

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

Council Chambers & Community Meeting Room
335 Rheem Boulevard
Moraga, CA 94556

February 18, 2020

7:00 P.M.

MINUTES

1. CALL TO ORDER

Chairperson Stromberg called the Regular Meeting of the Planning Commission to order at 7:00 P.M.

A. ROLL CALL

Present: Commissioners D'Arcy, Davis, Helber, Hillis, Lueder, Luster, Chairperson Stromberg

Absent: None

Staff: Derek Farmer, Planning Director
Mio Mendez, Assistant Planner
Brian Horn, Associate Planner

B. Conflict of Interest

There was no reported conflict of interest.

C. Contact with Applicant(s)

Commissioner Luster reported she had contact with the applicant for Bay Area Ballplayers prior to the submittal of the application to discuss issues with respect to the temporary tent, which had been installed absent permission from the Town.

2. PUBLIC COMMENTS

There were no comments from the public.

3. ADOPTION OF CONSENT AGENDA

- A. December 16, 2019 Minutes**
- B. January 21, 2020 Minutes**

On motion by Commissioner D'Arcy, seconded by Commissioner Luster to adopt the December 16, 2019 Minutes, as shown. The motion carried by the following vote:

Ayes: D'Arcy, Davis, Helber, Hillis, Lueder, Luster, Stromberg
Noes: None
Abstain: None
Absent: None

Speaking to the January 21, 2020 Planning Commission Minutes, Commissioner Luster requested an amendment to the fifth full paragraph on Page 7, as follows:

Commissioner Luster supported Commissioner Helber's recommendation to striking entirely the staff recommendation to change the appeal rights of the Commission set forth in MMC Section 8.12.240(A) to no longer allow one of its members to appeal a Planning Commission decision.

Commissioner D'Arcy requested that the vote for the motion as shown on Page 9 also be revised to read:

Ayes: Davis, Helber, Hillis, Lueder, Luster, Stromberg
Noes: D'Arcy
Abstain: None
Absent: D'ArcyNone

On motion by Commissioner Luster, seconded by Commissioner Helber to adopt the January 21, 2020 Minutes, as amended. The motion carried by the following vote:

Ayes: D'Arcy, Davis, Helber, Hillis, Lueder, Luster, Stromberg
Noes: None
Abstain: None
Absent: None

4. ADOPTION OF MEETING AGENDA

On motion by Commissioner Helber, seconded by Commissioner Luster to adopt the Meeting Agenda, as shown. The motion carried by the following vote:

Ayes: D'Arcy, Davis, Helber, Hillis, Lueder, Luster, Stromberg
Noes: None
Abstain: None
Absent: None

5. PUBLIC HEARING

A. Bay Area Ballplayers Temporary Tent (DRB-03-20)

Design Review Board Application No. DRB-03-20 to allow the placement of a 7,524-square-foot temporary tent structure housing an indoor baseball/softball training facility on a vacant portion of the property at 1325 Moraga Way through April 30, 2020. (Project Planner: Steve Kowalski, Senior Planner)

Planning Director Derek Farmer presented a PowerPoint presentation of the item as outlined in the staff report dated February 18, 2020. Due to the tent's general inconsistency with the design review provisions of the Zoning Ordinance, he recommended the Planning Commission, acting as the Design Review Board (DRB), adopt the resolution denying the request based on the findings for denial as contained in Attachment A to the staff report. He clarified that if the Planning Commission adopted the resolution of denial, California Environmental Quality Act (CEQA) regulations would not apply; however, if the Planning Commission was compelled to allow the temporary use of the site as requested by the applicant through April 30, 2020, the Planning Commission could adopt the draft resolution provided as Attachment B, subject to the findings and conditions of approval contained therein. If approved, the project would be categorically exempt from CEQA pursuant to CEQA Guidelines Section 15303, Small Structures.

Responding to the Planning Commission, Mr. Farmer reiterated that in the summer of 2019 he had advised the applicant of the need to file an application with the Town; however, the timing had been awkward related to the status of the zoning for the Moraga Center Specific Plan (MCSP) Implementation Project, and the fact the land use was inconsistent with the policies, long term land use vision, and likely the final zoning of the MCSP. While the zoning for the MCSP had not yet been adopted, the process was well under way and the applicant had agreed to be part of the MCSP Citizens Advisory Committee (CAC) meetings that had taken place last year. Staff had also advised the applicant at length and provided applications for a Conditional Use Permit (CUP) and Design Review, and had encouraged the applicant to submit an application in a timely manner for Planning Commission consideration since he hoped to be able to set up the temporary tent by January 1st of this year. Mr. Farmer recalled the applicant had understood the implications of the site, was amenable to participating in the MCSP CAC meetings, and was aware of the limited time frame to file an application given his desire to have the tent up by January 1st.

Mr. Farmer also detailed the differences between the proposed temporary tent and a tent structure for Canyon Club Brewery, which had also been installed without prior permission and had later been reviewed by the Planning Commission in December 2019. Canyon Club Brewery had an approved design review permit from 2018. The tent structure that the brewery owners had installed for that business was a temporary appendage to the design review permit approval and described by Mr. Farmer as an add-on, whereas the application for Bay Area Ballplayers was a standalone application for a standalone tent that was not part of any existing structure in the area. There was no existing entitlement for design review on the site and no guarantee or implication of an automatic renewal if the tent were to be approved by the Commission despite the applicant's desire to reinstall it each year around January 1st.

Mr. Farmer added there was no implication for any kind of precedent for approval or denial of the tent, with each application required to stand on its own based on findings at that time, and there would be no permanent automatic renewal. If the applicant wanted to install the tent in 2021, a separate application would be required which would be subject to staff analysis with findings. As to the status of the MCSP Implementation Project, the project had been delayed due to recent state legislation which became effective January 1, 2020. Staff hoped to present draft zoning to the Planning Commission this summer with formal adoption by the Town Council in the fall of 2020.

Mr. Farmer clarified that if the application had involved a CUP there would have been greater analysis of potential impacts including safety, noise, and the like. In this case, the application was only for design review, although the applicant was still required to obtain a building permit from Contra Costa County.

