

CITY OF CAMPBELL PLANNING COMMISSION
MINUTES

7:30 P.M.

TUESDAY

JUNE 23, 2020
REMOTE ON-LINE ZOOM MEETING

The Planning Commission meeting of June 23, 2020, was called to order at 7:36 p.m. by Chair Krey and the following proceedings were had, to wit:

ROLL CALL

Commissioners Present: Chair:	Michael Krey
Vice Chair:	Maggie Ostrowski (<i>joined at 7:42 pm</i>)
Commissioner:	Adam Buchbinder
Commissioner:	Stuart Ching
Commissioner:	Nick Colvill
Commissioner:	Terry Hines
Commissioner:	Andrew Rivlin

Commissioners Absent: None

Staff Present:	Community
Development Director:	Paul Kermoyan
Senior Planner:	Daniel Fama
Senior Planner:	Stephen Rose
Police Chief:	Gary Berg
City Attorney:	William Seligmann
Recording Secretary:	Corinne Shinn

APPROVAL OF MINUTES

Motion: Upon motion by Commissioner Buchbinder, seconded by Commissioner Colvill, the Planning Commission minutes of the meeting of June 9, 2020, were approved with a correction to the vote taken on bottom of page 11 and top of page 12 to reflect the accurate 4-2-1 vote. (6-0-1; Vice Chair Ostrowski arrived after this vote).

COMMUNICATIONS

Director Paul Kermoyan advised that Vice Chair Ostrowski is currently trying to get logged into this meeting. He advised that there are no new desk items outside of those received and emailed to the Commission prior to start of this meeting.

AGENDA MODIFICATIONS OR POSTPONEMENTS

None

ORAL REQUESTS

Audrey Kietreiber President of STACC (San Tomas Area Community Coalition):

- Pointed out that the issue of fence exceptions often come up with people requesting additional fence heights.
- Stated that fences taller than the current six-foot maximum should somehow be allowed by right.
- Said that these days the homes being built are taller than they used to be, and privacy is desired by property owners.
- Suggested that it was a “burden” not to allow eight-foot tall fencing by right.
- Encouraged the Commission to consider changes to the Code since there continue to be a whole lot of exceptions being processed.

Vice-Chair Ostrowski was successfully logged in to the meeting at 7:42 p.m.

Raja Pallela asked if he could speak about ADU's specifically the one that will be discussed as Agenda Item 2.

Chair Krey said Mr. Pallela would have the opportunity to make his comments on that application when it comes up for consideration later in the agenda.

Vice-Chair Ostrowski asked how emails are being handled this evening.

Commissioner Buchbinder said that those emails are predominately on an item the Commission voted on at the June 9th meeting to find the CIP consistent with the City's General Plan.

Vice Chair Ostrowski asked if the Commission and interested members of the public would be able to talk further about it.

Director Paul Kermoyan said that those members of the public can join the meeting to state their concerns expressed in their emails submitted and distributed to the Planning Commission.

Shannon Rose, Campbell Resident:

- Stated that she has a Measure O request as it may or may not pertain to the proposed purchase of a militarized armored vehicle for the Campbell Police Department. That item, a bearcat, is not part of the intended use for Measure O funds.

- Stressed that that purchase should not be paid for using Measure O funds.

Chair Krey pointed out that Council would be conducting another budget meeting later this week on Thursday, June 25th, and that would be a more appropriate body to raise that concern to. He advised that the Commission's review on June 9th was limited in scope to review and certify that the 2021-2025 CIP (Capital Improvement Program) can be found to be consistent with the City's General Plan. That action was taken at the June 9th meeting.

City Attorney William Seligmann advised that the funding for the bearcat would not be coming out of Measure O funds.

Chief Gary Berg reiterated that the item would not be paid for with Measure O funds. It is just a CIP request item.

Mike Wallace, Campbell Resident, said it is questionable whether an armored vehicle is necessary for Campbell Police. He added that, in his opinion, it should not be approved.

Chair Krey reiterated that the Commission already voted to find the 2021-2025 CIP consistent with the General Plan at its meeting of June 9th. Again, Council would be taking action at its meeting this week on June 25th.

Mike Wallace:

- Said that he would like to direct his question to Chief Berg.
- Asked whether given the anger being expressed nationwide, why does Chief Berg think we need a militarized vehicle.
- Pointed out that during the event that occurred at Denny's on Bascom people were not in danger.
- Questioned the need to spend \$250,000 for an armored car. Is it because of that one incident?

