

**REGULAR MEETING OF THE CITY OF  
COSTA MESA PLANNING COMMISSION**

**July 26, 2004**

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., July 26, 2004 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Chairman Garlich, followed by the Pledge of Allegiance to the Flag.

**ROLL CALL:**

Commissioners Present:

Chairman Bruce Garlich  
Vice Chair Bill Perkins  
Katrina Foley, and Dennis DeMaio

Commissioner Absent:

Eric Bever

Also Present: Perry L. Valantine, Secretary

Costa Mesa Planning Commission  
Marianne Milligan, Senior Deputy City Attorney  
Fariba Fazeli, Senior Engineer  
Mel Lee, Associate Planner  
Wendy Shih, Associate Planner

**MINUTES:**

The minutes for the meeting of June 28, 2004 were accepted as amended, and the minutes for July 12, 2004 were held over to the Planning Commission meeting of August 9, 2004.

**PUBLIC COMMENTS:**

Martin Millard, 2973 Harbor Boulevard, Costa Mesa, discussed his disappointment with the Planning Commission because he believed they had more power to fully enact agenda items, rather than continuing them.

Tim Lewis, 2050 Charle Street, Costa Mesa, stated his disappointment that landscaping has not been installed at the Beacon Bay/Robbins project since the Planning Commission hearing of June 28, 2004. In response to a request from the Chair regarding an update of the property, Mr. Valantine explained that as of this date, the fence screening has been replaced; irrigation is being installed on Charle Street, and plant materials will be installed after the irrigation has been installed. Mr. Lewis asked about the Harbor Boulevard side of the property. Mr. Lee stated the applicant's intention is to complete Charle Street first and then proceed to do Harbor Boulevard. In response to a question from Commission Foley, Mr. Lee said the applicant indicated the Charle Street side would be completed within the next 2 weeks. Commissioner Foley advised that the applicant needs to complete this project because it has gone through 2 extensions with very little change, and implementation of the landscape plan has been held up too long during the process.

Pamela Frankel, Myran Drive, Costa Mesa, discussed her interpretation of "design excellence" versus the City's interpretation, with particular emphasis on her residence.

**PLANNING COMMISSION  
COMMENTS/SUGGESTIONS:**

Katrina Foley requested that the County-owned property at 1100 Bristol Street be scheduled for a study session to discuss possible future uses. Mr. Valantine confirmed.

Vice Chair Perkins requested that Mr. Valantine ask the appropriate City office to check the signal timing along Bear Street because the lights change too rapidly.

**CONSENT CALENDAR:**

None.

**PUBLIC HEARINGS:**

APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF MINOR DESIGN REVIEW ZA-04-30

The Chair opened the public hearing for consideration of an appeal of Zoning Administrator's Approval of Minor Design Review ZA-04-30 for Darlene LaCombe, authorized agent for Barron and Jance Hurlbut, to construct a new 3,108 sq. ft., two-story, single-family residence and a 512 sq. ft., second-story, detached granny unit over a 635 sq. ft. 3-car garage, with a minor modification to allow a 2 ft. encroachment into the front setback (20' required; 18' proposed) for a porch, located at 281 Walnut Street in an R1 zone. Environmental determination: exempt.

Associate Planner Mel Lee reviewed the information in the staff report and gave a presentation. He said staff is recommending that the Zoning Administrator's decision of approval be upheld.

In response to a question from Commissioner Foley regarding the usages of the granny unit, Mr. Lee explained that the granny unit could not legally be used for a purpose other than what it was approved it for, (i.e., no more than two person 62 year of age or older).

Darlene LaCombe, authorized agent for the applicant, 2022 Orchard Drive, Newport Beach, agreed to the conditions of approval.

Lori McDonald, 284 Walnut Street, Costa Mesa, stated that she is asking the Planning Commission to deny Planning Application PA-04-03 and DR-04-03 for the following reasons: (1) so further environmental impacts can be adequately explored; (2) notification to the public regarding this project was faulty and omitted the correct legal owners who are still omitted on the planning application and 1 non-owner still remaining; (3) The application process requires signatures that are true and correct. Only Barron Hurlbut was recently added after the posting on July 14, 2004. (4) At least 2 persons did not receive a notice and notices were not sent to owners in some cases, only tenants. (5) The postcard says "new construction" and plans highlight keeping a portion of the wall. Current code says that all new construction must comply with current standards. (6) On the open space calculation for the plans, Mel Lee apparently included the area under the outdoor stairwell and upper floor decks; she felt these areas should not be included as open space. (7) Ms. McDonald questioned the validity of the plans since some of the distances seem exaggerated and are questionable—she requested that a City certification is necessary to attest that the site has been measured by a licensed surveyor, drawn by an architect licensed to do business in Costa Mesa for this project as the code requires. (8) She is concerned that Ms. LaCombe operates from Newport Beach and revisions already were made to the plans between the notice and this hearing. (9) On the postcard it lists a minor design review, yet it does not seem to comply with State Code Section 65852.1, as an existing unit will not be present when the project begins. At a later date she received a letter from Mr. Valantine describing an added development review, DR-04-04, which would have led to a free public hearing which she did not receive. (10) She said the Planning Application Summary sheet on page 1A of the report displays a "Proposed/Provided" column and she felt the rear measurement includes part of the alley as their measurement, but she couldn't be sure. (11) She received no advance notice on procedural rules of conduct and feels certain staff members have engaged in activities just prior to this meeting that may cause discrimination against her and harm her right to the quiet use and enjoyment of her property. Ms. McDonald said this project aside from a slue of procedural errors, omissions, and interpretations, favoring builders over preservationists, will do the following to affect her quality of life: (1) increase the intensity from R1 low density to spot high density zones that have become cumulative in her case, and high density do not comply with the general plan designation; (2) invasion of privacy from high-top windows at close range into areas previously assumed to be private: a bedroom, living room, kitchen, front yard, possibly even her back yard;