Mr. Farmer noted that staff had learned in conversations with County Building Department staff that not much could be regulated under the California Building Code if the structure was only up for 180 days or less. If the project was approved by the Commission pursuant to the resolution of approval contained in Attachment B, the project would be required to obtain any local and regional permits that may be required, a building permit from the County, and possibly a permit from the County Environmental Health Department.

Mr. Farmer further commented on the fact that the application was challenging since the design review standards were not meant for such temporary applications, but instead for permanent new structures. Staff had determined the strict application of the design review standards found the tent structure to be inconsistent with those standards, but he acknowledged the Commission may make a different determination. As to the use of property for Bob's Christmas tree lot, as an example, that use had been subject to a CUP, annual renewal, and notification to the Planning Department, and did not require new analyses and findings each year other than ensuring the site remained suitable for such a use. He reiterated why the Canyon Club Brewery tent was a different situation in that the Commission had approved an amendment in 2019 to the design review approval for that business which had been granted for the use to allow a seasonal structure. In this case, the tent for Bay Area Ballplayers was brand new and a standalone application.

PUBLIC HEARING OPENED

Steve Hammond (business owner), 1460-H Moraga Road, Moraga, apologized for any inconvenience the situation had caused for the application process and the necessity to go through design review and the Planning Commission. The tent had been installed after he had received approval from the Moraga-Orinda Fire District (MOFD), which had a full temporary use code for tent structures installed for less than 180 days. He had spoken to people in the Building Department and had been informed he would not need a building permit for a temporary structure that would be installed for less than 180 days. He reiterated he had gone through the process with the MOFD to address all impacts, a process which he described as simple and quick, with the permit having been issued, and a final inspection conducted. He added there had been a couple of batting cages installed in the tent at the time of the inspection so that the MOFD inspector could understand the proposed layout.

Mr. Hammond stated in speaking with the manufacturer of the tent and other tent manufacturers across the country, all that would be required for such tents and anything under 180 days would be a permit from the Fire Department. There had been rare cases when a temporary structure that was up for less than 180 days required design review by the Planning Commission. With the permit from the MOFD and the information he had received from the various manufacturers, Mr. Hammond had installed the tent as a temporary structure.

Mr. Hammond acknowledged the Planning Department from its perspective had informed him he would have to go through the design review process and obtain approval from the Planning Commission. He understood that due to the future change in zoning as part of the MCSP Implementation Project, a CUP would not be allowed for the tent because a CUP was intended to renew each year and would be inconsistent with the future zoning of the MCSP area. He questioned not being allowed to install the tent based on hopes of future development in the MCSP Area.

Mr. Hammond commented that he had offered a sunset clause for the tent, to be considered year by year, and if any development occurred in the future at the site, the tent would likely not be allowed anymore. He emphasized the tent was intended to be up between 90 and 120 days and then be removed, and emphasized the expense involved for the tent which would only be sustainable and installed during the rainy season. The tent was temporary, with a fixed start and end date, and it had been his intention to fully renew each year until development took place. The lot was located in an ideal location, back off the street, over 800 feet from the closest single-family residence, on the back side of a commercial shopping center, and was an extension of his current facility located nearby in that same shopping center.

Mr. Hammond noted that many cities allowed temporary uses up to 180 days and the application process was easier in other cities since Moraga only permitted 10 days for temporary uses with a maximum 10-day extension. He had offered to consider the 10-day permit with requests for additional extensions up to 90 days. He commented that Bob's Christmas tree lot would not be permitted as a CUP due to the impending changes in the zoning for the MCSP Area, although that use had been granted a permit which renewed each year. He cited other examples that would have the same challenges. He hoped the Commission would approve the temporary tent and allow it to remain in place until April 30th with the possibility of updating the Town's temporary use guidelines which would allow a more reasonable time period for temporary structures to be erected up to 90 or 180 days.

Mr. Hammond also understood there had been limited opposition to the tent, although some public comments had been made when it had first been installed. Again, due to the surrounding uses and the location of the tent, he could not see that any visual or noise conflicts would occur. He emphasized the large demand for sports in the Lamorinda area with the use being beneficial for youth in and around Moraga, and also for the other retail businesses in the Moraga Center.

Responding to the Commission, Mr. Hammond clarified the MOFD had not told him he did not need a permit from the Town. He had understood there were different guidelines for temporary structures for the MOFD and the Town. He again detailed his conversations with the MOFD, the receipt of a permit from the MOFD for the tent, and his assertion there had been a lack of communication between the Town and the MOFD in terms of the requirements. He reiterated the tent manufacturer he used (located in the City of Richmond) and two others had informed him he did not require design review because the Fire Department had codes for temporary tent structures in place under 180 days; however, based on the Town's perspective, the design review hearing before the Commission was the avenue he needed to take. While a CUP had originally been

considered given the potential implementation of the zoning for the MCSP Area, staff had stated it was unlikely a CUP would be granted.

Mr. Hammond stated in the meantime he had approached the MOFD about what was needed for a temporary tent and had been provided the information needed to obtain a permit from the MOFD. He continued to go back and forth with staff and had submitted his first site plan to the Town in December 2019, which included the MOFD permit.

Responding to the Commission, Mr. Hammond acknowledged he had not at any point in time prior to January 3, 2020 received any form of communication or assurance from anyone on Town staff that he could go ahead and install the tent without first submitting an application for design review.

As to whether the MOFD could issue any standalone entitlements, Mr. Farmer explained that the MOFD was not part of the Town of Moraga, the Town did not have an agreement with the MOFD as it did with Contra Costa County for the issuance of building permits, and the MOFD was a standalone and separate entity with separate requirements. The MOFD was also not a landowner having any geographic jurisdiction over property.

As to the Notice of Violation issued on January 8, 2020 by the Contra Costa Building Department, Mr. Hammond suggested it had been based on Mr. Farmer's reaching out to the County. The County had indicated to him after the fact that a permit would be required, but he clarified he had not received a formal notice from the County Building Department but had received a notice from the Town on the chain link fence that the structure was unpermitted.

Mr. Farmer clarified the Notice of Violation from the County Building Department had been issued on-site. The County Building Inspection Department had notified him of the issuance of the citation and he had later notified Mr. Hammond of the Building Code violation. The County was waiting for the Town to act on this matter prior to proceeding with any enforcement.