Director Paul Kermoyan:

- Advised that while the public has this opportunity to speak under Oral Request to any issue not included on this evening's agenda, neither staff nor the Commission is able to enter into a specific conversation on an item not included on the official agenda for this meeting.
- Suggested that Mr. Wallace contact Chief Berg directly to further discuss his concerns with this proposed purchase.
- Added that Council's next budget meeting is this week on Thursday, June 25th.

Raja Pallela, Campbell Resident:

- Said he wanted to address the fact that the State has offered amnesty for owners of unpermitted ADUs for five years against enforcement of missing building permits.
- Pointed out that a lot of cities are giving amnesty and he suggests Campbell consider a five-year amnesty against enforcement of existing ADUs with Zoning standard violations.
- Suggested that issue be brought back to a future Planning Commission agenda if at all possible.

PUBLIC HEARINGS

Commissioner Rivlin advised that he must recuse from Item 1 since his home is located within the minimum 500-foot noticing distance thus preventing his participation.

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

1. **PLN2019-234** Public Hearing to consider the application of Gordon Wong for an Administrative Planned Development Permit (PLN2019-234) to allow for the establishment of a small fitness studio and a Parking Modification Permit to allow a reduction in the number of required parking spaces at **85 Gilman Avenue** in the P-D (Planned Development) Zoning District. Staff is recommending that this item be deemed Categorically Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Stephen Rose, Senior Planner*

Mr. Stephen Rose, Senior Planner, provided the staff report.

Chair Krey asked if there were questions for staff.

Commissioner Buchbinder asked whether any concern that the limit of nine people and the provision of just nine parking spaces would be exceeded, would it be possible to formally limit occupancy.

Planner Stephen Rose:

- Advised that a condition of approval could be imposed limiting occupancy to nine.
- Cautioned that this is a very large space to serve just nine. As a result, there would be a tendency for abuse.
- Added that even with a condition for occupancy up to nine, any deviation would become something that Code Enforcement would have to deal with.

Commissioner Buchbinder asked if there have been any recent proposals for housing being developed on those adjacent lots discussed including this parcel.

Planner Stephen Rose replied not recently. The building/site have been vacant for a year now.

Commissioner Hines asked if there would be anything preventing this property owner from selling this property. Does this proposed use get in the way of a sale?

Planner Stephen Rose:

- Replied that on the City's part there is nothing preventing this owner from selling his parcel

- Added that if there is a lease for specific use on site that use would have to be allowed to continue even upon sale as the use goes with the location not the owner.
- Stated that with the owner being required to make site improvements to accommodate the next use, that investment would effectively extend the current non-residential use of that site. That results in a delay for the site and area to accommodate denser housing units.

Chair Krey

- Clarified with staff that while the site may be considered to be a housing opportunity site to help in the provision of low/medium and market rate housing, is this not an encouragement rather than a requirement?
- Asked if the property owner can be compelled to change the use to residential,

Planner Stephen Rose:

- Replied that the City cannot compel the conversion to housing.
- Reminded that the application is here for an Administrative Planned Development as required for a change of use and an associated Parking Modification Permit.
- Added that the Planning Commission doesn't have to approve those entitlements.

Director Paul Kermoyan:

- Advised that there is a broader vision intended for this area.
- Said that staff is providing information about that vision so that the Planning Commission has the ability to support that vision if they choose to. The Area Plan doesn't call out initiation provisions.
- Added that what is being proposed here is within the confines of the existing zoning.

Commissioner Colvill:

- Stated that until there is an actual demand to put in housing there not allowing this owner to use his property as he sees fit at this time is concerning.
- Pointed out that it imposes an extra layer of regulation if this owner is prevented from doing something right now with his property
- Concluded that he doesn't want to handcuff the property owner or applicant.

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

Gordon Wong, Applicant:

- Reported that it takes time to put together a good housing development project.
- Added that there will be some flexibility in place with a tenant having just three or four years of a lease.
- Explained that they are planning on a minimum tenant improvement to the interior.
- Stated that the hardest hits are landscaping and ADA accessibility requirements before a larger development is possible.

Alie Antoun, Property Owner:

- Stated his appreciation for Planner Stephen Rose's support during this process.
- Advised that he owns three adjacent properties and the business that formerly occupied this site, Etched Media.

- Said he understands that the long-term vision of this area is for higher density housing, but this is not the time for that right now.
- Added that he is interested in securing high quality tenants for his buildings that are walkable to Downtown.
- Said he is investing enough on the site to attract the right tenants.
- Reported that with the two to three month delays and impacts due to Covid19 he lost another tenant on one of the other properties.
- Agreed that there is a parking issue in this area and that the size of a building itself dictates the imposed parking standard by use.
- Explained that this proposed use was for a private training facility with an individual trainer and customer or a small class of two students at one time at most.
- Informed that this operator has a loyal client base who will follow her if or when she needs to relocate her business.
- Assured that he would be redeveloping these properties himself in the future and has also tried to purchase a fourth adjacent parcel without success.