(3) this building will effectively block air coming into her house and cause a shade and shadow effect to her garden, which was planted with current light conditions; (4) finally, this project will set a detrimental precedent of the only 2 two-story newly built homes on an R1 lot on the entire street.

Kenneth Zwick, the attorney representing Ms. McDonald, stated that approval of this project would seriously impose on Ms. McDonald's privacy; the new two-story home would look directly down into Ms. McDonald's front yard whether it be a 100 feet away or not. It has second-story windows allowing residents to peer down into her living room and front bedroom, it will destroy the privacy of a garden, and the ocean breezes and enjoyment of light would be harmed. The economic value of her property would be damaged because of the way her neighborhood has been transformed. He alleged that over the past few years, the Planning Division has allowed this community to slowly change in a bit-by-bit piecemeal fashion. He reviewed the changes made to homes by surrounding neighbors and said Ms. McDonald's single-story, 100-year old home, is now surrounded on 3 sides by modern two-story, big box homes. He quoted a case law which said, "a planning department cannot change the character of a residential zone, parcel-by-parcel, until it is transformed into something completely different." Furthermore, he said many of these big boxes are losing their single-family character, with garages and the like being rented out. The yards are disappearing into these large houses and the quiet community is getting louder and louder. He said it appears that this may not be by mere happenstance that this enclosure by big boxes is happening to Ms. McDonald. Mr. Zwick indicated that this may be a payback for her years of legal protest against the City. He strongly urged denial of the project. He said if nothing else, the matters discussed here deserve additional study and justify postponement of any kind of approval. Mr. Zwick submitted copies of his letter.

The Chair reviewed each of the issues raised by Ms. McDonald. He asked Mr. Lee to comment on the need for an environmental study. Mr. Lee stated that under the California Environmental Quality Act, this type of project is "exempt." Staff determined that the nature of the project, i.e., a basically new residential structure in a single-family residential neighborhood, would not have adverse impacts per CEQA guidelines on air quality, wild life, etc. For projects such as this, staff looks at immediate issues such as privacy and aesthetic issues and these were taken into consideration when the project was evaluated. With regard to the old/new construction, Mr. Lee said Ms. McDonald was referencing one wall that will remain as part of the proposed project and the rest of the construction will be entirely new. The totality of the project was evaluated in terms of zoning code requirements, including setbacks, open space and parking.

Commissioner Foley said Ms. McDonald raised the issue about a free public hearing and asked Mr. Lee to explain. He said this project falls under a "minor design review." Minor design reviews are reviewed by the Zoning Administrator and do not require a public hearing, although all property owners within 500 feet of the subject property are notified. He confirmed with Commissioner Foley that it has nothing to do with new or existing development.

The Chair asked about the open space calculation and the request that a survey be conducted. Mr. Lee said that staff verified the lot size with the City and County records to confirm the information presented on the plan was correct. Staff checked and rechecked the areas that were being covered by the proposed building, as well as the paved areas at the rear of the site off the alley, and came up with a 47% open space calculation, exceeding the 40% minimum required by code.

Commissioner Foley asked about the notice process and rule regarding legal ownership and who has to be named on the postcard. Mr. Lee said that the notice indicated that the applicant, Darlene LaCombe was acting as the authorized agent for Barron and Jance Hurlbut who are the property owners. Jance Hurlbut, who is Barron Hurlbut's wife, had initially signed the application as the property owner. After Ms. McDonald pointed out that Barron Hurlbut is the actual owner of the property, he was contacted and asked to sign his name on the application so that there was no question that he authorized the application. Mr. Valentine explained that there is no requirement that the public notice contain the name of the owner, or the authorized agent; it simply has to contain a description of the project and the address. Commissioner Foley asked if there was a distinction between "new development" versus "existing development" and if this were described as existing development would they have gone through a different process, or would it still be a minor design review. Mr. Lee stated that this proves it would be the same.

