



CITY COUNCIL AGENDA STATEMENT



September 18, 2018

File ID: 18-0311

TITLE

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DENYING THE APPEAL BY ROD BISHARAT AND AFFIRMING THE PLANNING COMMISSION'S APPROVAL OF DESIGN REVIEW PERMIT DR15-0037 AND CONDITIONAL USE PERMIT CUP15-0023 TO CONSTRUCT A 2,380 SQUARE-FOOT AUTOMATED CARWASH BUILDING WITH VACUUM STATIONS ON A 0.55 ACRE SITE LOCATED AT 495 TELEGRAPH CANYON ROAD, SUBJECT TO THE CONDITIONS CONTAINED THEREIN

RECOMMENDED ACTION

Council conduct the public hearing and adopt the resolution.

SUMMARY

On December 15, 2015, Gene Cipparone Architect, Inc. (Applicant), submitted a Design Review and Conditional Use Permit application for approval of a 2,380 square-foot automated carwash building with vacuum stations and associated parking and landscaping on a 0.55-acre site located at 495 Telegraph Canyon Road (the "Project"). The DR and CUP were approved by the Planning Commission on January 10, 2018. On January 18, 2018, an Appeal of the Planning Commission's decision was filed by Rod Bisharat (Appellant). The appeal is based on previously stated opposition to the proposed Project due to neighbors' concerns with the Project features. The Appeal contends that (1) the statements and evidence relied upon by the Planning Commission were inaccurate; and (2) the findings of the Planning Commission are not supported by the information provided.

ENVIRONMENTAL REVIEW

The Development Services Director has reviewed the Project for compliance with the California Environmental Quality Act (CEQA) and has determined that the Project qualifies for a categorical exemption pursuant to Section 15332 of the State CEQA Guidelines. Thus, no further environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

At its meeting of January 10, 2018, the Planning Commission voted 4-0-0 to approve the Design Review Permit Resolution and the Conditional Use Permit Resolution to develop the subject Site with the proposed Project with the condition that the "Applicant shall replace the 6-ft. wall with a 9-ft. wall along the northwestern portion of the property."

DISCUSSION

On December 15, 2015, the Applicant, Gene Cipparone Architect, Inc., submitted a Design Review (DR) and Conditional Use Permit (CUP) application for approval of a 2,380 square-foot automated carwash building with vacuum stations with associated parking and landscaping on a 0.55-acre site located at 495 Telegraph Canyon Rd. Currently, the site contains a one-story building with two tenants, an auto repair and dry cleaners. Other uses on the site include a Goodwill drop off bin, can and bottle recycling center, and a food truck (see Locator Map, Attachment 1). All existing structures or uses will be removed from the site.

Pursuant to Chula Vista Municipal Code (CVMC) Section 19.14, a Conditional Use Permit is required for a carwash. Normally, a project such as this would be approved by the Zoning Administrator. However, due to the issues and concerns raised by an adjacent neighbor, per Section 19.14.050 of the Chula Vista Municipal Code, the Zoning Administrator referred the matter to the Planning Commission for review.

On October 4, 2017, as the Project was being reviewed and evaluated by City staff for presentation to the Planning Commission, a letter was received by staff from Procopio, a San Diego land use law firm, on behalf of Judith Wilson, a Chula Vista property owner (the "October Procopio Letter"). The October Procopio Letter contained a series of comments on the Noise Analysis Report. The comments allege that the Project does not comply with the City's Noise regulations, and that certain findings cannot be made by the approving authority. City staff reviewed the letter, and the City's Noise Consultant, Eilar Associates, Inc., prepared a memorandum dated October 13, 2017 responding to the comments in the letter (the "October Eilar Memorandum"). The October Eilar Memorandum and the October Procopio Letter were presented to the Planning Commission at its hearing of January 10, 2018, and were included as Attachment's 4 and 5 of the Planning Commission Staff Report. Staff's and Eilar Associates, Inc. response to the letter demonstrates that all the evidence to support the findings required by the Project approval have been met and made. Furthermore, staff's response shows the Project's consistency with, and implementation of, the vision, objectives and policies of the City's General Plan and consistency with the development regulations and standards of the CVMC.