Mr. Hammond also clarified he had a short-term lease with the property owner for a one-time arrangement, and if everything worked out with the lease and if no issues occurred or development of the property was proposed in the next year, there could be opportunities for a new lease in the next year - although there were no guarantees. If the tent was allowed and no development had been planned, he would start the process all over again next year; however, if the tent was approved for this year, he questioned why he would have to go through the process again and pay another permit fee if the tent was unchanged and located on the same property.

Mr. Farmer explained that there had never been any indication in the first iteration of the staff report for an automatic renewal. The revised resolution of approval, as contained in Attachment B, would ensure the Planning Commission had the opportunity to look at the application independently of prior action and make findings at the time, with the applicant to come back and submit an application for Commission consideration. If the Commission adopted the resolution of approval, as contained in Attachment B, Condition #2 required that *"the approved project shall comply with all applicable Town Ordinances and laws and regulations of other governmental agencies."* As an example, as part of the approval of

the Canyon Club Brewery in 2018, other agencies beyond the Town had been involved in the permitting process, including the Building Department, Environmental Health Department and Sewer District.

Mr. Farmer further clarified the project had been noticed to the public as outlined in the staff report and staff had received no objections from the public since the notices had been mailed out and posted at the site.

Mr. Hammond emphasized he ideally wanted to have his business remain in Moraga given the great demand and desire to serve the strong youth baseball community within and around the Lamorinda area. The temporary tent made sense business-wise and was intended to be temporary, not year-round, given the limited utilization of batting cages in the summer and fall.

Kathe Nelson, Executive Director, Moraga Chamber of Commerce, reported the Chamber did not condone or recommend circumventing policies and procedures. In the last five years, the Chamber had worked hard to overcome the public perception of Moraga as being anti-business, and through the work of the Planning Department and the Town Council over the last several years there had been advancement for new businesses in Moraga as Town Council Goals. As a result, vacancies had been filled and the Town had attracted a number of new businesses. For the most part, those businesses, which included the subject business in its permanent location at 1460-H Moraga Road, had thrived. The applicant's business met a significant demand in the community in a very controlled environment and the tent allowed for those activities to continue throughout the year during the rainy season, with the location isolated enough where noise was not a factor, and which appeared to conform to the MOFD regulations as a temporary structure. If the applicant was willing to obtain all necessary permits for approval, she asked that the Planning Commission accept and approve the temporary tent request. If the application was denied, making it difficult for businesses such as his to survive, there was the threat of those businesses going elsewhere, as had occurred in the past. She wanted the Town to continue to build on the positivity of what was happening recently in the retail environment and respond to the needs of the community as much as possible.

Eric Moon, Moraga, understood there had been some procedural concerns but he found the situation to be a unique one that did not fall squarely under a certain set of rules and regulations. As a parent in the community, he emphasized the need for such a facility to provide a safe place for youth after school during the winter months, and he suggested the applicant's business was a testament to the demand, with the facility also drawing patrons from out of town. He suggested the temporary tent was a great idea to have during inclement weather, and an excellent draw to the Town. He urged the Commission to support the application.

Rudy Ortiz, Moraga, suggested patrons of the facility would typically use the facility for half an hour or an hour, and would likely patronize nearby businesses in the Moraga Center before or afterwards. If the facility was not permitted, patrons would be forced to utilize facilities and businesses outside Moraga. The applicant had a drive to provide a needed service for the community, had experience as a baseball coach, was serving an underserved community, and filling a niche that the Town could fulfill for the youth of

Moraga. He asked the Commission to consider approval of the application allowing the temporary tent to remain in place for 180 days with no guarantee for the next year.

Teresa Onoda, Moraga, understood many were delighted there was a location for youth to play sports but also recognized some may find the temporary tent to be an eyesore. She expressed concern with the potential precedent and unintended consequences if the temporary tent was allowed to remain in place. The size of the temporary tent was also a concern in terms of the potential precedent. She questioned whether the temporary tent was compatible with the semi-rural community and expressed concern the applicant was aware an application was required but installed it nevertheless. She felt that installing the temporary tent at a time when Town staff was on vacation during the winter break was shameful. She urged the Planning Commission to consider this as a teaching moment and consider the future.

Mike Metcalf, Moraga, found the situation to be contemptuous for the Town and its regulatory powers. He understood that conversations with Town staff had occurred in late summer 2019, at which time staff had made it clear to the applicant what was required. The applicant decided to take another avenue, had gone to the MOFD, and someone at the MOFD may have innocently said a permit was not needed. However, the MOFD had no jurisdiction over land use decisions in Moraga, as such decisions were specifically under the purview of the Town Council. Also, the County Building Department conducts inspections on behalf of the Town as part of its contract with the Town, served as an agent of the Town on building code and inspection matters, and enforced the Town's regulations.

In terms of the MCSP, Mr. Metcalf emphasized the multiyear effort to create a plan that made sense and one that the majority property owner could support. The MCSP had been approved years ago and he stated it was a shame there was now so much confusion involved. He noted there appeared to be a questionable provision in the Town's regulations which allowed temporary uses for only 10 days, which he suggested was absurd and prevented many activities from occurring on a temporary basis. He urged the Planning Commission to repair the applicable regulations.

Mr. Metcalf also suggested the Planning Commission did not have the authority to approve the temporary tent in that the Commission was being asked to make a policy decision that he believed was squarely under the purview of the Town Council. He suggested the application be remanded to the Town Council for consideration.

An unidentified resident of Moraga spoke to the difficulties of businesses striving to thrive in Moraga. He agreed that there appeared to be a flaw in the temporary use provisions, although he suggested the Planning Commission had the power to create standards by which a future temporary tent structure may not apply without limiting the current application. The applicant had a passion for youth and the sport of baseball, and was not trying to circumvent or be at conflict with the Town but provide something for youth in the community who had nowhere to play and practice during the winter season. He suggested some sort of advocacy be provided to business owners trying to navigate through the system given that Moraga had a lot of layers to its regulations and expressed his hope the Planning Commission would allow the temporary tent for this year.

