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DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: MARCH 26, 2024

TO: HONORABLE BOARD OF SUPERVISORS

FROM: LIAM CROWLEY, PLANNER II

SUBJECT: APPEAL OF MINOR USE PERMIT U_2021-0016 AND VARIANCE V_2021-0005

SUMMARY: Minor Use Permit U_2021-0016 and Variance V_2021-0005 (“the Project”) was denied by the Planning Commission (PC) on January 4, 2024 by Resolution No. PC_2024-0001. On January 5, 2024, attorney Brian S. Momsen, on behalf of Faizan Corporation and 898 Main Street LLC, filed an appeal of the PC’s decision to deny the Project. The Project requested authorization to establish and operate a gas station with ten (10) gas pumps, two (2) separate illuminated canopies, twenty-eight (28) new parking spaces, landscaping, and conversion of part of an existing structure to a convenience store. A concurrent Variance was requested for a sixty-five (65) foot tall business identification sign, increase in the allowable sign area, and to reduce the front yard setback. The Project site is located 1.6± miles southwest of Redwood Valley center, on the north side of North State Street (CR 104), 600± feet east of its intersection with U.S. Route 101 (US 101), located at 9621 & 9601 North State St, Redwood Valley; APNs 162-100-58 & 162-100-58.

Per Mendocino County Code Chapter 20.088, the proposed development is required to obtain a Minor Use Permit and Variance. Per Section 20.196.020, the granting or modifying of any Use Permit must be supported by several findings. The Planning Commission reviewed the County’s staff report, a memorandum from December 7, 2023 and January 4, 2024, other documents presented to the Planning Commission, and public testimony (the “Record”). Based the record, the Planning Commission found that granting the Minor Use Permit would constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in or passing through the neighborhood of the proposed use and would be detrimental or injurious to property and improvements in the neighborhood. The Planning Commission found that the projected increased traffic and safety impacts of the proposed Project would require closure of the US 101 median at the intersection of North State Street (CR 104) and Uva Drive (CR 239). Increased traffic due to the Project would increase the number of cars and trucks crossing US 101 at this intersection, increasing the likelihood of additional collisions which given the speeds of traffic on US 101 would likely be severe if not fatal. Closure of the intersection is necessary mitigation to reduce potentially significant transportation safety impacts caused by the project to less than significant levels. This closure would eliminate the current ability of motorists to turn from either County road onto US 101 or turn from US 101 onto either County road. In addition, motorists would be unable to cross US 101 from one County road to the other. If the median were to be closed, motorists traveling along US 101 would be required to use the West Road (CR 237) interchange to access North State Street and in turn the project site and neighboring properties. If the Project were to be approved, the required transportation mitigation would be a detriment to the general welfare of those residing or working in the vicinity because it would limit circulation options and would increase the length of trips made to and from the vicinity and would place an undue burden on the existing businesses in the area by possibly limiting customer traffic. There are no alternative mitigation measures that are equivalent or as effective in mitigating or avoiding the potentially significant transportation impacts caused by the Project. Therefore, the finding contained in Mendocino County Code Section 20.196.020(C)¹ could not be made, and the Minor Use Permit was denied. Because the requested Variance was processed concurrently with the Minor Use Permit and would have no independent value if the Minor Use Permit was denied, the Variance was necessarily denied.

¹ Mendocino County Code Section 20.196.020(C) provides that before a use permit is approved there must be a finding that “[t]hat such use will not, under the circumstances of that particular case, constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county; provided, that if any proposed building or use is necessary for the public health, safety or general welfare, the finding shall be to that effect...”

THE PROJECT: The Project involves a Minor Use Permit to establish and operate a gas station with ten (10) gas pumps, two (2) separate illuminated canopies, twenty-eight (28) new parking spaces, landscaping, and conversion of part of an existing structure to a convenience store. A concurrent Variance is requested for a sixty-five (65) foot tall business identification sign, to increase the allowable sign area, and to reduce the front yard setback. The Project would also include the installation of a fuel price pole sign and underground fuel storage tanks. The proposed fuel canopies would be located within the required twenty (20) foot front yard setback and the proposed freestanding signs would exceed the maximum sign area allowable per Mendocino County Code Chapter 20.184.

Staff originally recommended adoption of a Mitigated Negative Declaration and approval of the Project with several Conditions of Approval at a Noticed Public Hearing before the Planning Commission on December 7, 2023. After staff presentation, public testimony, questions, and deliberation, the Planning Commission moved to continue the Project to the January 4, 2024, meeting with direction to staff to prepare an alternative resolution for denial of the Project. On January 4, 2024, the continued public hearing was held, the alternative resolution was presented, additional public testimony was presented and, after further deliberation occurred, the Planning Commission ultimately adopted Resolution No. PC_2024-0001 denying the Project.