Commissioner Hines:

- Cautioned that one problem often seen with a CrossFit-type of business is the potential for the users to extend their workouts out onto the streets around it.
- Asked if there is any objection to having limits on this business to prevent that.

Alie Antoun, Property Owner:

- Said that topic has come up.
- Added he is willing to include that into the lease.
- Stated that the lease already includes a provision against loud music by including maximum decibel limits.

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

Commissioner Buchbinder:

- Reiterated his desire to see the issue of parking standards for commercial uses located near transit.
- Stated that it appears it's either this use now or nothing now.
- Expressed concerns about the maximum occupancy of nine and the required escrow to cover costs if any non-conforming code enforcement is required.
- Said he also doesn't support a time limit on the use.
- Pointed out that the property owner (Alie Antoun) is not concerned since he wants to redevelop the sites he owns in the future.
- Stated it is not fair to ask that this building remain vacant.

Commissioner Colvill:

- Agreed that this property owner needs tenants for his building.
- Reminded that that Mr. Antoun owns multiple buildings in Campbell and as thus has invested in Campbell.
- Said that this proposed tenant is better than an empty building.
- Assured that reconstruction of this area is something that can occur later down the road.

Commissioner Hines:

- Stressed the importance of creating a favorable climate for business. Especially small businesses.
- Pointed out the harm to the economy that has already resulted from the Covid19.
- Said that small business could include possible sales tax revenue. We have a willing small business here.
- Stated his preference to “deny the denial” of this proposal

Vice Chair Ostrowski:

- Expressed her concurrence with her fellow Commissioners and also supports this business.
- Pointed out this business will fill that building. It’s either this fitness center or a vacant building.
- Agreed that the chief issue is parking and the concerns of staff with potential for overflow and excess cars.
- Admitted that if, in the future, the owner wants to increase their number of customers, she would be open to that if the use is reevaluated based on actual traffic whether that expansion is possible.
- Reiterated that this location is close to Downtown and within an area with higher density housing.

Commissioner Colvill:

- Said that there is no cookie-cutter solution for parking.
- Stated that they must look at the Parking Modification Permit as part of the Planned Development Permit.
- Concluded that it is not that big of a deal.

Chair Krey:

- Said that this may be the highest and best use of this site right now and it is much better than a vacant building.
- Stated that it may be clear that there are better uses for that location in the future it is a tough situation for this property owner and his potential business tenant now.
- Agreed with Commissioner Buchbinder that there needs to be a broad vision on parking moving forward. This is one of the worse areas for parking.
- Admitted that he thinks this use will cause pretty much of a parking crunch, so he is leaning against this. Parking is a big problem.

Commissioner Ching:

- Said that he is leaning to Chair Krey’s point.
- Added that there is a massive need for housing. We are well behind where we should be in affordable housing. This would be an ideal site for housing as it no longer is for warehousing uses.
- Admitted that denying this will not make redevelopment any easier but he’s not sure. We don’t know that but at some stage we have to make a stand for housing.
- Opined that removing landscaping and open space is not improving the existing situation.
- Declared the parking in this area to be a nightmare and dangerous.

- Assured that there will be a parking issue there.
- Asked staff what they propose if the Commission reaches a decision to “deny the denial?”
- Said one condition could be the staff suggested deposit for \$5,000 to deal with any code issues that may crop up if this occupancy and parking limits are not adhered to.

Commissioner Colvill:

- Said that one alternative would be to continue this item to allow staff to draft the resolution to approve.
- Added that he doesn't support the deposit requirement for potential code enforcement.
- Suggested a motion.

Motion: Upon motion of Commissioner Colvill, seconded by Commissioner Buchbinder, the Planning Commission CONTINUED TO A DATE UNCERTAIN, consideration of the Administrative Planned Development Permit (PLN2019-234) to allow for the establishment of a small fitness studio and a Parking Modification Permit to allow a reduction in the number of required parking spaces at 85 Gilman Avenue, with the following direction to staff to:

- Return with a resolution for approval for this use with conditions, removing the \$5,000 deposit to cover costs for potential code enforcement; establishing a maximum occupancy of nine people; and the provision and use of nine on-site parking spaces; and no limit to the duration of the use;

by the following roll call vote:

AYES: Buchbinder, Colvill, Hines and Ostrowski
NOES: Ching and Krey
ABSENT: None
ABSTAIN: Rivlin

Commissioner Rivlin returned to the dais following the conclusion of Item No. 1.