Mr. Lee was asked to comment on the cumulative effects of this project in Ms. McDonald's immediate area. He stated that one of the required findings deals with the issue of cumulative effects. In terms of cumulative effects for purposes of density, state law does not recognize granny units as being an additional unit for purposes of calculating density for single-family residential properties. There were no errors indicated on the plan as far as the location of the property line versus the alley and the plan is correct and accurate in that regard. There are, as was pointed out by the attorney, several two-story structures that already exist in the immediate area and the cumulative effects as a result of this project are negligible.

Commissioner Foley asked if the open space calculation included the decks and if it is routine. Mr. Lee explained that neither the second-floor decks, nor the floor area below them were counted as open space. Mr. Lee said the definition of open space is spelled out in the definition section of the zoning code.

The Chair said the only other comment he would like to make is in response to Ms. McDonald's attorney, who referenced homes as "big boxes". He said this City, several years ago, spent a lot of time revising the zoning code to deal with "big box" issues and then readdressed it last year, and this Commission spent many hearings looking at that and the code was updated and design guidelines were put into place. The issue has been addressed and updated as recently as last October.

Commissioner Foley asked what revisions have occurred with respect to the application since the notice was sent out, if any. Mr. Lee said there have been no revisions to the plans since the notices were sent out, or since the appeal was filed. Commissioner Foley said the appellant raised an issue with respect to the privacy interests and placement of the windows on the second story and asked how far is the second story of the applicant's proposed home from the property line of the appellant. Mr. Lee said the proposed structure has a 20-foot front setback, there is a 60-foot right-of-way for Walnut Street, and the appellant's structure is set back approximately 20 feet, so the total distance from structure-to-structure is approximately 100'. In response to a question from Commissioner Foley regarding the average size of the street separating the two properties, Senior Engineer Fariba Fazeli stated that the average residential street in Costa Mesa is 40 feet wide from curb-to-curb, with 10-foot parkways on both sides.

In response to a question from Commissioner Foley regarding the architecture of the façade of the proposed home and other characteristics, Mr. Lee explained that there would be wood siding; the roof

will be an asphalt shingle roof and the distance between the main residence and the detached structure is approximately 19 feet.

Judy Barry, 2064 Meadow View Lane, Costa Mesa, was concerned about how the City is assured that whoever is residing in the granny unit is over 62 years of age. Mr. Lee stated that land use restriction document would be required to be recorded on the property that makes it clear to any future owners, that the occupants of the unit have to be at least 62 years of age or older; and the present owners are aware of the requirement. If however, it is brought to the City's attention that people are occupying the unit who are not 62 or older, then the matter could be referred to Code Enforcement for appropriate action. The Chair confirmed that, more than likely, it would be through some complaint that's brought to the City's attention. Senior Deputy City Attorney Marianne Milligan stated that typically included in the land use restriction, is the authority for Code Enforcement or a representative from the City, during reasonable business hours, to inspect the property for compliance.

Beth Refakas, Eastside resident, Costa Mesa, said she was concerned that the project seems to be out of scale and because of that, it contributes to traffic, lack of parking, lack of open space, and invasion of privacy. In response to a question from Ms. Refakas regarding the encroachment of the support posts, Mr. Lee explained that the support posts do encroach into the 20-foot front setback, but code does allow porch overhangs of 5 feet into the required setback without a minor modification. She felt the middle set of windows should be eliminated because it would provide more privacy and wouldn't add to the mass of the house if they were gone.

Pamela Frankel, a Myran Drive resident, Costa Mesa, suggested the proposed project be taken back to the drawing board and make it improved, compatible and harmonious so everyone wins.

Attorney Zwick returned to clarify that if the Commission were to go and visit the property, they would find that a 100-foot separation is a significant invasion of privacy, particularly at night when the lights are on. Secondly, with regard to the measurement of the property, simply because the computer and the City records say that these measurements are a certain amount, that does not properly address whether those measurements were done correctly.

In response to Commissioner Foley's concern that someone didn't go out and measure the property and because it was one of the complaints from the appellant, the authorized agent Ms. LaCombe said she did not have anyone measure the lot, but went to the County Tax Assessor's Office and asked for a copy of the recorded description of the lot; they are the same ones the client gave her and she proceeded from there. Mr. Valentine confirmed that the dimensions for the lot were not brought up previously until this evening. He said the records the City uses are not in the City computer, but records received from the County and are based on the original recorded tract map for the property. The only time the Planning Division would require a survey, is if there is some evidence that indicates a dispute as to the size of the property. In addition to that, when the foundations are set for the property, the Building Inspectors will measure the distance from the foundations to the property lines, i.e., the setbacks, ensuring those are correct. Senior Deputy City Attorney Marianne Milligan explained that the County documents the City has relied on are used during property sales, etc., and to question their validity, unless some other proof is provided that brings that fact into question, is a moot point.