Between January 4, 2018 and January 9, 2018, prior to the Planning Commission meeting, four letters were submitted to the Planning Commission (see Response Letters to Planning Commission, Attachment 3). One of the letters was from Procopio on behalf of Judith Wilson (the "January Procopio Letter"), and the remaining letters were from Rod Bisharat (the Appellant), Lorna Hardin, and Judith Wilson. The January Procopio Letter again alleged that the Project is inconsistent with the Chula Vista Municipal Code and that the required findings cannot be made. City staff reviewed the letters and the City's Noise Consultant, Eilar Associates, Inc., prepared a second memorandum letter dated January 9, 2018 rebutting the comments in the letter (the "January Eilar Memorandum"). The January Eilar Memorandum stated that the Project is consistent with and implements the vision, objectives and policies of the City's General Plan and is consistent with the development regulations and standards of the Chula Vista Municipal Code.

Staff reviewed and presented the proposed Project to the Planning Commission at its meeting of January 10, 2018 for consideration and recommended approval. As part of the Agenda packet, staff included a memorandum responding to the October Procopio Letter (see Attachment's 4 and 5 of the Planning Commission Agenda Packet). The January Procopio Letter and the January Eilar Memorandum, in addition

to letters received from Rod Bisharat, Lorna Hardin, and Judith Wilson, were provided to the Planning Commission on the dais. The comments in the letters were addressed by staff at the Planning Commission hearing. After considering all the information in the Agenda packet, staff's presentation, and all public testimony, the Planning Commission approved the Project, subject to conditions (see Planning Commission Minutes, Attachment 4).

On January 18, 2018, an Appeal of the Planning Commission's decision was filed by Rod Bisharat (see Attachment 5). The Appeal is based on previously stated opposition to the proposed Project due to neighbors' concerns with the Project features. The Appeal states that there is (1) factual error in accepting Caltrans' letter allowing the new entrance on Telegraph Canyon Road to be an enter/exit driveway; (2) factual error in accepting the County of San Diego's closure letter as evidence of soil at former gas station no longer contaminating the site; (3) findings not supported since no CEQA analysis was done or a traffic study for the impacted intersection of Halecrest Drive and Telegraph Canyon Road; (4) findings not supported since the Planning Commission failed to address, resolve issues, or make findings regarding noise, traffic, driveway entrance/exit, and contaminated soil issues.

Staff reviewed the Appeal and determined that:

- (1) The decision of the Planning Commission was based on an accurate review of the goals, objectives and policies of the City's General Plan and the CVMC, as well as, the evidence presented to support the decision;
- (2) The Planning Commission considered all the information related to the Project, the goals, objectives, and policies of the City's General Plan as well as the provisions of the California Environmental Quality Act. The Appeal does not provide any new reliable information supporting the Appellant's case. The Appeal is based on the same information that was presented by the Appellants to City staff and the Planning Commission at its meeting of January 10, 2018. The information presented to staff and to the Planning Commission does not support denial of the Project; and
- (3) The findings contained in the staff report to the Planning Commission and made by the Planning Commission support approval of the Project. Staff finds that there is no basis for granting of the Appeal, and, therefore, staff concludes that the Appeal should be denied.

The remainder of this staff report describes the subject site and Project, and provides an analysis of the Appeal and staff's detailed response to the Appeal. The detailed analysis of the Project and its consistency with the General Plan including the required findings is also contained in the Planning Commission's agenda packet, which is attached to this staff report and incorporated herein, as well as in the City Council Resolution attached to this Staff Report.

Project Site Characteristics:

The 0.55-acre project site (the “Project Site”) is located in the western portion of Chula Vista. The Project Site contains a one-story building with two tenants, an auto repair and dry cleaners. Other uses on the site include a Goodwill drop off bin, can and bottle recycling center, and a food truck, while the remaining portion of the Project Site is vacant. The Project Site is surrounded by commercial retail to the north, east, and south and an apartment complex is located to the west (Attachment 1, Locator Map).

