



CITY OF COMMERCE
DEPARTMENT OF PUBLIC WORKS & DEVELOPMENT SERVICES

<http://www.ci.commerce.ca.us/index.aspx?nid=328>

APPEAL APPLICATION

APPLICATION INFORMATION

Project Address: 2425 S. Atlantic Blvd., Commerce, CA 90040

Case Type (CUP,VARIANCE, ETC.) and Number: CUP No. 528; Variance No. 18-01

Hearing Date: November 28, 2018

Appeal Deadline: February 18, 2019

(deadline tolled from December 12, 2018 pursuant to agreements
Attached hereto as Exhibits B and C)

APPELLANT INFORMATION

APPELLANT: Taylor Megdal, Elliot Megdal & Associates

Telephone: [] (310) 277-0456

Address: 252 S Beverly Dr, Suite C

Fax: []

City: Beverly Hills State: CA Zip: 90212

Email: tmegdal@elliottmegdal.com

APPLICANT (IF DIFFERENT): _____

I hereby appeal the decision of the:

☒ Planning Commission

☐ Deputy Director of Development Services

☐ Planning Staff

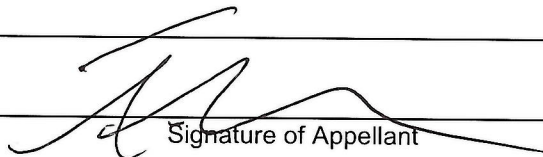
☐ Director of Public Works and Development Services

☐ Other: _____

REASON FOR APPEAL

The decision maker failed to comply with the provisions of the Zoning Code, General Plan or other applicable plans in the following manner (use additional sheets if necessary):

See Attachment A


Signature of Appellant

2 / 14 / 19
Date

* OFFICE USE ONLY

RC # _____

CASE # _____

DESCRIPTION _____

DATE APPEAL RECEIVED: _____

APPEAL FEES: \$ _____

RECEIVED BY: _____

ATTACHMENT A

I. Introduction.

On November 28, 2018, the City of Commerce Planning Commission ("Planning Commission") passed Resolution No. PC 18-13 (the "Resolution"), denying Conditional Use Permit No. 528 ("CUP") and Variance No. 18-01, submitted by Taylor Megdal, an individual, for Elliot Megdal & Associates (the "Applicant") for the development of a convenience store and gasoline service station on the property located at 2425 South Atlantic Boulevard, Commerce, CA 90040 (the "Project").

The Applicant brings the instant appeal to the City Council on the following bases: (1) the Planning Commission's decision to deny the Applicant's CUP and Variance applications was arbitrary and capricious and not supported by substantial evidence; and (2) the Commissioners' demonstrated prejudice and bias against the Project, impairing the Applicant's due process rights.¹ The City Council should therefore reverse the decision of the Planning Commission, grant the appeal, and approve the Project.

This appeal is timely filed pursuant to two Tolling Agreements, attached hereto as Exhibits B and C, which extended the appeal deadline to and including February 18, 2019. The Applicant agreed to delay the appeal in good faith to allow the City Economic Development staff to explore alternative tenants; to date, staff has failed to procure any earnest interest or proposals.

II. The Planning Commission's Ostensible Grounds for Denying the CUP Were Not Supported by Substantial Evidence.

In the Resolution, the Planning Commission made several findings, supposedly supported by "findings of fact," but many of these purported findings contain opinion, speculation, and conclusory statements not supported by any evidence. Accordingly, the Planning Commission's decision must be reversed. (*See Topanga Assn. for the Scenic Community v. County of L.A.* (1974) 11 Cal.3d 506, 514; *McMillan v. Am. Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175, 177; *Code Civ. Proc.* § 1094.5.) Substantial evidence "include[s] facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, but not argument, speculation, unsubstantiated opinion, or clearly erroneous evidence." (*San Franciscans Upholding the Downtown Plan v. City & County of S.F.* (2002) 102 Cal.App.4th 656, 675 (*San Franciscans*).) Further, to support denial, an agency "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*See Topanga, supra*, 11 Cal.3d at 515) While the issuance of a special use permit is discretionary, a decision to deny such may be overturned by the courts if it is arbitrary and unreasonable. (*Cohn v. County Bd. of Sup'rs of Los Angeles County* (1955) 135 Cal.App.2d 180, 185.)

Specifically, the Resolution lacks substantial evidence to support several of the findings that form the basis of the Planning Commission's denial of the Applicant's CUP and variance applications. By way of example, the Resolution contains the following findings:

¹ The Applicant reserves his right to present further evidence to the City Council regarding the Planning Commission's errors or omissions.

