



CITY COUNCIL AGENDA REPORT

MEETING DATE: FEBRUARY 7, 2005

ITEM NUMBER:

SUBJECT: APPEAL OF CONDITIONAL USE PERMIT PA-04-21
1045 EL CAMINO DRIVE

DATE: JANUARY 19, 2005

FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: WENDY SHIH, ASSOCIATE PLANNER

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER
(714) 754-5136

RECOMMENDATION:

Continue the subject appeal hearing to City Council's meeting on May 2, 2005.

BACKGROUND:

In 1964, Conditional Use Permit C-254 (CUP) was approved to allow a service station with gasoline sales and automotive repair to operate on the subject property in Mesa del Mar. Approximately one year ago, the gasoline pumps and storage tanks were removed and the business converted to solely automotive repair. After receiving complaints regarding the repair business, staff reviewed the original user permit and determined that an amendment is required to reflect the conversion and allow continued operation.

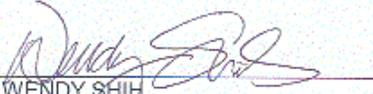
The business owner filed the CUP amendment and at their July 26, 2004, meeting, Planning Commission denied the request finding that the change to automotive repair increased the property's non-conformity. (The property was rezoned from C1 [local business district] to R2-MD [multiple-family residential] in 2001.) The applicant appealed that decision to City Council.

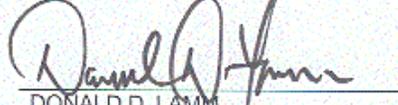
The appeal was originally scheduled for the September 7, 2004, City Council meeting. However, former Council Member Scheafer abstained due to a business conflict of interest. After several failed motions, the use permit hearing was continued to the October 18, 2004, City Council meeting. At your October 18, 2004, meeting, the applicant requested a continuance to allow time for the business owner and underlying property owner to meet and possibly resolve the situation. City Council granted a continuance to your February 7, 2005 meeting.

ANALYSIS:

Attached to this transmittal report is another continuation request from the applicant's legal counsel. The applicant/appellant requests "at least" a 90-day continuance of their appeal since there is apparently significant progress being made towards termination of the service station's lease. Since termination of the lease and service station closure would negate the need to proceed with the subject appeal hearing, staff recommends a "maximum" 90-day continuance be granted.

Should Council need additional background information, the original Planning Commission and City Council staff reports are attached for your review.


WENDY SHIH
Associate Planner


DONALD D. LAMM
Deputy City Mg./Dev. Svs. Director

DISTRIBUTION: City Manager
Assistant City Manager
Acting City Attorney
Deputy City Manager-
Development Svs. Dir.
Public Service Director
City Clerk (2)
Staff (4)
File (2)

Carl Reinhart
El Camino Partners
17871 Mitchell, Ste. 100
Irvine, CA 92614

Daniel Carlton
2600 Michelson Dr., Suite 1120
Irvine, CA 92612

ATTACHMENTS: 1 City Council Agenda Report for September 7, 2004
2 Zoning/Location Map
3 Plans
4 Photo Exhibit
5 Draft City Council Resolution
6 Exhibit "A" – Draft Findings
7 Exhibit "B" – Draft Conditions of Approval
8 Appeal Application
9 Minutes of Planning Commission Meeting of July 26, 2004
10 Planning Commission Agenda Report
11 Planning Commission Resolution and Findings
12 Correspondence from Neighbors

File Name: 020705PA0421CONT	Date: 01/28/05	Time: 12:00 p.m.
-----------------------------	----------------	------------------

FACSIMILE
(949) 752-2141

LAW OFFICES OF
DANIEL C. CARLTON
2600 MICHELSON DRIVE, SUITE 1120
IRVINE, CALIFORNIA 92612

TELEPHONE
(949) 757-0707

Legal Assistant
Heather Dorris

January 27, 2005

CITY OF COSTA MESA
Development Services Department
Post Office Box 1200
77 Fair Drive
Costa Mesa, California 92628-1200

ORIGINAL VIA FIRST CLASS MAIL
Copy By Telefax Communication
(714) 754-4856

Attention: Wendy Shih
Associate Planner

Re: Our Client: Akop "Jack" Sakzlyan
Re: 1045 El Camino Drive "Your Neighborhood Service Station"
Appeal of Planning Application PA-04-21

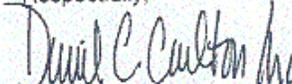
Dear Wendy:

This will confirm our several telephone conversations wherein I indicated that our client and the landlord have agreed to a termination of our client's lease. Although a written termination agreement has been prepared, it has not been executed by the parties at this time. It should be completed within the next two weeks.

In any event, since our client will obviously need time to relocate his business, we are requesting that the City continue the appeal hearing scheduled for February 7, 2005 for at least ⁹⁰ days, at which time we will have a better estimate of how long he will need. Alternatively, we request that any enforcement measures relating to the Planning Commissions decision be postponed until it can be determined exactly when our client will move, not to exceed six (6) months.

Thank you for your anticipated cooperation in this request. I look forward to hearing from you as soon as possible.

