

CITY OF CAMPBELL PLANNING COMMISSION

MINUTES

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7:30 P.M.

TUESDAY

SEPTEMBER 24, 2019  
CITY HALL COUNCIL CHAMBERS

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The Planning Commission meeting of September 24, 2019 was called to order at 7:30 p.m., in the Council Chambers, 70 North First Street, Campbell, California by Acting Chair Krey and the following proceedings were had, to wit:

**ROLL CALL**

Commissioners Present:

Acting Chair:	Mike Krey
Commissioner:	Adam Buchbinder
Commissioner:	Stuart Ching
Commissioner:	Maggie Ostrowski

Commissioners Absent: Chair: Andrew Rivlin  
Commissioner: Terry Hines

Staff Present:

Community Development Director:	Paul Kermoyan
Senior Planner:	Daniel Fama
Assistant Planner:	Naz Pouya
City Attorney:	William Seligmann
Recording Secretary:	Corinne Shinn

**APPROVAL OF MINUTES**

**Motion: Upon motion by Commissioner Ostrowski, seconded by Commissioner Ching, the Planning Commission minutes of the meeting of September 10, 2019, were approved as submitted. (2-0-2-2 Rivlin abstained from the portion of the minutes for Item 4 as he recused from that item)**

**COMMUNICATIONS**

Director Paul Kermoyan advised that there was one email distributed as a desk item relating to Agenda Item 2.

**AGENDA MODIFICATIONS OR POSTPONEMENTS**

None

**ORAL REQUESTS**

None

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Acting Chair Krey asked if there were any disclosures for tonight's two hearing items.

Commissioner Ching reported that he spoke with Ms. Stokely regarding the ADU Ordinance (Item 2).

**PUBLIC HEARINGS**

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

1. **PLN2019-147** Public Hearing to consider the application of Peter Wynne for a Variance (PLN2019-147) to applicable development standards, including setbacks, open space, lot coverage, and floor area ratio, to facilitate a lot line adjustment intended to remedy non-compliant construction (i.e., buildings crossing property lines) through a reconfiguration of existing parcel boundaries on property located at **1690, 1710, 1712, and 1718 Whitwood Lane**. Staff is recommending that this item be deemed Categorical Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Naz Pouya, Assistant Planner*

Ms. Naz Pouya, Assistant Planner, provided the staff report.

Acting Chair Krey asked if there were questions for staff.

Commissioner Buchbinder asked how this issue was brought to the attention of staff.

Planner Naz Pouya:

- Advised that the property was sold recently, and the new owner applied to Public Works for Lot-Line Adjustment(s).
- Reported that Public Works advised the new owner that in order to process Lot Line Adjustment(s) the resulting lots must meet current zoning standards.

Commissioner Ostrowski asked if the development was built incorrectly or are the records simply incorrect.

Planner Naz Pouya:

- Said there was a line in the Planning Commission minutes referencing the approval and building permit records show that building inspections occurred, and permits signed off.
- Added that there were no drawings found of the buildings as they are placed on these properties.

Acting Chair Krey asked if the four properties still are under one ownership.

Planner Naz Pouya replied yes, they are currently. They were sold within the last year.

Acting Chair Krey asked about the shared driveway for two of the properties.

Planner Naz Pouya explained that in the PC minutes establishing an easement was indicated as a condition of approval. However, there is nothing in the record that indicates such an agreement was ever actually executed.

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

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

Commissioner Buchbinder said these changes help to satisfy the existing non-conforming properties. They would be no worse and in some ways better. It is better with buildings situated property on their own respective lots.

Commissioner Ostrowski said that this is cleaning up an issue that dates back to the 60's.

Acting Chair Krey said he has no issues.

