



CITY OF COMMERCE AGENDA REPORT

TO: Honorable City Council

Item No. _____

FROM: City Administrator

SUBJECT: PUBLIC HEARING – Appeal of the Planning Commission’s Decision to Deny Conditional Use Permit No. 528 and Variance No. 18-01: Request to construct a new 7-Eleven convenience store and gasoline service station on a parcel measuring 20,395 square feet and located at 2425 South Atlantic Boulevard in the City of Commerce

MEETING DATE: APRIL 30, 2019

RECOMMENDATION:

That the City Council conduct a public hearing, receive input from the public, consider the staff presentation, as well as information discussed herein and affirm, overturn or modify the Planning Commission’s decision to deny Conditional Use Permit (“CUP”) No. 528 and Variance No. 18-01.

PUBLIC NOTICE REQUIREMENTS:

Chapter 19.39.220 of the Commerce Municipal Code (“CMC”) requires the City of Commerce (the “City”) to publish a notice of the appeal including the time and place of the public hearing in a newspaper of general circulation in the City not less than ten (10) days prior to the date of the public hearing. Said notice was published in the Los Cerritos News on March 22, 2019.

EXECUTIVE SUMMARY:

The City Council of the City (the “City Council”) will consider an appeal by Taylor Megdal, Elliot Megdal & Associates (the “Project Applicant”), for the approval of a CUP and two (2) variances to build a new 2,306 square-foot, 7-Eleven convenience store and gasoline service station under a 2,147 square foot canopy; both to be located on a 20,395 square foot site (the “Project”). On November 28, 2018, the Planning Commission of the City (the “Commission”) determined it could not make the required findings under the CMC to approve a CUP or variance, and denied CUP No. 528 and Variance No. 18-01. The Project Applicant appealed that action to the City Council. The City Council will now hold a public hearing pursuant to that appeal to consider the matter further. The City Council will base its decision on information presented to it including, relevant City Staff Report(s),

public testimony and testimony provided by City staff and members of the Planning Commission during the October 24, 2018 and November 28, 2018, Planning Commission hearings and all testimony and facts provided to the City Council as part of the appeal process.

DISCUSSION:

Project Description

The Project consists of the development of a new 2,306 square foot, 7-Eleven convenience store combined with a gasoline service station under a 2,147 square foot canopy. The Project site consists of a 20,395 square foot parcel. (Attachments 2 and 4). The Project requires the approval of three discretionary approvals; one CUP and two variances. Under the CMC, the Planning Commission is charged with the responsibility of considering the award of CUPs and variances. (Chapters 19.39.410(B)(3) and 19.39.500(B)(3).) The Planning Commission must make certain findings in order to approve a CUP or a variance. (Chapters 19.39.420(A) and 19.39.510.) The Planning Commission must deny an application for a CUP or variance if the Planning Commission is not able to make every required finding.

Here, the service station component of the Project requires a CUP pursuant to Chapter 19.31.400(A) of the CMC. Additionally, the Project as proposed requires two variances to secure relief from applicable developments standards of the CMC. Projects that consist of particular combined uses, including services stations and mini-markets, must comply with the development standards set forth at Chapter 19.31.400(B) of the CMC. Chapter 19.31.400(B)(1) and (B)(2) of the CMC provide that such combined uses must be located on parcels measuring at least 25,000 square feet and must be located at a minimum distance of 300 feet from any property zoned for residential use. The Project requires two variances because the Project is located on a site that is less than 25,000 square feet in size and is located within 300 feet of a property zoned for residential use. Specifically, the Project is proposed on a 20,395 square foot site that is located within 100 feet of property zoned for residential use.

