

CITY OF OAKLAND
COUNCIL AGENDA REPORT

TO: Office of the City Manager
ATTN: Robert C. Bobb
FROM: Community and Economic Development Agency
DATE: April 24, 2001

RE: APPEAL OF PLANNING COMMISSION DENIAL FOR THE OPERATION OF A
GAS STATION, CONVENIENCE MARKET AND CHECK CASHING FACILITY
AT 1532 PERALTA STREET

SUMMARY

On February 21, 2001 the City Planning Commission unanimously denied applications for a Major Variance and Conditional Use Permit to establish a new convenience market and check cashing facility and to re-establish a non-conforming gas station at the southeast corner of 16th and Peralta Streets in West Oakland. The Planning Commission's decision was based on review of the General Plan and Planning Code, public record, staff reports, plans and testimony received at the February 7, 2001 Planning Commission public hearing. The majority of comments received at the public hearing opposed the project citing the inappropriateness of a check cashing and gasoline service facilities, crime, potential for alcohol sales, 24-hour traffic, noise and light intrusion, the existence of similar services and facilities nearby and the neighborhood's desire to enhance the residential character of the area.

On March 2, 2001 the applicant appealed the Planning Commission's denial citing in part the project's compliance with the General Plan, landscape, building and equipment improvements, creation of new jobs and increased tax revenues, unlawful taking of private property, surrounding light industrial uses, community support, willingness to limit hours of operation and that community members and surrounding property owners have no legal or factual basis to object to the project.

FISCAL IMPACTS

Since this application and project does not have any City financial participation, there are no fiscal impacts. The applicant contends the establishment of the project will provide sales tax revenues to the City.

BACKGROUND

On October 20, 2000, the Planning Division received an application for Major Variance, Minor Conditional Use Permit and Design Review for the proposed project. The applicant proposes the demolition of an existing non-conforming gas station and construction of a new gas station, convenience market and check cashing facility.

On January 30, 2001, the applicant sponsored a community meeting to present the project and receive comments from the neighborhood. The majority of comments received opposed the project citing concerns and objection relating to safety, the inappropriateness of a check cashing facility, potential for alcohol sales, 24 hour light and noise intrusions, and the neighborhood's desire to enhance the residential character of the neighborhood.

On February 7, 2001, the Planning Commission held a public hearing to review the proposed project. At that time, the Commission reviewed the staff report and plans (See Attachment A), letters and the petition opposed to the project (See Attachment E), and received testimony on the project. The majority of comments received at the public hearing opposed the project. At the conclusion of the public hearing, the Planning Commission unanimously agreed that the proposed facility would not forward goals of the General Plan and was not consistent with the intent of the residential zoning. The Planning Commission continued the item to the February 21, 2001 consent calendar and directed staff to prepare findings for denial.

On February 21, 2001 the Planning Commission unanimously voted to deny the application (See Staff Report and Findings for Denial - Attachment B).

On March 2, 2001 the applicant appealed the Planning Commissions denial (See Appeal Letter - Attachment C).

APPEAL OF THE PLANNING COMMISSION DECISION

The applicant has filed an appeal of the Planning Commission's denial. A copy of the appeal is attached to this report. The following discussion summarizes the basis of the appeal and includes a staff response to each point.

A. The project complies with General Use Permit criteria contained in Section 17.134.050 because it will not adversely affect the livability or appropriate development of the abutting properties and the surrounding neighborhood; the project complies with setback, height and coverage limitations; the design of the new building and landscaping will benefit the surrounding neighborhood; traffic generated at the site can be accommodated by existing streets; increase in number of pumps from three to six has no adverse effect on the neighborhood; and new underground gasoline tanks will be double-lined, and the facility will be state-of-the art and safe.

Staff Response: The Planning Commission found that the location, size, and operating characteristics of the proposed facility would not be compatible with and would adversely impact the livability and appropriate development of the abutting properties and surrounding neighborhood. The proposed gas station, convenience market and check cashing facility is not consistent with residential zoning of the site nor is it consistent with the intent and desired character of the Mixed Housing Type Residential General Plan Classification. The proposed project is not compatible with and would not strengthen or enhance the residential character of the area. Expanding gasoline services and adding a convenience market and check cashing facility would be detrimental to the stability, appearance and quite residential character that creates a quality neighborhood.

B. The services provided are not readily available in the immediate community, no alcohol is proposed and the owner will incur all expenses to meet federal, state and local laws relating to gas station operations. Applicant cites abandoned gas stations throughout the community that have closed due to cost of necessary underground tank upgrades.

Staff Response: The Planning Commission received information and testimony from community members that the proposed services are readily available in the immediate vicinity of the project site. A map was submitted to the Planning Commission by the neighborhood identifying the location of existing gas stations and convenience markets in the area (See Attachment D).

C. The project will create 14 new jobs and increased sales tax revenues.

Staff Response: The revenue aspects of potential employment and sales tax revenues are not land use issues and do not off-set adverse impacts associated with the proposed facility.

D. The project conforms to all applicable design review criteria, surrounding buildings are blighted, zoning allows for mixed use and that there are no other gas stations in the area that have modern improvements and state-of-the-art safety features.