**Motion:**           **Upon motion of Commissioner Ching, seconded by Commissioner Buchbinder, the Planning Commission adopted Resolution No. 4528 approving a Variance (PLN2019-147) to applicable development standards, including setbacks, open space, lot coverage, and floor area ratio, to facilitate a lot line adjustment intended to remedy non-compliant construction (i.e., buildings crossing property lines) through a reconfiguration of existing parcel boundaries on property located at 1690, 1710, 1712, and 1718 Whitwood Lane, by the following roll call vote:**

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

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

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

2. **PLN2017-375 Public Hearing to consider a City-initiated Zoning Code Amendment (PLN2017-375) to amend Titles 18, 20, and 21 of the Campbell Municipal Code pertaining to the permitting, construction, affordability, and usage of accessory dwelling units (ADU), an Amendment to the Campbell Village Neighborhood Plan and a General Plan Amendment to the San Tomas Area Neighborhood Plan to incorporate by reference the proposed City-wide ADU standards. Staff is recommending that this item be deemed Categorical Exempt under CEQA. Tentative City Council Meeting Date: October 15, 2019. Project Planner: Daniel Fama, Senior Planner**

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

Acting Chair Krey asked if there were questions for staff.

Commissioner Ostrowski:

- Questioned the prohibition of having a second-story ADU above an attached garage.
- Inquired why this exception is necessary given the State's relaxation of setbacks for ADU's in general.

Planner Daniel Fama:

- Explained that a property owner could elect to convert existing square footage from their home into an ADU but not add over an attached garage.
- Added that if they want to do so than a design review process would be required for the addition prior to the space being converted to an ADU.

Commissioner Buchbinder asked staff how many new ADU unites might be possible.

Planner Daniel:

- Said it will not always be easy to implement an ADU.
- Added that an ADU may still be financially too much of a burden for some.
- Concluded that there is potential for an ADU on any property that includes a house.

Commissioner Buchbinder:

- Reported that there are currently newly adopted State Assembly and Senate Bills just awaiting signature by the Governor.
- Cautioned that they include some things that will be subtly different from this updated Ordinance.

Director Paul Kermoyan:

- Stated that we are not able to avoid having legislative changes go into effect. There were changes made right after we had just updated the ADU Ordinance the last time.
- Said that it seems like every time we make progress the State comes up with something new.
- Recommended that we must adopt what we have and react to new law(s) later.

Commissioner Buchbinder:

- Said that has us complying with last year's new rules and next year we'll deal with next year's newly adopted laws.
- Asked why there is the requirement for a one-year minimum rental lease term for ADU's.

City Attorney William Seligmann:

- Said that there was an issue in the past with a recovery home that is regulated differently than are other residential uses.
- Added that without that limitation of a one-year lease, the City runs the risk of not being able to regulate the recovery home situated within a residential neighborhood.

Commissioner Buchbinder pressed on the fact that the recommendation is for a one-year minimum.

City Attorney William Seligmann said that the Commission could modify that to six months or more. Currently the Code defines non-transiency to one-year or more.

Commissioner Ostrowski asked what the rental limitation is for all rental properties.

City Attorney William Seligmann said that is a bigger issue that is for the City Council to address.

Commissioner Ostrowski asked how big a problem are transiency issues.

City Attorney William Seligmann:

- Replied none recently.
- Added that the last occurred 10 years ago and was very acrimonious and expensive for the City.

Commissioner Buchbinder asked why the City would want to ban recovery homes.

City Attorney William Seligmann:

- Clarified that is not the case.
- Advised that recovery homes are allowed by right if there are six or fewer residents.
- Added that in order to serve more than six residents would require a special permit.

Commissioner Buchbinder advised that the City of San Jose has "ADU Tuesdays" whereas they provide a quicker process for approval. He asked if staff has any such plans.

Planner Daniel Fama said that would represent a new program and the Council would by the body to direct staff to do so.

Director Paul Kermoyan:

- Reported that thus far there have been 11 ADU applications, which are a building permit process. That process doesn't take 180 days but rather takes less than three months.
- Explained that plans are submitted to Building. Building forwards a plan set to Planning to verify compliance with any requirements.
- Stated that once Planning signs off on the plans, Building issues the ADU permit.

