

CITY OF CAMPBELL PLANNING COMMISSION
MINUTES

7:30 P.M.

TUESDAY

OCTOBER 23, 2018
CITY HALL COUNCIL CHAMBERS

The Planning Commission meeting of October 23, 2018, was called to order at 7:30 p.m., in the Council Chambers, 70 North First Street, Campbell, California by Chair Rich and the following proceedings were had, to wit:

ROLL CALL

Commissioners Present: Chair:	Michael L. Rich
Vice Chair:	JoElle Hernandez
Commissioner:	Stuart Ching
Commissioner:	Mike Krey
Commissioner:	Maggie Ostrowski
Commissioner:	Andrew Rivlin

Commissioners Absent: None

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

APPROVAL OF MINUTES

Motion: Upon motion by Commissioner Krey, seconded by Commissioner Ching, the Planning Commission minutes of the meeting of October 9, 2018, were approved as submitted. (4-0-0-2; Commissioners Hernandez and Rivlin abstained)

COMMUNICATIONS

None

AGENDA MODIFICATIONS OR POSTPONEMENTS

None

ORAL REQUESTS

None

PUBLIC HEARINGS

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

1. **PLN2018-241** Public Hearing to consider the application of Chris Morton for a Conditional Use Permit with a Parking Modification Permit (PLN2018-241) to legalize the establishment of a fitness studio (Extreme Fitness & Sports) on property located at **1600 Dell Avenue, Ste. C**. Staff is recommending that this project be deemed Categorical 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*

Commissioner Ching disclosed that he had visited the project site and met there with the applicant, Chris Morton.

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

Director Paul Kermoyan:

- Explained that the City's Code Enforcement Program consists of one Code Enforcement Officer.
- Added that the CEO must keep up with a current log of cases but it is impossible to keep track of everything.
- Added that in the event that a case becomes complicated, the CEO will often tend to set it aside to keep on top of the new cases as they come in each day.
- Reported that Council approved a second part-time CEO to help manage the aged cases.

Commissioner Krey mentioned that in 2008 a policy was established to allow fitness uses in light industrial (Controlled Manufacturing) zonings. He asked if encroachment of such uses into industrial zones is still an issue.

Planner Daniel Fama replied yes. He explained that the C-M zoning allows other activities while the C-2 (General Commercial) aligns more closely with the General Plan designations.

Commissioner Krey asked if there had been other CUP type of uses in this building.

Planner Daniel Fama replied yes. There used to be a deli but it has ceased operation at this location.

Commissioner Ostrowski asked what would happen next if a short-term approval is granted.

Planner Daniel Fama advised that they would need to come back for consideration of re-approval after the approved term had been reached.

Director Paul Kermoyan said that the way to look at the Code is that the “preferred” uses are those uses that the City really wants to see within that zoning district. There are permitted uses and there are secondary uses that are granted after consideration with a limited duration.

Commissioner Ostrowski asked if concerns would be evaluated.

Planner Daniel Fama explained that this use needs to secure a Building Permit for the tenant’s use of the location. In this situation, the applicant opened at this location without securing a business license or a Building Permit. The Building Permit involves a formal review of a building for its intended use.

Commissioner Hernandez:

- Referenced page 2 of the staff report that indicates that in 2014 a complaint was received.
- Pointed out that at this time Mr. Morton has been in operation here for six years although a business license was issued to him for a non-fitness use at a different location.
- Added that since then, the applicant didn’t listen to that advice and continued to operate without the required permit approvals.

Chair Rich asked staff whether the Controlled Manufacturing zoning is intended to preserve a place to accommodate R & D (Research & Development) and light industrial uses.

Planner Daniel Fama replied yes.

Chair Rich asked whether for the CrossFit’s CUP, both analysis and permits have been issued.

Planner Daniel Fama replied yes.

Chair Rich asked if it was the same process as for Crossfit.

Planner Daniel Fama replied yes. He added that professional architectural drawings are required to show what building modifications might be needed to use this building. Mr. Morton will need to hire an architect to see what needs to be modified.

Chair Rich referenced the need to check for hazardous materials.

Planner Daniel Fama agreed. He added another concern is to ensure there is adequate secondary egress in case of emergency.

Chair Rich asked if staff has had on-going conversations.

Planner Daniel Fama said he has had no communication with the property owner but has been working with the business owner.

Chair Rich asked about the Parking Modification Permit.

Planner Daniel Fama said that the owner would have to consider a plan that encompasses all uses on site rather than piecemeal.

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

Chris Morton, Applicant and Business Owner:

- Introduced his family including his wife, Mhairi; son, Matthew; and his two daughters, Emily and Gracie.
- Opined that the summary provided by planning is not representing his use properly.
- Reported that hiring an architect is very difficult and the estimated costs of \$5,000 or more are unaffordable.
- Explained that in 2004 his business was located down the road at 1077 Dell Avenue.
- Added that Sharon Fierro (who has since passed away) and Steve Prosser tried to help him at that time and approved his business use at 1077 Dell Avenue.
- Said that they later moved to their current location in a building where other similar uses were already located (Hardke and Sirious Baseball).
- Stated that he responds to all correspondence that comes from the City.
- Reiterated that he cannot afford an architect to prepare plans.
- Added that this enforcement action is a difficult distraction for him. He'd rather concentrate on serving his clients.
- Estimated that it would cost him \$50,000 to leave this current location and relocate elsewhere, which he does not have.
- Stated that his is a "mom & pop" business. For the last six years they have gotten along very well with their neighbors.
- Said he appreciates the Planning Commission considering his situation.
- Pointed out three errors in the staff report.
 - The first is that the report suggests that there is no rear exit point in the building due to a gate in the back. That is not true. There is a rear exit