Respectfully,


DANIEL C. CARLTON

DCC:hd

cc: Akop "Jack" Sakzlyan (w/out enclosures)

3



CITY COUNCIL AGENDA REPORT

MEETING DATE: SEPTEMBER 7, 2004

ITEM NUMBER:

SUBJECT: APPEAL OF CONDITIONAL USE PERMIT PA-04-21
1045 EL CAMINO DRIVE, COSTA MESA

DATE: AUGUST 26, 2004

FROM: DEVELOPMENT SERVICES DEPARTMENT – PLANNING DIVISION

PRESENTATION BY: WENDY SHIH, ASSOCIATE PLANNER

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER 714-754-5136

RECOMMENDED ACTION

Conduct public hearing and either uphold, reverse, or modify Planning Commission's decision.

BACKGROUND

At their meeting on July 26, 2004, by a vote of 2 to 1 (Bruce Garlich voting no, Katrina Foley abstained, and Eric Bever absent), Planning Commission denied Planning Application PA-04-21 to modify an existing conditional use permit to discontinue the car wash and gasoline sales and to become solely an automotive repair facility at the above address. The Planning Commission felt the change in use is incompatible with other (residential) developments in the same general area and that it is not in conformance with the General Plan designation for the property (Medium Density Residential). Daniel Carlton, representing the business owner as well as the property owner, appealed Planning Commission's decision to deny the application because he believes that there has not been a change or intensification of use on the property.

SITE HISTORY

The property currently contains an automotive repair facility in a former gasoline service station building, and is located adjacent to a neighborhood commercial center, surrounded by El Camino Drive to the north, Mendoza Drive to the west, and Coronado Drive to the south. The properties to the north and south are residentially zoned and developed, the property to the west is commercially zoned and developed, and to the east is a nonconforming commercial center in an R2-MD (Multiple-Family Residential, Medium Density) zone.

In 1964, a conditional use permit (C-254) was approved to allow a service station (gasoline sales and auto repair) on the property. Conditional Use Permit PA-87-204(A) was approved

in 1988 (amendment in 1996), for an expansion of the service station to include an automated car wash facility. In February 2004, the underground tanks, gasoline pumps and canopies were removed. A case closure letter from the County of Orange Health Care Agency was received on February 9, 2004, stating that site remediation had been completed. The car wash facility is also no longer operating.

Since the original conditional use permit (CUP) approved a gasoline service station with incidental automotive repair and car wash, upon learning that gasoline tanks and pumps had been removed, City staff advised the owner that he must either discontinue the use or apply for modification of the CUP. An amendment to the CUP would be necessary to recognize the change in use to auto repair and service only, including smog check and certification. Site design (including number of driveways and amount of landscaping) and conditions of approval are generally different for gasoline service stations than for automotive repair facilities.

The subject site (and adjacent commercial center) was zoned C1 (Local Business District) with a General Plan designation of Neighborhood Commercial. On April 2, 2001, City Council approved a rezone of the properties to R2-MD with a General Plan designation of Medium Density Residential. Therefore, the commercial uses are now nonconforming.

DISCUSSION

According to the Zoning Code (Sec. 13-204), any nonconforming use may be changed to another nonconforming use provided that the change does not expand or intensify the nonconforming use.

As mentioned above, all underground tanks, gasoline pumps and canopies have been removed. The service garage building (approximately 1,500 sq.ft.) will remain unchanged and the former car wash tunnel (approximately 400 sq.ft.) will be used for storage. Since the auto repair building was designed as an incidental use to the gasoline station, staff felt continuation of its use without the gasoline sales and car wash would lessen the impact on nearby residential properties, assuming no significant increase in the intensity of repair services. The applicant states that the majority of his income has always been generated by the auto repair and service portion of the business, and that the "gasoline sales accounted for no more than 25% of the gross profits".

The Planning Commission felt that changing the use to solely auto repair and service constitutes an intensification of use on the property. They believe that elimination of the gasoline sales results in an increase of auto repair services, which would constitute expansion of a nonconforming use.

If the application is approved, staff recommends site improvements to make the development more compatible with the area. There are currently three driveway entrances onto the property; two on El Camino Drive and one on Mendoza Drive. Since the additional circulation and fueling stations required for gasoline sales are no longer needed, staff recommends a condition to remove the driveway closest to the intersection on El Camino Drive and to improve the northwest corner of the property (between the two remaining

driveways) with a minimum of 15 ft. wide landscape planter. A condition is also recommended to provide a total of eight parking spaces (4 spaces/1,000 sq.ft. of building area) to serve the auto repair use. There are currently four parking spaces located on the adjacent property serving this site and one handicap space in front of the building. Approval of this application would be contingent upon the continued availability of the four parking spaces on the adjacent lot unless a total of eight parking spaces can be provided on-site. A site/landscaping/parking improvement plan would be required for Planning staff approval.

FISCAL REVIEW

Fiscal review is not required.

LEGAL REVIEW

Please refer to the confidential memo from the City Attorney's Office provided under separate cover.

