

**MINUTES
PLANNING COMMISSION REGULAR MEETING
SEPTEMBER 4, 2012**

1.0 CALL TO ORDER

The Regular Meeting of the Planning Commission of the City of Highland was called to order at 6:00p.m. by Chairman Hamerly, in the Donahue Council Chambers, 27215 Base Line, Highland, California.

Present: Chairman Randall Hamerly
 Vice Chairman Trang Huynh
 Commissioners John Gamboa
 Richard Haller
 Milton Sparks
 Michael Willhite

Absent: Commissioner Michael Stoffel

Staff Present: John Jaquess, Community Development Director
 Lawrence Mainez, City Planner
 Sean Kelleher, Assistant Planner
 Linda McKeough, Administrative Assistant III

The Pledge of Allegiance was led by Chairman Hamerly.

2.0 COMMUNITY INPUT

There was none.

3.0 CONSENT CALENDAR

There were no Items.

4.0 OLD BUSINESS

There was none.

Note: Prior to the Meeting, Staff distributed an additional memorandum document entitled, "Maintenance and Repair Threshold" Policy dated October 5, 2011, to the Commission for Item 5.2.

5.0 NEW BUSINESS

- 5.1 An Accessory Sign Review Application (ASR-012-017) requesting the Planning Commission consideration of a Sign Program for the Highland Plaza, inclusive of New Building Mounted Signage and a New Monument Sign. The Project is located at 27212 Base Line, Highland, California. Assessor Parcel No.: 1191-50-184. Representative: Charles Sabbah, Property Owner

Chairman Hamerly identified the Item and asked for Staff's presentation.

Assistant Planner Kelleher gave the presentation from the Staff Report and PowerPoint presentation and explained the historical background, design layout, added Planning Conditions of Approval (COA) and the Applicant's proposed Sign Program to the Commission. Assistant Planner Kelleher indicated the Applicant is not in the audience and then concluded his presentation.

Chairman Hamerly asked if the Commission had any questions of Staff.

A question was asked by Chairman Hamerly if the Commission approves the proposed Sign Program, that would include approving the Monument Sign or can the Commission pull the design of the Monument Sign and approve the language of the Sign Program. Assistant Planner Kelleher responded that Planning COA No. 7 could be modified and direct that the redesign of the Monument Sign return for the Commission's consideration. Chairman Hamerly said that he would personally be more comfortable with that and that this Applicant has had a long drawn out procedure to every improvement that has been made has been somewhat of a struggle so reiterated that he would be more comfortable with seeing what the Applicant comes up with a design, as opposed to what Staff can design.

Chairman Hamerly then asked what the Commission thought and Commissioner Haller responded that Chairman Hamerly's comment is a good comment. Chairman Hamerly then directed Staff to redraft COA No. 7, so that the Commission can see the design of the Monument Sign without affecting the overall approval of proposed Sign Program itself. Assistant Planner Kelleher responded and read the Commission's direction to Staff to modify Planning COA No. 7 and added the following verbiage: "...Sign cabinet, as approved by the Planning Commission."

Chairman Hamerly asked if the Commission had any further questions for Staff.

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A question was asked by Vice Chairman Huynh if the Building Signs are to be channel lettering or separate lettering and Assistant Planner Kelleher responded channel lettering per the Sign Program and per the Municipal Code and Vice Chairman Huynh said good, and that is what he likes and then thanked Staff.

Chairman Hamerly asked if the Commission had any further questions of Staff. Hearing none, he then opened the Public Hearing and asked if anyone in the audience would like to speak on the Item. Hearing none, he then closed the Public Hearing and there being no further questions of Staff or discussion amongst the Commissioners, he then called for the question.

A Motion was made by Commissioner Haller and seconded by Vice Chairman Huynh to Approve the Proposed Sign Application (ASR-012-017) for the Sign Program for the Highland Plaza, inclusive of New Building Mounted Signage and a New Monument Sign, subject to Conditions of Approval, as modified with the following:

Planning COA

7. (NS) The proposed Monument Sign shall be modified to include a more substantial cap to attach the Site's address to, as well as enhancements to the sides of the Sign cabinet, as approved by the Planning Commission.

And;

Adopt Findings of Facts

Motion carried on a 6 – 0 vote with Commissioner Stoffel absent.

