

**TO:** Andrew P. Powers, City Manager

**FROM:** Mark A. Towne, Community Development Director

**DATE:** September 10, 2019

**SUBJECT:** **Appeal of Planning Commission Decision Denying a Proposed Service Station and Convenience Store (SUP 2019-70299)**

**RECOMMENDATION:**

Adopt resolution to deny the appeal, thereby upholding the decision of the Planning Commission to deny the proposed service station and convenience store on property located at 2198 North Moorpark Road.

**FINANCIAL IMPACT:**

**No Additional Funding Requested.** The appeal filing fee and original application deposit paid by the appellant offset the costs associated with processing this appeal.

**BACKGROUND:**

This appeal was submitted on July 18, 2019 (Attachment #1).

The subject property is located at 2198 North Moorpark Road and is bounded by three streets; Moorpark Road to the west, Avenida de las Flores to the north, and Calle Jazmin to the east. The site is vacant but was formerly the site of a service station constructed in 1970. The service station was the sole use of the site until it was demolished in 2005. The property has been vacant since then. The property is zoned C-1 (Neighborhood Commercial).

On April 1, 2019, the Planning Commission considered Special Use Permit (SUP) 2018-70220, a previous request by Megdal Thousand Oaks, LLC for a 24-hour service station and convenience store (7-Eleven) at the subject site. The Planning Commission denied that request without prejudice. By denying without prejudice, the applicant had the right to reapply for the same or a similar project within six months. Staff had recommended that the Planning Commission deny the project.

On April 8, 2019, Megdal Thousand Oaks, LLC, submitted a new SUP application (SUP 2019-70299) with changes as summarized in Table 1 below.

Table 1: Comparison of Projects Recently Presented to Planning Commission

Project as presented to Planning Commission on April 1, 2019	Project as presented to Planning Commission on July 8, 2019
24-hour daily operation, every day	21-hour operation (5:00 a.m. to 2:00 a.m.), every day
No tobacco, vape, or alcohol products	No vape or alcohol products
Lot size 19,943 s.f.	Lot size 20,043 s.f.
300' community outreach mailing by applicant	500' community outreach mailing by applicant

On July 8, 2019, the Planning Commission considered the revised request (Attachment #2), and denied the application, based on the findings described in Attachment #3. Staff had recommended that the Planning Commission deny the project. In an abundance of caution, staff provided the Planning Commission a draft set of suggested conditions that would be analyzed and discussed in more detail if the Planning Commission moved to approve the project. One of the applicant's statements in the appeal refers to specific suggested conditions, including recommended hours of operation. However, reference to these conditions is moot because the Planning Commission moved to deny the project.

**DISCUSSION/ANALYSIS:**

**Planning Commission Findings for Denial**

The Planning Commission's findings for denial at its July 8, 2019 hearing are as follows:

1. *The project does not comply with all applicable laws, regulations and policies, including the Thousand Oaks Municipal Code for the following reasons:*
  - *A setback deviation near residential is necessary to accommodate the proposed convenience store building, and*
  - *The 21-hour use is inconsistent with the Service Station Design Criteria (Resolution 72-337) which recommends limited hours of operation for stations within 200 feet of residential property. The subject site is 60 feet from a single-family residential property.*
2. *The project will be detrimental to the public health, safety or general welfare because of the proposed 21-hour operation and proximity to residential dwellings. The hours of operation will create adverse impacts resulting from outdoor commercial activities, such as noise from fueling vehicles and truck deliveries, and potential light pollution which conflicts with the sensitive uses*

*nearby. Additionally, the 21-hour operation will create related noise from patrons and employees that is not compatible with the nearby residential area.*

3. *The proposed convenience store, with its close proximity to a high school, will attract students to the site, thereby creating site conflicts and potential safety issues due to the potential volume of pedestrians and vehicles visiting the site at the same time.*

### **Grounds for Appeal and Staff Responses**

The applicant's appeal is organized into three parts (Introduction, Grounds of Appeal I, and Grounds of Appeal II). Five subsections follow each of the Grounds of Appeal. The grounds of appeal do not directly correspond to the Planning Commission's findings for denial on a point-by-point basis.

The reader is referred to Attachment #1 for the specific appeal narrative. Following are staff's responses to the appeal, in the order presented by the appellant.