Dave Bruzzone, Lafayette, supported the approval of a permit for the temporary tent on the grounds that the tent was located behind Safeway, was a good utilization of the space, and the Community Commercial (CC) Zoning District had recently been amended to allow such a use. He agreed with the comments from the Executive Director of the Moraga Chamber of Commerce in terms of relaxing the rules for new businesses, and while he acknowledged the applicant had installed the tent prior to obtaining Town approval, the applicant had attended many meetings with staff and had met the regulations and approval of other jurisdictional organizations. He emphasized the use was permitted, the tent was temporary, and the Bruzzone family, as the owner of the property, supported it. He suggested the use was not considered a long-term use for the downtown, as reflected in a license agreement the Bruzzone family had with the applicant for this year, and which could be re-initiated next year. The Bruzzone family had been strong advocates to provide such uses to the community's children, the use was much-needed in the community, and the use provided a viable temporary situation in the downtown with patrons of the facility patronizing other retail businesses in the Moraga Center.

Mr. Bruzzone reiterated he had informed the applicant the use was not intended to be long-term and the Bruzzone family viewed it as a very important short-term use to be reconsidered each year until a specific proposal was considered for the subject property. He stated that the property had previously been a firewood sale lot and had been the site of a former community recycling facility as well. He found the use a positive addition to the area. He added that Bob's Christmas Tree lot, also a temporary use, was located on the scenic corridor, and he considered the subject use another appropriate temporary use similar to it. He asked the Commission to approve the temporary tent for this year given the tent had already been installed and would only be in place until April 30. He urged the Commission to exercise its discretionary ability to approve the project.

Dave Trotter, Moraga, pointed out it had been implicit, as shown in the background section of the staff report, that several Moraga residents had expressed concern over the tent immediately after its installation, and viewed the tent as an eyesore at the subject location. He agreed with the staff determination that the use was inconsistent with the standards and land use provisions set forth in the MCSP. He noted three former Town mayors were present in the audience who opposed the use and who had been instrumental in the creation of the MCSP, which was intended to be the future heart of Moraga. All three former mayors had also served on the MCSP Steering Committee from 2015 to 2018. The subject location had been envisioned as the Town's future civic plaza, and the focal point of the Town's new downtown. Pursuant to a land use map he had provided to the Commission, the tent with batting cages had been situated directly in this area. A linear park had also been planned in that same location as part of the MCSP.

Mr. Trotter expressed concern with the inertia effects of approving something that may be approved year by year in that School Street may never be extended and the future retail heart of Moraga may never be realized if such uses were allowed to be approved on a continuous basis. He found that staff had appropriately outlined the basis for denial of the temporary tent based upon the facts of the application. He suggested the necessary findings for design review could not be made and he urged the Commission to follow the staff recommendation for denial.

Mr. Trotter suggested the applicant should not be rewarded for ignoring staff's direction with an approval, and that the applicant must make application rather than having installed the tent under the cover of darkness when Town staff was out of the office on vacation. He also found this situation different from Bob's Christmas Tree lot, and explained that he had been involved in the approval of Bob's Christmas Tree lot adjacent to Wells Fargo Bank over 20 years ago, which had an approved use permit and involved a completely distinct situation. He urged the Planning Commission to follow the staff recommendation, uphold the positive vision in the MCSP, encourage the property owner to implement the MCSP, and adopt the resolution of denial as presented by staff.

PUBLIC HEARING CLOSED

Chairperson Stromberg commented that during a recent Planning Commission meeting he had discussed what he had perceived as an issue of growing concern, which had recently been occurring at a disturbing rate regarding an approach undertaken by members of the community with respect to planning projects: a *"better to ask for forgiveness afterwards than to ask for permission first"* approach.

Chairperson Stromberg stated that all municipalities in the country had governing documents and Moraga had its own Municipal Code (MMC), the product of decades of hard work by the Town Council and legal counsel. The MMC did not in any way state that members of the community had the option to ignore or disregard the MMC, suggest the appropriate approach was that members of the community take matters into their own hands, or recommend that members of the community act first and then ask for forgiveness later. The MMC required compliance of all provisions included in the MMC.

Chairperson Stromberg detailed his children's background and experience in sports – particularly in baseball - and his devotion to local youth sports during his time as a Moraga resident and father. As had been discussed, the applicant and the Planning Director had spoken during the summer of 2019 at which time the Planning Director had made it clear that even a temporary facility would need to be permitted. Had the applicant complied with the MMC and applied for a design review permit in accordance with the applicable rules, he [Chairperson Stromberg] would have been one of the applicant's strongest advocates; however, that had not been done and the applicant had instead made a unilateral decision to disregard Town staff and the rule of law in Moraga by erecting the tent on January 3rd.

Chairperson Stromberg stated he could not condone the actions and approach taken by the applicant. Having worked on the MCSP Steering Committee, as a former member of the DRB, and as a member of the Planning Commission on the MCSP Implementation Project CAC, he knew very well that the MCSP had contemplated a revitalized downtown with the main thoroughfare on School Street extending from Moraga Road to Moraga Way. While the location of the temporary tent may be on a presently undeveloped parcel of land, that would not always be the case. He wanted to see the applicant work with the Bruzzone family and explore alternative locations in Town that were not intended to be the Town's new center and work collaboratively on constructing a permanent location elsewhere in the Town.

Chairperson Stromberg referenced the Canyon Club Brewery and commented that he had told the business owners “if you build it they will come.” He acknowledged the applicant had identified a need in the Lamorinda community and suggested if he built it they would come, but it must be done in the right way and in conformance with the MMC.

Commissioner D’Arcy found the applicant had an incredible idea for local youth, as evidenced by those in support, although she agreed with the Chair that the proper procedures should have been followed. Given the site was located in the MCSP Area there was a conflict in the zoning. As an example, the tent could be better located on the Moraga Swim and Tennis Club (MSTC) property, which she understood was for sale, and outside of the zoning for the MCSP Area. Other alternative areas could be considered that would not face the same zoning issues. She, too, was concerned with the manner in which this situation had come about and agreed with the Chair that the request be denied.

Commissioner Hillis also noted the tendency for people to ask for forgiveness after the fact. He clarified with Mr. Farmer that had the applicant followed the process there would have been the same opportunity for the applicant to appear before the Planning Commission to deliberate the request. He also agreed with one of the speakers that this issue was a policy decision outside of the scope of the Planning Commission. Had the applicant followed the process, there may have been a better roadmap for getting that process highlighted by those who had the authority to make a decision. He shared the Chair’s views and agreed that the application should be denied.