Commissioner Ostrowski asked about the park impact fee.

Planner Daniel Fama:

- Said that these park impact fees are currently required.
- Reported that Public Works staff recently brought the issue of these park impact fees before the Council.
- Concluded that there is already pending legislation that will likely impact these fees in some way.

Commissioner Ostrowski sought clarification that park impact fees are currently required for ADU's as well as any new single-family residence.

Planner Daniel Fama replied yes. He added that the park fee was cut for ADU's to \$7,500. The fee used to be the same as for a new single-family residence.

Commissioner Buchbinder asked what the total fees charged are for an ADU.

Planner Daniel Fama said that the City's fees for ADU are the park fee and building permit fees. There are other fees imposed by outside agencies serving Campbell including Fire and West Valley Sanitation.

Commissioner Ching asked staff if the straw poll recommendations spreadsheet prepared by the Planning Commission has been incorporated into this current draft ADU Ordinance.

Planner Daniel Fama replied yes.

Commissioner Ching sought clarification from staff that the conversion of an existing accessory structure into an ADU can be remodeled but not completely rebuilt if said building were found to be too dilapidated.

Planner Daniel Fama said yes. If it doesn't comply with current standards. However, one pending State bill may require allowing rebuilds.

Commissioner Ching:

- Questioned the provision of parking. Are parking requirements outright eliminated?

- Asked, "What if the City wanted permit street parking? Would it be precluded for doing so?"

Planner Daniel Fama replied no.

Commissioner Buchbinder asked if a modular or manufactured ADU is plausible.

Planner Daniel Fama replied yes. He said it may be more challenging at the front of the property. At the back there is no design review requirements, but in the front the ADU must be architecturally compatible with the existing single-family home on the property.

Commissioner Buchbinder asked if Campbell plans a similar program to San Jose's.

Planner Daniel Fama said that would be up to the City Council.

Commissioner Buchbinder asked if the Planning Commission could encourage the City Council to consider such a program to help ADU's be approved more quickly.

Director Paul Kermoyan suggested that recommendation be added to the motion.

Planner Daniel Fama said that addition would be up to the majority of the PC.

Acting Chair Krey:

- Stated that staff provided a very good staff report.
- Clarified again that an ADU can go above a detached garage but not above an attached garage.
- Stressed the importance of lowering fees associated with ADU's.

Planner Daniel Fama said that the State Legislature is working on that issue. The only fee we have control over is the Park Impact Fee.

Acting Chair Krey clarified Campbell will allow both an ADU and JADU on a property. Do other cities so allow?

Planner Daniel Fama replied yes.

Acting Chair Krey questioned the rear setback of 5-feet or half of the wall height.

Planner Daniel Fama advised that the difference is based on a height difference between and single-story and two-story accessory structure and/or a single-story with very tall ceiling heights resulting in a taller structure than a typical single-story home.

Commissioner Ostrowski added that gable roofs also increase wall heights.

Commissioner Krey asked if protected tree removals would be allowed to be removed or would they be considered on a case-by-case basis.

Planner Daniel Fama:

- Said that tree removal of a protected tree (cedar, ash, oak and redwood) would still fall within the guidelines of the Tree Protection Ordinance.
- Added that he doesn't recall tree removal being an issue or hindrance to approving desired ADU units.
- Said that, if so, it might warrant allowing removal if needed.

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

Raja S. R. Pallela, Resident on W. Hacienda Avenue:

- Thanked Planner Daniel Fama for his work over this two-year effort.
- Pointed out that there are pending legislative changes that will impact this draft Ordinance. One would allow three units on any property. Another a minimum 4-foot setback. No fees. No HOA restrictions. Eliminating design standards. Eliminating FAR's and lot coverage standards.
- Cautioned that if the City's ADU Ordinance is not compliant with this pending legislation it would be considered null and void and revert to State Law standards.
- Suggested restricting all setbacks to 5-foot minimum.
- Admitted that he may be in favor of owner occupancy requirements but is not quite sure.
- Proposed that any future new single-family home be required to be both ADU and JADU-ready as part of the construction of that new single-family home in hopes of future ADU and JADU units.