Staff Response: The Planning Commission found that the proposed facility does not achieve or maintain a group of facilities that are well related to one another, and does not harmonize with the desired neighborhood character. The Commission received comments that the previously existing gas station may have been viable in the past but is no longer viable as a gas station since the damaged Cypress Freeway was removed. Other testimony received indicated that on-going community and neighborhood efforts have improved the residential character of the neighborhood and that these efforts would be compromised by the proposed project.

E. The project only requires minor conditional use permit to re-establish prior non-conforming use; new facility will not require additional building coverage; and the failure to approve project constitutes an unlawful taking.

Staff Response: In this case and pursuant to Section 17.134.040(B)(1) Procedures for minor Conditional Use Permits, the application has been referred by the Zoning Administrator to Planning Commission for decision because it is controversial and involves policy issues related to the re-establishment of non-conforming uses. Therefore the process requires a Major Conditional Use Permit with a final decision by the Planning Commission. Denial of the proposed gas station, convenience market and check cashing facility does not constitute a taking since there are variety of alternative uses that could be accommodated on the site.

F. A variance is not required to approve the convenience market. There are no gas stations in the immediate area which have been modernized and that this project would benefit the neighborhood.

Staff Response: As stated in the February 7, 2001 Planning Commission Staff Report in the General Plan Analysis and Zoning Compliance sections, review and approval of a major variance is required to establish the proposed convenience market at this site which is zoned R-36 Small Lot Residential and is within the Mixed Housing Type Residential General Plan Land Use Classification. With regards to other modern gas station facilities in the area, State law requires the removal of all underground storage tanks and the cessation of operations of all stations that have not been upgraded to current standards. The stations that are currently operating have been upgraded.

G. Several properties in this district have been abandoned neglected and are in disrepair. This project would be actively managed and will re-vitalize the area.

Staff Response: The maintenance and appearance of buildings surrounding the project site or the management of the proposed facility are not at issue. Issues relate to compatibility and consistency of the proposed land use with applicable codes and policies and to the surrounding area. In this case, the Planning Commission found that the proposed facility was not consistent with applicable General Plan and Zoning policies and regulations and that the project would not be compatible with or enhance the desired residential character of the surrounding neighborhood.

H. The State and Alameda County have exclusive jurisdiction in overseeing underground tank removal. An applicant who has complied with laws and who has obtained site remediation certificates has a vested right to re-open the prior existing gas station. Planning Commission has no authority to impede this state law.

Staff Response: The City of Oakland Fire Services Agency, Hazardous Materials Section, oversees underground tank removals in the city limits. Compliance with federal, state and local codes pertaining to underground tank removal and site remediation does not vest land use rights. As stated in the February 7, 2001 staff report, the gas station has been non-conforming since 1978 and had ceased operation for over one year at the time of application, therefore the project is subject to the discretionary conditional use permit process pursuant to Section 17.114.050(A), Non-Conforming Activity, and does not have a vested right to re-open.

I. Signs, including “No loitering”, “No littering”, etc., will be posted on site. Crime has been reduced nationwide and application can not be denied based on speculation.

Staff Response: The applicant’s willingness to post such notices on the project site is not an issue. Findings for denial contained in the February 21, 2001 staff report cite the potential for lessened neighborhood security and nuisance activities associated with the proposed convenience market and check cashing facility. The Planning Commission did receive testimony expressing concern and a newspaper article citing a specific recent incident of crime in the neighborhood associated with a nearby convenience market and liquor store.

J. Members of the public and owners of neighboring property have no legal or factual basis to object to the project.

Staff Response: The purpose of a public hearing is to provide members of the community and surrounding property owners the opportunity and ability to review and comment on land use proposals. The Planning Commission’s decision was based on review of the General Plan goals and policies, the Planning Code, the project plans and operating characteristics, and including but not solely reliant on public testimony.

K. If approved, the project will not adversely affect the neighborhood because the applicant is willing to limit hours of operation of the gas station and other commercial activities to 6 a.m. to midnight.

Staff Response: Hours of operations was one, but was not the only operating characteristic that was considered in the Planning Commission review. The Planning Commission reviewed potential impacts and benefits of the proposed project as identified in the February 7, 2001 staff report and concluded that the proposed facility was not consistent with General Plan and Zoning regulations and would be detrimental to the safety and residential character of the neighborhood.

L. There is significant community support of the project as evidenced by the petition with approximately 300 signatures presented at Planning Commission.

Staff Response: A petition in support of the project was referred to and was submitted following the February 21, 2001 Planning Commission hearing. The petition is attached to this report (See Attachment F). It contains approximately 74 signatures. The Planning Commission

also received and reviewed a petition, as well as individual letters, opposing the project (See Attachment E).

ACTION REQUESTED OF THE CITY COUNCIL

The Planning Commission recommends that the City Council open the public hearing, take testimony, close the public hearing and direct the City Attorney to prepare a resolution that denies the appeal and upholds the Planning Commission's denial of the proposed project.

Respectfully submitted,

WILLIAM E. CLAGGETT
CEDA Agency Director

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**APPROVED AND FORWARDED TO
THE OAKLAND CITY COUNCIL**

OFFICE OF THE CITY MANAGER

Attachments:

- A. February 7, 2001 Planning Commission Staff Report
- B. February 21, 2001 Planning Commission Staff Report
- C. March 2, 2001 Appeal letter
- D. Map of gas stations & convenience markets in vicinity of project site
- E. Letters and petition opposing the proposed development
- F. Petition in support of the proposed project.