ENVIRONMENTAL REVIEW

Pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines, this project is exempt from CEQA.

ALTERNATIVES

The City Council may:

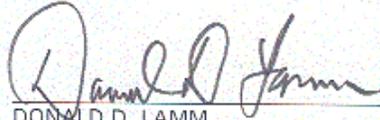
1. Approve modification of the CUP and allow continued operation of the auto repair business, subject to additional conditions,
2. Approve modification of the CUP and allow continued operation of the auto repair business without additional conditions, or
3. Deny modification of the CUP and direct the Planning Commission to schedule a hearing to revoke the existing CUPs.

CONCLUSION

Since the property was rezoned from commercial to residential, the gasoline service station with automotive repair and car wash became legal nonconforming uses. Upon removal of the underground tanks and closure of the car wash tunnel, the gasoline sales and car wash portion of the business lost their legal nonconforming status, which means they cannot be reinstated. Since this left the business with an auto repair use only, it no longer complied with the original CUP. Staff advised the owner that he must either close the business or apply for modification of the CUP. He chose to apply for modification of the CUP, and that is the subject of this report. The Planning Commission voted to deny the requested modification, because they felt continued operation as an auto repair business only would be incompatible with the surrounding residential area.



WENDY SHIH
Associate Planner



DONALD D. LAMM
Deputy City Mgr. – Dev. Svs. Director

Attachments: Zoning/Location Map
 Plans
 Photo Exhibit
 Draft City Council Resolution
 Exhibit "A" – Draft Findings
 Exhibit "B" – Draft Conditions of Approval
 Appeal application
 Minutes of Planning Commission meeting of July 26, 2004
 Planning Division Staff Report
 Planning Commission Resolution and Findings
 Correspondence from Neighbors

Distribution: City Manager
 City Attorney
 Assistant City Attorney
 Public Services Director
 City Clerk (2)
 Staff (4)
 File (2)

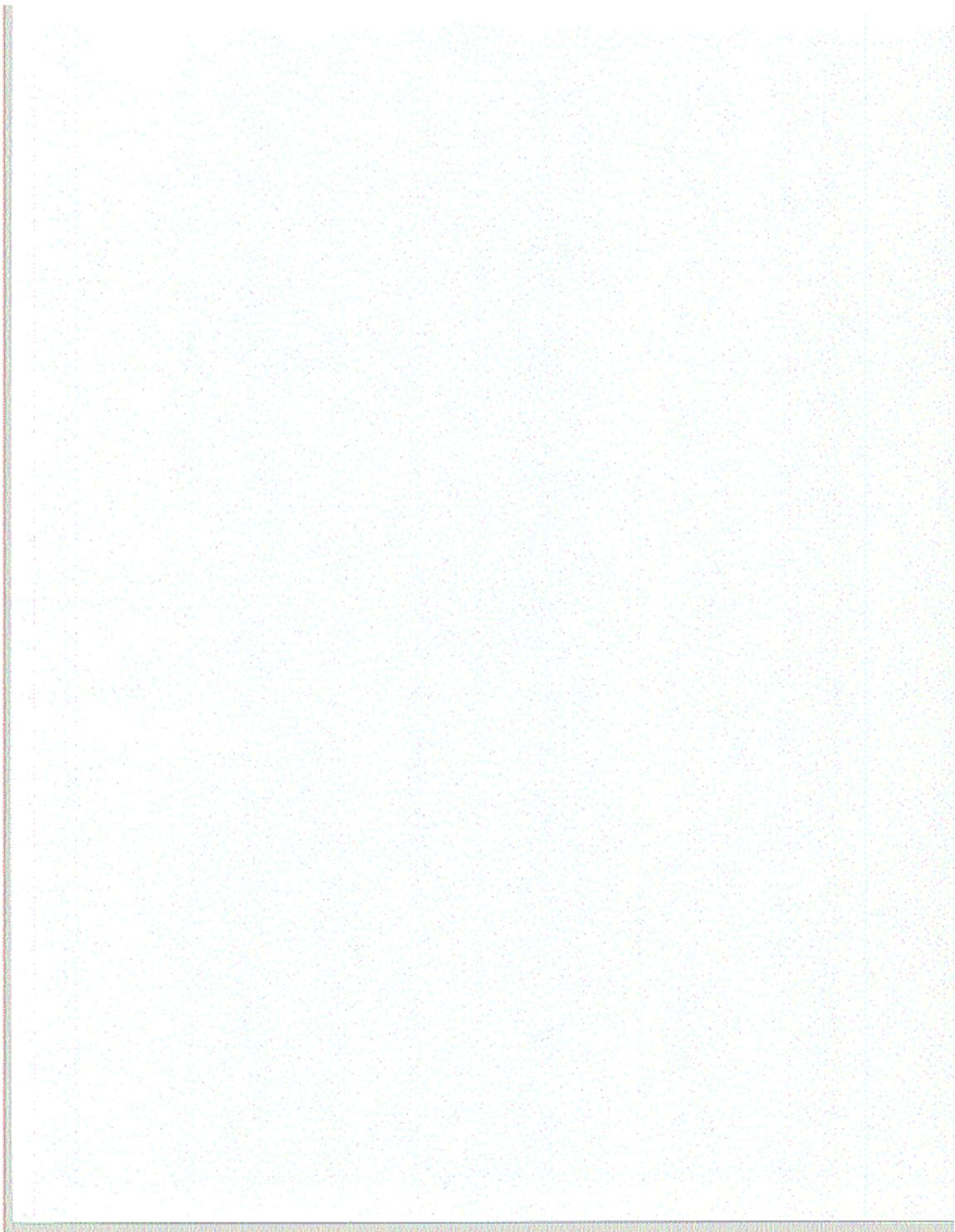
 Carl Reinhart
 El Camino Partners
 17871 Mitchell, Ste. 100
 Irvine, CA 92614