Summary of Surrounding Land Uses

	General Plan	Zoning	Current Land Use
Site:	Commercial Office, CO	Central Commercial, CCD	Auto Shop/Dry Cleaners
South:	805 Freeway off-ramp	805 Freeway off-ramp	805 Freeway off-ramp
	Residential Medium High	Apartment Residential, R3GP	Multi-Family Condos
North:	Commercial, CO	Commercial Office, COP	Dentist
	Residential RLM	Single Family Residential, R1	Single-Family Homes
East:	Commercial Office, CO	Central Commercial, CCD	Arco Gas Station
West:	805 Freeway	805 Freeway	805 Freeway

Project Description

The proposal includes a one-story 2,380 square-foot automated carwash building with vacuum stations located within the parking lot. The proposed building consists of an 85-ft. carwash tunnel with skylights above and blowers at the end of the carwash tunnel to dry the vehicles. There are also restrooms, vending machines, office space, and equipment room for the carwash. Customers may access the site through two driveways on Halecrest Drive or Telegraph Canyon and loop around to the western portion of the Project Site to the pay stations. Customers will select their desired carwash selection, pay for the carwash, and then proceed to drive their vehicle through the carwash tunnel. Customers do not exit their vehicles. They also have the option to use a vacuum station to vacuum their vehicles. A canopy extending the full length of the parking spaces provides shade for the vacuum stations.

Compliance with Development Standards

The following Project Data Table shows the development regulations along with the Applicant’s proposal to meet said requirements:

Assessor’s Parcel Number:	639-080-68-00
Current Zoning:	Central Commercial (CCD)
General Plan Designation:	Central Office (CO)
Lot Area:	0.55 acres

PARKING REQUIRED: Parking spaces, broken down as follows: Carwash employees: one space for each employees (3) Carwash Vacuum Station One space per vacuum station (12) Total: 15 parking spaces	PARKING PROPOSED: Handicapped= 1 space Regular=14 spaces Total: 15 parking spaces
SETBACKS/HEIGHT REQUIRED: Front: 10 feet Exterior Sides: 10 feet Rear: 0 Height: 45 feet	SETBACKS/HEIGHT PROPOSED: 197 feet 33 & 224 feet 0 feet 28 feet

Appeal:

On Thursday, January 18, 2018, Rod Bisharat submitted an Appeal of the Planning Commission’s January 10, 2018 decision.

Analysis

Staff has reviewed and analyzed the Appeal and offers the following analysis. The Appellant indicates they are appealing “the procedure, actions and approval” of the Project by the Planning Commission because:

- a) Factual error in accepting Caltrans’ letter allowing the new entrance on Telegraph Canyon Road to be an enter/exit driveway;
- b) Factual error in accepting County of San Diego’s closure letter as evidence of soil at former gas station no longer contaminating the site;
- c) Findings not supported since no CEQA analysis was done or a traffic study for the impacted intersection of Halecrest Drive and Telegraph Canyon Road;
- d) Findings not supported since the Planning Commission failed to address, resolve issues, or make findings regarding noise, traffic, driveway entrance/exit, and contaminated soil issues.

Staff’s response to the Appeal is that these statements, as basis for the Appeal, are unsupported and do not represent cause to reverse the Planning Commission’s decision.

The statements are unsupported because the Appellants do not provide any new specific evidence indicating that the statements and findings relied upon by the Planning Commission are inaccurate. Appellant’s Appeal reiterates the information proffered at the Planning Commission hearing. No new information has been provided by the Appellant. Staff’s analysis and all the information presented to the Planning Commission in the agenda packet are accurate and supported by substantial evidence in the record of the Planning Commission’s proceedings as well as being based on the vision, objectives and policies of the City’s 2005 General Plan and the development standards, regulations, and design guidelines contained in the Design Manual. As shown in the attached Planning Commission Agenda Packet (Report, Resolutions, and Attachments), the proposed Project is consistent with the vision, objectives and policies of the General Plan and the regulations of the Chula Vista Municipal Code. The General Plan and the Design

Manual envision the area with commercial uses that contribute to create a vibrant and attractive area. Today, the parcel within the CCD Zone is developed with a retail and automobile repair use. Additionally, the proposed Project has been designed to meet the development standards, regulations and design guidelines of the Design Manual. The Project is also fully compliant with the City Noise Ordinance.