Chair Krey called for a brief break at 8:45 p.m. and reconvened the meeting at 8:50 p.m.

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

2. **PLN2019-176** Continued Public Hearing to consider the application of Nandini Bhattacharya and Buddhadeb Basu for a Variance (PLN2019-176) to allow a reduced side-yard setback to legalize an unpermitted accessory dwelling unit (ADU) on property located at **309 Redding Road**. Staff is recommending that this item be deemed Categorically Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Daniel Fama, Senior Planner*.

Mr. Daniel Fama, Senior Planner, provided the staff report.

Chair Krey asked if there were questions for staff.

Vice Chair Ostrowski:

- Referenced two documents submitted by the applicant that included a 1974 Application for Moving Permit.
- Said it seems to indicate structures as consisting of 26 x 49 feet originally; and two support structures at 12 x 24 feet and 20 x 21 feet, which seem to support the structure being built legally.

Planner Daniel Fama:

- Advised that those are County permits and not Campbell permits.
- Explained that staff had reached out to the County asking them to provide a letter attesting to the legality of the construction on site.
- Reported that the County was not willing to do that.
- Added that this County documentation is not sufficiently clear to document the legality of the buildings on site.
- Added that the construction occurred following annexation of this area into Campbell.
- Said that the finding for legality, belongs to the Director.
- Concluded that the applicants stipulate that their building is not legal and as such are asking for a variance.

Director Paul Kermoyan:

- Reported that upon an aerial chronological review was done, it showed a much smaller garage and later a larger garage.
- Said that's where the argument made that it was legal fell apart.
- Concluded that the addition was added after annexation and without permits.

Planner Daniel Fama said that garage expansion occurred in the late 1980's to early 1990's.

Commissioner Colvill said that means the documents from the applicants do not clarify legality.

Planner Daniel Fama replied correct.

Commissioner Colvill asked if the potential to redraw property lines to allow a sufficient side setback had been discussed or considered by the applicant as this lot size is not conforming.

Planner Daniel Fama said that this lot is too narrow at 45-feet. The minimum lot size in this R-1-6-zoned neighborhood is 60-feet. He added that if the lot line was adjusted onto the neighboring site, that home next door would then encroach on its own required setbacks making that option unfeasible.

Commissioner Rivlin:

- Asked if the applicants explored the option not to have adjacency of the ADU at the property at all by creating a separate storage space next to the property line that is not part of the ADU.
- Admitted that option would require moving walls.
- Questioned whether the applicants are firm that such a change would cost too much.
- Reiterated his question whether there has been any such discussion over the last few months.

Planner Daniel Fama reminded that the wall that would have to be moved is the kitchen wall with all the cabinets and appliances along it and the utilities to serve them.

Vice Chair Ostrowski asked what if the buildings' footprints for the structures on the County permit are confirmed by the County.

Planner Daniel Fama:

- Said if the County would have documented in writing the legality of what had been constructed under their jurisdiction as it stands now, that would have avoided this process altogether.
- Pointed out that Campbell provides zoning letters outlining what is legal on a property, but the County was unwilling to do so. If they had, we would have accepted their position.

Vice Chair Ostrowski:

- Asked why the County would not.

Planner Daniel Fama said the County simply declined to document in writing the legality of what's on site.

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

Ms. Nandini Bhattacharya, Applicant and Property Owner:

- Thanked the Planning Commission for their time.
- Assured that they had done their due diligence and hired an architect.
- Reported that they received a code enforcement letter and had followed the process and done all that was asked of them.
- Advised that they have received numerous letters of support for their ADU to remain as it is. They have many supporters.
- Reminded that the State of California has a vision for housing and offers a five-year deferment from local enforcement of any building permit violations for ADUs.
- Suggested that their request for this variance could create precedent for others in Campbell with unpermitted ADUs.
- Explained that they have filed for a variance because they only realized their ADU was not permitted recently.
- Pointed out that some members of this Commission have visited their home to see this ADU.
- Thanked the Commission.

Commissioner Hines asked what the three different color lines reflect on the site exhibit provided by the applicants.

Mr. Buddhadeb Basu, Applicant and Property Owner:

- Said that the blue line depicts the garage. The yellow line is the portion of the ADU that is in question. The red line is the portion of the ADU that is not in dispute.
- Advised that he has gathered data on their land. It is quite narrow and 4 ½ feet short of minimum 60-foot required frontage for its zoning.
- Said that it would be appropriate to compare this to a 10,000-square-foot lot.
- Thanked the Commission and staff for their time on this matter.