 Daniel Carlton
 2600 Michelson Dr., Ste. 1120
 Irvine, CA 92612

File: PA0421CC090704

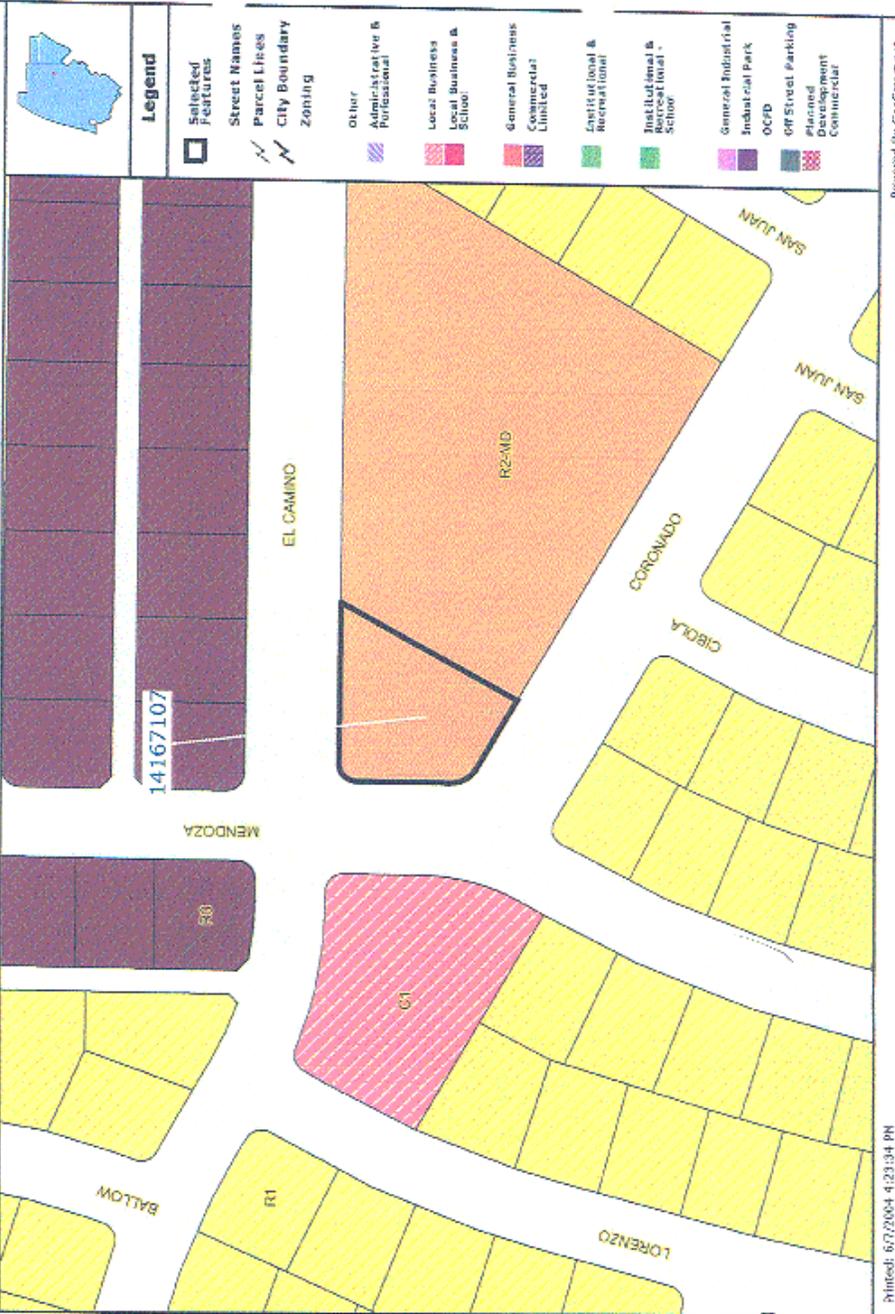
Date: 082604

Time: 1130a.m.