No one else wished to speak and the Chair closed the public hearing.

MOTION:  
ZA-04-30

A motion was made by Chairman Garlich, seconded by Vice Chair Perkins, and carried 4-0 (Eric Bever absent), to uphold the Zoning

Upheld Zoning Administrator's Approval

Administrator's of approval, by adoption of Planning Commission Resolution PC-04-50, based on analysis and information in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B."

During the motion, Commissioner Foley stated that this site is very different from Myran Drive and other areas in the community, and she believed that the type of architecture used, is intended to provide a sense of style that is compatible with the neighborhood. She said personally she did not believe that the distance between the two homes would severely invade the privacy, more so than any other residential neighborhood where you have a 2-story home directly across the street. She does not see that the second story is looming over the single-story home. Removing windows would not make much of a difference and they accent the outside of the home that makes it a nicer building. Regarding the notice, she did not see anything sufficient to show that there were errors, and the ownership as indicated by staff, is not required to be included in the notice even though it was. The application was posted correctly and all the components of the application were included, and it was mailed to owners within 500 feet; some tenants may have received it also, but probably because the owners used that address as their mailing address. The open space is 47% , and exceeds the code requirement of 40%. She said according to Mr. Lee, code allows the decks to be used as a part of the open space. She said if the open space is incorrect for some reason, she is satisfied that it can be corrected at the time of the inspection and suggested the inspector be notified. She said the encroachment for the support posts, as indicated by staff, a minor modification, no variance required, is allowed and limited to the posts that she felt enhances the property. She did not believe that there is that much of an impact on privacy with 2 huge trees and a fence in front of the appellant's home. With respect to the granny unit, she said the Commission couldn't do anything about it other than request that they have a land use restriction in place, and a condition of approval requiring people of age 62 and older to live there. She said if someone 22 is living there, she is certain the City will hear about it. This process all comes under the minor design review, none of which would allow for anything but a Zoning Administrator decision, and it does not require a public hearing as the appellant thought.

Mr. Valentine asked for a point of clarification on the "decks" issue. He felt there was some misunderstanding and clarified that the decks at the second floor level were not included in the open space calculation. Open space only relates to the coverage on the ground. What Mr. Lee referred to is that if there is a deck on the second floor that overhangs a portion of open ground, that ground below the deck is counted.

The Chair said he believed it was important to get all the questions addressed and obtain rationale for the Commission's support of the proposed project on the record. He thanked Mr. Lee for his competence in dealing with all the questions this evening.

PLANNING APPLICATION  
PA-03-42

Mozayeni/Garrison

Planning Application PA-03-42 for John Garrison, authorized agent for ABCO Realty/Al Mozayeni, for a design review to construct a 26-unit residential town house project with variances from building height (2 stories, 27' allowed; 3 stories, 36' proposed), chimney height (29' allowed; 42' proposed), and off-street parking (84 spaces required; 58 spaces proposed), with a minor conditional use permit to allow up to 6 compact parking spaces, and a minor modification to reduce the front landscape setback (20' required; 16' proposed), located at 2013-2029 Anaheim Avenue in an R3 zone. Environmental determination: exempt.

Removed from calendar

The applicant requested this item be removed from the calendar for re-scheduling at a later date.

The Chair called a break and the meeting resumed at 8:17 p.m.

CONDITIONAL USE PERMIT  
PA-04-21

Reinhart/El Camino Partners

The Chair opened the public hearing for consideration of Conditional Use Permit PA-04-21 for Daniel C. Carlton, authorized agent for Carl Reinhart/El Camino Partners, to modify an existing conditional use permit for a former gasoline service station to discontinue sales of gasoline and become solely an auto repair facility, located at 1045 El Camino Drive in an R2-MD zone. Environmental determination: exempt.

Commissioner Foley excused herself from this item because of a conflict of interest in that her home is within 500 feet of the subject property.

Associate Planner Wendy Shih reviewed the information in staff report and gave a presentation. She said staff is recommending approval by adoption of Planning Commission resolution, subject to conditions.

Ms. Shih informed the Commission that additional conditions were included in their packets to ensure that the repair work does not become more nonconforming in nature or volume. She said staff is also recommending a condition of approval to eliminate the driveway on El Camino Drive closest to Mendoza Drive, since gasoline sales no longer exist. Another condition to require a minimum 15' landscape area at that corner to improve the aesthetics of the site was also included. Ms. Shih advised that the proposed change in use with the recommended conditions of approval would not adversely affect the neighboring residential properties. However, if the conditional use permit is denied, the auto repair use would not be allowed to continue its operation. She pointed out that future residential development of the property, as a result of the rezone in 2001, is not a subject of this evening's agenda.