Planning Commission Meetings

Summary of Meetings:

The proposed Project was first introduced during the October 24, 2018 Planning Commission meeting and continued to the November 28, 2018 Planning Commission meeting. During the October 24, 2018 Planning Commission meeting, the Planning Commission directed City staff to prepare a resolution in support of denying the Project Applicant's request for a CUP and two variances for the Planning Commission's consideration at the Planning Commission's November 28, 2018 meeting. To that end, City staff prepared a resolution considering the staff reports, public comments, findings and all other information presented to the Planning Commission and Planning Commission comments during the course of the two (2) hearings relating to the Project. The Planning Commission determined it could not make the required findings under the CMC to approve a CUP or variance, and adopted Resolution No. PC 18-13 denying CUP No. 528 and Variance No. 18-01 (the "Resolution") (Attachment 5) at the November 28, 2018 Planning Commission meeting.

October 24, 2018 Meeting:

During the October 24, 2018, Planning Commission meeting, City staff made a presentation describing the Project. City staff informed the Planning Commission that service stations are permissible uses subject to the approval of a CUP. (Chapter 19.31.400(A).) City staff also described the applicable development standards related to minimum parcel sizes for combined uses such as service stations and mini-markets and minimum distance requirements for such uses from residential uses. Chapter 19.31.400(B)(1) and (B)(2) of the CMC provide that such combined uses must be located on parcels measuring at least 25,000 square feet and must be located at a minimum distance of 300 feet from any property zoned for residential use.

Based on the requirements of the CMC, City staff informed the Planning Commission that the Project requires the approval of two variances to secure relief from the CMC's minimum requirements with regards to: (1) parcel size (25,000 sq. ft.) and (2) buffer distance (300 feet from residential zones). Project site maps and plans confirmed that the proposed Project required the approval of variances because the Project does not meet the CMC's minimum requirements regarding the parcel size and distance from residential uses. The Project site consists of a 20,395 square foot parcel located within 100 feet from the nearest property zoned for residential use.

City staff also expressed concerns over the potential increase in traffic and driving hazards. City staff was concerned that the proposed ingress and egress to the Project site could create unsafe traffic conditions at the corner of Washington and Atlantic; an intersection which already suffers from heavy traffic congestion. Further, staff stated that without the preparation of a CEQA study, the effects on traffic, the environment, and general neighborhood aesthetics were presently unknown. The Project Applicant did not want to prepare studies to comply with CEQA until the Project Applicant received confirmation from the Planning Commission that the Planning Commission was supportive of the Project.

In addition, staff was concerned that the placement of the proposed convenience store building would cut off connectivity between the Project and the surrounding neighborhood. According to City staff, the location of the proposed convenience store, with the back of the convenience store facing Cowlin Avenue, would remove a sense of human scale. Staff concluded its presentation by asking that the Planning Commission review and analyze the information presented and direct further action.

The Project Applicant was given an opportunity to address the Planning Commission. At that time, he stated that he understood the concerns presented by staff and members of the community. However, the Project Applicant argued that that no other business ventures would be profitable in that proposed site because of the lack of "roof tops" (referring to the number of residential homes) in the area. He stated the Project would provide residents with a viable shopping location for groceries and other daily necessities while fostering development in a corridor in "dire" condition.

Following the Project Applicant's presentation, Chairperson Gonzalez questioned the need for another convenience store in the City at that location. Chairperson Gonzalez noted that based on the staff presentation, there were several gas stations and convenience stores already in place offering very similar services and products. The Chairman was also concerned over damage to the site if the proposed gas station were to close leaving behind gas tanks that, even if sealed, could present unknown environmental hazards.

Commissioner Peraza echoed many of the Chairperson's concerns and added that he understood the Project Applicant's argument regarding the lack of residents in the area to support an alternative business establishment, but noted that the community did not have to settle for another convenience store.

At the conclusion of all presentations and comments, the Planning Commission directed staff to draft and present at the next hearing a resolution of denial outlining the findings supporting such denial. The item was continued to the November 28, 2018 Planning Commission meeting for further consideration.