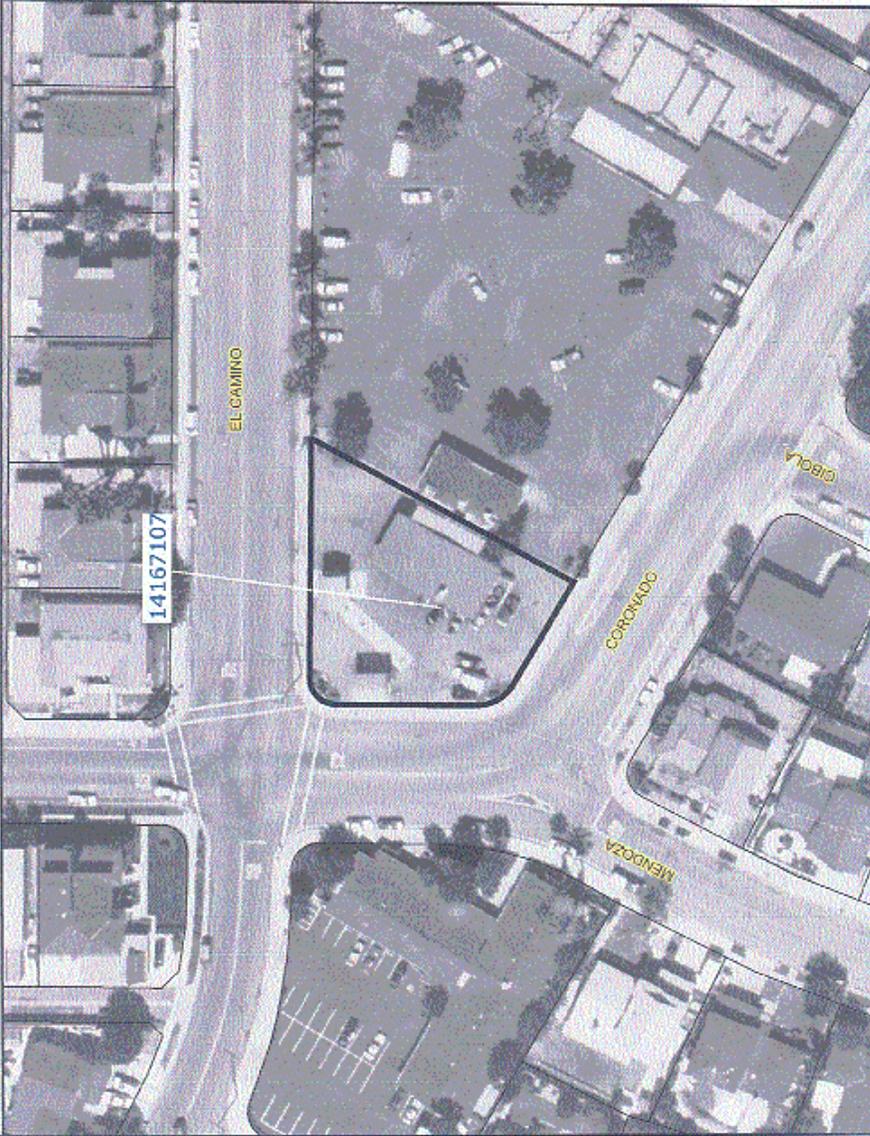
ZONING/LOCATION MAP

1045 El Camino Drive



AERIAL PHOTOGRAPH

1045 El Camino Drive



14167107

EL CAMINO

CORONADO

MENDOCINO

VANDA

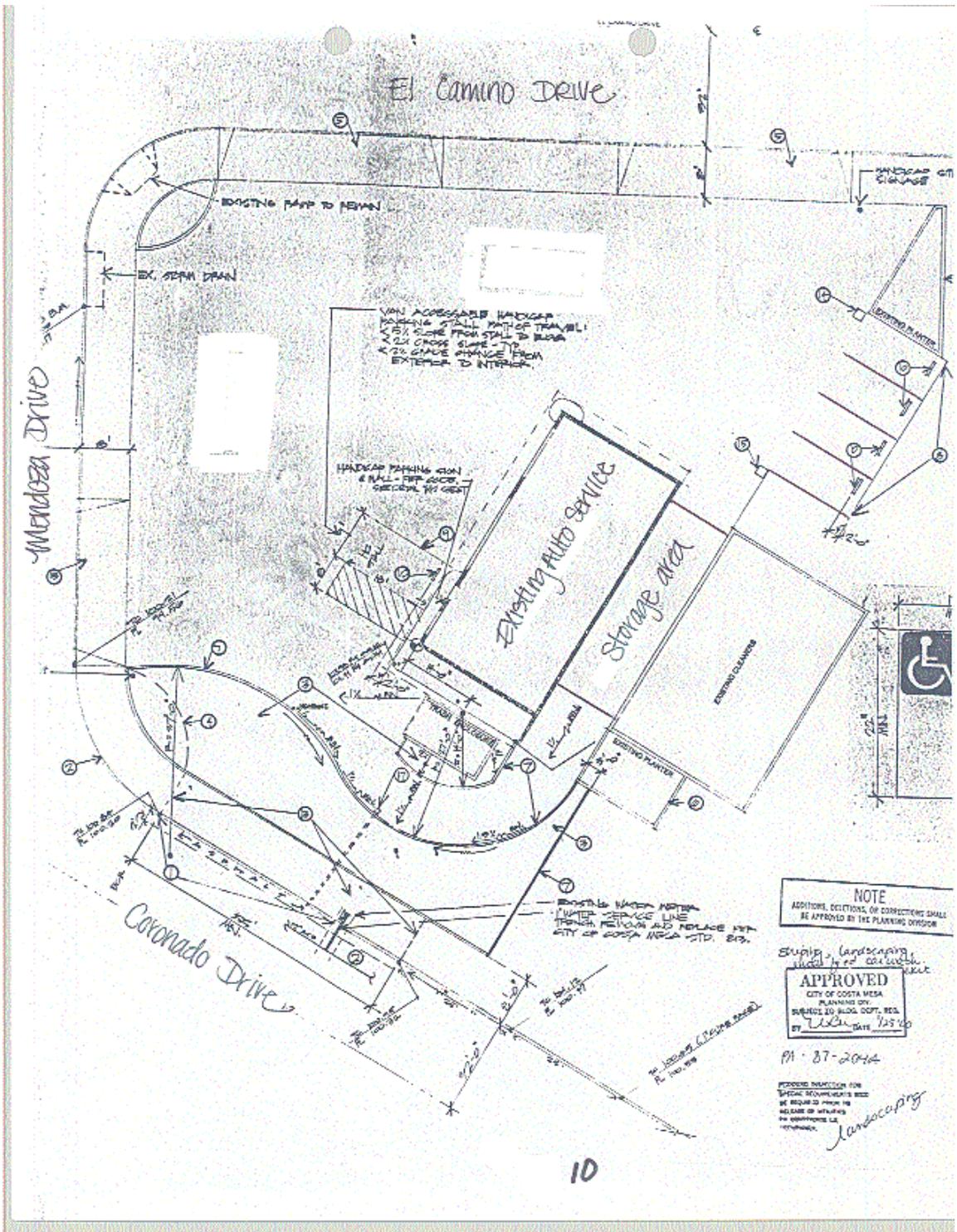


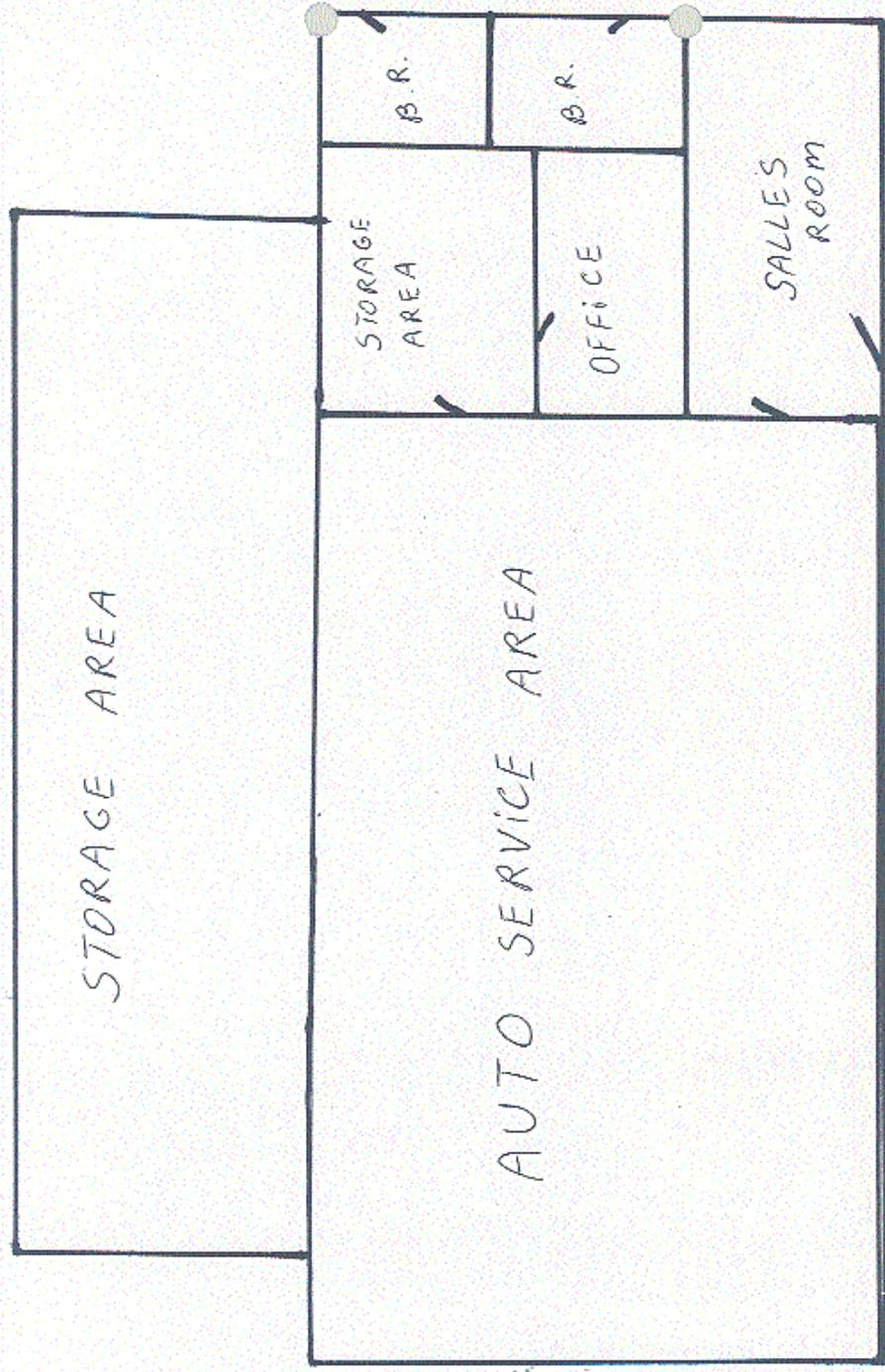
Legend

- Selected Features
- Street Names
- Parcel Lines
- City Boundary
- Ortho Photography
- Parcels

Powered By GeoSmart.net

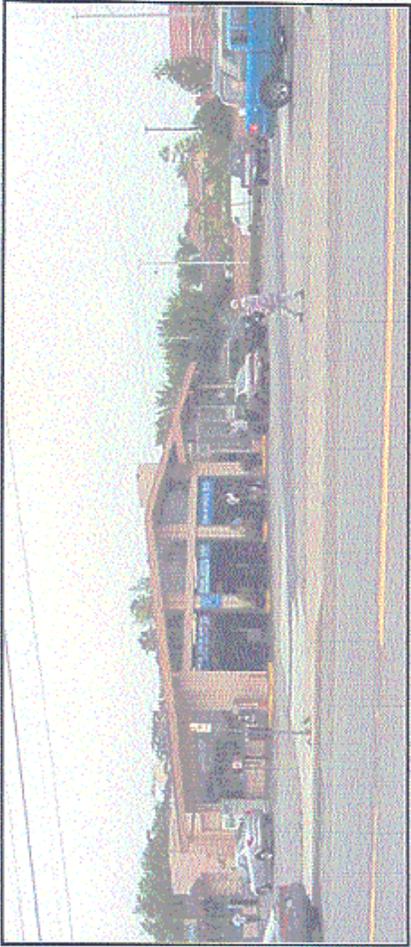
Printed: 6/27/2004 4:32:53 PM





FLOOR PLAN

SITE PHOTOS



RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
COSTA MESA DENYING PLANNING APPLICATION PA-04-
21**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES
AS FOLLOWS:

WHEREAS, an application was filed by Daniel Carlton, representing Carl Reinhart, owner of real property located at 1045 El Camino Drive, requesting approval to modify an existing conditional use permit to discontinue the car wash and gasoline sales and to become solely an automotive repair facility; and,