- point. He said he opens the gate every day and locks it as he leaves each night at 10 p.m. There are two exit points in the building.
- The second “error” was the inference that there may be hazardous materials in the warehouse. He said that he has a hazardous materials report that indicates no hazardous waste or chemicals in the building. He got that report from the property owner. The building was safe enough to have allowed a kitchen.
 - The third was a problem with parking. Staff indicated low parking demand. Most of his clients drop their participants off. They have a limit of seven participants at any given time. Usually there is between one and five per hour. They use between one and five parking stalls. There have been no complaints on parking in their six years there.
- Explained that his business helps develop coordination/neuro-cognition/peripheral vision in athletes. This helps to reduce injury risk and improve confidence. They are doing R & D (Research & Development) using their own equipment.
 - Added that his entire family is involved daily. This business has been an amazing learning tool for them.
 - Said that his program has helped his son to rehab his knee after recent surgery. That is still an on-going process.
 - Reported that this location is ideal because it is rectangular in shape. He can afford the cost of this space. It offers a unique setup.
 - Reiterated that he has been in business since 2000 and at this location for six years.
 - Added that all of their operation is within their space not outside.
 - Offered his conclusion statement that this is a family-run business that considers real-world impacts. There have been no complaints about his business. It is a carefully and meticulously-run business.
 - Said that to “remove us must prove benefit will beat the pain” and that he “looks forward to looking forward.”
 - Asked the Commission to please vote “yes” that they can continue to operate safely and support their family.

Commissioner Ostrowski asked Chris Morton to elaborate on the R & D aspect of his business.

Chris Morton did so.

Commissioner Ostrowski asked whether he is doing testing.

Chris Morton replied yes. He is testing it himself.

Commissioner Ostrowski asked if his lights are commercially available.

Chris Morton said that they are manufactured in Canada.

Commissioner Ostrowski asked who designs and creates concepts.

Chris Morton said he and partners.

Commissioner Ostrowski said that along with designing equipment and testing it she is trying to understand what Mr. Morton's business is. She asked if he is in partnership with a doctor.

Chris Morton said that he has consulted with an eye surgeon out of Brazil who has served as an advisor on micro-speed protocol, the vision part of it that helps to stretch our peripheral vision.

Commissioner Ostrowski asked how else the benefits from the use of this equipment can be evaluated. Placebo versus what? Improvement in a measurable way? Are they tracking performance?

Chris Morton said yes. They collect a lot of data and profile

Chair Rich said he is well aware of this process. He asked Mr. Morton whether he is prepared to go through the review process of securing a conditional use permit that other similar businesses have done if the Commission looks into this use.

Chris Morton said he is not sure about the price tag of such a process. He said they do their best within their financial means.

Planner Daniel Fama said that it is the obligation of the applicant to prove their business can operate by hiring professionals. There remain lots of questions without answers having been provided by the applicant.

Chair Rich reiterated that it is up to the applicant to demonstrate the suitability of their business at this location.

Commissioner Krey asked about the Crossfit Center and Serious Baseball Facility, which also serves kids. Was the safety of the location considered when they applied? Was the site found not hazardous for their use?

Planner Daniel Fama:

- Said that the processing of a building permit demonstrates the suitability of a space for a specified use.
- Added that we are here now discussing this existing use because of an open code enforcement case at this level of preparation.
- Cautioned that the applicant will still need architectural plans to make sure the site is suitable for this type of business.

Chris Morton said that \$5,000 will take a while to accumulate.

Matthew Morton, 15 year old son of Chris and Mhairi Norton:

- Reports that he too works at EFS and helps to train others as well as rehabbing his knee there.
- Said that what he has learned there helps with his confidence and develops his ability to lead others.

- Added that he hopes to continue at this facility to become the best he can be.
- Stated he also hopes to share his experience with others.
- Thanked the Commission for hearing him and hopes they will let them stay at this facility.

Mhairi Morton, wife and business partner of Chris Morton:

- Stated that she is a co-owner together with her husband.
- Asked the Commission to accept their request for a CUP.
- Stated that their business is a “mom & pop” business where their family works together.
- Said that she assists with training as does their son, Matthew.
- Reported that they have experienced two floods at their home. They currently are without a kitchen. There may be a spring beneath their home.
- Asked for some empathy for their situation and assured that they would do their best to work with the City.

Mr. Shannon Roberts, San Jose:

- Said that he is a high school teammate of Chris'.
- Advised that he has brought some of his students to train at this facility and the results have been phenomenal. The kids improved greatly. Chris sponsors his kids as they are from lower-income families.
- Reported that he is a 24-year football coach.
- Stated that this business is an asset to the community.

William McMillen, San Jose:

- Said he's been a friend of Chris Morton for the last 15 or 16 years.
- Stated that he has never met a higher caliber of character than he has in Chris Morton.
- Advised that he has been to this facility and trained there as well.
- Recounted that he has visited such facilities on four different continents and has never seen one better than this one.
- Added that he has spoken with parents of clients who are happy with their results.
- Recommended that Chris be able to conduct his business to continue helping young people. He offers the highest level of integrity and responsibility.

James Kinley, Los Gatos:

- Said that he has been an intern with Chris Morton for the last nine months.
- Stated that this facility is second to none. They offer a vast improvement to all of their athletes.
- Reported that he is currently a student of kinesiology at West Valley College.
- Described Chris as personable, an excellent family man with a fine reputation. There are no negatives. He is meticulous.
- Implored the Commission to approve this use and allow this mom & pop business to continue.
- Concluded that he is proud to speak for these people and their facility. It would be a shame if they have to close down.