THE APPEAL: The appeal asserts that the Planning Commission “*did not proceed in a manner required by law and its determination was not supported by substantial evidence in the record there was no evidence (only vague complaints from the public) that the proposed project would be a nuisance or would interfere with an easement. There was no evidence that the project’s environmental impacts could not be mitigated to acceptable levels with the conditions of approval staff proposed. The proposed freeway conditions are exactions as defined in the Dolan v. City of Tigard decision.*”

Pursuant to MCC Section 20.208.015, the Board of Supervisors may affirm, reverse or modify the decision of the Planning Commission as it deems just, equitable and in compliance with the County Zoning Code and the General Plan.

DISCUSSION: There are four primary issues raised by the appeal, which are discussed separately below.

1. Lack of Evidence that the Proposed Project would be a Nuisance

The appeal asserts that “*there was no evidence (only vague complaints from the public) that the proposed project would be a nuisance...*”

In the context of a use permit, the permit applicant bears the burden of demonstrating its entitlement to the use permit. If a permit is granted, the agency’s findings must be supported by substantial evidence. If a permit is denied, the agency is determining that the applicant has failed to carry its burden of proof as to its entitlement to the use permit. The determination that a party has failed to carry its burden of proof is not required to be supported by substantial evidence; it is the lack of evidence of sufficient weight and credibility to convince the decision-making body that results in the determination. *Hauser v. Ventura County Bd. of Supervisors* (2018) 20 Cal.App.5th 572, 576.

Statements by the public and the Commission reflected concerns that approving the proposed project with all proposed mitigation measures would create a detriment to the general welfare of those residing or working in the vicinity because of the resulting limited circulation options.

In finding that the Project would be inconsistent with Section 20.196.020(C), the Planning Commission’s determination was not limited to nuisance only. Necessary closure of the median barrier to mitigate environmental impacts, and its subsequent impacts to the circulation patterns of the existing neighborhood are well documented in the record. As noted in a letter from Caltrans dated August 11, 2023, “*failure to condition the project with the previously requested highway safety mitigation would increase the number of left turns from southbound US 101 to North State Street. The increased volume of left-turn traffic at this location will have a higher probability of collisions when compared to existing conditions. Due to the prevailing freeway speeds on US 101 at this location, any collision runs the risk of being a high-severity or fatal collision*”. As explained by Caltrans, an unmitigated project would conflict with the State’s Safe Systems Approach and Vision Zero Goals, where even one fatality is unacceptable. Staff concurred with this reasoning as explained on Page 47 of the Initial Study prepared for the Project. The letter from Caltrans dated January 3, 2024 also makes note of an unmitigated project’s reasonably foreseen inconsistency with an adopted policy or program regulating transportation and circulation, which would be considered a potentially significant impact under CEQA. Changes in circulation patterns due to the proposed mitigation were explained by staff at the December 7, 2023 public hearing. The impact of median closure on the surrounding neighborhood was discussed by Commissioner Babbini, who contemplated whether the closure would cause a major detour, and that the current circulation pattern is a convenience for those that live on Uva Drive to access the businesses across US 101. Impacts to the surrounding neighborhood were also discussed by Commissioner Paulin at the December 7, 2023 hearing, who noted that the testimony provided

ATTACHMENT M

by Caltrans indicated that the median closure was necessary, which in turn would impose a significant burden on existing businesses and residents that utilize the current circulation pattern.

2. Lack of Evidence Related to Interference with an Easement

While there was discussion at the Planning Commission hearing about a private easement that crosses the proposed project site, the Planning Commission did not base its denial of the use permit on this issue. In fact, the Planning Commission's resolution does not mention easement interference.

3. No Evidence that Environmental Impacts Could not be Mitigated to Acceptable Levels with the Conditions of Approval proposed by Staff

As noted in the staff report and environmental document, it was found that the originally recommended mitigation measures and associated conditions of approval would reduce transportation impacts to less than significant levels. This included closure of the US 101 median barrier at the North State Street/Uva Drive intersection. The Planning Commission Resolution does not assert that those mitigation measures and conditions of approval originally recommended by staff would not be sufficient to mitigate impacts. Rather, the resolution found that the closure of the US Route 101 median at the North State Street/Uva Drive intersection was necessary mitigation to reduce potentially significant transportation safety impacts. The Planning Commission then determined that the closure of that intersection would be a detriment to the general welfare.

In addition, staff notes that this aspect of the appeal appears to contradict the last aspect discussed below. While the appellant here appears to be asserting that the evidence shows environmental impacts can be mitigated to acceptable levels with the conditions of approval proposed by staff, the next aspect of the appeal challenges the constitutionality of one of the proposed mitigation measures.

4. The Proposed Freeway Conditions are Exactions as defined in *Dolan v. City of Tigard*

At the Planning Commission hearing, the applicant made a general assertion that the cost of the mitigation measures related to the traffic impacts of the proposed project, which include the closure of the US Route 101 median at the North State Street/Uva Drive intersection, as well as expanded acceleration and deceleration lanes on northbound US Route 101 at the North State Street intersection, constituted an exaction.