- 5.2 Appeal Application (APP-012-001) – an Appeal Application requesting reconsideration of the Community Development Director's determination requiring the Demolition of an Illegally Constructed Room Addition within the City's Business Park (BP) Zoning District.. The property is located at 25331 Court Street, Highland, California. Assessor Parcel No.: 0279-192-01. Representative: Jorge T. Raygoza, Property Owner.

Chairman Hamerly identified the Item and asked for Staff's presentation.

Assistant Planner Kelleher gave the presentation from the Staff Report and PowerPoint presentation and explained the Memorandum that was distributed to the Commission prior to the Meeting that was a result from City Council action on taken in September, 2011, on the Xam Thach Appeal regarding a single family

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residence located in a BP and I Zoning Designations, and becoming a City Council Policy / Threshold for maintenance and repair. He then further explained the historical background of the Plans, Permits and the Appellant's request to the Commission. Assistant Planner Kelleher indicated the Appellant is in the audience for any questions the Commission may have and then concluded his presentation.

Chairman Hamerly asked if the Commission had any questions of Staff.

A question was asked by Chairman Hamerly if the Policy's City Council Resolution not to increase the square footage, and referenced specific causes that necessitated the renovation or maintenance and each structure that would be in full compliance would have had a Building Permit, if it have been destroyed through whatever means and would have been able to replace it up to its original condition and Assistant Planner responded that is correct on both accounts and would be up to the percentages described in the City Council Resolution for the original structure.

Another question was asked by Chairman Hamerly that the Memorandum document / Resolution does not have a bearing or application on this Appeal and Assistant Planner Kelleher responded that is correct and Community Development Director Jaquess added that it is the same Zoning Districts and which is the issue, but it doesn't compare.

Chairman Hamerly asked if the Commission had any further questions of Staff.

A question was asked by Commissioner Willhite if the fire sprinklers were required at the time the garage was proposed, the garage that was over 500 square foot and a room addition and Assistant Planner Kelleher responded that is correct. Commissioner Willhite continued and if both square footages are put together to determine that it had to be sprinklered and Assistant Planner Kelleher responded that was the Policy at that time, yes, but it does not hold true today.

Chairman Hamerly asked if the Commission had any further questions of Staff.

A question was asked by Vice Chairman Huynh regarding with today's requirements, with the 232 square footage addition, would that trigger the requirement of fire sprinklers at today's Code and Assistant Planner Kelleher responded in this Zoning District, the addition would not be able to be construct the Room Addition because of the Non-conforming Ordinance and in other portions of the City, the Threshold is 500 square feet or there is another Policy in place under the current Fire Code if the structure is already fire sprinklered, it is a lower threshold and indicated that he did not know what that Threshold is and Community Development Director Jaquess added that it is fifty-five (55) square feet.

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Another question was asked by Vice Chairman Huynh in this Zoning District, the Appellant or any home owner would not be able to add additional square footage to the existing building and Assistant Planner Kelleher responded that is correct.

Chairman Hamerly asked if the Commission had any questions of Staff. Hearing none, he then opened the Public Hearing and asked if the Appellant would like to make a presentation.

Elena, who is the Appellant's daughter, addressed the Commission. She stated that the only reason why her father did not obtain the Permits at that time, that they were financially unable to do and is a family of eight (8). She stated that she is the eldest and has two (2) brothers that are currently in college and one (1) sister in high school and one (1) brother in middle school and one (1) sister in elementary school. So basically, that was a necessity for them because they "didn't all fit" and with everyone growing, they needed to have their own space in order to do their homework, or whatever. She further stated if there is anything that they could pay and can do the Permit and requested the Commission allow them build two (2) walls because the roof was already there. When her parents constructed the First Addition it was to enlarge the kitchen and added two (2) rooms. As part of that, the roof and space was already there and the only thing that they added was building two (2) walls to connect with the roof and floor and reiterated the request if there is anything that the Commission could do and is willing to pay and that the family really needs the space.

A question was asked by Chairman Hamerly with the 232 square foot enclosure was built under the existing roof and Elena responded affirmatively. Chairman Hamerly then asked if it was a Patio Enclosure essentially and Elena responded affirmatively and reiterated "how everything was there" under the Permits that had been already filed and basically closed it with two (2) walls. Even though they know that it is wrong, but at that time, her father was financially unable to afford the fire sprinklers because they were expensive for just one (1) room.