#### **Introduction:**

*Staff Response:*

- a) The Introduction incorrectly refers to the 1967 Service Stations Design Criteria Regulations as the applicable standards. In fact, the 1967 guidelines (Resolution 67-133) were the first iteration of Service Station Design Criteria and have been amended several times. City Council Resolution 72-337, which was adopted by City Council in 1972, is the most recent and applicable Service Station Design Criteria, and has been applied by staff consistently in the evaluation of the proposed projects for the subject property.
- b) The Introduction incorrectly refers to the Service Stations Design Criteria Regulations as "binding code." Resolution 72-337 establishes policy guidelines for review of new or modified service stations, but is not codified as part of the Thousand Oaks Municipal Code.

**Grounds of Appeal I:** The Planning Commission's Ostensible Grounds for Denying the SUP Were Not Supported by Substantial Evidence.

Staff Response to Subsection I(1):

- a) Comments by a Planning Commissioner do not constitute a finding for denial of a proposed project. The findings for denial are those contained in PC Resolution No. 10-2019 PC (Attachment #3).
- b) The C-1 zone contains a setback standard of 100 feet from the centerline of adjacent streets. The applicant incorrectly states that “...a 100-foot setback from Moorpark Road would render the lot unbuildable because it is only 90 feet wide.” In fact, the proposed convenience store location meets the 100 feet setback from the centerlines of Moorpark Road and Avenida de las Flores, but requires a setback waiver from the centerline of Calle Jazmin.
- c) Staff concurs that a strict application of the 100 feet setback requirement from the centerline of all adjacent streets would render development of the property infeasible, and therefore a waiver of this standard is reasonable in this case. This was acknowledged in the two staff reports to the Planning Commission. Staff and the Planning Commission were concerned, however, that the proposed convenience store location is located approximately 40 feet from the centerline of Calle Jazmin, which is a residential street. The first part of Finding for Denial #1 therefore states that “A setback deviation near residential is necessary to accommodate the proposed convenience store building,...”.
- d) Staff concurs that a waiver of City-adopted hours of operation standards is being requested by the appellant. This has been a primary point of concern for staff and the Planning Commission, as expressed in the second part of Finding for Denial #1 and Finding for Denial #2.

Recommended hours of operation for service stations and ancillary uses are contained in Resolution 72-337. For service stations located within 200 feet of residential property (in this case the service station is 60 feet from residential property), the hours of operation for a service station are “...the station shall not conduct operations between the hours of 11:00 p.m. and 6:00 a.m. The conditions may further stipulate that all business activities except supply of vehicles with gasoline and oil and emergency repair shall be confined to hours between 7:00 a.m. and 9:00 p.m. on weekdays and 10:00 a.m. and 8:00 p.m. on Sundays.” Thus, the City’s recommended hours of operation comprise 17 hours per day for a service station, and 14 hours per day for ancillary activities such as the convenience store.

The original proposal requested 24-hour operation, every day, which was denied by Planning Commission on April 1, 2019. The current request seeks operating hours from 5:00 a.m. to 2:00 a.m. (21 hours), every day. This conflicts with the hours of operation recommended by Resolution 72-337), and therefore the second part of Finding for Denial #2 states that “*The 21-hour use is inconsistent with the Service Station Design Criteria (Resolution 72-337) which recommends limited hours of operation for stations within 200 feet of residential property. The subject site is 60 feet from a single-family residential property.*”

- e) Metal roofing was not a finding for denial, nor a waiver. A decision on the material finishes of the building can be made by the Planning Commission based on the City’s Architectural Design Guidelines and the intent and standards applicable to the C-1 zone. In this case, staff is recommending a concrete slate or “S”-tile roof that is compatible with adjacent commercial buildings. The applicant would like to install a metal roof.

Staff Response to Subsection I(2):

- a) The Planning Commission and staff determined that the proposed hours of operation are not appropriate for this project due to its proximity to a residential area. See Finding for Denial #2 and Staff Response 1(d) above. The Commission did not base its decision on the potential viability of a gas station, nor on the difference in proposed hours between the original and revised project proposals. As noted in Staff Response 1(a) above, a comment by a Planning Commissioner does not necessarily constitute a finding for denial of a proposed project but are consistent with the findings adopted. The findings for denial are those contained in PC Resolution No. 10-2019 PC (Attachment #3).

Staff Response to Subsection I(3):

- a) The proposal will remove two existing driveway locations on Moorpark Road and Calle Jazmin. Access will be provided by modifications to two other existing driveways - one on Moorpark Road and the other on Avenida de las Flores.

