board quickly because of the discrepancy with what was built.

Chair Avellar questioned the threshold that triggers the need for a landscape plan for an addition. Ms. Harbin said their submittal application for design review requires a landscape plan either showing existing, replacement or new landscaping. However, not much would be represented or required for rear yard landscaping other than what exists.

Vice Chair Woodrow referred to the photograph showing an entrance to the house on the front, but this is not represented on drawings. Ms. Avi said this has changed; the entry is now on the

side, which will be to their bedroom. Vice Chair Woodrow noted that the drawing did not show what exists now. Ms. Avi said work has been going on for one month.

Vice Chair Woodrow questioned if the relocation of the door was what the Board was being asked to approve, or has it been approved. Mr. Mitchell said yes, the original issue was that the rear room addition needed design review because it was higher than 15 feet. In the process of review, it became clear that the front is changing, as well. The face of the building is being expanded by the proposed wing wall, so the entry will be represented by the gate going into the yard and then to the left of the gate is the arched area which will be the driveway in. He said they are moving the entry from the street to the left which becomes a gateway or courtyard area approach, which staff also felt needed to be reviewed by the Board.

Vice Chair Woodrow said a drawing would be helpful showing the house as it was when the photo was taken and then what is current. He questioned how the Avi's arrived at a single slanting room on the back of the house. Ms. Avi said it will be a space that they can dance in and since it is not a large space and doing so would give the feeling of light and height into the room and bringing the earth, trees and clouds into their home.

Vice Chair Woodrow questioned the color, materials, windows and walls, and Ms. Avi presented a color and materials board. He also questioned the insufficient landscaping plan, and Ms. Avi reiterated the short amount of time to complete the plan, said she chose drought resistant plants and said she can work with Boardmember Bloom or get a designer to design a plot plan of the plants. Her intentions are to improve their quality of life and make something beautiful and she said she also brought pictures of homes on her street which was not beautiful.

Vice Chair Woodrow questioned if staff presented design guidelines to Mr. and Mrs. Avi, and Mrs. Avi said they were somewhat helpful and confirmed the color of the home would be Adobe. Vice Chair Woodrow said the house as it exists is one style and the rear portion is of another style which could be interpreted as not fitting together. Mrs. Avi said she was advised not to change the front and to keep the way it looks so that it is compliance with the Code. She said the back cannot be seen from the front and was not sure why this was an issue.

Vice Chair Woodrow questioned why the 2x12 accent strip on the front of the house does not carry to the sides of the house, and Mrs. Avi said it goes around to the edge of the arbor and fence and continues visually to the gate, but she said this can be continued along the rest of the house.

Chair Avellar said he likes the design of the addition. He asked the applicants to ensure they have a 30-year roof on the plans, he asked to be sure to match the existing window and door trim, consider porch covers over the rear entries, and have the new 2x12 stucco accent strip wrap around the house, or at least 3 feet past the front of the house.

Public Comments:

Justin Pearce said he lives directly behind the Avi's property, voiced concern only with the height of the addition, presented photographs to the Board, wanted to ensure that the structure conforms to the City's codes regarding height and was curious to know what exceeded the City's codes currently with the home.

Vice Chair Woodrow questioned and confirmed with Mr. Pearce that his concerns relate to visual aesthetics and overall property values. Vice Chair Woodrow noted that the large tree screens the Avi's home from Mr. Pearce almost completely, and Mr. Pearce said it does provide a buffer but he voiced concern with the chance there may be new property owners in the future and removal of the tree.

Chair Avellar noted the height was 19'5.5" and the Building Code limit is 35 feet, so it falls well below the ordinance. However, if over 15 feet it must be reviewed by the Board, and he said this was why the project was before the Board. He also questioned and confirmed that no new windows intruded upon Mr. Pearce's privacy.

*Rebuttal – Applicant*

Mrs. Avi said they are spending a lot of money on their home and do not plan to leave. She likes trees and can plant more, was sorry for making any problems for her rear yard neighbor and respected his concerns.

Vice Chair Woodrow noted that the applicants did not bring their plans to the North and East Neighborhood Council, and Mrs. Avi said she did not realize she needed to, and said she took all of the steps she was instructed to by the Planning Department.

The public hearing was closed.