Commissioner Lueder was uncertain the Planning Commission had the authority to approve the application or whether the application must be forwarded to the Council. As a fairly new resident, to him it appeared that the site of the temporary tent had been an undeveloped gravel lot with weeds, and he recognized that the use must comply with the design review standards, but if the application was denied and the tent removed, the lot could revert back to its original unkempt condition. He also understood that the MCSP had envisioned a civic center and more retail at this particular location, but he had no confidence that would be the case in the near future. Presently, the temporary tent was serving the community and could potentially increase business in the area, and thus potentially have a positive effect. The temporary tent was not permanent, would require future requests prior to installation in the future, and the landowner understood the use would not be allowed once the property was proposed to be developed consistent with the MCSP.

Commissioner Lueder realized there had been a series of troubling situations where applicants had acted first and asked for forgiveness later, and he shared the concern the temporary tent had been erected under the cover of darkness. While he agreed there was no excuse for the applicant not knowing the law and not following the procedures, he found the use to be of great benefit to the youth and community as a whole. As such, he supported allowing the temporary tent to remain in place as requested.

Commissioner Hillis reiterated his concern that, had the applicant followed the process, the use still would likely have been found to be inconsistent with the Town’s Design Guidelines, and as part of that process the Planning Commission could have denied the permit or remanded the application directly to the Town Council. The applicant also had the option to appeal a decision of the Commission to the Council.

Commissioner Hillis recognized the benefits to the community that had been identified but suggested when a policy problem had been defined it had been accurately described as a loophole which should be remedied; however, the Planning Commission was not the authority to remedy that situation in this case. He stated this situation was clearly a policy decision that should be decided by a higher body or, in this case, the Council.

Commissioner Helber had struggled with the application based on the fact the applicant had installed the tent after having conversations with Town staff and having knowledge of the requirements involved, although a full application had been submitted and the Planning Commission had the ability to consider and review the application at this time. Had the application been submitted prior to the installation of the temporary tent, it was quite possible the Planning Commission may have supported it. He supported the short-term use, recognized it had been serving the community as evidenced by the public testimony, and considered the use to be similar to Bob's Christmas Tree lot, which also served the community well each year. He wanted the Town to find a way to allow the use to exist on a temporary basis each year, that it be required to be approved under some jurisdiction of the Town each year, and he shared the uncertainty whether the Commission was the right body to make that decision.

Commissioner Luster was torn because she believed in the process which had not been followed and which was possibly not clear to the applicant. While ignorance of the law was not an excuse to break the law, she found the temporary use at the subject location to be good for the Town. She did not condone the process the applicant had taken or some of the misleading information that had gone out via e-mail which had implied that the Town was the reason the process had been slow, and that the DRB had been delaying the issuance of an approval when in fact an application had not actually been submitted. She agreed with the concerns expressed by her fellow commissioners that actions were being taken first and forgiveness being asked later, although she found this situation to be unique and she did not want to lose something that was great for the Town's youth.

Commissioner Luster suggested if the application was approved, it would only be for this year, and that it be clear that any future application should be resubmitted each year. She otherwise found the concerns with the MCSP difficult to address since the plan was not yet set in stone, no final decides had been made, the empty space was currently underutilized, and she could support the property being used for only the next few months. She could support a different location in the future since the subject location was likely not a location that could be approved by the Town once the MCSP had been implemented. She also suggested the Town Council be asked to direct staff to create an actual temporary use process or propose language that was not currently in the MMC, other than the temporary 10-day use, to ensure the process and language was clear in the future. She added that staff had worked very hard to schedule a public hearing once the application had been submitted, and she wanted the public perception to be clear that the application had not been delayed by the Town in any way. She was conflicted as to how to decide on the application at this time given all the factors involved.

Commissioner Davis recognized the consensus that there was a good use that had been poorly executed. He disagreed there was any lack of clarity in what Town staff had communicated with the applicant. There had been no delay by the Town because there

had been no application to consider. If the tent was an approved structure by the DRB it would have to be screened and painted a color that did not stand out, and require some manner of on-site restroom facilities, among other potential conditions to allow the tent to be an approved facility.

Commissioner Davis was not concerned about the MCSP vis-à-vis the tent since nothing would happen on the property in the next 65 days other than the potential implied by the current application, and the fact staff had made it clear during the staff presentation that would likely not be permitted. He found the business owner had been doing his best to have a good business in Town where the Town had a history of making it challenging for new businesses. He found the use served a section of society that the Town's Parks and Recreation Department tended to ignore, and the use supported the other businesses in the Moraga Center. There were many good things about the use, although it would likely have been difficult to approve it in the middle of the Town, which was difficult to overlook.

Given the fact the tent would only be in place until April 30, Commissioner Davis could agree it was not a bad idea although it had been erected without permit and conditions of approval. He pointed out one of the conditions of approval for the project included a condition that the tent be removed on April 30, but the proposal had no regulations to ensure that happened. He was concerned if the application was approved it could encourage future applicants to act first and ask for forgiveness later, and in his mind there remained concerns with conditions of approval that could not be enforced. He also recognized the possibility the Planning Commission may deny a good business asset.

As to whether the Planning Commission had the jurisdiction to take action, Mr. Farmer explained that the Planning Commission may take action on DRB applications. The design review standards and regulations had been considered by the Commission on other applications. The resolutions before the Planning Commission were consistent in terms of findings and conditions of approval and it was within the purview of the Commission to take action on either of the two resolutions before it tonight, either as written or as amended by the Commission by a majority vote.

Commissioner Hillis reiterated his opinion the policy conflicts that had been discussed would be better addressed by the Town Council and not the Planning Commission. In his opinion, the approach should be denial of the application, thereby allowing the applicant or a member of the Planning Commission or public to appeal the Commission's decision to the Town Council.

On motion by Commissioner D'Arcy, seconded by Commissioner Hillis to adopt Resolution next in number to deny Bay Area Ballplayers Temporary Tent, DRB-03-20 at 1325 Moraga Way, without prejudice, the motion **CARRIED** by the following vote:

Ayes:	D'Arcy, Davis, Hillis, Stromberg
Noes:	Helber, Lueder, Luster
Abstain:	None
Absent:	None

Chairperson Stromberg identified the 10-day appeal process to the Town Council in writing to the Town Clerk.