Senior Deputy City Attorney Marianne Milligan researched this matter and based on the existing case law, she said it would be difficult to find that the use of this property as a service station has been abandoned because of the continued use of the auto repair business. She said the municipal code allows a legal nonconforming use such as the auto repair business to be changed and gives the opportunity to impose additional conditions to bring that use into greater compliance and allows the business to be maintain under the present CUP. It is a choice of whether the Commission wants to regulate the auto repair business, or leave it unregulated.

In response to a question from Vice Chair Perkins, Mr. Shih explained that the original car wash area would be converted for storage as part of the auto repair service operation.

In response to a question from Commissioner DeMaio, Ms. Milligan explained that Planning Commission always has the option to deny the application, however, at that point in time, it would be necessary to set a public hearing to revoke the conditional use permit and then enforce the revocation.

Carl Reinhart, El Camino Partners, 17871 Mitchell, Irvine, stated that he was one of the managers of the entity that owns this property. In response to a question from the Chair, he stated that he does not object to the condition of approval. He said the responsibility for those rests with the tenant. The Chair reminded him, that was something between he and his tenant.

Mr. Reinhart said they purchased the property in 2000 and felt at the time, they would be able to negotiate with the tenants relocation or purchase of their businesses. At that point, they sought to have the property rezoned which was successful, but then many of the tenants determined that they didn't want to sell their business for what was originally discussed; consequently, it has not been economically viable for the partners to deal with the tenants and convert the property. He said they anticipate at a future time it will be viable. Mr. Reinhart stated that Jack Sakzylan, owner of "Your Neighborhood Service Station" operates this business at the center, and they would appreciate the Commission requiring the minimum conditions for the property because it is the intention of the partners to redevelop as soon as it is economically viable. He pointed out that when the tanks were removed a few months ago, it was done because the equipment was getting old and would take significant upgrades, which were not economically viable considering the amount of gas being pumped.

In response to the Chair, Mr. Reinhart stated that other tenants have leases and options for another ten years and some of those options, may or may not be exercised; it didn't appear that the tenants were interested in exercising any of the those options when the partners first spoke to them. After the property was rezoned, many of them decided to consider exercising those options. He said the partners believe that it will be economically viable to buy out those leases or to do something to acquire those businesses in a much shorter time span. He said in this case, the auto repair service tenant exercised an option he had to continue his business there for another 5 years.

In response to a question from Vice Chair Perkins regarding how many tenants are left at the center, Mr. Reinhart stated that there are about 10-12 tenants, with some on month-to-month leases and a few long-term leases (3 or 4 with considerable tenancy left). In response to another question from Vice Chair Perkins regarding not being able to move forward on the residential project until the year 2014, Mr. Reinhart stated that there are only 1 or 2 tenants with options for that period of time and he believed those businesses would exercise those options. In response to a question from the Chair regarding the options and the time period if they were not exercised, Mr. Reinhart felt it would be approximately 5-6 years from now. Further, he said they have not signed new leases with most of the tenants, at least not more than 2 years, and that there are only 1 or 2 large businesses in the center that have exercised an option to renew their leases. Vice Chair Perkins asked when the rezone was approved, and Ms. Shih stated it was April of 2001.

The applicant, Jack Sakzylan, 1045 El Camino Drive, Costa Mesa, stated that this business has been at the Center for over 40 years and has provided excellent service for the neighborhood. He said they removed the gas tanks and the dispensing equipment thinking that they were operating a cleaner and safer environment for the neighborhood and did not anticipate problems with the new CUP. He felt they had many neighbors supporting this business because it is reliable, and he did not believe removing the business from the corner would speed up the landlord's project as far as building homes there is concerned. If this business is going to sit there collecting dust, it won't be any better for the neighborhood. He asked the Commission to approve his application and allow them to continue their business. In response to the Chair, Mr. Sakzylan agreed to the

conditions of approval. The Chair reminded Mr. Sakzylan that some of the conditions deal with the hours of operation and prohibition of detailing on site.

Vice Chair Perkins asked Mr. Sakzylan if he had worked on the "overnight storage" problem since the last meeting and he responded that, if the cars are on his property, they are his cars and no cars are stored outside the property. Regarding the question raised previously about cars being parked on the street, research was done by the Planning Division and they were found not to be a part of his business; they belonged to a neighbor selling cars out of his home. Another issue was the business sign, and he has repaired the sign and is waiting for the lettering.

The Chair asked Mr. Sakzylan and Mr. Reinhart if they would be agreeable to a condition of approval that would cause the CUP to expire in 5 years, at the end of the current lease. They had no objections.

Martin Millard, 2973 Harbor Boulevard, Costa Mesa, opposed approval of the request. He suggested that if the partners/owners really wanted to be aggressive, they could start building homes around the existing tenants because it's done all the time. By approving the CUP, the Commission is allowing the automotive service to stay in business to create more foot-traffic for the center as a whole, so that the tenants that are there, will pick up more business with no incentive to ever get out of their leases.