Chair Krey said he was sorry for the time it has taken to get this matter back to the Planning Commission for further discussion and consideration.

Commissioner Colvill pointed out that there are lots of irregular sized parcels throughout the Bay Area. He asked if the applicants feel entitled to an ADU if it would never have been allowed as constructed if permits had been properly applied for prior to construction?

Mr. Buddhadeb Basu, Applicant and Property Owner:

- Said he provided the data that he could to support this ADU.
- Assured that he does not say that he is entitled.
- Concluded that he just wants due process.

Vice Chair Ostrowski said that she thought that there is a provision to allow side-yard setback encroachment.

Planner Daniel Fama said that if this ADU had been expanded with a permit, it would have been allowed to expand along the existing substandard setback and then it could have been legalized.

Commissioner Buchbinder asked whether they would have been allowed to extend the garage and convert it into an ADU.

Planner Daniel Fama clarified that prior to 2017, if a garage was extended with a permit it could have later been converted into an ADU. This expansion was not legal from day 1.

Commissioner Buchbinder asked whether the existing ADU could be converted back into a garage and then back to an ADU at a later date with permits.

Planner Daniel Fama said that it would have to have been legal when constructed and before January 1, 2017.

Vice Chair Ostrowski said she is concerned by calling this ADU illegal.

Director Paul Kermoyan stated that a 1974 photo refutes what you're saying. It was small. It got bigger after annexation into Campbell without permits.

Vice Chair Ostrowski said there remain a lot of unknowns.

Director Paul Kermoyan:

- Said that the old County permits are hard to read.
- Advised that he had looked back at historic aerials as he wanted to exhaust all available information. The visual there in those aerial photographs are precise.

Planner Daniel Fama:

- Reminded that the applicants filed for this variance. That in itself is a stipulation that they know it is illegal.
- Said that using this route of review, staff has to assess that this building is not legal.

Commissioner Colvill:

- Asked the applicants when they found out about the non-conformity of their ADU. Was it when they went to the City to legalize the structure?

Mr. Buddhadeb Basu, Applicant and Property Owner:

- Provided a history of sequence since they purchased this property in 2015.
- Stated that the property listing (MLS) indicated a 1,900-square foot house with four bedrooms and five bathrooms.
- Added they looked at City records and found permits for roof and remodel. As a result, they provided a \$36,000 escrow deposit on the purchase, which was non-refundable once paid.
- Said that the appraisal then came back as a three bedroom and 2 ½ bath home.
- Reported that they felt compelled to go ahead with their purchase despite that discrepancy so as not to lose their deposit.
- Said that they have a 9,980-square-foot lot. It is not a full 10,000 square foot lot. A lot less than 10,000 square feet did not allow an ADU at that time.
- Pointed out that there are a lot of inconsistencies with this house.

Commissioner Colvill:

- Said that at the time of sale a disclosure statement was provided to them. He asked if they marked “yes” for disclosure 4 that stipulates they were aware of alterations that had been made without permits?
- Pointed out the disclosure about zoning violations that has been marked with “yes” from them as the buyers. That indicated that the garage is closer to the property line.
- Asked whether that proves that they knew of the potential for problems with what they were buying.

Ms. Nandini Bhattacharya replied not before they put down their three-percent non-refundable deposit on the house.

Mr. Buddhadeb Basu admitted that they knew the ADU was illegal at time of purchase.

Commissioner Colvill asked whether they looked at the notes they were signing off on.

Mr. Buddhadeb Basu said only after escrow was already underway.

Commissioner Colvill:

- Asked for clarification about the applicants' use of this ADU.
- Said that they have claimed it was used as an in-law unit for visiting family and friends. They also say that their children use it as a play space.
- Asked what the use of the ADU had been since their purchase of this property.

Ms. Nandini Bhattacharya said that it's for their parents to stay in when they visit from India, as a kids' play space as well as a prayer room.

Commissioner Colvill:

- Asked the meeting coordinator to allow him to share his screen with the meeting.
- Showed a listing outlining the history of rentals on this property. It was offered for rent twice at a rent of \$2,200 per month.
- Said that the listing outlines some new construction in 2015 and a renovation in 2018. It seems there have been multiple tenants over time.
- Concluded that his question for the applicants is how the Commission should approach this information.

Ms. Nandini Bhattacharya:

- Admitted that they had listed it for rent.
- Assured that between 2015 and 2020, their parents have visited every year and used this ADU.
- Concluded that they never actually ended up renting it out to a tenant.