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

Commissioner Ching:

- Stated that this is a tough one.
- Advised that he read through the staff report a couple of times over.
- Said that it seems to come down to whether there is an over-concentration of sports-related facilities in this industrial site.
- Added that the report accurately reflects this issue. If this facility is predominately a sports facility than there is an over-concentration. The question is whether it is sports training versus R&D. It is promoted as sports but it's more than that.
- Admitted that he appreciated Commissioner Ostrowski's line of questions.
- Stated that if this facility is predominately sports in nature than he agrees with staff's position. If it is predominately R&D than he may look at it differently.
- Reported that he went there yesterday (Monday, October 22, 2018) and the gate was open. There was no parking issue observed.

Commissioner Ostrowski:

- Said that the reason for her questions was that it seems like their work falls under R&D. They are forming a testable hypothesis. They are collecting data. Their equipment cannot be bought "off the shelf". Their data is evaluated and further improvements are made as a result. He has worked under consultation with a doctor.
- Stated that the financial aspect of R&D is that they generally take funding by investors and/or grants. At the present time this use provides a benefit to its clients that people are willing to pay for.

Commissioner Rivlin:

- Said he could support an over-concentration exemption. While there may be too many within a certain block, this use doesn't seem to have interfered with the other uses. No detrimental effects have been shown.
- Concluded that he could support a finding for the exemption.

Commissioner Krey:

- Said that he has a lot of empathy for this business owner. This business seems great.
- Admitted that it would have been better if they had established themselves in this location correctly right from the beginning.
- Stated that he hadn't considered it to be R&D and feels it may be a stretch.
- Said that the main issue is the over-concentration issue. Within a 300-foot radius it is an over-concentration.
- Added that the only place where they could establish without requirement for a CUP is in the Downtown Area.
- Stated his hope that there is something that the Commission can do.

Commissioner Hernandez:

- Said that she can see both arguments.

- Added that Planner Daniel Fama did a good job on the report that offered a clear and thorough understanding of the Code and required findings.
- Reported that she cannot make the required findings that it is “not an over-concentration.” It is.
- Stated that she agrees with the staff report.
- Said that she perhaps see an angle as this business is creating its own materials and products. They are working with those products and testing them.
- Cautioned that even if this is a “mom and pop” operation the Commission has the obligation to protect the public. That warehouse is not approved for that use. It would have to be approved for that use and that may be a long road.
- Stated that she is not okay with the fact that this location was used without proper improvements and approvals.
- Pointed out that if something went wrong people would look at the City and ask, “Why didn’t you put a stop to it?”
- Reiterated the need to make sure everyone is safe for this business, the family and everybody who comes there.
- Added that she is very familiar with the Dell Avenue Area. There is not a huge parking problem there.
- Concluded that the required findings cannot be made for a sports facility but as an R&D use it may be possible.

Commissioner Ching:

- Stated his agreement with Commissioner Hernandez.
- Added that he would want to see a process, suitability and schedule for determining if this is an R&D use that can be supported for this location.

Director Paul Kermoyan:

- Clarified that the report presented on this project is not a “Daniel Fama Report”. It is a staff report from the Planning Division.
- Advised that should the Planning Commission deem this use to be R&D that we should not be here discussing this use at this location that allows R&D. However, we are calling it a fitness facility. As such, we are bound by the standards that call for a limited term approval.

Chair Rich asked whether this use would be allowed to continue if the Commission was to say it is R&D.

Director Paul Kermoyan:

- Said that R&D is a permitted use on this property. However, they would still need to provide and process a building plan in order to occupy the space. Such a plan is required prior to occupying any space.
- Cautioned that such a decision could have a bearing on other decisions.

Commissioner Hernandez agreed.

Planner Daniel Fama:

- Said that it could still be a fitness studio but with a binary R&D component that would be an exception to allow it at this location.

Chair Rich:

- Said that while Commissioner Ostrowski is able to consider this request using a PhD research basis, he does so as an Ex-D-1 Athlete who was coached by an Olympic coach. As such he was constantly thinking of ways to improve performance.
- Pointed out that we couldn't find a company in the US that is doing what he does. There are some unique things going on there.
- Admitted that he does not want to see kids in a facility that is not suitable. Those things need to be looked at including hazardous materials.
- Opined that it is probably legit that there is an R&D component to this business. It is very unique.
- Reiterated his desire to find a way to ensure that this is a safe facility and whether there is a good way to make this work. Again, it is unique and different.

Commissioner Ostrowski said it could merit figuring out how to make it work.

Chair Rich:

- Asked staff to expand on the differences in process to allow R&D use of this location versus issuance of a CUP. There is a higher bar for a CUP.

Director Paul Kermoyan:

- Said that if this is deemed a fitness studio with an R&D emphasis it would still require a CUP process.
- Added that if it is just an R&D business that would take it out of the realm of fitness.
- Stated that we "all" understand it's a great use but the "preferred" use in this location is industrial.
- Cautioned that the more "un-preferred" uses of industrial properties there are displaces desired industrial uses from coming into Campbell.
- Concluded the importance of being careful with how we word the decision as it can impact others.

Commissioner Krey asked if there are other types of businesses for which the issue of over-concentration is taken into consideration.

Director Paul Kermoyan said there are including massage uses and payday lending.

Planner Daniel Fama advised that there is a similar exception just up the street.

Chair Rich said he doesn't see this is 100 percent R&D. He said he'd like to see an exception to the over-concentration and a parking exception.

Planner Daniel Fama said that the Commission can elect to continue consideration of this item to allow Mr. Morton the time to hire an architect to prepare building plans that could be brought back to help the Planning Commission to make a decision.