During review of the current application, staff determined that due to safety concerns, the driveway on Avenida de las Flores should be restricted to right-in/right-out only. The applicant indicated that, if left turns from the driveway on Avenida de las Flores were prohibited, the project would require retaining the Calle Jazmin driveway for ingress/egress purposes.

However, due to the proximity of the existing driveway on Calle Jazmin to the intersection, the location cannot be retained since it does not meet current engineering best practices for commercial driveways near intersections.

As described above, the location and design of the proposed driveways is based on a technical evaluation by staff in the Public Works Department, and is not based on “argument, speculation, [and] unsubstantiated opinion.” Furthermore, driveway location and design are not a Finding of Denial for this project.

Staff Response to Subsection I(4):

- a) Please see Staff Response 1(e) above regarding the proposed metal roof on the convenience store.
- b) The applicant indicates that they submitted “code” evidencing that the metal roof was not in conflict with code, and was not a waiver. As noted in Staff Response 1(e) above, the document being referenced is the City’s Architectural Design Guidelines, not code, and is a policy used to evaluate proposed projects.

Staff Response to Subsection I(5):

- a) Please see Staff Response 1(e) above regarding the proposed metal roof on the convenience store.
- b) The applicant is correct in that the Planning Commission could condition the project to include a slate roof, as recommended by staff.

**Grounds of Appeal II:** The Staff Report demonstrated prejudice and bias against the Project, imposing conditions and conclusions of non-compatibility in direct conflict with the binding code prescribed in the 1967 Service Station Criteria Regulations (Design Criteria), impairing the Applicant’s due process rights.

- a) Please see Staff Responses (a) and (b) to the appellant’s Introduction above, with regard to the Service Station Criteria Regulations.

Staff Response to Subsection II(1):

- a) The applicant references a suggested condition of approval relating to a different application (SUP 2018-70220), which was denied by the Planning

Commission on April 1, 2019. This previous request is not the subject of the current appeal.

The hours of operation standards contained in the Service Station Design Criteria do not require a “finding of unacceptable noise” for the City to apply specified hours of operation. The guidelines explicitly state, in part, “...*it is found mandatory to limit hours of operation that will normally be imposed in connection with special use permits for sites in close proximity to residential areas...and within 200 feet of residential property, a condition may be imposed stating that the station shall not conduct operation between the hours of 11:00 p.m. and 6:00 a.m....conditions may further stipulate that all business activities except supply vehicles with gasoline and oil and emergency repair shall be confined to hours between 7:00 a.m. and 9:00 p.m. on weekdays and 10:00 a.m. and 8:00 p.m. on Sundays.*”

- b) Should City Council opt to approve the project, staff is recommending hours of operation of 6:00 a.m. to 11:00 p.m. for the fuel dispensers and 6:00 a.m. to 9:00 p.m. for the convenience store, with no restrictions on Sundays. Thus, staff’s suggested hours of operation for the fuel dispensers are consistent with the Service Station Design Criteria, while staff’s suggested hours for the convenience store allow for a slightly greater range than those suggested by the Design Criteria, consistent with nearby commercial uses (9:00 p.m. close).
- c) Staff concurs that the proposed hours of operation from staff for the fuel dispensers (6:00 a.m. to 11:00 p.m.) are similar to those recommended by the Design Criteria, and are similar to those for the service station that previously occupied the site.

Staff Response to Subsection II(2):

- a) The Service Station Design Criteria were established to ensure compatibility with permitted uses in the area. The applicant is correct that the preamble (Purpose and Intent) acknowledges that service stations warrant special consideration because of several prominent elements of design and operation, as described in the applicant’s statement. This preamble also states that the standards “...*are intended to augment some of the zoning district requirements that might otherwise create a hardship for a service station operation, and to minimize any adverse effect on neighboring uses by the application of standards for signs, screening, landscaping, parking, architectural appearance of the service buildings, the location and operating activities.*”

- b) Staff concurs that the guidelines allow for the “Sale of soft drinks, candy, and cigarettes sold via dispenser...[or] within the enclosed service building” and that the C-1 zoning states that a primary tenant in this zone will usually be a supermarket or drugstore, and that the center will serve only the convenience needs, such as food, drugs, hardware, and personal services, of a residential area.
- c) In this case, the Planning Commission did not deny the convenience store, but rather a service station and convenience store project based, in part, on its proximity to sensitive uses, including the nearby high school (see Finding for Denial #3 above). As noted in the staff reports to the Planning Commission, similar concerns arose when the commercial center immediately to the north (2220 North Moorpark Road) was proposed. As a result, that site was limited to passive business uses intended to prevent congregating on the property, which could adversely impact nearby residential properties.