Exhibit A of the Appeal Letter is presented as the “basis or evidence” for the Appeal. Included are documents that were submitted to the City on January 8, 2018. As indicated earlier in this report, the letter from Rod Bisharat was submitted to the Planning Commission the night of the hearing (January 10th) and was considered by the Planning Commission as part of its decision to adopt the Addendum and approve the Project. Exhibit B of the Appeal Letter, reiterates Judith Wilson’s concerns of inadequate noise control from the Project Site and that the findings required for both a CEQA Exemption and the CUP cannot be made without appropriate and effective noise mitigation.

As part of the deliberations at the Planning Commission meeting, City staff addressed the contents of the Appeal letter. Since the responses to the letters submitted to the Planning Commission were delivered verbally by staff at the hearing, staff provides the following written responses for Council’s consideration.

On March 20, 2018, a letter was received by staff from Schwartz Semerdjian, a San Diego land use law firm, on behalf of Rod Bisharat, the Appellant (see Schwartz Semerdjian Letter, Attachment 6). The letter from Schwartz Semerdjian again alleged that the Project does not comply with the California Environmental Quality Act (CEQA), City’s Traffic and Noise regulations. The comments in the letter were previously addressed by staff at the Planning Commission hearing.

Following is a summarized list of issues in the Appeal letter (in italicized font) followed by a staff response as to how that issue was addressed as part of the Project review process. The below responses were provided verbally at the Planning Commission hearing.

Driveway Exit

“Factual error- applicant permitted an exit onto Telegraph Canyon Road. Caltrans/City previously precluded this when new entrance lane onto highway #805 was constructed.”

Upon initial submittal of the Project, staff routed a set of project plans to Caltrans for their review. Caltrans submitted a letter dated March 9, 2016 regarding their review of the Project. On November 16, 2016, the Applicant contacted Caltrans via e-mail, requesting clarification on the right-of-way fence. On March 21, 2017, at staff’s suggestion, the Applicant provided the final plans to Caltrans for their final review. On March 22, 2017, Caltrans responded via e-mail and a letter dated October 3, 2017 (See Caltrans Letter, Attachment 7). Caltrans again stated they had no opposition to the project and showed an exhibit of the driveway and how it met the minimum length of 50-ft. distance from the freeway on-ramp. The exhibit also showed it as being an entrance/exit driveway. At no time during the review process did Caltrans notify staff that this was to be an entrance only driveway.

During the Planning Commission meeting and also in the Appeal letter, Exhibit A, the Appellant stated he contacted Caltrans and was verbally told this should be an entrance only driveway. The Appellant did not

provide a letter from Caltrans to this effect. At the Planning Commission meeting, staff clarified that the driveway is within Caltrans jurisdiction, and if Caltrans wanted it as an entrance only driveway, they have the right to require this, but have yet to inform the City.

After the Planning Commission meeting, staff contacted Caltrans asking for clarification. Caltrans provided a letter dated March 16, 2018 (see Caltrans Response Letter, Attachment7) stating the entrance/exit is sufficient with Caltrans.

Soil Contamination

“Factual error-Commission accepted closure letter as evidence soil at former gas station not contaminated.”

“Findings Not Supported- Planning Commission failed to address, resolve issues, or make findings regarding issues set forth... how handling of on site water would not contribute to off site migration from contaminated soils.”

A Phase 1 Environmental Site Assessment dated March 23, 2016 was prepared by Ninyo & Moore Geotechnical and Environmental Services Consultants. The report noted a gasoline service station, which formerly operated on the Project Site, had two documented unauthorized releases that impacted the soil. In both instances, the County of San Diego opened a case to resolve the issue. The first case was closed in 2002 and the second case in 2004. The contamination was cleaned up on the site to the satisfaction of the County of San Diego. Since that time, no additional contaminants have been found on the site. The Appellant has not provided factual evidence to the contrary.