Conditions of approval and mitigation measures cannot violate state or federal constitutional standards. The first limitation is that there be a reasonable relationship or nexus between the project's impacts and the condition imposed by the agency. The second limitation is that the condition bear a reasonable relationship to the burden created by the development. The United States Supreme Court case of *Dolan v. City of Tigard* case referred to by the applicant adopted a rough proportionality standard for the relationship between the project's impacts and the requirement imposed by the agency. An agency may not impose requirements on a developer that would exceed the extent of the development's own impact. No precise mathematical calculation is required, but there does need to be an individualized determination that the required action is related both in nature and extent to the impact of the proposed development. As put another way, there must be rough proportionality between the property the government demands and the social costs of the applicant's proposal.

The nexus between the closure of the US Route 101 median and the approval of the proposed project is clear. The project is anticipated to increase traffic volumes in and around the North State Street/Uva Drive intersection with US Route 101, and the California Department of Transportation's analysis of traffic studies completed to date is that the project will increase the number of cars crossing at said intersection, creating a higher probability of collisions in the future that, given prevailing freeway speeds, will run the risk of being a high-severity or fatal collision.

The applicant has presented no evidence that specifically shows how the closure of the median at the North State Street/Uva Drive interchange is not reasonably related to the proposed project. At the Planning Commission hearing, Ernie Wipf from Wipf Construction gave comments that were directed at the cost of the northbound US Route 101 acceleration and deceleration lanes at North State Street. Those improvements were recommended by the applicant's own traffic study and relate to separate safety concerns than the proposed median closure.

In contrast, the requested improvement is directly related to the increase in traffic and vehicular crossings of US Route 101 at the North State Street/Uva Drive intersection. Testimony from engineering staff of the California Department of Transportation stated their concerns regarding the increased potential for high speed collisions directly as a result of this development. The requirement is based on the traffic demands caused by this particular project and not potential cumulative impacts from other potential development. For this project, the social costs of the applicant's proposal of a likely increase in very serious traffic collisions is supported by public comment and expert input from the California

ATTACHMENT M

Department of Transportation. Given this potential outcome, there appears to be rough proportionality between the cost of the mitigation measure and the social costs of the proposal.

Issues to Consider in order to Grant or Uphold the Appeal

Pursuant to MCC Section 20.196.020, the following findings must be made in order to grant a use permit:

- (A) That the establishment, maintenance or operation of a use or building applied for is in conformity to the General Plan;
- (B) That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided;
- (C) That such use will not, under the circumstances of that particular case, constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county; provided, that if any proposed building or use is necessary for the public health, safety or general welfare, the finding shall be to that effect;
- (D) That such use preserves the integrity of the zoning district.

In this instance, the Planning Commission denied the permit application as it determined that finding (C) could not be made for the reasons stated in its resolution. In order for the Board to grant the appeal and approve the project, the applicant must show that substantial evidence exists to support the County making not only finding (C) but the other findings as well.

Should the Board of Supervisors desire additional review of certain issues raised by the project, including the purported exactions claim or CEQA concerns or even modifications to the proposed project, staff would recommend either continuing the item to a later date or remanding the project to the Planning Commission for further consideration. Similarly, should the Board disagree with the Planning Commission's denial and desire to approve the project, but considers modifications to the project design, mitigation measures or conditions of approval, staff would request that the Board give direction to staff and then continue or remand the item to allow time for evaluation of any modifications pursuant to CEQA. In either case, staff would likely need to revise or augment the administrative record in order to clearly support the action of the Board.

RECOMMENDED ACTION: Adopt a resolution denying the appeal and upholding the Planning Commission's denial of Minor Use Permit and Variance (U_2021-0016/V_2021-0005) to establish and operate a gas station with ten (10) gas pumps, two (2) separate illuminated canopies, twenty-eight (28) new parking spaces, landscaping, conversion of part of an existing structure to a convenience store, and concurrent variance for a sixty-five (65) foot tall business identification sign, increase in the allowable sign area, and to reduce the front yard setback; located at 9621 and 9601 North State Street, Redwood Valley; APNs: 162-100-58 and 162-100-59; and authorize Chair to sign same.

ATTACHMENTS:

- A. Resolution No. PC_2024-0001
- B. U_2021-0016 & V_2021-0005 PC Draft Denial Resolution
- C. U_2021-0016 & V_2021-0005 Planning Appeal
- D. 12/07/23 PC Notice, Staff Report, & Attachments
- E. 12/07/23 PC Initial Study/Mitigated Negative Declaration
- F. 01/04/24 PC Public Comments Combined
- G. 12/07/23 PC Public Comments Combined
- H. 12/07/23 Staff Memo to PC
- I. U_2021-0016 & V_2021-0005 Transportation Impact Study
- J. December 7, 2023 Planning Commission Minutes
- K. January 4, 2024 Planning Commission Draft Minutes