A question was asked by Chairman Hamerly what kind of foundation is under the Patio and Elena asked what did Chairman Hamerly mean by "foundation". Chairman Hamerly stated that if one is turning an outdoor space into an indoor space, most people do not construct patios with the footings that would be structurally sound to turn it into part of the building. The footings that are underneath the building are stronger. Elena responded and explained the layout design of the rectangle and square areas that were on the PowerPoint display and reiterated how the roof was already there. She explained how the room was added, and when the addition was constructed, with the Permits, along about the kitchen and hallway to two (2) rooms. They were initially going to construct three (3) rooms and the Garage, but for the same reason with the sprinklers, they were

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unable to. When all of it was built, the whole roof and built, but because they were unable to afford the sprinklers, and the (square) area was left with no walls. and indicated that it did have the same foundation.

A question was asked by Chairman Hamerly when the Garage was built, there was an Addition also done to the house and Elena responded affirmatively and added how her father had just purchased it and reiterated how the Permits were obtained for the Addition and the Garage.

Another question was asked by Chairman Hamerly if that was up to 432 square feet and Assistant Planner Kelleher responded and clarified that are two (2) Room Additions on the property in 2001. The "L" shaped area was a 460 square foot portion Room Addition that was constructed in 1997 and the Garage was constructed in 2001.

A question was asked by Commissioner Willhite if the Patio area had a continuous footing and Assistant Planner Kelleher responded that he doesn't have that information. Elena added that her father clarified that it was the same foundation.

Another question was asked by Commissioner Willhite if there was a continuous footing all the way around the outside of the Patio two feet (2') deep; eighteen inches wide (18") or whatever the requirement is.

A comment was made by Chairman Hamerly that is why the Commission is asking because if there were Permits and the Patio was part of the Permit that was pulled with the Room Addition, and Commissioner Haller added that it would be a part of the 1997 Permit. Assistant Planner Kelleher indicated that he had in his hands the Plans from 1997 and the footings are shown for only the "L" shaped portion of the Building and does not show a footing for the post for the Patio Cover.

A question was asked by Chairman Hamerly regarding if there is a specification listed that gives the minimum standards for slab edge thickness and Assistant Planner Kelleher responded even if there was, there was no Planning approval done, and no inspections were conducted for that portion of the footing because there was no wall going above it and would have been looking at a Patio, at that point.

A comment was made by Chairman Hamerly that it appears that it is supporting a portion of the roof so there has to be some kind of a structural footing to hold up that corner and Assistant Planner Kelleher responded that he doesn't see any documentation for it on this and that the Foundation Plan notes the "L" shape of the 460 square foot Room Addition and does not note Patio footings and was not

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included in these Plans. He added that you can do a solid patio in the City under a regular Patio Permit obtained over the counter and that was not included in these Plans.

A comment was made by Chairman Hamerly that you can tell that it is supporting a solid roof structure and would have to have a foundation that would be capable of supporting the roof and that would require engineering. Assistant Planner Kelleher responded that he cannot confirm what type of roof. Chairman Hamerly said it would be part of the regular hip roof, or is he mistaken and Assistant Planner Kelleher responded that it was his understanding that it was a shed-type roof. Elena added it was the same foundation that was built with the whole roof.

A question was asked by City Planner Mainez if the Appellant has any photographs and Elena responded no.

A question was asked by Vice Chairman Huynh what is the Addition used for and Elena responded a bedroom.

Another question was asked by Vice Chairman Huynh how many bedrooms are in the house and Elena responded, currently, there are four (4) and Vice Chairman Huynh said without the Addition, there would be three (3) bedrooms and Elena said three (3).

A question was asked by Chairman Hamerly if shown as a Covered Patio and declared on the 1997 Permit that two (2) walls and a roof would equal a room and that would have been added to the square footage and Community Development Director Jaquess responded that the Permit was for a habitable space.

Another question was asked by Chairman Hamerly if the Original Addition was 400+ square feet and the Covered Patio is an extension of the roof is another 232 square feet, then that would have pushed them over the limit for sprinklering the 1997 Addition.

A question was asked by Community Development Director Jaquess when the Original Sprinkler Ordinance went into effect and Assistant Planner Kelleher said he didn't know and Community Development Director Jaquess continued that he, too, was unsure what sprinkler requirements were in effect in 1997, and is unable to respond technically to Chairman Hamerly's question and added it may have been in effect, at that time, but reiterated that he was unsure.