**ACTION: It was M/S (Avellar/Woodrow) to approve PLN08-056 with the staff's four findings and twelve recommendations, with an additional condition to indicate on elevations a 30-year roof, for windows and door trim to match existing, a porch cover over the rear entries, for the landscape plan to return to the Board for approval before submittal of a building permit, and that the applicant meet with Boardmember Diane Bloom to formulate the landscape plan; unanimously approved.**

- 1. EID/DR 1104490 – Kohl's Department Store on Rydin Road and Central Avenue - PUBLIC HEARING** to consider a recommendation to the Planning Commission on the Draft Mitigated Negative Declaration (MND) and Design Review Permit for the Kohl's Department Store project located at 2700 Rydin Road and 4903 Central Avenue (APNs: 560-390-018, -013, and -020). The project consists of a new two-story ±99,011-square-foot retail building, and a ±76,008-square-foot commercial pad site. The project requires City Council adoption of the MND and approval of a General Plan Amendment, Rezoning, Zoning Ordinance Text Amendment, and Design Review Permit. M-1 (Industrial/Office Flex) zoning district. L&S Properties and Central Spur Properties, owner; Oliver and Company, Inc., applicant. Staff Contact: Hector Rojas. Tentative Recommendation: Recommend Conditional Approval to Planning Commission.

Vice Chair Woodrow questioned if staff could expand on what the Board's review role is for the project, and Mr. Rojas said the comment period ended this date at 5:00 p.m. and the Board will be forwarding a recommendation to the Planning Commission on the mitigated negative declaration and the design review permit. He provided a brief overview of the project, stating Mike Porto from SP2, two consultants the City hired to conduct the biological study for the project and a traffic analysis; Ross Dobberteen and Pang Ho; David Popelka and Steve Oliver from Oliver and Company, Inc. who will give a short presentation, Brian Tobiczkyk from Kohl's Department store who will discuss the design in more detail. He briefly described the project request, stating with the project is a companion project for development of a commercial pad site in the amount of 35,000 square feet. The project would be developed as a 6,000 square foot commercial building and staff is considering this for a similar retail use, a bank or sit-down restaurant. Approximately 400 letters were received prior to and during the comment period, mostly concerned with the dog park and effects of the project on the Hoffman Marsh and mud flats. Attachment 2 shows those comments in form, and letters were also received just an hour ago from Caltrans and East Bay Regional Park District.

Vice Chair Woodrow said he thought the Board was supposed to be concerned with such things as paint, parking, all design-related issues and he was not sure what the Board's scope of review was for the negative declaration. Ms. Harbin clarified that the Board would be reviewing and recommending the negative declaration along with the design review permit approval to the Planning Commission tonight.

Steve Oliver, Oliver and Company, Inc., described their 62<sup>nd</sup> year in business and they made the decision to move to Richmond 16-18 years ago, they have tried to be a good corporate citizen, said he got very involved in the green building movement and environmental work through the Sonoma Land Trust and assisted them raise \$500,000 to develop urban growth boundaries around every city in Sonoma County. They began to focus on some of the early industrial buildings they developed in northern California with particular emphasis on Richmond. He noted they originally developed the site as a Coors Beer distributing site, as they move their beer by rail. He discussed their reasons for choosing Kohl's, noted the store would result in 180 new jobs for the City, increased tax revenues, said they are reducing the currently 165,000 square feet on the site to a 55,000 square foot footprint. He said there is no impact to the Pt. Isabelle Dog Park and discussed their allegiances to dogs. They are bringing in over 100 new trees to the site, they are improving the storm water management system which improves all nearby neighbors, they had 9 proposals and chose Kohl's because of the quality of their management team, their focus on green building and LEED certification, they understand traffic impacts, they are pleased to see no impact to the marshlands and mud flats, and are happy to continue to meet with the Richmond Annex Neighborhood Council and are proud of the project. He described their support to non-profits, presented recently completed projects, said they relocated most all of their existing tenants from the site, and he introduced Brian Tobiczyk.

Brian Tobiczyk, Kohl's Department Store, Wisconsin, provided an overview of Kohl's mission, their family focused environment based on value, brands and specialty lines.