Senior Deputy City Attorney advised that this application is not for a new CUP, but to amend the current CUP as allowed under code for a change of use.

Terri Breer, 956 Magellan Street; Jeffrey Wilcox, 924 Junipero Drive; David Stiller, 2879 Regis Lane; Michael D'Alessandro, 2734 Cibola Avenue; Michael Berry, 2064 Meadow View Lane; Judy Berry, 2064 Meadow View Lane; Scott Brown, 929 Junipero Drive; Sam Clarke, 3077 Coolidge Avenue; Beth Refakas, 320 Magnolia Street; Lisa Reide, 2747 San Carlos Lane; Costa Mesa, generally disagreed with staff's conclusions in the staff report, and that this was an example of one of the systemic conditions blocking the improvement efforts in the City by both the applicant and property owners. They made the following comments regarding this application: (1) The zoning code requires that Planning Commission decide whether a change to an auto repair facility is equally, or more appropriate, than a gasoline service station and a car wash; (2) It seems neither the business owner, nor the property owner is willing to take responsibility for any of the improvements; at a recent meeting with the homeowners board, one of the partners stated that they do not have the funds to implement the conditions, and the business owner, at the last public hearing stated that he does not have the funds to comply with the conditions; it was felt that on that basis, the application should be denied; (3) it is time that the partners realize the fact that money is at an all time low and the value of the property has probably doubled since they bought it, and should be incentive enough to get this project in the works; (4) one speaker said it is his understanding that the operator of this business was willing to relocate; (5) the neighborhood does not want to see this eyesore for another 5 years, and asked so how this benefits the City of Costa Mesa. (6) Another speaker said three years ago the owner of the property led the community to believe that new homes were soon to be erected on that property once it was rezoned. He described the last few weeks of how once again, the neighborhood has been deceived by the ownership of this property, who has provided limited information to them concerning this CUP. (6) Most speakers felt that the City should step in and make a stand with regard to the residential zoning issue. (7) One speaker felt that since almost half the units are vacant at the cen-

ter, it qualifies as a “blighted area.” If this property is not going to be turned into residential, the owners of the property should fix it up to look like a place where people would want to patronize the businesses. (8) Another speaker pointed out that this is not an issue of city government versus a small business as some people would like it to appear; it’s an issue of a landowner not taking responsibility for his actions. The Commission should make the landlord responsible for his actions and deny the conditional use permit. (9) Another speaker was in hopes of a denial so this item would go through the appeal process to City Council where further discussion of the development concerns the neighborhood has, could be heard. (10) The applicant has refused to follow the conditions of the original CUP, and has known what the new conditions are, but has shown no interest in taking the steps necessary to come into compliance.

During public testimony, the Chair asked staff what the options were concerning noncompliance with the conditions. Ms. Shih explained that there is a deadline date given in the CUP and if the conditions are not completed by that deadline, the CUP could be called back for revocation.

During public testimony, the Chair asked staff to define their statement regarding this use as, “...would not adversely affect the neighborhood.” He also asked staff if any evidence was found linking the business owners with noncompliance. Ms. Shih reviewed the recommendation and said she could find no violations of conditions of the conditional use permit in 1964. In response to a question from Vice Chair Perkins regarding overnight storage, Ms. Shih said it was not included in the original CUP.

There was discussion between the Chair and Ms. Shih regarding the differences between the recommended conditions of approval (to ensure the use will not impact the neighborhood) and those already existing in the original CUP.

During public comment, the Chair explained the CUP process for the benefit of several speakers who wished to have clarification. He also explained that this conditional use permit would allow the CUP to be called back to Planning Commission for possible revocation because of noncompliance with the conditions of approval.

Mr. Reinhart returned to the podium to clarify that they have not granted any new long-term leases. On the longer leases, in this particular case, the tenant chose to exercise his option; it is not a mutual consent thing. For the cost of paying the various conditions required for the permit, El Camino partners is financially capable of implementing these items. He said their counsel has advised that it is the tenants responsibility, so if the CUP is approved and the tenant does not comply, the Chair has already explained the remedy. With respect to code enforcement issues at the property, he did not believe there are any code enforcement issues existing at the property.

Katrina Foley, Mesa del Mar resident, Costa Mesa, asked if there is another conditional use permit for the car wash. Ms. Shih confirmed that in 1988 a conditional use permit was approved for the car wash. In response to a question from Ms. Foley regarding the conditions of approval for that use, Ms. Shih said that although she could not remember all the conditions in that CUP, she believed most related to noise generated from the car wash. Mr. Valentine said that one of the conditions for the car wash was for the installation of the landscaping along Coronado Drive, which is currently in place—and its positive effect is part of the reason staff is recommending additional landscaping on both Mendoza and El Camino Drives. Ms. Foley requested a copy of the conditional use permit for the car wash.