A question was asked by Commissioner Willhite if there is a slab shown in that

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area on the Plans and Assistant Planner Kelleher responded that someone had drawn this is after the fact and that it might have been a Planning or Building and Safety Division Staff Member.

Chairman Hamerly requested the Commission to see the copy of the Plans in which Assistant Planner Kelleher complied and distributed the Plans to the Commission for review.

A comment was made by Chairman Hamerly how the roof was there and the Appellant is not adding roof and then asked does that then push it back into not adding structural space and enclosing an area making non-conditioned space to conditioned space, but the Appellant is not adding covered square footage, does that fall under the "Threshold and Maintenance" Policy. If the Appellant was to sprinkle the now existing, non-committed Addition, if the roof foundation was already constructed as a result of a legal Building Permit. Community Development Director Jaquess responded that Staff's position is no and that it is not habitable as it was with expanding the habitable area of the Building, basically, enclosing the Patio, which happens throughout the City, but requires a Permit to do so. A Patio is not a habitable space, by definition, and Staff believes the Code is based on that. Elena responded that it was not a Patio, and that it was going to be a part of the First Permit that was filed for the Building. When the whole roof was built, the same foundation was there because initially, it was going to be for a bedroom, and then had to change the Permit in order to do three (3). Assistant Planner Kelleher then went and showed Elena the Plans the Commission had just reviewed.

Chairman Hamerly explained to the audience how the Commission had reviewed the permitted Building Plans from 1997 Application for a kitchen and room addition and in this Exhibit that was submitted for Permits, there is no indication that the area was to be covered with a roof and there is no foundation system. So even the Original Addition to the house that Elena said that there were Permits for, that it was not constructed per Plan so it would not have been built legally. So even the roof addition that the Appellant is speaking of that is covering the Patio is not shown on the Plans and there are no records of when that was constructed. For all we know, it could have been constructed when this was done, but it would have been done without a Permit and without inspections or it could have been done when the Garage was constructed under that Permit. Chairman Hamerly reiterated the documents do not show that there were any Plans pulled for a legal roof, at this time, and he doesn't know about the 2001 Plans. Elena responded she knows that when the roof was built, the two (2) Additions were also built. Chairman Hamerly responded then their contractor did not follow the Building Plans, which is unfortunate and is a separate issue.

A comment was made by Commissioner Willhite how he had driven by the property and saw a detached garage located in the back and asked if that is

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being used as a living area and Elena responded no. City Planner Mainez added in the Staff Report, shows the 2001 Building Permit that references the Garage and the other Additions and this Plan shows the Patio area that was just discussed as showing as a Room Addition with the footings, etc.

A comment was made by Chairman Hamerly that this is a big issue for the Appellant and how the roof existed / constructed with the entire Addition that was done when the kitchen remodel was constructed and City Planner Mainez responded that these Plans show the roof and the footing locations, so this is probably a little more accurate in terms of what is out there now.

Another comment was made by Chairman Hamerly that was the Project the Appellant modified at the time in 2001 because he did not want to cross the Threshold of sprinklering and not when the Appellant did the 1997 Addition saying that the roof was already there, and all that was done was added two (2) walls to enclose it. City Planner Mainez responded the Appellant was not thinking about Thresholds or anything like that, that this was a sheer financial issue and today, the Appellant did something without Permits and today, the Appellant cannot even do that Addition, even if it was allowed for the Appellant to go forward with a Permit. There is also a City Policy and applies only to habitable space.

A comment was made by Chairman Hamerly, if he read the Ordinance and Resolution correctly, he asked then if the Commission were to make a Finding of Fact supporting the Appellant in this case, then the Commission would then be in direct violation of two (2) standing City Ordinances now with it being reinforced by the City Council and Community Development Director Jaquess said right and City Planner Mainez responded affirmatively, and added if the Commission was to support the Appellant, the Commission would need some good Findings and Staff would come back with a Resolution.