Jeff Stove, Architect, said the building on the site is a reduction in square footage with a lot more landscaping and green space than the current site, they worked with staff on setting the building back and rotated it, and he presented elevations and described the architectural style of the store.

Vice Chair Woodrow referred to the site plan and said there are a couple of benches on the site and bike racks and questioned why they were there. Mr. Stove noted this was a bus stop location, and Mr. Tobiczyk said the bike rack is a requirement of their LEED certification and they expect 5 people being able to utilize those racks.

Vice Chair Woodrow questioned what would happen to LEED certification if Kohl's does not receive state funding for the solar panels. Mr. Stove said they are pursuing installation of the panels, they do not impact their LEED certification requirements and the store as it stands will be LEED certified. The certification is based on air quality, building balancing, efficiencies, materials, local sourcing and products with higher recycled content and briefly described examples. He also noted they have a strict no-smoking policy, said they use only green, non-toxic products, they have a lot of LEED accredited people on staff, and said they are the number two retail purchaser of renewable energy currently according to the EPA. He discussed their educational programs for employees and customers and opened 45 stores at the beginning of the month which is all LEED pre-certified stores.

Boardmember Smith questioned screening with regard to machinery and trash enclosures. Mr. Tobiczyk said they screen RTU's; they raised the parapet height on the sides visible from the surrounding streets to provide visual screening of rooftop units. Dumpsters are located in the dock and he pointed them out on the site plan.

Chair Avellar questioned the City's code requirements for such rooftop equipment and confirmed with Mr. Rojas that the applicant submitted a study that shows how far one would need to be to view equipment on the rooftop and they were in compliance.

Chair Avellar asked for elevations of the refuse area and screening, downspout and scuffers. Mr. Tobiczyk noted they are fully enclosed and they can provide staff with the cut sheets, but said currently the compactor exposed to the Costco side has no enclosure. Mr. Jeff Striker, landscape architect, said the downspouts are a sheet metal painted to match the building and exposed on the side facing Costco.

Chair Avellar questioned if the path would incorporate colored concrete or permeable pavers, and Mr. Tobiczyk said there are some locations that are permeable paving. Mr. Striker said the main path will be made of course concrete or asphalt. They are also looking at the south side sidewalk being porous concrete. Ms. Harbin noted the applicant has pavers in front of the entrance-way, and the side facing Rydin Road would be the front entrance, which is the only entrance into the building.

Vice Chair Woodrow believed colored concrete was a very Californian material and people finds that it brings in light if colored, and the white concrete gets hot.

Chair Avellar noted there would be significant bike traffic in the area and he suggested increasing the bike rack total.

Vice Chair Woodrow asked for the parking stall sizes to be maintained without reducing it by 6" and discussed problems for larger vehicles. He questioned the depth to which the slab is going to extend below ground, and Mr. Stove said it depends on the soil conditions, whether or not it will be a structural slab on piers, which is yet to be determined. Vice Chair Woodrow said the water table is 8 feet below the ground surface and questioned if they thought about this. Mr. Tobiczyk said he did not believe the water table would rise above the level that is currently surrounding the site. Mr. Oliver noted they already had geotechnical investigation on the site by their consultants and they will take this under consideration. Part of the building will be on rock and part on bay mud, and he agreed they were introducing water into the infiltration basins, but because it is bay mud, they will only introduce new materials there with rock and drain pipes which will mitigate through the storm water system. Also, through evaporation it will also lessen some of the flow.

Chair Avellar questioned the type of fencing for the plan, and Mr. Tobiczyk said they are not proposing any fencing. Mr. Oliver said they only have two deliveries per week, so it is pretty quiet on the site, there is a view corridor with landscaping between them and Costco, but they are only facing their dock on their site.

Chair Avellar referred to the pedestrian path and he suggested between the parking lot side and building, the front sidewalk or walkway be made of permeable, colored concrete or pavers. Mr. Oliver said they do not use pavers, as their legal department has indicated there are instances of being sued when using pavers with tripping problems. They would; however, use concrete.

Public Comments:

Sally Lacquiee believed people need spaces to better connect with, feels more open space is needed, voiced concerns with added traffic, said the regional park system is wonderful and it is disrespectful to put more commercial enterprises so close to such fragile areas. She questioned why Kohl's could not relocate to the vacant store in El Cerrito.