Chair Rich asked what an architectural plan provides to the Commission.

Planner Daniel Fama:

- Said that the architectural plans would include a site plan. It would verify accessibility.
- Cautioned that the architect may well determine that there is \$30,000 in tenant improvements that would be required in order to make this building suitable for its use.
- Said that once the plans are prepared, Mr. Morton can submit them for a Building Permit.

City Attorney William Seligmann:

- Said that the only option this evening for the Commission is a continuance with a direction to staff to come back with a resolution for approval.

Planner Daniel Fama reminded that a licensed architect is required to prepare plans for a Building Permit. Does the Planning Commission want plans prior to taking action for approval or prefer to leave it for staff to approve.

Commissioner Ostrowski said that she didn't need to see architectural plans.

Chair Rich said he didn't either.

Director Paul Kermoyan:

- Clarified that he is not talking about construction drawings but rather we need to know more about the building itself. We need to know what we are approving.
- Reiterated that State law requires architectural plans be provided during preliminary review if they will be required later for Building Permit processing.

Commissioner Ostrowski said that a timeline is needed.

Chair Rich asked staff what is realistic as a timeline.

Commissioner Ostrowski said that with the holidays approaching it is not realistic to get the plans in the next couple of months. Perhaps February or March 2019.

Chair Rich asked staff what needs to be done if the deadline for plan submittal is March 1, 2019.

Commissioner Ostrowski said architectural plans need to be provided.

Planner Daniel Fama cautioned that something could be determined that is not yet known.

Commissioner Rivlin suggested soliciting existing plans from the property owner. He added that a draftsman could draft this building in two days.

Commissioner Hernandez suggested a shorter timeline than March.

Commissioner Rivlin suggested by the end of this year.

Commissioner Hernandez said that the architectural plans are needed.

Director Paul Kermoyan:

- Reiterated that plans to secure occupancy need to be prepared by an architect.
- Added that the sooner the better that this item is decided is best for the City.
- Said that he does understand that hiring an architect is expensive as he has had recent personal experience in that.

Motion: Upon motion of Commissioner Ostrowski, seconded by Commissioner Hernandez, the Planning Commission CONTINUED TO A DATE UNCERTAIN the consideration of a Conditional Use Permit with a Parking Modification Permit (PLN2018-241) to legalize the establishment of a fitness studio (Extreme Fitness & Sports) on property located at 1600 Dell Avenue, Ste. C, with the requirement that that applicant submit architectural plans to the Planning Division by March 1, 2019; by the following roll call vote:

AYES: Ching, Hernandez, Krey, Ostrowski, Rich and Rivlin

NOES: None

ABSENT: None

ABSTAIN: None

Chair Rich called for a short break at 9:10 p.m. and reconvened the meeting at 9:15 p.m.

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

2. **PLN2018-280** Public Hearing to consider the application of Anthony Siri for a Modification (PLN2018-280) of a previously approved term-limited Conditional Use Permit (PLN2016-24) to extend the approval of an existing indoor athletic fitness facility (d.b.a. Sirious Baseball), permit one additional batting cage, and allow existing office and storage areas to be converted into an exercise room within the existing tenant space located at **1520 Dell Avenue, Suites A & B**. Staff is recommending that this project be deemed Categorical Exempt Under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Stephen Rose, Associate Planner*

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

Chair Rich asked if there were questions for staff. There were none.

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

Anthony Siri, Applicant & Owner, Sirious Baseball:

- Said that he was available if there were any questions.

Chair Rich asked where the office work would be done with the conversion of the office space into training space.

Anthony Siri said that the office space is empty and was not being used.

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

Commissioner Ostrowski said that she supports staff's recommendation. There are no issues.

Commissioner Ching agreed.

Motion: **Upon motion of Commissioner Krey, seconded by Commissioner Hernandez, the Planning Commission adopted Resolution No. 4465 approving a Modification (PLN2018-280) of a previously approved term-limited Conditional Use Permit (PLN2016-24) to extend the approval of an existing indoor athletic fitness facility (d.b.a. Sirious Baseball), permit one additional batting cage, and allow existing office and storage areas to be converted into an exercise room within the existing tenant space located at 1520 Dell Avenue, Suites A & B, by the following roll call vote:**

AYES: **Ching, Hernandez, Krey, Ostrowski, Rich and Rivlin**

NOES: **None**

ABSENT: **None**

ABSTAIN: **None**

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

Chair Rich read Agenda Item No. 3 into the record as follows:

- 3. PLN2018-166** Public Hearing to consider the application of LVL UP for a Modification of a previously-approved Conditional Use Permit to allow additional arcade games, additional bar seating, and extended hours (12 AM public closing time) on property located at **400 E Campbell Avenue**. Staff is recommending that this project 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.

Chair Rich asked if there were questions for staff.

Commissioner Hernandez asked if the business owners know Planner Naz Pouya was coming to the location to inspect.

Planner Naz Pouya said that they had already submitted their application before she visited the site.

Commissioner Hernandez asked if she noticed more adults or kids in the business when she was there.

Planner Naz Pouya replied more adults.

Commissioner Hernandez asked about the closing time. She said she believes that there is generally different business versus operational hours.

Planner Naz Pouya said that is true. The business can be on site an hour earlier and an hour later than their patrons can be there to prepare and close for the business day.

Commissioner Krey said that it seems this request fits within the provisions of the Downtown Campbell Alcohol Policy and there are no Police Department objections. There is no issue.

Director Paul Kermoyan clarified that there is no issue between closing time of 10 p.m. or midnight. It's after midnight closures where the City has concerns.

Commissioner Krey asked about the prohibition of minors after 10 p.m. What about those over 18 up to 21.