November 28, 2018 Meeting:

At the second (2nd) and final hearing held on November 28, 2018, City staff presented the Resolution supporting the denial of the Project. (Attachment 5). The Project Applicant was given an opportunity to address the Commission through its legal counsel, Emily Murray with the law firm of Allen Matkins. Ms. Murray voiced concerns that City staff's findings were not based on substantial evidence and stated that previous hearings on the Project were biased and unfair. Ms. Murray had previously provided a letter to the City prior to the October 24, 2018 Planning Commission outlining the Project Applicant's concerns regarding the alleged bias of one of the Commissioners. The October 24th letter is referenced in the Project Applicant's appeal letter. (Attachment 3.) The Commissioner in question did not attend the October 24, 2018 Planning Commission meeting and recused herself from the Planning Commission's consideration of the Project at the November 28, 2018 Planning Commission meeting.

After considering all presentations from staff, the Project Applicant, and public testimony, the Planning Commission determined that it could not make the required findings under the CMC for the approval of a CUP or variance. Accordingly, the Planning Commission voted 3-0 in favor of adopting the Resolution denying CUP No. 528 and Variance No. 18-01. (Attachment 5.)

PROJECT APPLICANT FILES APPEAL:

After executing two (2) tolling agreements with the City in early December 2018 and January 2019, the Project Applicant appealed the Planning Commission's determination on February 14, 2019. (Attachment 3). In the letter in support of its Appeal ("Appeal Letter"), the Project Applicant argues that the Commission's denial was "arbitrary and unreasonable" because: (1) the proposed Project is compatible with other, nearby commercial establishments; (2) no evidence was furnished to establish that the proposed project will increase traffic congestion or create traffic hazards; and (3) there is no evidence that the proposed Project would conflict with the City's vision for the future of the area when no changes to the City's General Plan related to this area have been made.

The Project Applicant further alleges that the Planning Commission “demonstrated bias and prejudice” against the Project well before CUP No. 528 and Variance No. 18-01 were denied. As discussed above, the Project Applicant submitted a letter dated October 24, 2018 alleging one of the Commissioners was biased against the Project due to statements made on social media. The Commissioner in question did not attend the October 24, 2018 Planning Commission meeting and recused herself from the Planning Commission’s consideration of the Project at the November 28, 2018 Planning Commission meeting.

CITY COUNCIL OPTIONS:

Following the presentation of information to the City Council, staff is requesting that the Council consider the testimony discussed herein and provide direction to staff. In accordance with Chapter 19.39 Division Four of the CMC, the City Council, at its discretion, has the following options:

1. Based upon the facts and public testimony presented to the Commission and the facts and public testimony presented to the City Council, the City Council may deny the appeal and affirm the Planning Commission’s decision to deny CUP No. 528 and Variance No. 18-01. Direct staff to prepare a resolution affirming the Commission’s denial including findings of fact for the City Council’s consideration at the April 16, 2019, City Council meeting; or
2. Based upon the facts and public testimony presented to the Planning Commission and the facts and public testimony presented to the City Council, the City Council may grant the appeal, overturn the Planning Commission’s decision to deny CUP No. 528 and Variance No. 18-01 and approve CUP No. 528 and Variance No. 18-01. Direct staff to prepare a resolution overturning the Planning Commission’s denial including findings of fact for the City Council’s consideration at the April 16, 2019 City Council meeting; or
3. Modify the decision of the Planning Commission.
4. Provide staff with alternative direction.

FISCAL IMPACT:

This activity can be carried out without additional impact on the current operating budget.

RELATIONSHIP TO STRATEGIC GOALS:

This agenda report relates to the 2011 strategic planning goal: “*Protect and Enhance the Quality of Life in the City of Commerce*”.

Recommended by:	Maryam Babaki, Director of Public Works & Development Services
Prepared by:	Manny Acosta, City Planner
Reviewed by:	Vilko Domic, Finance Director
Approved as to form:	Noel Tapia, City Attorney
Respectfully submitted:	Edgar P. Cisneros, City Administrator

ATTACHMENTS:

1. Planning Commission Staff Reports prepared for the October 24, 2018 and November 28, 2018 Planning Commission meetings
2. Project Application
3. Appeal Letter
4. Project Plans
5. Resolution No. PC 18-13