David Harris, Richmond Annex Neighborhood Council, cited environmental impacts such as light and noise and said the picture of the height of the building was extremely misleading. He said because of land use zoning and a proposed restaurant on site, a number of businesses that could go into the site without public review and hearing present unknown effects on the Hoffman marsh to plants, animals and birds. The biological resources report is incomplete, it does not address birds and animals known to live permanently or migrate into the area. Their explanation about how Costco got in under the M-1 district is incorrect. He said there will be a decrease in park use due to increased traffic, and the LOS analysis is wrong due to changes in Caltrans' project for Central Avenue. He felt that an EIR should be completed instead of a mitigated negative declaration.

Bill Pinkham spoke on the reason why a negative declaration is not acceptable, stating CEQA Section 15061 states, "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, then the project is not subject to CEQA." It also states that "if the area in which the project is located is not environmentally sensitive." He said Hoffman Marsh has endangered species and plants, specifically the Salt Marsh Harvest Mouse, the Clapper Rail, Pickleweed and native Cord grass. Also, natural areas can be impacted by exhaust such as the Mission butterfly.

Marla Miyashiro, Boardmember of the Pt. Isabelle Dog Owners Group, said they believe the project will bring congestion to the intersection of Central Avenue and Rydin Road, there will be a significant increase in noise and pollution, cause idling and backup at the intersection, disturb resident and migratory bird population at the Hoffman Marsh, Section 15064 of CEQA states that, "in determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency." Also, "in evaluating the significance of the environmental effect of the project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonable foreseeable indirect physical changes in the environment which may be caused by the project." The City has received over 400 letters in opposition, presented 4,500 signatures of park users against the project and she said Pt. Isabelle receives over 1.3 million visitors.

Silvia Falcon said the mitigation arguments in a mitigated negative declaration and comments in the planner's report to the Board do not address concerns adequately and some answers are unsatisfactory. She felt the change in zoning or land use designation prior to the General Plan being complete will open the way for future undesirable businesses to open through a simple business license application. If the project is approved, she suggested the retail pad be placed right next to Kohl's so they can have extra trash and pollution from businesses. She recommended the Board recommend to the Planning Commission and City Council that a full EIR be conducted so all issues can be adequately addressed and that adequate observation of the wildlife be done. She said the Audubon Society has issued a detailed account of birds, as well as the Mt. Diablo Audubon Society, including endangered species that are sited at the marsh year-round.

Mary Selva, President, Richmond Annex Neighborhood Council, said the comments were due by 5PM, there are 100 more letters in addition to the 400 letters, and the Board probably does not have even half of them in their packet. They received the staff report Monday afternoon and there is not enough time to make an intelligent decision on the project. Their Neighborhood Council Board submitted 8 pages of comments to the mitigated negative declaration, the biological study and traffic study and is not finished. She said the biological study was conducted for only one month, it is not accurate and/or insufficient, cited endangered species and the Audubon Society findings, felt that giving the public only two minutes to speak was not fair and asked to be able to speak on the design as well as on the separate studies.

Charles T. Smith said he has used the park and Costco on a regular basis, believed con artists that come into the community get in by saying their project is "green" and said green is already present. The park is the most well-used park in the entire regional park system, it is sacred and clean, said traffic will be backed up all the way from San Pablo Avenue to the dog park, and said Kohl's will ruin this if the Board allows them to get away with their development. He suggested having Kohl's locate to the empty Target Store building, as there is adequate space for their store and a restaurant, and said over 500 people do not want the project.

Lina Smith said she uses the dog park, uses Costco, said traffic is already a disaster, the marshland area has been reclaimed and improved by neighbors over the years, she felt more development is not needed and there are many other places the store could locate. She felt the picture of the height of the building was completely misrepresented; she is very distrustful of Kohl's and believed there would be a significant environmental loss if the project is built.

Garland Ellis, Vice President, Richmond Annex Neighborhood Council, said he has lived within a mile from the project for over 50 years, has seen the area change immensely, said Caltrans is planning an upgrade to the interchange which would improve traffic circulation on the Central Avenue corridor, but they have already determined the project under Measure J will cost too much to follow through with. He said there are proposals for a temporary fix such as traffic lights, but no one has committed to paying for them and hence, no mitigation which is unacceptable.