A comment was made by Chairman Hamerly stating that he is trying to understand the chronology and the way it has been represented, it sounds like it would meet the Threshold, at least under the roof area, that it was a space already and whether it is turned into enclosed or not enclosed is a separate issue, but at least this would be considered maintenance or improvements of an existing structure, but cannot make the Finding of Facts personally, because he cannot show the documents were in place saying this was done legally with a Permit and the Appellant is now modifying or maintaining an existing Structure that was legally constructed and it isn't shown on the set of Plans that the Commission has just reviewed and that is the last time that the house was legally modified and the Garage was the legal modification in the 2001 Plans and have the documents to show that. Chairman Hamerly reiterated that there are no documents showing that this was a legally constructed, permitted Structure that the Appellant was only enclosing two (2) walls and that he, personally, cannot

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make a Finding of Fact to support that in keeping with the two (2) Ordinances because it wasn't legally permitted under that Threshold. City Planner Mainez responded for the record, this was done without Permits for the 232 square foot Addition.

A comment was made by Community Development Director Jaquess these are the facts that in 2001, the Code would have allowed the Appellant to have the Addition with the fire sprinklers. In 2012, the Addition is not permitted with or without fire sprinklers, and would require fire sprinklers, even though the Appellant is willing to do it, Staff is unable to issue a Permit because the Land Use Code does not allow it and, unfortunately, the change in time, changed the rules under which the Permits can be issued. If the Appellant would have pulled the Permit and built the Building in 2001, this would not be an issue today and City Planner Mainez added the Zoning that was changed regarding the non-conforming use was passed in 2005.

A question was asked by Vice Chairman Huynh if the demolition is done and tear down the walls, but the roof and open space can stay according to the 2001 Plans and City Planner Mainez responded would be an open Covered Patio.

A comment was made by Vice Chairman Huynh with the walls, would be illegally electrical wiring and if it has to be demolished, would be the walls, electrical, etc., except the roof and Chairman Hamerly added and anything that makes it a habitable space. Vice Chairman Huynh said if there is any plumbing, then that would have to be removed, but the roof could stay as an Open Patio.

A question was asked by Chairman Hamerly if the roof was legally constructed or is that part of the Project that the Appellant abandoned saying that he cannot sprinker this and cannot afford it and not going to build this portion of the Project and Community Development Director Jaquess responded that he doesn't know if the Permit was ever issued or if the roof was inspected. Assistant Planner Kelleher stated that he has all of the Building Permits for this Property that were pulled in Highland and there is no Permit for a Patio Cover. There was a proposal for a Patio Cover as part of the 2001 proposal, and is unsure if that Patio Cover was built or not and City Planner Mainez said that it was not called out separately so the question for Staff is if the roof structure that was built as part of the Additions covered under a Permit, whatever the Permit is and Staff does not have that answer. If that is something that the Commission wants Staff to research, Staff will do that and take photographs, etc.

A comment was made by Chairman Hamerly he wants them to keep everything that the Appellant has a Permit for, and if it is a question whether or not to remove two (2) walls, or if the Appellant did not pull a Patio Cover Permit either, the roof has to be removed. Anything that was not constructed with legal Building Permit you would have to take it back to the last point of conforming use

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in order to be in conformance with the Resolution. Community Development Director Jaquess responded that Staff needs to spend some more time with Building and Safety to try and answer the question. Staff does not believe that it was permitted. Chairman Hamerly stated with a diaphragm inspection, a rough framing inspection if it was done under a Permit. Somewhere there is a job card and not just a Permit record and indicated there is not enough information for the Commission to determine which portions of the Structure were legally constructed with Building Permit and Staff is going to through the records more so the Commission can accurately determine which portions of the Structure were legal and which were not. In order to do that, the Commission is going to continue this Item to a date specific and Elena then thanked the Commission for its time and if they would receive a letter and Chairman Hamerly responded affirmatively.

A Motion was made by Chairman Hamerly and seconded by Commissioner Gamboa to continue this Item to September 18, 2012, to allow Staff more time to do some background research as requested by the Planning Commission.

Motion carried on a 6 – 0 vote with Commissioner Stoffel absent.

6.0 ANNOUNCEMENTS

Community Development Director Jaquess explained the Items tentatively scheduled for the Commission's Regular Meeting on September 18, 2012, at 6:00pm.

7.0 ADJOURN

There being no further business, Chairman Hamerly declared the Meeting adjourned at 6:42p.m.

Submitted by:

Approved by:

Linda McKeough, Community Development
Administrative Assistant III

Randall Hamerly, Chairman
Planning Commission

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