1) **"The proposed project will impair the integrity and character of the existing zone. The proposed location of the new convenience store will leave Cowlin Avenue and residential area void of any interaction with the site, given the rear building mass will face towards Cowlin Avenue."** (Resolution, Section 2, Paragraph 2.) The Resolution does not explain how the Project will "impair the integrity and character of the existing zone" or offer any evidence in support of the finding that the residential area will be "void of any interaction or the site." These statements are ambiguous and conclusory at best. Moreover, the Commerce Municipal Code allows for a gas station in the C/M-1 zone with the granting of a CUP determination, so it was arbitrary and contrary to the Code for the Planning Commission to determine that the Project will "impair the integrity and character of the existing zone."

2) **"The gasoline service station and convenience store are not compatible with the current and future land uses in the zone and the general area. The proposed site is within 100 feet of residential uses."** (Resolution, Section 2, Paragraph 5.) There is a Chevron gas station approximately one mile to the north on Washington that is within 100 feet of residential uses. There is no explanation in the Resolution for this inconsistency. Moreover, the Applicant has set forth evidence that the use of the Project is compatible with other, nearby highway-oriented retail, including the immediate neighbor to north of the Project, a truck rental store. The historically-approved use of the Project site for drive-thru dining is also consistent with the proposed use.

3) **"Staff is concerned that any new curb cuts closer to the intersection of Washington Blvd. and Atlantic Blvd. may cause additional traffic congestion and possible turning hazards, especially from traffic making a right onto Washington Blvd, from South-bound Atlantic Boulevard."** (Resolution, Section 2, Paragraph 7.) There is no evidence to support this "concern" that the new curb cuts may cause traffic congestion or create traffic hazards. As set forth above, "argument, speculation, [and] unsubstantiated opinion" do not constitute evidence for purposes of the substantial evidence test. (*San Franciscans, supra*, 102 Cal.App.4th at p. 675.) Conversely, the Applicant has set forth evidence demonstrating that the anticipated traffic for the proposed use will remain consistent with existing service levels for the arterial roadways adjacent to and servicing the site.

4) **"The project may adversely impact the general welfare of the City with the additional traffic from the proposed drive approaches. Therefore, the proposed use may be detrimental to the public interest, health, safety, convenience, or welfare."** (Resolution, Section 2, Paragraph 9.) Again, there is no evidence, let alone substantial evidence, that the Project may create additional traffic.

5) **"The proposed design is intended to service only the site and its customers. The proposed design does not preserve and maximize the image, character, and visual quality of the neighborhood."** (Resolution, Section 2,

Paragraph 10.) No evidence is cited in support of the statement that the proposed design is intended to service only the site and its customers. The Resolution also ignores the fact that the Project site has been vacant for several years and remains a visual blight for the neighborhood.

The Resolution refers to the fact that "... there are currently four (4) 7-Elevens within 1.5 mile radius and fourteen (14) gas stations (10 with convenience stores) within a 1.5 radius." (Resolution, Section 2, Paragraph 5.) However, gas stations are a permitted use under the C/M-1 zone pursuant to the Commerce Municipal Code. Thus, this fact is not only irrelevant, it's also not a legally cognizable basis to deny the Applicant's CUP. Further, it highlights the Planning Commission's bias against the Project, as discussed in more detail below.

At the October 26, 2018 Planning Commission hearing, a Commissioner expressed concern with the Project, stating, "This just doesn't fit within the vision of our next general plan for this corridor." However, in addition to being a permitted use in the C/M-1 zone, the Project is fully consistent with all elements of the City's General Plan. The Planning Commission's decision to deny the Applicant's application for a CUP and variance on the basis that the Project *could* conflict with speculative future general plans, not yet enacted, does not meet the requirement of being supported by substantial evidence in a written record.

Accordingly, the Resolution lacks substantial evidence to support the findings providing the basis for the Planning Commission's denial of the Applicant's CUP and variance applications. For this reason, the Planning Commission's action must be reversed, and the City Council should approve the Project.

III. The Planning Commission Demonstrated Prejudice and Bias Towards the Project, Impairing the Applicant's Due Process Rights.

The Planning Commissioners failed to conduct themselves in a way that provided for a fair and adequate public hearing on this Project. Specifically, the actions and testimony of several Commissioners demonstrated bias and prejudice against the Project prior to the Planning Commission's denial of the CUP and variance applications. Most egregiously, Commissioner Evelyn Serfozo's vocal opposition to the Project on a public social media post required her recusal at the October 26 and November 28, 2018 Planning Commission hearings.ⁱ Additionally, at the Planning Commission meeting on October 26, 2018, Commissioners insinuated, without any evidence, that signatures the Applicant received in support of the Project were falsified.