Vice Chair Woodrow questioned what is the Southwest Annex Neighborhood Council, and Mr. Ellis said they have a smaller membership and Board than the Richmond Annex, are located further north, they typically review projects along the waterfront, additions to the Bay Trail, as well as many other projects.

Vice Chair Woodrow questioned where Mr. Ellis received confirmation about Caltrans not having funding, and Mr. Ellis said he spoke with the Engineer in charge of consulting in San Francisco; the information has been brought up at the San Pablo Specific Plan Committee meeting held about three weeks ago in the City of El Cerrito. They initially had three proposals which involved different forms of relief interchange improvements for I-580 and I-80. They learned none of the three could be paid for. Until the interchanges were built, they proposed three traffic lights; one on top, one at Rydin Road and one back towards Jacuzzi Street. They also want to completely block left turn access from all streets between I-80 and Carlson and the on-ramp to I-80 and shift that traffic down to Rydin Road and I-580, and make it the primary on-ramp to the freeway going towards Berkeley. He said they used a lot of the Measure J funds on engineering costs, thus far they have only made a proposal, nothing has been approved, the City of Richmond has not made any comment about what they are going to do and everyone is waiting for the report to be published by the WCCTA within one month.

Vice Chair Woodrow said it sounds like the Board should have something in writing from agencies involved, and Mr. Ellis said this was why they are asking for an EIR. Ms. Harbin said a couple of letters were placed before the Board from two different traffic agencies commenting on the project. CCTA asked to verify the numbers of another type of analysis and they also stated that if they do not go with the full project of rebuilding the overpass, they would install a traffic light on the overpass which would alleviate much of the congestion there.

Vice Chair Woodrow said he did not see anything about dollars, who would build it, and he did not see Caltrans included at all. Ms. Harbin said staff has held discussions with the consultant for Caltrans as well as the applicant, and the City was told a study would come out shortly that would discuss improvements, and this included the traffic signal on the overpass. She said moreover, she believes funding would be in place. Vice Chair Woodrow suggested that staff obtain something in writing, and Ms. Harbin said they would be receiving something shortly that

would clarify this information. Mr. Rojas said they were to go back to El Cerrito and look at a more condensed study that would focus on short-term based solutions which includes different alternatives, and he could obtain a firmer date on when this information would be received.

Vice Chair Woodrow believed something in writing and firm should be received, as the State states they are broke and no one knows whether this funding would be cut.

*Rebuttal – Applicant*

Steve Oliver, Oliver and Associates, Inc., said their intent is to be good neighbors, so much has been focused on traffic, reminded everyone that there is 165,000 square feet of use is already on the site today and the traffic report states that traffic from Kohl's would be reduced from what it is today and slightly raised on weekends. He said they purposely relocated businesses over the last year in anticipation of this, but if not passed, they also have interested industrial users for the site.

Vice Chair Woodrow asked Mr. Oliver to describe what businesses are locate at the site now; stating Mountain Hardware has been gone for 6-8 months who did not have much traffic generation. Mr. Oliver said traffic has been dramatically reduced over the last six months, the study was done based upon when it was occupied, but under the current industrial and commercial uses allowed there, many want to use it for a distribution facility with trucks and vehicles moving in and out on a regular basis, and they just assume not have this.

Boardmember Smith questioned expected traffic generation from Kohl's and operating hours. Pang Ho, traffic consultant, said he conducted a study for the City which was reviewed by the City, CCTA, and Caltrans, they concur with the findings and proposed mitigations. He said this project would not have any impact in the morning peak hour, but there would be some impact in the afternoon and weekend peak hour. They find that by installing the traffic signal and eliminating the left hand turn, the LOS can be improved back to LOS A or B.

Vice Chair Woodrow questioned if the study took into account the traffic coming in and out of the dog park, and Mr. Ho said all traffic was captured. He also noted that the traffic survey was done prior to the tenants moving out of the site.

Vice Chair Woodrow questioned how critical the signal was for the junction on the bridge to the success of the project in terms of having traffic circulating. Mr. Ho said he believes the three locations should be signalized in order to make everything work or it will be a problem.