Shirley Chan, Resident on Theresa Avenue:

- Stated that she is happy to see so much progress here. It is going in the right direction.
- Supported the recommendation to investigate eliminating or lowering impact fees as well as owner-occupancy requirements.
- Add that this change is not just for Campbell but also for the entire State of California.
- Declared that ADU's increase housing stock.
- Asked if her project would be approved by right if the Governor signs new laws not yet dealt with on this draft ADU Ordinance.

Ray Barbierri, Campbell Resident:

- Stated his appreciation for the work done.
- Admitted that he is considering putting an ADU unit on his property.
- Said that there is some confusion between State and local regulations.
- Thanked the Commission for their efforts.

Daraius Sorabji, Resident on Craig Avenue:

- Admitted that seeing this staff report was a pleasant experience.
- Stated that he does have a couple of things to address such as FAR.
- Reported that his 90-year-old father lives with him and his 70-year-old mother-in-law may one day need to live with his family.
- Explained that he is currently at the maximum limit for FAR but only 23 percent as far as lot coverage.
- Said that his family needs extra living space not for profit but rather for family.

- Opined that there is too much disparity between what is allowed on a single-family zoned property when compared to a planned development zoned property.
- Suggested eliminated the FAR standard.
- Questioned staff as to how many homes are located within the STANP neighborhood that are already over the maximum 50-percent FAR.

Commissioner Ching asked Mr. Sorabji the size of his current home.

Darius Sorabji said his home is two-story consisting of 2,700 square feet with a 400 square foot garage. The lot is 7,800 square feet.

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

Acting Chair Krey clarified with the City Attorney that Commissioner Ostrowski will not be able to vote on the resolution attaching the ADU Ordinance to the Campbell Village Neighborhood Plan as she lives in the area and is affected differently than the rest of the Commission.

City Attorney William Seligmann agreed saying that the discussion and resolution for that would have to be heard separately with Commissioner Ostrowski leaving the chamber during that portion of this item.

Commissioner Ostrowski:

- Offered her thanks to staff and the Commission for their work on the ADU Ordinance over the last two years.
- Added thanks to the members of the public who have provided input.
- Stated that the draft looks good and appears sufficiently flexible.
- Said that the Ordinance decreases restrictions and allows for the possibility of more housing.
- Admitted that she would like to discuss further the one-year lease restriction. That is not typical for the rest of Campbell.
- Opined that such a long lease could be a bit risky for a landlord in the event the tenant doesn't work out. There are a lot of reasons a tenant doesn't work out and must leave prior to one year.
- Said that requirement seems to be overreach in her opinion. A lease is a big burden if it doesn't work out.
- Questioned why an ADU would not be allowed above an attached garage. This is a missed opportunity if we don't allow them.

Commissioner Buchbinder:

- Stated his agreement with Commissioner Ostrowski regarding allowing above attached garage ADU's.
- Expressed his thanks to staff for the work done here.
- Added that he is excited to be here discussing this important ordinance.
- Asked the purpose of the owner-occupancy restriction.

Planner Daniel Fama explained that staff is considering the fact that there are single-family residential neighborhoods mostly populated by homeowners rather than renters.

Commissioner Buchbinder asked if there are any issues with the proposed language offered to deal with situations whereby adult children with disabilities would occupy a unit after the death of parents with the unit under the ownership of a trust. Therefore, that adult disabled person would not be the owner.

City Attorney William Seligmann replied no.

Planner Daniel Fama said that is more of a policy call. The Commission could recommend the addition of the proposed language by the City Council. Alternatively, the BMR incentive could be used in these cases.

City Attorney William Seligmann said that we cannot assume they (disabled adult) would qualify as low-income.

Commissioner Ching:

- Clarified that if the ADU is designated as a BMR unit owner occupation on site is not required.
- Stated that he is in favor of including the language suggested by Housing Choices.