In response to another question from Ms. Foley, regarding approval of the CUP for a limited period of time, Ms. Milligan stated it was

discussed previously and the applicant was asked and has accepted a 5-year limit on the CUP.

Ms. Foley commented that Planning Commission always has the option to deny because it is a discretionary approval.

She said she read some of the cases regarding expansion of a legal nonconforming use, and every one of those cases indicates that where there is a legal nonconforming use, the goal is to expeditiously change that use to make it more compatible with the use that it has been rezoned to. The spirit of underlying ordinances, is to restrict, rather than to increase the nonconforming use. The policy of the law is for the elimination for nonconforming uses and she noted that all of these cases support the fact that the Planning Commission has a duty to eliminate nonconforming uses. Staff's determination that the use is less intensive is void of any real factual investigation or support. The proposed use would in fact, increase the nonconforming use—not decrease it. This decision (if approved) does exactly what the Sabeck case says is not allowed. It would make it a more permanent use and would expand a legal-nonconforming use by the very conditions that are being imposed. The condition requiring additional landscaping, the conditions asking for the driveways to be changed are conditions that add to the investment in the legal nonconforming use. Additionally, the issue before the Planning Commission is whether there's sufficient evidence in the record to support a denial and she believes there is substantial evidence in the record. There is evidence that the detailing of cars which is not allowed occurs (an increase in the use); there is also evidence that, although the car wash was approved, it was never used, and should not be used in the analysis to determine whether the use has been expanded or decreased; the number of cars parked during the day and overnight are more impactful than previously; the landscape proposed will increase the expansion of the use and will not buffer the parked cars. The owner testified that the pumps were removed because of the low volume of gas being pumped, so the intensity of the auto repair must have increased to offset loss of gasoline revenues. The smog checks going on there were not conducted before and there was no discussion with staff whether there were more employees there than had been previously; there is no information as to any discussion with residents who live adjacent; no requests for receipts to show a comparison of the use between gas station and the current auto repair. The staff decision is not based on much factual investigation, but the testimony in the record supports that the use has expanded.

In response to a question from Ms. Foley Mr. Valentine said if there is a legal nonconforming development, which this is, as well as a nonconforming use, the development itself couldn't be expanded, so they could not add to the area of the service station. The only physical improvements being looked at here, are landscaping which would not necessarily be inconsistent with residential development, although it may have to be modified or even removed to allow that development, but he would not consider the landscaping to be an expansion of the commercial use.

Ms. Foley felt the landscaping and the change of the driveway makes the nonconforming use more permanent; it causes the business owner to invest money into that improvement which then encourages the business owners to exercise yet another option which would again, make the legal nonconforming use more permanent.

In response to Ms. Foley's comments, Mr. Sakzylan said that this type of business cannot be expanded if you don't have more space and he is not adding any more space to this service center and the business cannot service more cars than they did before.

Ms. Milligan said she would like to clarify and/or address some issues that Ms. Foley had brought up. She agreed that the case law does indicate one of the main purposes of nonconforming uses is to eliminate nonconforming uses. However, our municipal code allows for a change in use in legal nonconforming uses.

No one else wished to speak and the Chair closed the public hearing.

The Chair stated that there is no one who would like to see the residential development that was permitted by the general plan amendment for that property to go forward more than he, but as he said repeatedly tonight, that's not on the agenda. He said he agrees with the comments made about economic viability. He sent two major builders over to talk to the property owner about the economic viability of developing residential.. He did not know anything further, but felt he would be hearing from them at a later date. He said he has also taken note of the fact that if the Commission denied the CUP for the auto repair service, it would not necessarily cause any residential development to occur because there are still businesses there with ongoing leases. He said for those reasons and others, he would make the following motion.

MOTION 1:  
PA-04-21  
Fails for lack of a second

A motion was made by Chairman Garlich to approve PA-04-21, based on the findings in exhibit "A", subject to conditions in exhibit "B" with the following addition. Condition of approval #21. The Conditional Use Permit (CUP) shall expire 5 years from expiration of the current leases The motion failed for lack of a second.

In response to a question from Vice Chair Perkins regarding how the Commission would go about processing a denial for this CUP, Mr. Valentine stated that the Commission would need to amend findings A and B, deny the expansion of the conditional use permit, or the modification, and allow the operator some period of time, established by the Commission, to relocate the business from the premises.

Ms. Milligan stated that, in addition, if the application is denied, pending any appeals to the City Council, and/or rehearing if applicable, a hearing would need to be set for revocation for the current CUP. The applicant would be allowed to continue his business until the CUP was revoked. In response to the Chair, she said the conditions of the current CUP would apply and there really are no conditions on that CUP for the regulation of the auto repair business.

Ms. Milligan explained, in answer to Vice Chair Perkins' question, in order to revoke a CUP, the Planning Commission would have to find that either the business was a public nuisance as defined by civil code, or that there was a failure to comply with conditions. Typically, she said the courts look to see if, before revocation, the conditions could have been modified so that the business could continue.