Chair Avellar referred to concerns about lighting, and Mr. Oliver said the light pollution on the marsh was primarily from City streetlights. The light is actually being reduced by Kohl's, they are moving the building back hundreds of feet from the current line which is only 5 feet off of Rydin Road now. He said the lighting also goes off one hour after the store closes, which includes all signage and they only use small, shoebox fixtures directly over exit doors which are very low level lighting.

Mr. Rojas noted there is existing cobra head lighting in the median on Rydin Road. Most of the light that spills over to the marsh area is generated by the City owned and operated lights. The lights from the project site will be contained within the contour shown on the plans. Chair Avellar said one light that is very bright is in the area by 49<sup>th</sup> Street in the back of Target Store, and Ms. Harbin noted staff would review this, but the store did have some issues with security. She also said the biologist also reviewed whether lighting would affect the marsh and found that the types of lights used would not cause any impact.

Vice Chair Woodrow questioned if Kohl's looked at the Target store as a place to relocate, and Mr. Mitchell asked the Board to stay focused on the design proposed for the site and not one in another city.

Vice Chair Woodrow asked what would be the effect of holding the item off for one month so that the Board would have access to information not currently in hand now. Mr. Oliver said the process to open the store is lengthy, the property is sitting there unused and vacant, and they have some target dates. Vice Chair Woodrow felt signaling was a critical part of the project, felt there was more than design to consider for the project, he believed a funding commitment was needed, and he confirmed Mr. Oliver deferred to planning staff regarding monetary commitments. Ms. Harbin reminded the Board that they are to hear items once and the Board in this case would be recommending the design review permit and the mitigated negative declaration onto the Planning Commission and City Council. There would be other public hearings on the project, and the applicant would like to move forward in order to keep within their schedule for opening.

Chair Avellar questioned if the item could be conditioned and the information could return to the Planning Commission meeting on November 6, 2008. Vice Chair Woodrow believed Caltrans would not be able to submit written comments on the matter in 15 days, and Mr. Mitchell said the City has no authority over what Caltrans does. They have made a number of statements regarding the study they have been working on with WCCTA and he did not believe the City could predicate its decisions on what Caltrans does or when they decide to do it.

Chair Avellar questioned the level of complexity between the mitigated negative declaration and an EIR. Assistant City Attorney Carlos Privat said for a mitigated negative declaration, one must find based on substantial evidence in the record that the mitigation measures will clearly reduce the significant environmental impacts to an insignificant level. For an EIR, there must be substantial evidence that the project may have a significant environmental effect. If this finding is made, the Design Review Board would recommend to the Planning Commission that an EIR be pursued. The final action on the project is; however, being taken by the Planning Commission and not the City Council, subject to appeal.

Chair Avellar said the public has brought up issues about endangered species, and Ms. Harbin noted that the biological study addresses impacts that were found to be less than significant.

Boardmember Smith questioned what type of restaurant is proposed, and Mr. Oliver said they have discussed and proposed a sit-down restaurant, but in the last six months they have also focused on a financial institution locating on the site. They are in discussions with three such institutions, but their decision will be held off until the first quarter of 2009. They would return with that proposal separately.

The public hearing was closed.

Chair Avellar questioned short-term solutions, and Mr. Mitchell briefly discussed Caltrans' options for addressing the problem, and the short-term solution proposed is closing the left entrance onto I-80 and sending traffic down to I-580 and they see this as having the least impact on surrounding businesses and will study additional solutions in the future.

Boardmember Smith received an explanation of less than significant impacts from Ms. Harbin. Vice Chair Woodrow noted there would be the need for two traffic signals under the proposed mitigations, but Ms. Harbin noted Caltrans proposes one signal for a short-term solution. She said the City is restricted in doing anything given the land is governed by Caltrans, and if something is proposed, Caltrans must approve it.

Chair Avellar confirmed the Board preferred colored concrete. The Board discussed the 400 letters, which Mr. Rojas said most are form letters and all comments would be transmitted to the Planning Commission.

Vice Chair Woodrow said both the Planning Commission and Design Review Board have been purposely shrunk over the last two years to prepare for a plan to combine the two bodies. He said he would have voted to extend or not approve the mitigated negative declaration, but he knows that the written comments of citizens will be passed onto the Planning Commission. He did not believe Caltrans would commit funds for the project, said they had an opportunity to do improvements when the Shell Station closed at Pearce and Central, but regardless, he said he would still support the project.