Director Paul Kermoyan:

- Said that rarely happens.
- Added that if there is a disagreement there is an accommodation process that can offer an exception.
- Said that disabled adults would not be displaced but rather could receive a Reasonable Accommodation. That is a perfect tool.

Commissioner Buchbinder asked what happens when the parent(s) of the disabled person pass what happens?

Director Paul Kermoyan said a representative could come to us to explain the parents have passed. The way to keep them on the property is a Reasonable Accommodation permit.

Planner Daniel Fama said there is concern with the property being owned by a trust and the disabled adult lives there without being the owner. That would result in two non-owner occupants on the property.

Commissioner Ching:

- Said that it is concerning that when the parents die and the property transfers to a trust.
- Admitted that he would rather see a rule change than to have the City bend the rules.

Director Paul Kermoyan said the concern is with a trust having ownership rather than a person.

Commissioner Ching said that this is a special needs trust.

Commissioner Ostrowski said she supports that. It really clarifies things.

Acting Chair Krey again raised the issue of allowing an ADU above an attached garage.

Planner Daniel Fama:

- Said that is not allowed.
- Added that there is a process whereby the property owner goes through a Site and Architectural Review Permit process for a proposed addition. When that addition is approved and constructed, the owner can apply to convert the space into an ADU.
- Stated the intent is to avoid creating a loophole.

Acting Chair Krey suggested reducing the lease period from one year to perhaps seven months.

City Attorney William Seligmann suggested striking the first part of Subsection A to establish a time period that is less than one year. He pointed out that having a minimum stay is to prevent Air BnB type of short-term rentals.

Acting Chair Krey:

- Said that the requirements for owner occupation on site is a good idea.
- Said that he proposes to leave it as drafted.
- Reminded that the creation of more BMR units is the bigger goal.
- Pointed out that we won't have a perfect Ordinance the first time.

Planner Daniel Fama said that if the State prohibits establishing requirements for BMR units that would invalidate that option.

Commissioner Buchbinder suggested considering the potential for other incentives to encourage people to deed restrict their property as BMR.

Director Paul Kermoyan:

- Explained that the City Manager has the responsibility to provide Council with legislative updates.
- Added that in February of each year, the Council considers and adopts work plans that give the City Manager direction on priorities. The City Manager directs staff from those priorities.
- Assured that the City Manager will let staff and Council know if new laws come up that must be addressed.

Commissioner Ching:

- Said that FAR increases faster with a two-story house.
- Added that there are some large lots that currently have small houses on them.
- Stated that the recommendations are based on FAR and lot coverage.
- Suggested that we keep what we have and make not that we will have to revisit again as new State law is/are passed.

- Supported a minimum occupancy time frame as six months rather than a year.

Acting Chair Krey:

- Supported forwarding a recommendation on to Council with the reduced six-month minimum rental occupancy time frame.
- Said he also supports the inclusion of the recommended language provided by Housing Choices.
- Concluded that the Ordinance is okay as it is and is hitting a happy medium.

Commissioner Ostrowski:

- Said that staff's process offered to get an ADU over a garage makes sense.
- Added that it makes sense to go forward with this ADU Ordinance and revisit it later once new legislation is adopted.
- Said there is no reason to restrict the rental time frame. That's not done elsewhere in the City. That provision should be removed and left at one month as allowed under State law.

Commissioner Buchbinder encouraged staff to consider partnering with manufacturers of ADU manufactured/modular homes.

Acting Chair Krey reported that Santa Cruz has seven such designs. It makes sense.

Commissioner Buchbinder stated that an off-the-shelf product is a good idea.

Acting Chair Krey suggested a motion be made that does not include the Campbell Village Neighborhood Plan aspect of the Ordinance Update. It seems there is support for inclusion of the Housing Choice language and to forward a recommendation to Council to consider different ADU partnerships with manufacturers.