Planner Naz Pouya said that there is no restriction after 10 p.m. for those over 18. It's just those under 18. This provision is a part of the Arcade Section of the Code. Minors can be on site with an adult guardian but they can't play arcade games after 10 p.m.

Chair Rich asked whether staff is recommending 17 or 18 bar height seats.

Planner Naz Pouya said staff's recommendation is for 17 maximum bar seats, which represents the 25 percent of total seating as established with the Downtown Campbell Alcohol Policy.

Chair Rich asked verification that the arcade games are in place already.

Commissioner Hernandez replied yes.

Chair Rich said that means they are seeking approval for what they already have.

Director Paul Kermoyan:

- Said that they can place the games as they wish but should only have the maximum number of games approved for their use.
- Added that the deviations from the current CUP are the reason staff added a condition of approve to allow for spontaneous staff inspections at a cost to the business to ensure adherence to the CUP conditions of approval.

Commissioner Ching asked when minors cannot go to this location.

Planner Naz Pouya said after 10 p.m. any minors under 18 years of age must be accompanied by a guardian but they cannot play the arcade games.

Chair Rich opened the Public Hearing for Agenda Item No. 3.

Josh, Applicant and Business Owner, LVL UP:

- Said that 21 arcade games are currently allowed and that's how many they have at this time.
- Admitted that they had 23 for a short time (a week or so) but two of them were not working.
- Advised that he is fine with the maximum of 17 bar height seats per staff's recommendation.

Commissioner Krey cautioned that LVL UP staff has to be good at policing who is drinking alcohol at this location.

Josh replied that his staff mandatorily takes ABC (Alcohol Beverage Control) training classes on techniques of alcohol service and oversight.

Commissioner Krey asked Josh if they have as many dining patrons as game patrons.

Josh replied yes.

Chair Rich asked Josh if their target market is adults or kids.

Josh replied that they find they draw lots of families. It was a pleasant surprise but a welcome one.

Commissioner Hernandez asked how they are monitoring drinks to ensure only adults have access to alcohol.

Josh admitted that is a constant worry for businesses that serve alcohol. He reported that he has staff walking around the business at all times. They represent the first line of defense against under-age drinking.

Commissioner Hernandez asked Josh about the difference in bar seats versus table seats being limited to 25 percent.

Josh said he'd like to have more bar seats as possible but his main concern with this evening's Modification request is the increase in hours. Everything else is less important. Also the ability to switch out games is important to keep things interesting for patrons.

Larry Schaadt, Property Owner, 400 E. Campbell Avenue:

- Reminded that finding the right tenant for this renovated building was a difficult challenge.
- Advised that he chose this business (LVL UP) as they had a great concept.
- Stated his support of their request to modify their Use Permit.

Ken Cheney:

- Said his role is to keep the games working there.
- Reported that he has been in the arcade business for 25 years.
- Added that he had been waiting for the right people to work with and LVL UP is the first that he has found to go in business with in this way.

Chair Rich closed the Public Hearing for Agenda Item No. 3.

Commissioner Ostrowski:

- Said that this is a great and exciting concept. It is a new and innovative business for Downtown Campbell.
- Said that it is important to figure out how they want to run things.
- Added that she is supportive of the later hours to midnight and has no issues with the other items being requested.
- Agreed that they should comply with the maximum of 25 percent seating being bar height for a total of 17.

Commissioner Krey said he is in favor of this application given there is no Police Department concern.

Commissioner Ching:

- Said that he visited the business tonight and found that they have created a nice environment.
- Admitted that he would prefer that the Sunday opening not be 10 a.m. due to the weekly Farmer's Market that is occurring Downtown on Sunday mornings.

Commissioner Rivlin said he is supportive of all requests. This concept is fantastic.

Commissioner Hernandez said that she is supportive as well of the arcade hours getting reconciled and a maximum of 17 bar height seats at the bar.

Commissioner Ching said he supports 10 a.m. versus 11 a.m. opening including on Sunday if the majority of the Commission supports it.

Motion: Upon motion of Commissioner Hernandez, seconded by Commissioner Rivlin, the Planning Commission adopted

Resolution No. 4466 approving a Modification of a previously-approved Conditional Use Permit to allow additional arcade games, additional bar seating and extended hours (12 AM public closing time) on property located at 400 E Campbell Avenue, by the following roll call vote:

AYES: Ching, Hernandez, Krey, Ostrowski, Rich and Rivlin

NOES: None

ABSENT: None

ABSTAIN: None

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

Chair Rich read Agenda Item No. 4 into the record as follows:

4. **PLN2017-45** Public Hearing to consider the application of Canyon Heights Academy for a Conditional Use Permit Modification with Site and Architectural Review and a Parking Modification Permit (PLN2017-45), and a Tree Removal Permit (PLN2018-328) to allow construction and use of an approximately 8,400 square-foot gymnasium building and associated site and parking improvements for an existing private school on Campbell Union School District property (former Hazelwood campus), located at **775 Waldo Road**. Staff is recommending that this project be deemed Categorical 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*

Commissioner Ching disclosed that he met with three project representatives on site and discussed parking and capacity.

Commissioner Ostrowski disclosed that she has a family member that worked at Canyon Heights School many years ago.

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

Chair Rich asked for the SARC Report.

Commissioner Hernandez provided the Site and Architectural Review Committee report as follows:

- Said that SARC was advised to only review and comment on the style, colors and materials of the proposed gymnasium and not the site overall.
- Stated that as to the proposed colors, SARC asked that more muted colors be considered.

- Advised that the non-traditional building materials were discussed and sample materials were requested.
- Added that the building's height that exceeds the allowed standard was discussed.
- Concluded that the tree proposed for removal was also discussed.