Chairperson Stromberg declared a recess at 9:05 P.M. The Planning Commission meeting reconvened at 9:15 P.M. with all Planning Commissioners present.

B. 707 Augusta Drive (DRB-02-20 & VAR-01-20)

Design Review Board Application No. DRB-02-20 including two Exceptions from Moraga Design Guidelines, and Variance Application No. VAR-01-20 to allow the construction of a 1,146-net-square-foot addition, including a 703 square-foot partial second story, to an existing one-story single-family dwelling at 707 Augusta Drive that would continue an existing encroachment within the minimum 10-foot required left side-yard setback of the 3-DUA Zoning District. (Project Planner: Mio Mendez, Assistant Planner)

Mr. Farmer introduced new Assistant Planner Mio Mendez.

Assistant Planner Mio Mendez presented a PowerPoint presentation of the item as outlined in the February 18, 2020 staff report, and recommended due to the project's overall consistency with the Zoning Ordinance, General Plan, and Design Guidelines, as well as the minimal impact it would have on the surrounding properties, the Planning Commission approve Design Review Permit DRB-02-20, including both proposed exceptions from Design Guidelines SFR2.6 and SFR1.1, respectively, and accompanying Variance VAR-01-20 as conditioned in the draft resolution and as shown in Attachment A to the staff report.

Responding to the Commission, Mr. Mendez clarified the special circumstances that applied to the subject property necessitating a variance. Staff had reviewed what had been enjoyed by adjacent property owners and the phenomenon of multiple second-story units which could be seen throughout Moraga Country Club (MCC).

Mr. Farmer added that the application of zoning after the development of the MCC involved legal non-conforming zoning. MCC had established County zoning but when the development had been incorporated into the Town of Moraga, the Town had not established the zoning resulting in most of the lots being inconsistent, which inconsistency applied to the subject property. The lot size, shape, and topography was applicable in this case, since the lot size and shape was inconsistent with the zoning which had been applied after construction. In response to concerns with the staff interpretation of the variance findings, the Planning Commission may make its own interpretation of the findings, although staff had provided the information in the staff report which made the findings for a variance.

As to the number of existing second story additions in MCC, Mr. Farmer was uncertain of the dates when they had been approved, although he acknowledged currently there were now more two-story homes side by side in MCC. In some cases, there was a partial second story. In this case, the applicant was not creating a situation where there would be three full stories side by side, but a partial second story side by side, consistent with other residences within MCC. He acknowledged that some of the second-story additions may have been illegally constructed, which was why the exception was available with findings and whether it would constitute anything inconsistent with the Town's Design

Guidelines. If the second stories had been constructed prior to the Town's incorporation and zoning, they were illegal in terms of their application. If constructed subsequent to that period the guidelines applied.

As to whether MCC had more than two, two-story homes located side by side, Mr. Mendez identified 101 Brookline through 121 Brookline Street where all of the homes were two story single-family residences. He confirmed the MCC Homeowner's Association (HOA) Architectural Review Committee (ARC) had also reviewed and approved the subject application.

Mr. Farmer read into the record Design Guideline SFR1.1 which states: *"Not more than two (2) two-story units should be placed side by side unless topographic and/or architectural considerations justify exceptions or unless the two-story portion of the house is not visible from off site. (Architectural considerations may include partial second stories and setback of second stories)"* and which could be considered whether to grant the exception. The approved permit from MCC ARC had been included in the staff report and had shown the ARC had reviewed and approved the application and that the neighbors had also signed off on the application.

Mr. Mendez was unaware of any recent granting of an exception to Design Guideline SFR 1.1, and Mr. Farmer commented that applications were reviewed on a case-by-case basis.

As to the discrepancy of the site area and build out calculations in the staff report, Mr. Mendez advised there had been a discrepancy on the application that had been discovered and revised pursuant to Page 3 of the site plan identifying the 10,500 square foot property.

PUBLIC HEARING OPENED

Donna Chivers, D3 Designs, LLC. 645 Sky Ranch Court, Lafayette, introduced the property owner and welcomed any questions from the Planning Commission.

There were no questions from the Planning Commission at this time.

PUBLIC HEARING CLOSED

Commissioner Luster supported the variance for the left side yard setback given the legal non-conforming lot and the fact there was no choice but to build along those lines prior to the Town's incorporation; however, she had difficulty agreeing with the exception to SFR 1.1, since the purpose of the guideline was to set the design philosophy and the rules of implementation for that philosophy. She noted there were 27 guidelines for implementation and the first one was SFR 1.1. She wanted to rely on the Design Guidelines and not her opinion. Had there been varying topography, the second story not visible, or the lot size much larger with the homes not right next to one another, she could see the argument for a partial second story as defensible. In this case, the homes were close to one another, with the same front yard setback. SFR 1.1 existed to create variation and character in this type of scenario, and as such, she found it hard to agree to that exception.

Chairperson Stromberg understood the challenge was that MCC had been designed and constructed prior to its incorporation into the Town, and the attempt to regulate modifications to homes in MCC had been based on the provisions of the MMC. Concerns with having more than two, two-story homes adjacent to one another had been amplified in MCC due to the proximity of homes adjacent to one another, a condition not found in other subdivisions in Moraga. The setbacks in other developments in Moraga were greater and MCC homes were closer together making the issue of second stories more problematic. He noted the history of MCC, and allowing a variance to SFR 1.1 could allow that condition to continue to evolve where people were purchasing units in MCC with the expectation of expanding the existing residences. He recognized there was no way to expand on the footprint other than to go up. He questioned whether there was acquiescence for all of the homes in MCC ultimately being bought with the intention of expanding them to two stories.

Commissioner Luster suggested there should be an overlay established over the entire neighborhood to allow two stories to be built by right or possibly revising SFR 1.1.

Mr. Farmer noted the partial second story complied with the 10-foot setback and the partial second story had been specifically sited to conform. He asked the Planning Commission to engage the applicant more so that the applicant could clarify why the addition had been sited the way it had.