In an effort to provide further clarification regarding the location of the contaminants on the site, and how the Project will impact the soil, if at all, the Applicant submitted a Soil Management Plan (SMP) dated May 15, 2018 and an Addendum to Soil Management Plan (ASMP) dated June 27, 2018 prepared by CTE, Inc. to the County of San Diego Department of Environmental Health Voluntary Assistance Program (VAP) for review. The County of San Diego requires this report to be submitted for review and approval prior to construction of the Project. The reports describe the reuse and disposal of soils to be excavated on the site during grading. Approximately 550 cubic yards of impacted soil will be generated and either reused on the site (meeting onsite reuse criteria), disposed of at a landfill, or reused as inert soil as determined by the RWQCB Conditional Waiver 10 of the Order R9-2014-0041. Soils meeting hazardous waste criteria will be disposed of at an appropriate facility. A Community Health and Safety Plan (CHSP) was also submitted to the County of San Diego Department of Environmental Health outlining proposed safeguards for the community due to the excavation, stockpiling and loading of soils generated during grading. On July 3, 2018, the SMP, ASMP, and CHSP were approved by the County of San Diego Department of Environmental Health (see County of San Diego Approval Letter, Attachment 8). The Applicant will continue to work with the County of San Diego throughout the grading process to ensure compliance.

Traffic

“Findings Not Supported. No CEQA analysis done. Project permitted without traffic analysis or traffic study at an impacted intersection at Halecrest and Telegraph Canyon Road.”

The Project was analyzed by the City's Traffic Engineer and the determination was made that trips associated with the Project do not result in a significant traffic impact (see Attachment 9, City Traffic Engineer Response Letter).

There were also concerns regarding queuing on Halecrest Drive from vehicles leaving the Project Site. The Appellant assumed this would block motorists from being able to exit the Arco Gas Station to the east. The City's Traffic Engineer explained the timing of the traffic signals and how long each vehicle will be waiting at a signal. The City Traffic Engineer indicated that there will be no issues with the queuing on Halecrest Drive. At maximum capacity, one vehicle will exit the carwash tunnel every minute. Customers will then have the option to use the vacuum stations. At the Planning Commission meeting, the Applicant explained the typical operation at other San Diego carwash locations. Approximately 15-20 vehicles are on-site at once and stay on the site for approximately 15-20 minutes after using the vacuum stations. The peak hours for this Project are from 10:00 a.m. to 4:00 p.m. which does not conflict with the intersections peak traffic times of 6:00 a.m. to 9:00 a.m. and 6:30 p.m. to 7:30 p.m. In accordance with City Staff's suggestion, the Applicant previously agreed to reduce the hours of operation and open at 8:00 a.m. instead of 7:00 a.m., to avoid interfering with rush hour traffic. Therefore, the City's Traffic Engineer does not see this as an issue and believes the Project will not cause queuing issues on Halecrest Drive. (See Attachment 9, City Traffic Engineer Response Letter). The Appellant has not provided factual evidence to the contrary.

Noise

"Findings Not Supported- Planning Commission failed to address, resolve issues, or make findings regarding issues set forth in attached Exhibit A and B."

A Noise Analysis Report dated August 7, 2017, by HMMH was prepared to assess the potential noise impacts of the Project. The proposed carwash building is to be constructed along the rear property line. The carwash driers within the carwash tunnel are located along the eastern property line, furthest away from the single-family residential homes. A 6 ft. and 12-ft. solid wall will be provided along the property line as a project feature. The Noise Analysis Report found that the proposed carwash will be consistent with the City of Chula Vista Noise Standards.

Several vacuum stations will be provided within the parking lot area for customers to use under a canopy. The mechanical equipment for the vacuum stations will be located within the carwash building and fully enclosed.

Per the Project's Conditions of Approval, no activity shall occur past 8:00 p.m. on the Project Site. Therefore, the carwash and vacuum stations will not exceed the nighttime noise standard for adjacent residential or commercial uses. Hours of operation for the carwash will be from 8:00 a.m.-8:00 p.m., seven days a week.