WHEREAS, duly noticed public hearings were held by the Planning Commission on June 28, 2004, and July 26, 2004.

WHEREAS, the item was appealed to the City Council on August 2, 2004, and a duly noticed public hearing was held by the City Council on September 7, 2004, October 18, 2004, and February 7, 2005;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A," and subject to the conditions of approval contained within Exhibit "B," the City Council hereby **DENIES** Planning Application PA-04-21 with respect to the property described above.

PASSED AND ADOPTED this 7th day of February 2005.

Mayor of the City of Costa Mesa

ATTEST:

Deputy City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the 7th day of February 2005.

Deputy City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
COSTA MESA APPROVING PLANNING APPLICATION PA-
04-21**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES
AS FOLLOWS:

WHEREAS, an application was filed by Daniel Carlton, representing Carl Reinhart, owner of real property located at 1045 El Camino Drive, requesting approval to modify an existing conditional use permit to discontinue the car wash and gasoline sales and to become solely an automotive repair facility; and,

WHEREAS, duly noticed public hearings were held by the Planning Commission on June 28, 2004, and July 26, 2004,

WHEREAS, the item was appealed to the City Council on August 2, 2004, and a duly noticed public hearing was held by the City Council on September 7, 2004, October 18, 2004, and February 7, 2005;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A," and subject to the conditions of approval contained within Exhibit "B," the City Council hereby **APPROVES** Planning Application PA-04-21 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for PA-04-21 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B". Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

PASSED AND ADOPTED this 7th day of February 2005.

ATTEST:

Deputy City Clerk of the City of Costa Mesa _____
Mayor of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the 7th day of February 2005.