Commissioner Rivlin asked staff if the applicant had provided any responses to the concerns raised at SARC.

Planner Daniel Fama said he would defer to the applicant's design team to respond.

Chair Rich asked if the parking required is being looked at as incremental.

Planner Daniel Fama said that it is in addition to the existing supply of parking.

Chair Rich said that it seems that 112 additional parking spaces are required to serve this new gym.

Planner Daniel Fama replied that is a Code requirement. He added that other opportunities such as a valet program can be considered.

Chair Rich asked if there are questions for staff.

Commissioner Ostrowski asked if this is the typical parking standard for schools.

Planner Daniel Fama replied that it is the standard for private schools. The City doesn't have jurisdiction over what occurs on public school sites.

Director Paul Kermoyan referenced the processing of Campbell Christian School about six years ago. That site was parked to accommodate that new gym.

City Attorney William Seligmann clarified that even public schools must meet City standards.

Chair Rich opened the Public Hearing for Agenda Item No. 4.

Jim Campagna, Project Representative, Canyon Heights Academy:

- Introduced the project team standing with him this evening as Dr. Margaret Richardson, Principal of Canyon Heights Academy and Brad Cox, the Project Architect.

Dr. Margaret Richardson, Principal, Canyon Heights Academy:

- Introduced David Renard, with Sprung Structures Solutions, who will construct the gym structure for Canyon Heights.
- Provided a history of the school.
- Said that they serve children from age 18 months through 8th grade. They moved to this location in 2004.
- Said that they currently have 350 students and their Use Permit allows up to 400.

- Stated that their school is noted for academics. It is an independent Catholic school that is a part of the Diocese. It is a fully accredited school.
- Advised that they use the cafeteria for all larger events but have a need for more space. They can't do a full mass on site. They play (and practice) volleyball on the blacktop. Same with basketball.
- Assured that they don't plan to affect their student population as a result of building this new gym. This school facility will not allow them to go above 400 students.
- Reported that this is a very active school. This new gym is needed to serve the school population they have now. It is important to have a place where they can all be together in one place as a community.
- Informed that their maximum class size is 24 students for elementary grades and 26 students for middle-school grades.

Jim Campagna:

- Reminded that the Campbell Union School District owns this site.
- Advised that they have about 25.5 years left on their ground lease.
- Said that Sprung Structure Solution makes sense since we are on leased land. It is a "re-locatable" structure but it lasts forever. The "skin" of the structure lasts about 30 years.
- Added that cost is a big factor in their selection of this type of structure.
- Said that this school was founded about 17 to 18 years ago. They need to do more with less. Their budget for this project is \$1.5 million. Again, it is a temporary structure that can be removed.
- Stated that they are seeking an exception to allow for a maximum height of 31 feet. They need that added height for volleyball. Our team is pretty good.
- Pointed out that there is no current parking issue. While they will cover over some spaces with their new gym building they will also replace those spaces elsewhere on site for a maximum of 40 parking spaces.
- Admitted that City staff doesn't believe when Canyon Creek says we're not increasing the intensity of use on site with the addition of this gym.
- Reiterated that they are not looking to expand their current CUP allowances.

Dr. Margaret Richardson, Principal, spoke about parking using a photo of the site to show where it is located. She said that their All-Saints event is the only time per year where they need to use their valet parking system.

Brad Cox, Project Architect:

- Said that the school has the practice of parking on the blacktop for larger events using a valet parking system. There is an additional provision of 52 parking spaces on the street along Virginia and Walnut.
- Said that the City is requiring 159 spaces on site.
- Reported that they hired an arborist to look at the tree proposed for removal. While the tree is in good health it is also structurally damaged and should be removed.
- Said that their original color scheme was beige and white with red as an accent throughout the campus.
- Advised that the gym building would be located 95 feet from the street. They are committed to adding seven large trees on site.

- Recounted that a community member had suggested a large tree mural but they couldn't make that work so they decided to make it real trees instead.
- Stated that the peak height allows more light into the building.

Jim Campagna said that Canyon Heights has been a good neighbor. Only one neighbor is known to have complained about parking impacts from the school and that issue was resolved pro-actively by Dr. Richardson.

Dr. Margaret Richardson advised that the school staggers its start time in order to avoid traffic impacts on the neighborhood.

Commissioner Krey asked if the proposed gym materials are acceptable for a school use.

Ben Renard, Sprung Structures Solutions, said that this material is used in disaster relief all around the world. The structure is fully permit-able.

Commissioner Krey asked if there could be a change of roof pitch to lower the maximum height.

Ben Renard, Sprung Structures Solutions, replied no.

Commissioner Ostrowski asked how large the new trees would be.

Ben Renard, Sprung Structures Solutions, said they would work with staff to determine that.

Commissioner Ostrowski asked if this gym structure will be able to have heat and cooling.

Jim Campagna said that it would be served with a package unit meeting Title 24 standards.

Chavonne Renard, with Sprung Structures Solutions, said that the structure can be cooled and heated efficiently.

Commissioner Hernandez:

- Reported that she was on-site at 3:30 p.m. and drove through the pick-up line. There were quite a few cars there. It was packed.
- Asked where the faculty would park since the gym will be placed where they currently park.

Jim Campagna showed a site plan where the staff parking would be placed as a new paved parking area.

Commissioner Hernandez asked if it would be possible to pave more area on site for parking.

Jim Campagna:

- Said that they are currently in talks with the Todd Capurso with the City to put in a joint public park and/or a track on the site in partnership with the Public Works Department.
- Stressed that they are not adding new events and not increasing their student count.
- Said that the activities will continue as they currently do except with a new gym to do them in.