On October 4, 2017, a letter was received from Procopio, representing an adjacent neighbor, requesting revisions to the Noise Analysis Report (Attachment 5 of the Planning Commission Agenda Packet). After review of their concerns, the City's Third-Party Noise Consultant, Eilar Associates, Inc., provided a response memorandum (Attachment 4 of the Planning Commission Agenda Packet) indicating the acoustical report

prepared by HMMH was adequate. Therefore, no further revisions of the Noise Analysis Report are required.

On January 4, 2018, another letter was received from Procopio, representing an adjacent neighbor, requesting revisions to the Noise Analysis Report. Upon review of their concerns, the City's Third-Party Noise Consultant, Eilar Associates, Inc., provided a second response memorandum, again indicating the acoustical report prepared by HMMH was adequate and rebutting the assertions contained in Procopio's letters. The two letters and the City's Third Party Noise Consultant responses were provided to the Planning Commissioners at the hearing. The Appellant has not provided any factual evidence to the contrary.

Conclusion

The Project will provide new investment and site improvements that will contribute to, revitalize and enhance the Project Site and the neighborhood. The Project's central location in the City and along one of the City's major corridors will provide convenient access for residents to obtain a service in close proximity.

The Project Site will be developed with a quality project that is consistent with the vision, objectives and policies of the General Plan. The Project has been designed to meet the development regulations and design guidelines of the Design Manual. Regarding the driveway exit, soil contamination, traffic, and noise, the Project has met the City's requirements.

Staff has reviewed and analyzed the Appeal and has determined that the Appeal has no merit and should be denied based on the following:

- 1) The decision of the Planning Commission was based on an accurate interpretation of the goals, objectives and policies of the City's General Plan, Design Manual, and the CVMC.
- 2) The Planning Commission considered all the information and testimony related to the Project, the goals, objectives, and policies of the City's General Plan, Design Manual, and the Chula Vista Municipal Code, as well as the provisions of the California Environmental Quality Act. The Appeal does not provide any new reliable information supporting the Appellant's case.
- 3) The findings contained in the Staff Report to the Planning Commission and made by the Planning Commission, attached hereto and incorporated herein, fully support approval of the Project.

Based on this conclusion and all the information contained in this Staff Report, City Council Resolution and Attachments, as well as the Planning Commission Staff Report, Planning Commission Resolutions and Attachments, all incorporated herein by this reference, staff finds that there is no basis for granting of the Appeal, and, therefore, staff concludes that the Appeal should be denied. Staff recommends that the City Council adopt the Resolution presented with this Staff Report and deny the Appeal and affirm the Planning Commission decision to approve the Project.

DECISION-MAKER CONFLICT

No Property within 500 feet

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 500 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financial conflict of interest under California Code of Regulations Title 2, section 18702.2(a)(11), for purposes of the Political Reform Act (Cal. Gov't Code §87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The Project implements the Economic Vitality, Healthy Community, Strong and Secure Neighborhoods, and Connected Community Strategic goals because the Project represents an investment in the construction of a commercial building and all its infrastructure; the construction of the Project will provide an automated carwash facility; the Project also contributes to the City's Strategic Goals by providing construction of a development project that is consistent with the goals and objectives of the City's General Plan and the development standards of the City of Chula Vista Municipal Code in a manner that ensures public health and safety of the community.

CURRENT-YEAR FISCAL IMPACT

All costs associated with processing the Project, including the Appeal, are borne by the Applicant, resulting in no net impact to the General Fund or Development Services Fund. The Appellant paid the required filing fee for the Appeal. Costs associated with the processing of future implementing permits, will also be recovered by permit and processing fees.

ONGOING FISCAL IMPACT

There is no ongoing fiscal impact to the City as a result of this action.

ATTACHMENTS

1. Locator Map
2. Planning Commission Agenda Packet
3. Response Letters to Planning Commission
4. Planning Commission Minutes
5. Appeal from Rod Bisharat
6. Schwartz Semerdjian Letter
7. Caltrans Response Letter
8. County of San Diego Approval Letter
9. City Traffic Engineer Response Letter

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