**Motion:** Upon motion of Commissioner Ostrowski, seconded by Commissioner Buchbinder, the Planning Commission took the following actions:

- **Adopted Resolution No. 4529 recommending that the City Council approve a Zoning Code Amendment (PLN2017-375) to amend Titles 18, 20, and 21 of the Campbell Municipal Code pertaining to the permitting, construction, affordability, and usage of accessory dwelling units (ADU), with the following changes:**
  - Eliminate the one-year minimum rental period from 21.23.060A to 30 days;
  - Incorporate the language provided by Housing Choices that will allow disabled adults to stay in units after passing of parents and ownership of property into trust;
  - Recommending that the Council consider having the City partner with ADU manufacturers with the goal of streamlining the process of developing ADU's; and
- **Adopted Resolution No. 4530 recommending that the City Council approve a General Plan Amendment to the San Tomas**

**Area Neighborhood Plan to incorporate by reference the proposed City-wide ADU standards;**  
**by the following roll call vote:**  
**AYES: Buchbinder, Ching, Krey, Ostrowski**  
**NOES: None**  
**ABSENT: Hines and Rivlin**  
**ABSTAIN: None**

Commissioner Ostrowski had to recuse from the third part of this item due to active part in the creation of the Campbell Village Neighborhood Plan. She left the dais and chambers.

It was realized that with Commissioner Ostrowski's recusal, there was not a quorum available to act on the resolution to connect the updated ADU Ordinance to the Campbell Village Neighborhood Plan. It would have to be continued to the next meeting when additional commissioner would be present.

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

**Motion: Upon motion of Commissioner Buchbinder, seconded by Commissioner Ching, the Planning Commission CONTINUED TO A DATE CERTAIN OF OCTOBER 8, 2019, the adoption of a resolution to modify the Campbell Village Neighborhood Plan to incorporate by reference the proposed City-wide ADU Ordinance standards, by the following roll call vote:**  
**AYES: Buchbinder, Ching and Krey**  
**NOES: None**  
**ABSENT: Hines and Rivlin**  
**ABSTAIN: Ostrowski**

Acting Chair Krey advised that this item would return at the next meeting to allow a vote on the final of the three resolutions required to forward this item onward to the City Council for final action.

Commissioner Ostrowski returned to the chambers and dais at the completion of Item 2.

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## **REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR**

Director Paul Kermoyan made the following additions to his written report:

- Reported that Commissioner Ching and Senior Planner Cindy McCormick both attending the CalAPA conference in Santa Barbara last week.
- Said that Commissioner Ching is offered an opportunity to provide an update and/or debrief of his experience at this training.
- Stated that staff is trying to budget enough funding for all Commissioners to attend training events.

Commissioner Ching:

- Updated the Commission on his attendance at the 2019 CalAPA Conference held in Santa Barbara last week from Sunday through Wednesday.
- Said that it was somewhat like the LCC.
- Stated that it provides a good focus on planning more in tun with staff.
- Opined that the LCC Planning Commission Academy is more concentrated on the Planning Commissioner's role and responsibility.
- Added that he finds the LCC Academy to be a more useful program especially for newly-appointed Commissioners.
- Advised that for him the highlight from last week were the Legislative updates and discussions on General Plans. Representatives from Santa Monica and Mountain View presented on their General Plans that have very different styles.
- Said that other topics of great interest were inclusion and accessibility.
- Recounted that he had opportunity to speak with younger Planning Commissioners who are very passionate about affordable housing. Many reported that they work two jobs but still volunteer for service on their community's Planning Commission. That was very commendable.

### **ADJOURNMENT**

The Planning Commission meeting adjourned at 9:07 p.m. to the next Regular Planning Commission Meeting of **October 8, 2019**.

SUBMITTED BY: \_\_\_\_\_

Corinne Shinn, Recording Secretary

APPROVED BY: \_\_\_\_\_

Michael Krey, Acting Chair

ATTEST: \_\_\_\_\_

Paul Kermoyan, Secretary