Mr. Buddhadeb Basu:

- Said that he's the one who listed the unit for rent but never actually rented it out.
- Added that he was just testing the market to determine the interest there might be in someone renting it.
- Pointed that he cannot legally rent it out since it is not legally permitted.

Commissioner Colvill thanked the applicants for their clarifications.

Raja Pallela, Resident on Hacienda Ave:

- Said that he has been working with Planner Daniel Fama over the last two years during the time of the ADU Ordinance update.
- Pointed out that Campbell rules allow a garage with a zero setback in this neighborhood.
- Added that this property was built about 30 to 40 years ago.
- Said that it doesn't make sense not to approve this request.
- Claimed that there are no permit records in Campbell.
- Reiterated that the intent of the State with ADUs is to provide additional housing units.
- Stated that he doesn't understand the City's logic. It is not ethical or legal.
- Admitted that he understands that staff is doing their duty, but the Planning Commission has to listen to the people.
- Said that every city is giving legalization.
- Reminded that Commissioner Buchbinder wants to put amnesty on non-conforming zoning for a five-year period at the last meeting but it didn't pass.
- Asked the Commission to listen to the neighbors.

Audrey Kietreiber, President of STACC (San Tomas Area Community Coalition):

- Admitted that this property is not located in their area (San Tomas) but is highly relevant.
- Stated that there are a large number of garages that have been converted without permits into ADUs. Included to that is one that is a second story ADU added above a garage.
- Reported that the San Tomas area was annexed into Campbell in 1979.
- Pointed out that if this particular ADU had been constructed with a permit as an extension to the garage and then into an ADU it would be allowed.
- Said that the County record doesn't seem to provide enough validation for what's on this property.
- Cautioned to Director Paul Kermoyan that staff needs to consider documents before you right now rather than aials that are not provided tonight.
- Added that she believes the intent of this homeowner. Besides whether it is rented out or for personal use, that issue is not a factor.
- Stated her disagreement with staff regarding the requirements. This lot is unique in size. It is smaller in width than normal. Allowing this ADU would not represent a special privilege. It would be an unnecessary hardship to make them chop off four feet of their existing ADU.
- Described herself as a big "law and order" girl. This was done 40 years ago. No one objected at that time. It was done to Code.
- Suggested that the ADU be inspected and the homeowners allowed to legalize it.
- Concluded that she wishes more property owners would attempt to legalize their illegal ADUs.

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

Commissioner Buchbinder:

- Said that there is a gap in our knowledge where it's possible this garage was converted legally and later converted into an ADU.
- Questioned, "Do we know that didn't happen?"

Planner Daniel Fama said that while it's possible that records have been lost after this County pocket was annexed into the City of Campbell, the focus of the conversation is the required findings to support the requested Variance for a substandard side setback.

Commissioner Buchbinder:

- Said that these property owners desire an ADU.
- Admitted that he is somewhat disappointed that they didn't mention trying to rent it out.
- Added that he can see reasoning not to grant a Variance and that it would still be possible to have an ADU property situated elsewhere on this property, but it feels Kafkaesque.
- Reminded that there has been no neighbor objection to this request. This is a non-conforming lot. He does not see any justification to demolish the unit.

Director Paul Kermoyan asked staff whether there had been a complaint.

Planner Daniel Fama replied yes, about two years ago. He clarified that a code complaint has a confidential reporting party, but they are not anonymous.

Commissioner Buchbinder said that another reason to have some kind of amnesty program is that people tend to harass other people using code complaints.

Vice Chair Ostrowski:

- Thanked everyone.
- Admitted that this is not a clear-cut case and we are trying to piece together what happened to get to this situation.
- Listed her feedback on the required findings:
 - 1 -- This lot is narrow. Construction was done in stages with unknown records.
 - 2 – Tied to the first finding whereby this lot is narrow at 54 feet where 60 feet lot width is required for R-1 zoning.
 - 3 – Lack of history and permits. Example of missing permit given by one speaker.
 - 4 - Not just this one situation. Making exceptions for all non-conforming ADUs.
 - 5 - This one was found to be true by staff.
 - 6 - Agree that this Variance would not be detrimental to the public.
- Reiterated that the State is trying to create housing to provide opportunities for those who want to live in this area and the need for more housing stock.

Commissioner Buchbinder asked staff what they think should be done with the existing non-permitted ADUs. He said that complaint-based enforcement equates to a bad outcome.