Commissioner Ching asked what they thought about the suggestion to put a condition of approval that they not rent out the use of their gym by any outside group.

Dr. Margaret Richardson said they are okay with that.

Chair Rich said that it seems that the school's valet parking program works for their All Saints Day Event. He asked what is involved in triggering the need for valet parking.

Jim Campagna said the trigger would be if an event uses up existing parking and street parking.

Chair Rich asked, "What events would trigger the use of valet parking?"

Dr. Margaret Richardson said events such as their Christmas Production, All-Saints Day, Parent Orientation and Science Fair.

Jim Campagna asked for approval this evening as delay is expensive for them. He said they were already in tens of thousands of dollars into this already and they have addressed every issue.

David Johnson, Resident on Lana Court, Campbell:

- Stated that he is a long-time resident of the area and lives down the street from the school.
- Said that he has three kids ranging from kindergarten to eighth grade.
- Reported that Canyon Heights is a great neighbor.

Myhanh Tran, Resident on Emory Avenue, Campbell;

- Advised that she is the parent of three kids, two of whom are alumni of Canyon Heights and one of which is currently at student there.
- Added that she coaches the volleyball team at the school.
- Reported that on hot days they practice on the blacktop. On rainy days they cannot practice.
- Admitted that she would appreciate a suitable place for their athletes.
- Asked the Commission to please consider this proposal. This facility is much needed.

Kathryn Sager, Resident on Dale Ave, San Jose:

- Stated that she is the Director of Marketing for Canyon Heights Academy.

- Added that she has three kids that graduated from the school.
- Reminded that it is a private Catholic school that is a part of the Catholic Diocese but functions independently.
- Reminded that this is a small school with class sizes no larger than 24 students for elementary grades and 26 students for middle-school grades.
- Said that adding a gym building will improve their common space on campus to support uses they already have going on there.

Sajeeni DeAlwis-Mima, Resident on Virginia Ave, Campbell:

- Stated that she has had students at Canyon Heights for the last nine years. Her children are now in 3rd and 6th grades.
- Admitted that Canyon Heights has kept them in Campbell.
- Said that their sports teams are at a disadvantage since they practice outside rather than within a gym.

Hung Le, Resident on Emory Ave, Campbell:

- Identified herself as a 20-year resident with children at Canyon Heights for the last 12 years. Two have graduated and one is still there.
- Advised that she is here tonight in support of Canyon Heights. This gym is the building that we have dreamed of for a long time. It is more than a building. It is a place where we meet and share what our children do at school. It is a source of joy for us.
- Concluded that this gym will be a source of pride for parents and students alike. It will benefit children and the community for a long time.

Lucia Soares, Resident on Emory Street, San Jose.

- Stated that she is the mom of two girls who are students at Canyon Heights.
- Advised that the school has identified a need and worked together to make it happen.
- Said that Dr. Richardson is an amazing woman that we respect and obey.
- Assured that they will make this gym work for the community.

Doug Erickson, Resident on Laurie Way, San Jose:

- Stated that "our school" is phenomenal. His child has been a student there for five years.
- Asked the Commission to support this project.

Ryan, Resident on N. Milton Ave, Campbell:

- Said that he is in support of this project.
- Added that he has no complaint about parking caused by this school.
- Thanked the Commission for their work.

Penny Ruiz, Resident on S. Third Street, Campbell:

- Said that she has two kids at this school.
- Assured that efforts are taken by Canyon Heights to be a good neighbor.
- Added that they draw people from outside of Campbell. The school is grooming future leaders.
- Asked the Commission to act favorably on this request.

Ron Bonhagen, Resident of San Jose:

- Advised that he is a former member of this Commission until he moved out of Campbell and could not continue in that role.
- Said that his two kids have attended this school over the last nine years and he has seen the leadership of Canyon Heights demonstrated this evening.
- Reminded that the school has agreed not to rent out this new gym to outside users.

Robert Garcia:

- Said that he has two kids at this school.
- Asked that the Commission please approve this request tonight.

Carlos Mazariegos, Resident of Brunswick Ave., San Jose:

- Said that any delay to this project will cost the school money.

Chair Rich closed the Public Hearing for Agenda Item No. 4.

Chair Rich asked staff if the normal noticing occurred for this item.

Planner Daniel Fama replied yes.

Director Paul Kermoyan:

- Stated that we are all here for some reason.
- Said that the issue here is “show us parking.” Put the parking on the plans and we’re good.
- Concluded that if they have the parking, they’re good.

Chair Rich asked the Commissioners for their comments.

Commissioner Hernandez:

- Stated that this gym is great and serves a good purpose but the problem is parking to serve the gym.
- Said that she had a child at St. Francis Catholic School for nine years and four years at Presentation Catholic High School and found that there was great animosity between the neighbors and these two schools. It got ugly.
- Advised that she needs to see a parking plan. It is very short-sighted to allow this use to be 112 spaces short of a required parking standard.
- Stated that putting a new gym on this site changes the use on the site. For that they need to provide parking.
- Said that she could not support this without an actual parking plan on site.

Commissioner Ching asked what the definition of a parking plan is.

Planner Daniel Fama said it could include either permanent parking on site or a parking plan to deal on an “as needed” basis when larger events occur.

Commissioner Ching:

- Asked what changes since the school is not planning to add new activities at the school.
- Reminded that at the moment the site parking works.
- Questioned what is different between now and when they put their gym in place.

Director Paul Kermoyan suggested establishing some form of a “trigger” as to when additional parking management is necessary. Perhaps taking out routine practices. It seems that organized events are what mostly trigger the need for open on-site parking. Keep it simple.