**ACTION: It was M/S (Avellar/Smith) to recommend approval of the mitigated negative declaration to the Planning Commission, with staff's four findings and 27 conditions, with additional condition that letters received be incorporated into the record, and that correspondence from Caltrans be incorporated into the record and forwarded to the Planning Commission; unanimously approved.**

Vice Chair Woodrow confirmed that Boardmember Bloom reviewed the landscape plan and she suggested a condition be placed on the project that a meeting with the landscape architect between staff and herself be held to review plant selections.

**ACTION: It was M/S (Avellar/Smith) to recommend approval of DR 1104490 to the Planning Commission with staff's four findings and 27 conditions, with the additional condition that colored concrete be used in the front entry areas of the store, lighting be down lighting, that it be timed, and no lighting is allowed after a certain time of night per City requirements, that trash enclosure or screening be brought back to Planning staff for approval prior to being issued a building permit, and that a meeting be scheduled to review the landscape plan between staff, Boardmember Bloom and the project landscape architect; unanimously approved.**

**BREAK**

Chair Avellar called for a brief break, and thereafter reconvened the regular meeting.

**2. EID/DR 1104442 – Multi-Family Residential Development on Garrity Way - PUBLIC HEARING** to consider a recommendation to the Planning Commission on the Mitigated Negative Declaration (MND) and Design Review Permit for the construction of a ±200,000 square foot multi-family residential development located at 3151 Garrity Way (APN: 405-290-069) that would include a total of 127 dwelling units over a parking podium. C-3 (Regional Commercial) zoning district. Wasatch Advantage Group, owner; Tony Hladek, applicant. Staff Contact: Hector Lopez. Tentative Recommendation: Recommend Conditional Approval to Planning Commission.

Assistant City Attorney Privat noted that Boardmember Smith would need to recuse himself from participating on the item, stating he rented property to the applicant in an amount greater than \$500 and therefore has an economic conflict of interest. There is no quorum and said the item must therefore be continued.

Mr. Hladek briefly discussed and confirmed with Mr. Privat that there was, in fact, a conflict of interest, and the Board apologized to the applicant for the absence of Boardmember Bloom and discussed when the item would be heard.

**ACTION: DR 110442 was held over to November 12, 2008.**

#### 4. Reports of Officers, Board Members, and Staff

##### Public Form – Brown Act

Mary Selva, President, Richmond Annex Neighborhood Council, said when it comes to negative declarations and design of a major project, there needs to be at least two items on the agenda and not lumped together, as the public is robbed from commenting on both actions. She said the City had scheduled two separate items in the past and she also said the public gets no time for rebuttal at DRB meetings, which she felt was inequitable and unfair. She also believed that applicants would need to seek a land use amendment prior to receiving design review approval. She also suggested the Board having a period of time in order for materials to be timely read in enough time when comments are received.

##### EXTEND MEETING

**ACTION: It was M/S (Avellar/Smith) to extend the meeting to 9:15 p.m.; unanimously approved.**

Garland Ellis, Vice President, Richmond Annex Neighborhood Council, believed the Kohl's hearing was extremely unprofessional, said items brought forth in two minutes are a small fraction of problems that are contained in many reports. He said most studies would take significant time to read and he had only two minutes to comment on them, the Board did not have a chance to read correspondence from the public, nor was adequate time to confirm whether information was true or not. He said the traffic study did not take into account any traffic to or from the bulk mail center, yet this is a significant impact. All truck figures were taken from a Caltrans study years ago on I-580 at the Bayview overpass, yet this property is right next to the project. Similar issues need to be considered and the public has only one shot at speaking, and they will again only have two minutes before the Planning Commission. He hoped they have enough time to read through it amongst other projects for review on the agenda.

David Harris, said one issue not brought up was the safety of the overpass, stating lights are to be installed and this will cause a constant line of traffic on the overpass all the way down Rydin Road, including truck traffic. He questioned if Caltrans or any other body assured citizens that the overpass is earthquake safe or not. He felt it has the potential of collapsing onto I-580 and the railroad tracks, which will impact everyone.

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The Board adjourned the meeting at 9:13 p.m.