Commissioner Colvill:

- Said that he works in real estate.
- Added that in regard to these required findings, he is having a hard time not seeing them as black and white.
- Asked what happens if someone else were asked to build in this manner. They would be denied.
- Agreed that it is unfortunate, but we can't just buckle and give in.
- Pointed out that there are plenty of unpermitted units.
- Said that they were not completely truthful about their intent for their ADU. That was proven by the ads they placed seeking interested renters.
- Added that there is no proof as to whether they rented or not.
- Reminded that when one buys a house, disclosures about that property are given in writing. If a buyer goes forward with the purchase despite the disclosures, that buyer takes on a huge risk. They are not victims here
- Said that the owner prior to the current bought a \$600,000 house to flip and sold it quickly for \$1.3 million within 6 months. Why was that possible? Because of a major upgrade to the ADU. It's not uncommon for flippers to hand off their problems to a new buyer.
- Concluded that these current owners could possibly pursue legal action against the seller. This transaction and that seller were shady, and this buyer got caught up with a hot potato.

- Stated that the City has been fair in evaluating their request. It is unfair for them to do it as they have done it.
- Concluded that staff gave a great job in giving us all this information to consider and approving this Variance equates to a special privilege.

Commissioner Hines:

- Said that this family is trying to get a comfortable house and move on.
- Stated that he is trying to figure out whether this Commission should provide a Variance.
- Added that a Variance is not a precedent.
- Pointed out that this home is useable for this family.

Planner Daniel Fama reminded that the Variance belongs with the property. If granted, it will settle this setback issue forever.

Commissioner Hines:

- Said that this is a decision on a single property
- Added that it is impractical to move this ADU by 4-feet. There are costs and seems unnecessary physically.
- Stated that this Commission has spent lots of time discussing this over two meetings and he would suggest a motion be made at this point and see what we've got.

Commissioner Ching:

- Reminded that he was not at the last meeting.
- Reiterated that the Commission's purview is to make the findings required to approve this Variance.
- Admitted that whether this ADU was rented and not disclosed might be a bearing on the applicant's character or not. Requiring them to demolish or substantially change the existing ADU seems out of proportion for the "crime" of building it without permits.
- Stated he would support the Variance.

Commissioner Rivlin:

- Said that he was at both the first meeting on this item in December and this one.
- Stated his appreciation for the applicants' due diligence,
- Advised that it is not on the City to add value to their property despite their mistakes but there are practical difficulties moving this ADU.
- Said that it had been suggested that they could build one interior wall to create a storage space at the property line setback and then relocate the kitchen in the ADU.
- Stated that no other owner could have a building on the property line as this one is situated.
- Admitted that it is a shame that we can't get a letter authenticating this ADU from the County.
- Asked staff if four of five findings are sufficient.

Planner Daniel Fama said all five must be met.

Commissioner Rivlin asked staff to define "Special Privilege".

Planner Daniel Fama:

- Said that it is something that others are not being given as well.
- Added that someone else would not be given this Variance to build on a property line.
- Stated that a Special Privilege is one that others are not otherwise allowed to get and typically are supportable only when there are issues such as topography or geographical constraints or if a lot is substantially substandard and beyond the control of the property owner. The placement of this building belongs to this homeowner.

Commissioner Rivlin:

- Said that these are extraordinary circumstances.
- Agreed that this applicant's initials are on the disclosure they were given by the seller and they accepted that risk.
- Reminded that at the last meeting, the bar was not met for all five required findings for a Variance.
- Admitted that this is a hard decision to reach.

Chair Krey:

- Said that a great conversation has been held between the applicants, Commission and staff.
- Pointed out that he voted against this Variance at the December meeting and is leaning that way today.
- Stated that there is some subjectivity there in these findings, but he agrees with staff's assessment.
- Advised that the State wants ADUs as does this Commission and the owners of every single non-conforming ADU.
- Added that a lot of time was devoted to the new ADU Ordinance.
- Said that disparate treatment can be claimed by others with illegal ADUs who may prefer to seek forgiveness than permission for what they have built.
- Stated that the bigger question is how to get every ADU legalized with an emphasis on property owners.

Commissioner Colvill agreed that good opinions and conversation about this Variance have been raised. He said he has questions for staff in regard to the findings they have made.

Planner Daniel Fama said that if the Planning Commission wants to approve this Variance he would recommend a continuance to allow staff the time to prepare a resolution for approval. He said that staff has enough feedback from tonight's meeting.

Commissioner Colvill:

- Stated that Campbell is not anti-ADU or difficult to deal with.
- Added that some are having a hard time setting precedents.
- Pointed out that the seller made illegal upgrades and sold this property to the current owners. It seems there are no ramifications on the part of either party given the buyers signed off on the disclosure.
- Said that with a Variance a door opens up.