Commissioner Krey:

- Said that he agrees with staff. With a bigger facility available for games more people will come as there’s space. It will add to the use of the facility.
- Added that he understands the need for a gym.
- Admitted that the second issue for him is the proposed type of building. He’s a little leery of it. At a 31-foot height it is going to stand out.

Commissioner Ostrowski:

- Said that they are following the zoning laws and Code and managing their use of the site.
- Stated that she doesn’t think more people are going to come to the gym than currently do without having a gym.
- Cautioned that putting on more on-site parking would reduce space for playgrounds.
- Reminded that this is a non-profit organization that gives back to the community.

Commissioner Rivlin:

- Said that Canyon Heights is a good neighbor and they intend to continue to be.
- Stated that he had expected to see things requested by SARC incorporated into the proposal.
- Opined that 152 parking spaces can be accommodated on site and the Commission needs to see that demonstrated on paper.

Commissioner Ching asked how parking would be triggered for organized events.

Chair Rich reiterated that it would involve everything outside of routine practice.

Commissioner Rivlin suggested activities that exceed 50 participants.

Chair Rich:

- Said that it is even simpler if it represents that all events other than practice would apply.
- Advised that he passes by this area about three times a week as his kids go to school nearby.
- Added that if it were up to him every school would have a gym.

- Suggested that there seems to be some confusion between the daily drop-off and pick-up of students with events that would include the use of the facility and require on-site parking.
- Stated that the use of a Sprung constructed gym makes sense.
- Said that questions still remain about potential use of valet parking or self-parking during organized events.
- Reminded that the school agrees to the proposed condition of approval that states they cannot lease out the use of their gym for any outside events.

Director Paul Kermoyan said that the beauty is that this school can park uses of their venue. With that they could then offer use of the facility to outside events.

Chair Rich said he is uncomfortable leaving it that open.

Planner Daniel Fama cautioned that could potentially change uses away from those uses that are allowed under a Public Facilities Zoning.

Chair Rich said it could be restricted to school use.

Commissioner Ostrowski:

- Reminded that the school representatives were happy to limit the use of their gym to just to their school per the draft condition.
- Reiterated that any non-practice event opens the use of the blacktop for parking.
- Said that the prohibition of leasing the gym to outsiders is a good idea.

Commissioner Hernandez reminded that as there is no draft resolution prepared the Commission will have to continue this item.

Director Paul Kermoyan said that architectural plans for the proposed gym structure are necessary.

Commissioner Rivlin said that parking needs to be depicted on the site plan.

Char Rich asked if that means 106 parking stalls.

Commissioner Rivlin said that 106 spaces doesn't meet code.

Planner Daniel Fama said that the project includes a Parking Modification Plan as the applicant was proposing zero added parking.

Commissioner Rivlin said that 152 stalls for use only during events are required per Code. He added that reducing that to 112 does not work for him.

Commissioner Ching asked if 152 spaces are possible.

Commissioner Hernandez said that 152 spaces are what are required per Code. They need to show that they can park 152 cars on site.

Planner Daniel Fama reiterated that the Parking Modification Permit is part of the application as they were proposing zero added spaces.

Chair Rich admitted that 152 spaces is not a hard number for him.

Commissioner Hernandez:

- Asked why not a smaller gym if they don't believe they will ever draw the 500 people their proposed gym could accommodate.
- Pointed out that the Code standards are in place for a reason.
- Reminded that everyone says they are a good neighbor.

Commissioner Rivlin said that if they build this new building they need to meet the standards.

Commissioner Hernandez suggested that they be instructed to provide as many parking spaces as possible.

Commissioner Krey agreed.

Planner Daniel Fama said that they have 40 spaces, which when added to 112 results in a total of 152 spaces. The Planning Commission can grant a Parking Modification permit to differentiate from the standard.

Commissioner Rivlin suggested providing enough parking to meet Code for a new structure.

Planner Daniel Fama suggested requiring revised elevations that include the added entry feature, additional landscaping trees, a draft resolution with findings and conditions of approval.

Chair Rich reiterated a final time the trigger for parking management be any non-practice use.

Planner Daniel Fama requested the provision of the final arborist report.

Motion: Upon motion of Commissioner Ostrowski, seconded by Commissioner Ching, the Planning Commission CONTINUED TO A DATE UNCERTAIN the consideration of a Conditional Use Permit Modification with Site and Architectural Review and a Parking Modification Permit (PLN2017-45), and a Tree Removal Permit (PLN2018-328) to allow construction and use of an approximately 8,400 square-foot gymnasium building and associated site and parking improvements for an existing private school on Campbell Union School District property (former Hazelwood campus), located at 775 Waldo Road, with the following instructions:

- That the applicant provide a parking map for non-practice uses of the gym;

- Use of the blacktop for parking when the gym is in use;
- Provision of the final tree report and a landscape plan;
- Add a condition of approval that the gym is not to be leased out for use by any outside users;

by the following roll call vote:

AYES: Ching, Hernandez, Krey, Ostrowski, Rich and Rivlin
NOES: None
ABSENT: None
ABSTAIN: None

REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR

Director Paul Kermoyan added the following comments to his written report:

- Three members of staff and two Commissioners attended the CalAPA conference in San Diego.

Commissioners Hernandez and Rivlin advised that they had attended a variety of sessions and found the conference to be both interesting and useful.

ADJOURNMENT

The Planning Commission meeting adjourned at 11:56 p.m. to the next Regular Planning Commission Meeting of **November 13, 2018**.

SUBMITTED BY: _____
 Corinne Shinn, Recording Secretary

APPROVED BY: _____
 Michael L. Rich, Chair

ATTEST: _____
 Paul Kermoyan, Secretary