Deputy City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

EXHIBIT "A"

FINDINGS

- A. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed change of use, as conditioned, will be more compatible with developments in the same general area. Granting the conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the property will be less intensely used than before, without the gasoline sales and car wash. The recommended conditions of approval will ensure that the operation will not be disruptive to residential uses or properties in the vicinity. The added landscaping at the northwest corner of the property will also improve the aesthetics of the property as viewed from the street intersection and increase its compatibility with the surrounding residential neighborhood. Parking will comply with current Code requirements and approval of the use is contingent upon availability of the existing 4 parking stalls provided off-site plus 4 parking stalls on-site unless a total of 8 parking stalls can be provided on-site to serve the automotive repair business. Although the use is not in conformance with the current General Plan designation for the property (Medium Density Residential), it complies with the Nonconforming Provisions with regard to allowable change of nonconforming use in nonresidential structures, and the degree of nonconformity will not be increased.
- B. The proposed project complies with Costa Mesa Municipal Code Section 13-29 (e) because:
- a. The proposed use will be more compatible and harmonious with uses both on-site as well as those on surrounding properties.
 - b. Safety and compatibility of the design of buildings, parking area, landscaping, luminaries and other site features which may include functional aspects of the site development such as automobile and pedestrian circulation.
 - c. The planning application is for a project-specific case and does not establish a precedent for future development.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA.
- D. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"

CONDITIONS OF APPROVAL

- Plng. 1. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.
2. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
3. A total of 8 parking stalls shall be available to serve the property. Approval is contingent upon continued availability of the existing 4 parking spaces off-site plus 4 on-site unless all 8 parking spaces can be provided on-site.
4. Close the drive approach at the northwest corner of the lot on El Camino Drive and replace with full-height curb, gutter, and sidewalk.
5. Provide a minimum 15 ft. continuous landscape strip at the northwest corner of the property, between the two driveways. This condition shall be completed under the direction of the Planning staff.
6. A site/parking/landscape plan shall be submitted reflecting the above conditions (no. 3-5). This condition shall be completed under the direction of the Planning staff.
7. All site improvements shall be completed by **May 31, 2005**.
8. The applicant shall contact the Planning Division to arrange for a Planning inspection of the site prior to the above date. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
9. There shall be no outdoor overnight storage of vehicles.
10. The use shall be limited to the number of vehicles that will not interfere with on- or off-site parking and circulation.
11. No queuing of customer vehicles within the public right-of-way shall be permitted.
12. No vehicles shall be parked/stored on the street or at the adjacent shopping center.
13. The use shall be conducted, at all times, in a manner to allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever operational measures are necessary to comply with this requirement.

14. Complaints regarding noise related to the operation of the use and/or violation of any of the operating conditions and restrictions shall be immediately remedied by the applicant.
15. The use shall be limited to the description in the staff report (auto repair/service including smog check and certification in the main building and storage in the former car wash building). No body work/repair, engine replacement/rebuilding, or vehicle working/detailing shall be permitted.
16. The freestanding sign for the auto service facility shall be repaired/replaced and maintained in good condition.
17. The hours of operation shall be limited to 8 a.m. to 6 p.m., Mondays through Fridays, and 8 a.m. to 2 p.m. on Saturdays. No work shall be permitted on Sundays.
- Eng. 18. Obtain a permit from the Engineering Division, at the time of development and then remove existing driveway on El Camino Drive and replace with full height curb and sidewalk at applicant's expense.
- Trans. 19. Close westerly drive approach on El Camino Drive with full height curb and gutter.

CITY OF COSTA MESA
P.O. BOX 1200
COSTA MESA, CALIFORNIA 92626
APPLICATION FOR APPEAL OR REHEARING

RECEIVED
FEE: \$ 210.00

Applicant Name Jack Sakzlyan 04 AUG -2 PM 2:06
Address 1045 EL CAMINO DRIVE CITY OF COSTA MESA
Phone (949) 757-0707 Representing Business owner and property owner

Decision upon which appeal or rehearing is requested: (Give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) PA-04-21 July 26, 2004

Decision by: Planning Commission

Reason(s) for requesting appeal or rehearing:

See "Exhibit A" to Application for Appeal
PA-04-21 July 26, 2004, attached hereto.

Date: 8/2/04

Signature: David Clayton, Attorney for Jack Sakzlyan

For Office Use Only — Do Not Write Below This Line
SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

EXHIBIT A

**APPLICATION FOR APPEAL
Applicant Jack Sakzlyan
PA-04-21 JULY 26, 2004**

The Planning Commission's decision to deny this Application was arbitrary and an abuse of their discretionary authority.

This is not an application for a new Conditional Use Permit (CUP), and the existing CUP has not been abandoned. There has been no change in the use of the business. The business has always been conducted as a service station (hence the name "Your Neighborhood Service Station"). The majority of its income has always been generated by its auto repair and service. Gasoline sales accounted for no more than 25% of the gross profits. When the gas tanks were removed earlier this year, it did not change the nature of the business. The City merely requested that the existing CUP be modified to reflect that dispensing gas and a car wash was no longer a part of the business.

A minority of the members of the Planning Commission improperly decided that a vote to deny this Application would somehow motivate the property owner to build homes as intended and requested in 2001. Their reasoning was that an appeal to the City Council would somehow force the issue. This is not a legitimate reason for a denial. It is not sufficient to merely change to the negative all of the City staffs' findings of approval, and send the parties on their way to appeal the decision.

No evidence was provided to justify a denial. Indeed, forcing Applicant out of literally the same business he has been in for almost ten years and boarding up the windows cannot be in the best interest of the neighborhood. It certainly will not force the property owner to build homes as intended any faster.