In further response to a question from Vice Chair Perkins about the courts' position on revocation, Ms. Milligan said that the courts do not favor putting a business out of business, if there are other more reasonable conditions that can be imposed to regulate the business, and resolve the problems with the business.

MOTION 2  
PA-04-21  
Failed for lack of a second  
(see below)

A motion was made by Commissioner DeMaio, to deny the modification to PA-04-21. He said his reasoning to deny it goes back to the fact that it was zoned residential on April 2, 2001. The intent by the property owners at that time, was to develop the property with single-family homes. He felt the Commission should deny the CUP and hope that the property owners will build residential. He felt it would be devastating for the surrounding community if they approved the CUP. (The motion was amended and called later; it failed for lack of a second—see below).

At this point, Mr. Valentine offered that one option the Commission

may wish to consider is to continue this item for 2 weeks and ask staff to draft findings to support a denial. He clarified that his intent is not to drag anything out, but to take a little more time than is really practically available to try to do this on the dais to come up with some findings.

Commissioner DeMaio amended his motion to recommend a continuance and asked staff to come back with findings to support a denial. The motion failed for lack of a second.

MOTION 3:  
PA-04-21  
Denied

A motion was made by Vice Chair Perkins, seconded by Commissioner DeMaio and carried 2-1 (Bruce Garlich voted no, Katrina Foley abstained, Eric Bever absent), to deny by adoption of Planning Commission Resolution PC-04-51, based on public testimony, information in the record, and findings in exhibit "A" with the following modifications:

Findings

- A. The information presented ~~substantially complies~~ does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed change of use, as conditioned, will not be more compatible with developments in the same general area. Granting the conditional use permit will ~~not~~ be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the property will be ~~less~~ more intensely used than before, without the gasoline sales and car wash. The recommended conditions of approval will not ensure that the operation will not be disruptive to residential uses or properties in the vicinity. ~~The added landscaping at the northwest corner of the property will also improve the aesthetics of the property as viewed from the street intersection and increase its compatibility with the surrounding residential neighborhood. Parking will comply with current Code requirements and approval of the use is contingent upon availability of the existing 4 parking stalls provided off-site plus 4 parking stalls on-site unless a total of 8 parking stalls can be provided on-site to serve the automotive repair business. Although~~ The use is not in conformance with the current General Plan designation for the property (Medium Density Residential), and it does not comply ~~complies~~ with the Nonconforming Provisions with regard to allowable change of nonconforming use in nonresidential structures, ~~and~~ because the degree of nonconformity will ~~not~~ be increased.
- B. The proposed project does not comply ~~complies~~ with Costa Mesa Municipal Code Section 13-29 (e) because:
  - a. The proposed use will not be more compatible and harmonious with uses both on-site as well as those on surrounding properties.
  - b. Safety and compatibility of the design of buildings, parking area, landscaping, luminaries and other site features which may include functional aspects of the site development such as automobile and pedestrian circulation.
  - c. The planning application is for a project-specific case and does not establish a precedent for future development.

During the motion Vice Chair Perkins explained that in any case he felt this item would be appealed regardless of what the Planning Commission did. He said Ms. Reide's comment about putting it in Council's lap to force the issue impacted him the most and he based his decision on that premise. He said he was confident that Mr. Sakzylan would be able to continue operating his business until this process is completed. He said he believed Mr. Sakzylan runs a decent operation. He said his major concern throughout this hearing, was that he felt he was sold a bag of goods three years ago, and it appears to have been set aside. He said he is very discouraged about that. He made it clear that he understands this item was brought forward as an amended change in use. He said he was somewhat disappointed that Commissioner Bever was not able to be here this evening because he wanted to have his input on this item. He felt Mr. Millard's comment about beginning the building process on site now, was a good suggestion and should be noted. He was also concerned about the lack of integrity on the part of property owners as stated by several speakers.

Chairman Garlich said the only comment he would make is that, it can get to the Council by either an approval or denial method, and his personal feeling is that there is more integrity to approve it based on land use criteria and legal opinions. In either case, he believed the outcome would be the same.

The Chair explained the appeal process.

**REPORT OF THE DEVELOPMENT SVS. DEPARTMENT**

Mr. Valentine announced the nomination for the Planning Commission biannual design awards. A motion was made by Chairman Garlich, seconded by Vice Chair Perkins, and it carried unanimously to present the award to the Armstrong Garden Center at 2123 Newport Boulevard.

**REPORT OF THE SENIOR DEPUTY CITY ATTORNEY**

None.

**ADJOURNMENT:**

There being no further business, Chairman Garlich adjourned the meeting at 9:38 p.m., to the study session of Monday, August 2, 2004.

Submitted by:

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PERRY L. VALANTINE, SECRETARY  
COSTA MESA PLANNING COMMISSION