Staff Response to Subsection II(3):

- a) The sale of any product, including cigarettes, is not a Planning Commission finding for denial. Staff is recommending, however, that if the project is approved, that alcohol and vaping products be prohibited. The applicant is not contesting the restrictions on alcohol and e-cigarette sales, however the appellant indicates in this subsection that they do intend to sell cigarettes if approved by City Council.

Staff Response to Subsection II(4):

- a) Please refer to Staff Responses (a) and (b) to Subsection I(1) for an explanation of hours of operation restrictions. The guidelines do not require a “finding of unacceptable noise” to apply specified hours of operation.
- b) A project that is reviewed by the Planning Commission is not “conditioned” by staff. Instead, staff suggests conditions of approval that are consistent with City policy and practices, and the Planning Commission may add, modify, or delete conditions of approval.
- c) The appellant incorrectly states that “*The Planning Staff consistently and unlawfully conditioned both applications with fewer operating hours than the Design Criteria required.*” In fact, as described in Staff Response (b) to Subsection II(1) above, staff’s suggested hours of operation for the fuel pumps (6:00 a.m. to 11:00 p.m.) are exactly as recommended in the Design Criteria, and staff’s suggested hours of operation for the convenience store

(6:00 a.m. to 9:00 p.m. every day) are slightly greater than the Design Criteria standards (7:00 a.m. and 9:00 p.m. on weekdays and 10:00 a.m. and 8:00 p.m. on Sundays), due to the hours of operation of nearby businesses. The condition does not require that the fuel pumps stay open later than the convenience store nor does it prevent an attendant from being on-site.

- d) It should be noted that these staff-recommended hours of operation were provided should the Planning Commission approve the project. Staff's recommendation was to deny the request.
- e) The Domino's operation across Avenida de las Flores, within the shopping center at 2220 North Moorpark Road, was granted limited operation after 9:00 p.m., which is the closing hour limitation for the shopping center, as described by the applicant. The Planning Commission authorized the extended hours and, in doing so, required 6-month reviews to determine if any disturbance resulted. Two 6-month reviews were conducted with both indicating no complaints were received.

Staff Response to Subsection II(5):

- a) The statement refers to an application denied by the Planning Commission on April 1, 2019, which is not part of the appeal.
- b) Staff provided all correspondence received on each application to the Planning Commission. The letter from the Board of the Conejo Valley Unified School District and from Thousand Oaks High School Principal Bergman were referenced and attached to the April 1, 2019 staff report.
- c) The email from Principal Lichtl to Mr. Megdal (dated August 14, 2017) provided in the appeal, was not submitted as part of either application considered by the Planning Commission. The first application (SUP 2018-70220), was filed with the City on April 27, 2018, about 9-months after the date on Principal Lichtl's email.

**CONCLUSION**

The Planning Commission based its decision to deny the request on specific findings contained in Attachment #3. Staff recommends, based on the Planning Commission's findings, that City Council deny the appeal, thereby upholding the Planning Commission's decision, as reflected in the attached City Council Resolution (Attachment #4).

**COUNCIL GOAL COMPLIANCE:**

Meets City Council Goal A:

- A. Provide municipal government leadership which is open and responsive to residents, and is characterized by ethical behavior, stability, promoting public trust, transparency, confidence in the future, and cooperative interaction among civic leaders, residents, business representatives, and staff, while recognizing and respecting legitimate differences of opinion on critical issues facing the City.

**PREPARED BY:** Stephen Kearns, Planning Division Manager

**Attachments:**

- Attachment #1 – Appeal Application/Grounds of Appeal
- Attachment #2 Part A – July 8, 2019 Planning Commission Staff Report – SUP 2019-70299
- Attachment #2 Part B – July 8, 2019 Planning Commission Staff Report – SUP 2019-70299
- Attachment #2 Part C – July 8, 2019 Planning Commission Staff Report – SUP 2019-70299
- Attachment #2 Part D – July 8, 2019 Planning Commission Staff Report – SUP 2019-70299
- Attachment #2 Part E – July 8, 2019 Planning Commission Staff Report – SUP 2019-70299
- Attachment #2 Part F – July 8, 2019 Planning Commission Staff Report – SUP 2019-70299
- Attachment #2 Part G – July 8, 2019 Planning Commission Staff Report – SUP 2019-70299
- Attachment #3 – PC Resolution for Denial of SUP 2019-70299
- Attachment #4 – City Council Resolution Denying Appeal