Chairperson Stromberg shared Commissioner Luster's concerns and the fact that two-story additions had become a common occurrence in MCC. He suggested they were getting to a point of giving carte blanche to MCC to allow two-story homes everywhere. Had the proposal been requested in any other area of the Town, there would have been greater concern with any deviation from SFR 1.1. He recognized that MCC was being given special consideration given it had been designed and built prior to incorporation into the Town. He emphasized that SFR 1.1 meant something and agreed it was a philosophical discussion that would require Town Council input as to the number of exceptions or variances that should be allowed in MCC.

Commissioner Davis emphasized the Town Council had been very clear, particularly over the past three years, that SFR 1.1 should stand. He could not recall where the Planning Commission had been corrected over a two-story home.

Commissioner D'Arcy noted the Planning Commission was assuming intent that everything in MCC would become full two stories with full facades and a wall of housing fronts. In this case, MCC had always been its own land and because it had not been part of the Town initially, she found it wrong to deny a homeowner who would like to have a partial second story given the precedent and history of the development of the homes in MCC. MCC was limited with no place to build out and the situation would not change. She saw no problem with people adding to their homes to provide more space, and she recognized that MCC was unique to Moraga in the way it had been designed with narrow setbacks. She objected to the application of 2020 laws to development that had been constructed in 1974, recognized the precedent that had occurred since that time, and agreed that homeowners should be allowed to expand their homes.

Commissioner Hillis again clarified with staff the intent of SFR 1.1. In his opinion, while this was 2020 and the homes in MCC had been built in 1974, the Town Council had on numerous occasions and most recently in the summer of 2019, emphasized the importance of SFR 1.1, and how partial second stories had been interpreted. He expressed concern if the Planning Commission approved the exception to SFR 1.1, it would be contrary to the mandate of the Town Council.

Mr. Farmer again explained how staff had interpreted SFR 1.1 and noted the Planning Commission may consider the Design Guideline as written “*Not more than two (2) two-story units should be placed side-by-side unless topographic and/or architectural considerations justify exceptions or unless the two-story portion of the house is not visible from off site. (Architectural considerations may include partial second stories and setback of second stories.)*” While the two-story portion of the home was visible off-site it had been setback from the rear, which architectural consideration the Planning Commission may make. He added that recent decisions regarding more than two, two-story homes had been based on new developments ground up and involved new design review applications for new construction. The subject application involved the unique development of MCC, and the Town did not have zoning for such development nor had it come up with any.

Mr. Farmer emphasized the precedent for variances in MCC had been set and that exceptions for variances for properties on Augusta Drive had been granted, and while it did not mean that all requests should be granted that information should be taken into consideration.

Chairperson Stromberg pointed out they were speaking of a partial two story, not a full second story which could create a monolithic appearance and which would be problematic if confronted with applications in MCC for complete two stories all along the roads, flying into the face of SFR 1.1.

Mr. Mendez pointed out the adjacent property owner had also obtained approval for a second-story addition which also met the current zoning setbacks and which was why staff was of the opinion the findings could support moving forward with the application.

Mr. Farmer added the bulk and massing of the home was on the first floor. He clarified with respect to the Los Encinos development that project had been approved by the Planning Commission and had been appealed to the Town Council. The Town Council denied the appeal but approved the project subject to amendments.

Commissioner Luster further clarified the Los Encinos project which she had appealed to the Town Council had been denied by the Town Council, but the Town Council had modified the project including prohibiting more than two, two-story homes adjacent to one another, and requiring two of the homes to be lowered to a single story.

Commissioner Lueder suggested the Planning Commission should not prescribe any intent and suggest a two-story home should have been purchased by a homeowner rather than a one-story home and adding onto it or seeking to add onto the property.

Commissioner Hillis again clarified he had been questioning the legislative intent of the Town Council establishment of Design Guideline SFR 1.1.

Chairperson Stromberg reiterated his comments and the pattern of people buying in MCC and then wanting to make the homes larger, with the only way to do so was to go up. He was not prescribing any negative view to that and would be pushing back against it if everyone was seeking full two-story homes adjacent to one another.

Chairperson Stromberg re-opened the public hearing.

Derek Dellamar, 707 Augusta Drive, Moraga, understood the Design Guidelines regarding two-story additions. He had gone through numerous steps already including revisions to the original plans. The partial two story had originally been planned to come out but there had been no room. The addition must go up to provide space for his family. When asked, he stated he had lived in the residence for the past nine years. He referenced photographs of the existing home which included a mansard roof which had experienced numerous leaks and repairs. A new roof had been required which was why gaining additional space in the rear yard had resulted in the partial addition. The partial addition had been approved by the MCC ARC, and neighbors on each side of the residence were supportive. There were no rear neighbors given that a creek ran alongside the back of the residence and the partial addition was not visible from the rear. He suggested he had done everything possible to have the application comply and suggested not everyone in MCC would want to build a partial second story addition. Mr. Dellamar also clarified the proposed height of the home would be 24.4 feet in height, with his neighbors' residences enjoying the same height.

Ms. Chivers responded to a recommendation to lower the height of the roof; however, there was no way to lower the roof which had a pitch of 4.5:12 and an 8-foot plate, which was a standard plate height.

Mr. Dellamar also commented that Country Club Drive was full of townhomes and he asked whether SFR 1.1 related to visual standards and if the intent was that visually homes not be stacked all together.

Commissioner D'Arcy reiterated that MCC had been built years ago and the homes had been built tight as opposed to newer developments built on larger lots with front facing homes. The rule had been two, one, and then two-story homes, although a number were now two and three, with no more than two, two-story homes in a row.

Ms. Chivers further explained that the home would not exceed the allowable Floor Area Ratio (FAR), the project had been redesigned to comply with the FAR, and the upper story had been set back to comply with the Town's guidelines. The site plan included a set of stairs leading to a creek side area, with a creek easement on the backside of the property. If the property was expanded and required to stay within the allowable FAR, they would have to push into that area and dig down, which would require a lot of grading, disturbance of the soil, and encroachment into the creek side easement. As a result, and in order to build out compliant with the allowable FAR, building up made sense on the flat portion of the property. The addition stepped back, pushed out from the front lot line, tucked back, and was hidden to make it visually appealing.