When an agency acts in a quasi-judicial capacity, as the Planning Commission was when it denied the entitlements for the Project, procedural due process principles apply. (See *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482, citing *Beck Development Co. v. Southern Pacific Transportation* (1996) 44 Cal.App.4th 1160, 1188.) Procedural due process in the administrative setting requires that the hearing be held before a "reasonably impartial, noninvolved reviewer." (*Nasha*, 125 Cal.App.4th at 483; see also *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1234 ["that a fair hearing requires a neutral and unbiased decision maker is a fundamental component of a fair adjudication"].) Courts have found that an unacceptable probability of bias may exist where there is even a tentative commitment to a certain result. (See *BreakZone*, 81 Cal.App.4th at 1236, referencing *Withrow v. Larkin* (1975)

421 U.S. 35.) The *Nasha* court found an unacceptable probability of bias where, among other things, a planning commissioner who heard an appeal of a project had been in contact with one of the leaders of the opposition, who had also filed an appeal of the approval. (125 Cal.App.4th at 447.)

Here, the Planning Commission's testimony and actions revealed an unacceptable level of bias and prejudice against the Project. This prevented the Applicant from receiving a fair, adequate public hearing on the Project.

For the reasons discussed above, the Applicant respectfully requests that the City Council reverse the decision of the Planning Commission, grant the appeal, and approve the Project.

ⁱ As detailed more fully in the Applicant's letter to the Planning Commission dated October 26, 2018, in a publically posted response to a Facebook post by Chairperson Gonzalez detailing the agenda for the Planning Commission's meeting later that same day, Ms. Serfozo stated her strong opposition to the Project and arguments against approval, including the hashtag "#no7-11" and the statement: "Why are we revisiting the possible construction of a 7-11 on the corner of Atlantic. In the meeting that took place for the community last year to introduce the idea, residents were strongly opposed. In addition to that we have an abundance of gas stations, and other liquor stores, and a 7-11 within ½ a mile of a distance? Commerce residents deserve at least a sit down restaurant, or other alternative in that high visible corner." In addition to being improper and inappropriate and requiring recusal, this comment was also demonstrably false.

EXHIBIT B

Tolling Agreement for Taylor Applicant

This Tolling Agreement ("Agreement") is made and entered into as of December 6, 2018 ("Effective Date") by and between Taylor Megdal, an individual, for Elliot Megdal & Associates ("Applicant"), and the City of Commerce, a California municipal corporation ("City"). Applicant and the City may be referred to as "Parties" collectively or "Party" individually.

I. Recitals

- A. On February 8, 2018, Applicant submitted an application for Conditional Use Permit No. 528 and Variance 18-01 (the "Entitlements") to the City of Commerce Planning Commission ("Planning Commission") to construct, establish, and operate a Convenience Store and Gasoline Service Station located at 2425 South Atlantic Boulevard, Commerce, CA 90040 (the "Proposed Project").
- B. On November 28, 2018, the Planning Commission voted 3-0 to deny the Entitlements for the Proposed Project.
- C. The City of Commerce Municipal Code section 19.39.190(B) provides that decisions by the Planning Commission may be appealed to the Commerce City Council. This appeal must be filed within fourteen days of the date of the rendering of the decision. (City of Commerce Municipal Code § 19.39.200.)
- D. Accordingly, Applicant's deadline to file an appeal to the Commerce City Council of the Planning Commission's denial of the Entitlements is December 12, 2018.
- E. Because Applicant and the City are working cooperatively with respect to the Entitlements and the Proposed Project, in order to comply with applicable law, the Parties wish to enter into a tolling agreement to extend the appeal period from the Planning Commission's denial of the requested Entitlements for the Proposed Project.

II. Agreement

- 1. The City and Applicant agree that the time period to appeal the Planning Commission's denial of the requested Entitlements for the Proposed Project pursuant to City of Commerce Municipal Code section 19.39.200 is extended to and including January 30, 2019 (the "Extension Date").
- 2. The Parties' Agreement may be terminated by either the City or Applicant, upon 14 days advanced written notice to the other. Notice shall be given as set forth in this Agreement.

3. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California.
4. Each of the undersigned represents and warrants that he/she has the authority to bind the Party on whose behalf he/she signs this Agreement and that all parties hereto are entitled to rely on such representation and warranty.
5. Any notice to be given under this Agreement shall be made in writing and personally served or mailed by certified mail to:
 - To City: City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: Edgar P. Cisneros, City Administrator
 - With Copy to: Alvarez-Glasman & Colvin
13181 Crossroads Parkway North
Suite 400 – West Tower
Industry, CA 91746
Attn: Noel Tapia, City Attorney
 - To Applicant: Taylor Megdal, Esq.
Megdal & Associates
252-C S. Beverly Drive
Beverly Hills, CA 90212
 - With Copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP
865 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017
Attn: Emily L. Murray, Esq.
6. This Agreement may be executed in counterparts, each of which will be an original, but all of which together constitutes one instrument executed on the same date.

CITY OF COMMERCE
a California municipal corporation

By: Edmund Osneer
Its: City Administrator

TAYLOR MEGDAL,
an individual

Taylor Megdal
Taylor Megdal, Elliot Megdal &
Associates

APPROVED AS TO FORM:

Noel Tapia
Noel Tapia, City Attorney

EXHIBIT C

Extended Tolling Agreement for Applicant

This Extended Tolling Agreement ("Agreement") is made and entered into as of January 14, 2019 ("Effective Date") by and between Taylor Megdal, an individual, for Elliot Megdal & Associates ("Applicant"), and the City of Commerce, a California municipal corporation ("City"). Applicant and the City may be referred to as "Parties" collectively or "Party" individually.

I. Recitals

- A. On February 8, 2018, Applicant submitted an application for Conditional Use Permit No. 528 and Variance 18-01 (the "Entitlements") to the City of Commerce Planning Commission ("Planning Commission") to construct, establish, and operate a Convenience Store and Gasoline Service Station located at 2425 South Atlantic Boulevard, Commerce, CA 90040 (the "Proposed Project").
- B. On November 28, 2018, the Planning Commission voted 3-0 to deny the Entitlements for the Proposed Project.
- C. The City of Commerce Municipal Code section 19.39.190(B) provides that decisions by the Planning Commission may be appealed to the Commerce City Council. This appeal must be filed within fourteen days of the date of the rendering of the decision. (City of Commerce Municipal Code § 19.39.200.)
- D. On December 6, 2018, the Applicant and the City entered into a Tolling Agreement, wherein the Parties agreed that the time period to appeal the Planning Commission's denial of the requested Entitlements for the Proposed Project pursuant to City of Commerce Municipal Code section 19.39.200 was extended from the original deadline of December 12, 2018 to and included January 30, 2019.
- E. On December 18, 2018, the Parties held a meeting in order to begin work and discussions regarding the Entitlements and the Proposed Project.
- F. Because Applicant and the City are continuing to work cooperatively with respect to the Entitlements and the Proposed Project, in order to comply with applicable law, the Parties wish to enter into a further tolling agreement to once again extend the appeal period from the Planning Commission's denial of the requested Entitlements for the Proposed Project.

II. Agreement

- 1. The City and Applicant agree that the time period to appeal the Planning Commission's denial of the requested Entitlements for the Proposed Project pursuant to City of Commerce Municipal Code section 19.39.200 is

extended for a period of 60 days beginning on the date of the Parties' meeting on December 18, 2018 to and including February 18, 2019 (the "Second Extension Date").

2. The Parties' Agreement may be terminated by either the City or Applicant, upon 14 days advanced written notice to the other. Notice shall be given as set forth in this Agreement.
3. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California.
4. Each of the undersigned represents and warrants that he/she has the authority to bind the Party on whose behalf he/she signs this Agreement and that all parties hereto are entitled to rely on such representation and warranty.
5. Any notice to be given under this Agreement shall be made in writing and personally served or mailed by certified mail to:


To City: City of Commerce
 2535 Commerce Way
 Commerce, CA 90040
 Attn: City Attorney

To Applicant: Taylor Megdal, Esq.
 Megdal & Associates
 252-C S. Beverly Drive
 Beverly Hills, CA 90212

With Copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP
 865 S. Figueroa Street, Suite 2800
 Los Angeles, CA 90017
 Attn: Emily L. Murray, Esq.

6. This Agreement may be executed in counterparts, each of which will be an original, but all of which together constitutes one instrument executed on the same date.


CITY OF COMMERCE
a California municipal corporation

By: 
Its: CITY ADMINISTRATOR

APPROVED AS TO FORM:


Noel Tapia, City Attorney

TAYLOR MEGDAL,
an individual


Taylor Megdal, Elliot Megdal &
Associates