- Described this ADU as a very large income-producing structure. It should not be located where it is on that lot.

Vice Chair Ostrowski:

- Agreed that she doesn't want others to do illegal ADUs and come to us later to legalize them.
- Added that it seems that in this case the construction occurred 40 years ago although we have incomplete information to document that fact.
- Suggested that there is some ambiguity in this situation.
- Stated that owners of old ADUs are likely come forward in the future to legalize and bring their units up to Code and deemed safe to occupy. There is nothing negative to come out of that fact of people coming forward.

Commissioner Colvill agreed that fantastic points have been made but he still struggles with the knowledge that these owners posted their ADU for rent several times.

Vice Chair Ostrowski advised that being an engineer herself, like this property owner is, she too would have wanted to list it for rent in order to determine the interest out there. It is just a market research effort.

Commissioner Colvill said that they are claiming financial issues as the reason not to properly legalize the ADU's setback.

Commissioner Buchbinder thanked everybody. He said this is a terrible situation that demonstrates that the City should talk about a citywide policy to reflect predictable policy.

Motion: **Upon motion of Commissioner Hines, seconded by Vice Chair Ostrowski, the Planning Commission CONTINUED THIS ITEM TO THE JULY 14, 2020, PC MEETING and directed staff to draft a resolution for approval of a Variance (PLN2019-176) to allow a reduced side-yard setback to legalize an unpermitted accessory dwelling unit (ADU) on property located at 309 Redding Road, by the following roll call vote:**
AYES: **Buchbinder, Ching, Hines, Ostrowski and Rivlin**
NOES: **Colvill and Krey**
ABSENT: **None**
ABSTAIN: **None**

Commissioner Rivlin said that he'd like to see the aerial information provided at the next meeting.

Chair Krey advised that this item would be back before this Commission at its meeting on July 14, 2020.

REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR

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

- Advised the Commission that the regular schedule for meetings are now moving forward by Zoom for the foreseeable future.

Commissioner Buchbinder said he has two items to propose for discussion. He asked staff when the conversation about potential modifications to the parking standard for commercial uses located near transit.

Director Paul Kermoyan said that discussion would be set for the second meeting in July on July 28th.

Commissioner Buchbinder said he also wants to propose a future discussion about the potential for an amnesty program for ADUs that are non-conforming in terms of Zoning standards. He suggested a study session for a proposed amendment to the Zoning Code.

Vice Chair Ostrowski said that is a great idea.

Motion: Upon motion of Commissioner Buchbinder, seconded by Vice-Chair Ostrowski, the Planning Commissioner directed staff to schedule a study session to discuss proposed amendments to the Zoning Code to create an amnesty program for existing ADUs. (7-0)

Commissioner Buchbinder said he also wants to propose another study session to develop a history on the segregation efforts that were utilized during the planning of Campbell as it relates to people of color.

Chair Krey:

- Said he can agree that the Planning Commission can rightly discuss the need for parking and ADUs, but perhaps historic research is not within its purview.
- Added that it is to the discretion of the City Council to prioritize the use of staff.
- Concluded that this should simply be a suggestion forwarded on to Council to see if it fits within their priorities at this time.

Commissioner Ching:

- Agreed with Chair Krey.
- Added that there is enough stuff going on and this historic social research is outside of this Commission's purview.
- Stated that is something more in line for the City Council than us.

Chair Krey said that these suggestions show a clear need for at least one joint session between the Council and Planning Commission each year if not more.

Director Paul Kermoyan advised that his role is to bring forth that PC recommendation to the City Manager who works directly with the Council in establishing what they will agendaize.

Commissioner Hines agreed that research is a good item to discuss. It is a very engaging and interesting topic to pursue.

Director Paul Kermoyan said he would raise this issue with the City Manager Brian Loventhal.

Commissioner Buchbinder asked if this idea might be something for next year. He said he is happy to put it in its proper place.

Commissioner Hines said that there are other timelier issues including public safety and how it can be changed.

Commissioner Buchbinder said that is even further outside of our purview. He said he would follow up personally with the City Manager to request a joint session with the Council and Commission and will come back with this recommendation at another time.

ADJOURNMENT

The Planning Commission meeting adjourned 10:45 p.m. to the next Regular Planning Commission Meeting of **July 14, 2020**, which will be conducted on Zoom.

SUBMITTED BY:

Corinne Shinn, Recording Secretary

APPROVED BY:

Michael Krey, Chair

ATTEST:

Paul Kermoyan, Secretary