Commissioner Helber supported the project as proposed in terms of the requested variances since it fit within the character of MCC. He suggested the findings for the exceptions could be made. In terms of the architectural detail, he clarified a black clad garage door with smoked glass had been recommended, which was a unique and modern look for MCC, but there was another home that had the same look. Also, lap siding had been proposed on the front entry but it was difficult to tell where it started and stopped, and he preferred it end at a logical place. He also liked the standing seam metal roof, which fit in with the other pitched roofs in MCC but asked for more clarification on the proposed use of black clad inset windows, and whether the windows would be flush stucco, have some type of relief, or be inset with trim around the edges to provide some architectural detail.

Ms. Chivers clarified a home located around the corner from the subject property had the same type of garage door. The intent was to remain consistent with the same look, with a black clad door, garage door, inset trim less windows neither stucco or wooden, with relief similar to the photographs provided in the staff report. The floor plan had shown the entry to be tucked in providing two walls on either side for the lap siding to die into. The lap siding would travel along the face of the front wall of the front door, with no edges exposed, with the rest would be stucco material. Stucco pillars to hold up the entry roof were not flush with the corners of the home and there would be space visible between the corner of the home and where the lap siding went over the wall. The windows would have their own recess within the frame itself, with the garage door to be consistent with a home around the corner.

On motion by Commissioner Helber, seconded by Commissioner D'Arcy to adopt Resolution next in number to approve Design Review Board Application and Variance for 707 Augusta Drive, DRB-02-20 and VAR-01-20, subject to the findings and conditions as shown. The motion **CARRIED** by the following vote:

Ayes:	D'Arcy, Davis, Helber, Lueder, Stromberg
Noes:	Hillis, Luster
Abstain:	None
Absent:	None

Chairperson Stromberg identified the 10-day appeal process to the Town Council in writing to the Town Clerk.

Commissioner Davis stated he had intended to abstain on the vote. While another vote had been recommended by staff, a second vote was not taken and the Chair stated the motion was to be corrected to read:

On motion by Commissioner Helber, seconded by Commissioner D'Arcy to adopt Resolution next in number to approve Design Review Board Application and Variance for 707 Augusta Drive, DRB-02-20 and VAR-01-20, subject to the findings and conditions as shown. The motion **CARRIED** by the following vote:

Ayes:	D'Arcy, Helber, Lueder, Stromberg
Noes:	Hillis, Luster

Abstain: Davis
Absent: None

Chairperson Stromberg again identified the 10-day appeal process to the Town Council in writing to the Town Clerk.

C. General Plan Annual Report

Review Annual General Plan Implementation Report for 2019 and provide input on Planning Department 2019-20 Work Program Priorities. (Project Planner: Brian Horn, Associate Planner)

Associate Planner Brian Horn presented an abbreviated PowerPoint presentation and welcomed questions or comments on the General Plan Annual Report, to be incorporated into the staff report that would be forwarded to the Town Council.

The Planning Commission discussed the General Plan Annual Report and offered the following comments to be forwarded to the Town Council for consideration:

- Clarified with staff the calculations for Very Low, Low, and Moderate and Above Moderate Incomes for Contra Costa County, with many of the affordable housing units built through subsidies, Development Agreements (DAs) or Deed Restrictions. Clarified Moderate housing had been able to be provided in Moraga through development of some Accessory Dwelling Units (ADUs) although the State Department of Housing and Community Development (HCD) requires comparable square footages and rental units to show it would be possible to have a Moderate income units in the jurisdiction. ADUs could be counted towards the Regional Housing Needs Allocation (RHNA). The Town had a density bonus tool which would allow a project to go over the allowable density but some of the units would have to be affordable. There continued to be new state legislation related to housing. Recent legislation regarding ADUs had gone into effect which impacted the MCSP Area. (Luster)
- Staff was uncertain whether the Luxor Apartment development involved a density bonus which would have to be researched, although the units did have deed restrictions. Staff was also unaware at this time how the RHNA numbers would be enforced by the Association of Bay Area Governments (ABAG). A joint Tri-City Lamorinda Councils meeting had been scheduled for early March which would be hosted by the Town of Moraga, with a focus on housing, state laws, and the evolution of various requirements. Staff recommended it would be a good opportunity for the Planning Commission to attend or view the livestream of that meeting. (Lueder)

[Note: Chairperson Stromberg did not open the public hearing for this item as there were no members of the public in attendance and no collective motion was made by the Planning Commission, however, before moving onto the next item staff asked Chairperson Stromberg to confirm whether Commission was recommending the General Plan Annual Report for acceptance to the Town Council, at which time he confirmed yes, and without any comments or amendments.]

6. ROUTINE AND OTHER MATTERS

A. Review of 2020 Moraga Liaison Meeting Calendar

The Planning Commission acknowledged the receipt of the 2020 Moraga Liaison Calendar with the Chair and Vice Chair responsible for attending the Liaison Meetings. The meetings are also open to members of the public.

7. REPORTS

A. Planning Commission

Chairperson Stromberg reported he and the Vice Chair had attended the February 12 Town Council meeting regarding consideration of the Zoning Text Amendments for the consolidation of the DRB and Planning Commission. The Town Council had accepted most of the recommendations from the Planning Commission, but after a lengthy discussion eliminated the right of a Planning Commissioner to appeal a decision of the Planning Commission to the Town Council. He briefed the Planning Commission on the Town Council's discussion of this topic.

Commissioner Luster also briefed the Planning Commission on the Town Council's deliberations during its February 12, noting that "equal parts of the argument were based on hypotheticals of what if commissioners abuse the right to appeal." She confirmed a Planning Commissioner still had the opportunity to approach members of the Town Council to possibly bring an appeal of a decision of the Planning Commission.

B. Staff

Mr. Farmer reported the Planning Commission meeting scheduled for March 2 would be canceled and the next meeting would likely be held on March 16. Staff was considering the MCSP Area zoning in context with recent state legislation that had been enacted, specifically Senate Bill (SB) 330, which had caused internal discussion of the applicability of some of the provisions in the MCSP. The intent was that the zoning for the MCSP would be brought to the Planning Commission for discussion in the summer of 2020.

8. ADJOURNMENT

On motion by Commissioner Luster, seconded by Commissioner D'Arcy to adjourn the Planning Commission meeting at 10:40 P.M.

A Certified Correct Minutes Copy



Secretary of the Planning Commission