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February 4, 2025

Contra Costa County Department of Conservation and Development
Planning Commission
c/o Everett Louie
30 Muir Road
Martinez, CA

Subject: CDLP23-02046 Appeal of Land Use Permit Approval for RCFE Facility in R-10
Zoning District

Dear Members of the Planning Commission:

I represent Joshua Eckhaus and Jennifer Ostrander, who reside at 2370 Warren Road in unincorporated Walnut Creek – along with other neighbors within the Warren Road neighborhood. This letter represents a formal appeal of the Zoning Administrator Approval of the above referenced application for a land use permit for the proposed expansion of the Residential Care Facility for the Elderly (RCFE) located at 2374 Warren Road, Walnut Creek, CA 94595. The neighborhood zoning is R-10 single-family residential; my clients and the residential neighborhood are adversely impacted by the proposed grant of land use permit and consequent proposed expansion of an existing facility. This letter will set forth the grounds/reasons for appeal and will also propose an alternative development approach which I feel the County should have pursued – and which would have resulted in a project my clients could have supported.

1. Deceptive and Misleading Application

The RCFE in question is known as the Carnelian. It consists of a three-building complex operated and administered as a single entity housing 30 residents. Each building is situated on a separate legal parcel. Although for all purposes and intents there is but a unitary facility, the particular application focused on only a single parcel and the proposed expansion of the building on that parcel. The pre-existing building housed 6 residents. The application proclaimed that it sought merely to add 12 new residents for a total of 18. The reality is that the existing 30 residents will be expanded by land use permit to 42.

One of the justifications advanced for approval of the application is the characterization of the neighborhood as “transitional”. The Carnelian presently fronts on Warren Road. However, the RCFE is located at the intersection of that road with Flora Avenue. Flora connects with Boulevard Way – and that portion of Carnelian is indeed located within a transitional neighborhood. Warren Road is an older, very nice residential area rather distinct in its residential look and feel from Flora Avenue and its environs.

A second justification advanced for the particular proposal which would replace a single story building with a much larger and more imposing two-story building is that the retention and preservation of “Grandma’s Garden” is essential to the facility and the use and enjoyment thereof by its residents. However, the Garden can be retained in its entirety – and even expanded – if the proposed new construction and facility was placed in the vicinity of Flora Avenue rather than Warren Road. There would appear to be space for construction of a two story building on another of the parcels that comprise Carnelian. The latter development would then adjoin a parking lot belonging to a multi-family building on Flora Avenue – with no discernible impacts on either Warren Road or the Flora Avenue neighbors. The facility already houses 30 residents, and this application proposes adding 12 more, significantly stretching the definition of “residential” and moving it closer to a commercial operation. The same facility with a relocated two story building in the vicinity of Flora Road would place the commercial aspects of the entire development within a true transitional neighborhood and avoid the impacts on Warren Road residents.

If The Carnelian had been properly evaluated as the single facility it actually is, the total occupied space would exceed 10,000 square feet and would preclude the establishment of this proposed addition due to additional requirements for such things as a dedicated fire lane. The applicant is surely aware of this and has submitted an application for one parcel with the intent of evading a comprehensive scrutiny of its plans and the full scope of the project. Moreover, Planning 101 requires that the cumulative impacts of proposed and future development be considered together in evaluating any pending project. One can speculate that the preferred site for expansion described herein may have been set aside for some future expansion on yet another of the Carnelian parcels.

The Carnelian has steadfastly refused to even consider alternatives to the placement of its expanded building on the proposed site. It has alternatives available to it that avoid the false premise that its Garden can only be preserved by approval of the present application. The County staff should have considered the entirety of Carnelian and the substance over the form of the application in making the Zoning Administrator determination. It did not, and this was and is wrong.

2. Unique Scale and Density of the Facility

The Carnelian facility is unique in Contra Costa County as the only RCFE operating three contiguous homes, resulting in far more residents than is typical for this type of facility. This scale is incompatible with the intended use of R-10 zoning, which prioritizes single-family residential living. Allowing this expansion would set a troubling precedent for other facilities seeking similar exceptions.

3. Emergency Egress and Safety Concerns

The proposed expansion exacerbates already critical safety concerns. With only two egress points serving a neighborhood of over 200 homes, this facility could block one of the exits during an emergency. The heavy equipment required to evacuate its residents poses a significant risk to the safety of the entire community, as delays or obstructions could be catastrophic during a fire, natural disaster, or other emergencies. Since the application falsely claims only 18 residents will be “on-site” the true implications of allowing 42 non-ambulatory seniors to occupy an incompatible location were not addressed.

4. Violation of Solar Access Statutes

The proposed structure would block sunlight from neighboring solar panels, in direct violation of statutes protecting solar access. This not only infringes on homeowners’ rights but also undermines broader environmental and sustainability goals. Furthermore, the design of the structure is inconsistent with the character of the neighborhood, further diminishing its compatibility with the R-10 zoning.

5. Negative Impact on Property Values

The construction of a commercial-scale building in the middle of a residential neighborhood will severely impact the property values of surrounding homes. Homeowners have invested in this area with the expectation of maintaining its residential character, and introducing a commercial enterprise undermines this expectation.

6. Erosion of Peaceful Living and Community Integrity

Accommodating a commercial enterprise’s profit ambitions at the expense of the neighborhood’s residential character and peaceful living is fundamentally unfair. This project prioritizes corporate interests over the well-being of the community and violates the trust of residents who chose this area for its quiet, family-oriented environment.

In my experience, it is unusual for an applicant’s preferences for maintenance of an amenity (such as Grandma’s Garden) to be given precedence over the same amenities that will be lost to neighbors if approval is granted. Obviously, the applicant has alternatives and can prioritize features important to it. The neighbors, by contrast, are faced with loss accomplished by the choices made by the applicant neighbor. This is not the balancing of competing interests that the planning process seeks to effect.

7. Lack of Legal Basis for Grant of Variance

The grant of a variance is a matter of law. The concept is that unique physical characteristics of a particular property are such as to deprive that property of rights otherwise generally available within the zoning district. The applicant has not made a proper showing of entitlement to grant of a variance; nor has the Zoning Administrator made proper and sustainable

findings from which a grant might be upheld. For that reason alone, the approval was improvidently granted.

Request for Action

Given these concerns, I respectfully request that the Planning Department:

1. **Reopen the review process** to include a comprehensive evaluation of the entire three-building complex and reevaluate the project's compliance with zoning and safety regulations.
2. **Investigate the deceptive elements** of the application and hold the applicant accountable for providing misleading information.
3. **Conduct a full environmental review**, including the impact on solar access, emergency egress, and the neighborhood's residential character.
4. **Hold a public hearing** to provide residents an opportunity to voice their concerns and review updated findings.

Conclusion

The failure to consider the totality of the project – despite significant evidence that the application is deficient – was apparently not reviewed by the Zoning Administrator and leaves open the question of why the applicant was allowed to proceed.

The approval of this permit, based on incomplete and misleading evaluations, sets a dangerous precedent for land use decisions in our community. I urge the Planning Department to take immediate action to address these issues and uphold the principles of fairness, safety, and residential integrity that define our R-10 zoning district.

Thank you for your attention to this matter. I look forward to your response and am available to provide additional information or attend any hearings related to this appeal.

Very truly yours,



David J. Bowie

Cc: Neighbors