

City Response to Blake & Ayaz on behalf of Fred Cohen and Farzi Inc. LLC

Appeal No. 2023-06

Comment 1: This comment states that the Planning Commission's decision does not support the findings required to deny a Conditional Use Permit (CUP).

Response 1: During the meeting, the Planning Commission verbally provided multiple findings as required by SAMC Section 41-638 to deny modification to CUP No. 2019-41 and CUP No. 2023-03. The findings presented by the commission include the following:

- The Planning Commission determined the proposed project was unable to support Finding No. 2 outlined in Section 41-638(a)(1)(ii) of the SAMC, that the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity. The Planning Commission found that the proposed project could not definitively determine the environmental impact on the health of the surrounding community. Multiple General Plan goals and policies support this inability to make this finding.

Goal 1 of the Conservation Element ("CN") supports the protection of air resources, improved regional and local air quality, and the reduced impacts of climate change. The proposed project will not improve local air quality as the regular operations of a service station are associated with the management of hazardous substances. Policy 1.5 of the Conservation Element encourages the study of impacts of stationary and non-stationary emission sources on existing and proposed sensitive uses, and opportunities to minimize health and safety risks as well as developing and adopting new regulations that avoid siting of facilities that potentially emit increased pollution near sensitive receptors within environmental justice area boundaries. The proposed project does not minimize health and safety risks that can contribute to increased pollution near sensitive receptors. The applicant did not submit any studies or additional information to evaluate potential impacts onto surrounding properties, including the adjacent child care facility. Technical studies such as a health risk assessment or air quality assessment were not provided with the application.

Goal 2 of the Safety Element ("S") supports the protection of residents and environmental resources from contaminated hazardous material sites and minimize risks associated with the use, production, storage, transport, and disposal of hazardous materials. Policy 2.4 of the Safety Element supports the identification of the hazardous materials and/or waste contamination prior to approval of new uses and require appropriate measures be taken to protect the health and safety of site users and the community. The proposed project will not take appropriate measures to protect the health and safety of the surrounding community. The project, including the proposed reconfiguration of the site, fails to contribute to a stronger protection of local air quality, minimizes environmental impacts associated with the business, and will be detrimental to the existing community.

- The Planning Commission determined the proposed project was unable to establish Finding No. 3 outlined in Section 41-638(a)(1)(iii) of the SAMC, that the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area. The Planning Commission found that the proposed project would negatively impact the economic stability and future development of adjacent properties of the surrounding area. Specifically, the proposed project would impact the

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long-term operations of the adjacent child-care facility by the impact of increased traffic congestion, management of toxic substances onsite, and increase in the presence of members of the unhoused population. Multiple General Plan goals and policies support this inability to make this finding. Modified conditions of approval that can address this inability to meet this finding may be included upon the discretion of the City Council which support consistency with goals and policies of the General Plan.

Goal 1 of the Land Use Element (“LU”) encourages a land use plan that improves quality of life and respects our existing community. Policy 1.1 supports the compatibility between land uses to enhance livability and promote healthy lifestyles. The proposed project land use is not compatible with the surrounding community as it is adjacent to sensitive land uses such as a child-care facility and near residential uses. Goal 2 of the Land Use Element encourages a balance of land uses that meet Santa Ana’s diverse needs. Policy 2.2 of the Land Use Element encourages a range of commercial uses to capture a greater share of local spending and offer a range of employment opportunities. The proposed project is located near four other service stations within a half-mile area and will contribute to an overconcentration of the service stations in the area. Policy 2.7 of the Land Use Element supports land use decisions that encourage the creation, development, and retention of business in Santa Ana. The proposed project will contribute negatively to a neighboring existing business. Policy 3.7 of the Land Use Element promotes a clean, safe, and creative environment for Santa Ana’s residents, workers, and visitors. The proposed project may also contribute to the increase in presence of the unhoused population in the area and near a child care facility as well as residences.

Goal 4 of the Mobility Element (“M”) coordinates transportation planning efforts with land use and design strategies that encourage sustainable development and achieve broader community goals. Policy 4.9 of the Mobility Element supports the utilization of land use, building, site planning, and technology solutions to mitigate exposure to transportation-related air pollution, especially in environmental justice focus areas. The proposed project will contribute to the increase in vehicular traffic in the area and negatively affect the surrounding businesses.

Comment 2: This comment states that the Planning Commission relied on facts not supported in the record.

Response 2: The Planning Commission, during the meeting, reviewed the staff report and expressed concern that report did not include information such as data-proven metrics that would indicate the proposed project would not be detrimental to the surrounding community. Moreover, several community members spoke during the public hearing, at which concerns were raised with the proposed project. Concerns regarding the station’s health, economic, traffic, and safety impact on the adjacent child care facility neighborhood were discussed. Other concerns regarding overconcentration of service stations and the long-term effect of the permanent presence of the unhoused population in the area. Lastly, as part of the proposal, the applicant did not submit any studies or additional information to evaluate potential impacts onto surrounding properties, including the adjacent child care facility. Technical studies such as a health risk assessment, air quality assessment, or noise study were not provided with the application.

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Comment 3: This comment states that the manner in which the Planning Commission conducted the hearing and the actions of several planning commissioners violated the Brown Act, Santa Ana Municipal Code and various legal binding precedents of state and federal courts.

Response 3: The Planning Commission public hearing was held in accordance with the Brown Act, Santa Ana Municipal Code, and all applicable State laws. Moreover, the appellant did not identify or reference what City/State codes or legal court cases were violated to support the comment.

Comment 4: This comment states that procedural errors including but not limited to requiring the applicant file an appeal without providing written determination of the City's decision, to include factual analysis and/or findings.

Response 4: The Planning Commission provided verbal determination on the findings of denial, as supported in the record. Additionally, a full recording of the meeting is publicly accessible via the City's website and was posted online the next business day.

Comment 5: This comment states that the Planning Commission's decision was not based on land use principals or laws.

Response 5: The Planning Commission's decision was based on required land use standards outlined in the SAMC, which are required to be made to support granting of a conditional use permit application. This comment is similar to comment 1. See Response 1. Lastly, the appellant did not identify or reference any specific standards in the appeal application.

Moreover, on the October 3rd City Council meeting, staff presented three recommendations for the council to consider. Action No. 1, original analysis of the project led to a recommendation to approve the requested entitlements based on the factors presented in the June 26, 2023 Planning Commission staff report (Exhibit 9). Action No. 2, the City Council may approve the applicants appeal and overturn the Planning Commission's June 26, 2023 decision to deny the project, based on the analysis presented during the June 26, 2023 staff report (Exhibit 9). Action No. 3, the City Council may approve the project as originally recommended by staff, but with modified conditions set forth by the discretion of the City Council which are consistent with goals and policies outlined in the General Plan.

Comment 6: This comment claims that the Planning Commission failed to consider the applicant's testimony and evidence, and the commissioner's decision was predetermined before the meeting was held.

Response 6: The appellant was given up to 15 minutes to speak during the meeting and was allowed to respond to several questions the commissioners and public posed regarding the project. The appellant does not provide any further justification for the claim of predetermined decisions. No written communication or other evidence has been provided to support this claim.

Comment 7: This comment states that Planning Commission failed in their duty to remain neutral unbiased in decision making.

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Response 7: This claim is similar to that made in Comment No. 6. No evidence claiming otherwise was provided.

Comment 8: This comment states that the Planning Commission reviewed no evidence either substantial or circumstantial to support their decision to deny the applicant's application.

Response 8: The Planning Commission provided verbal comment that the provided staff report was insufficient in providing verified metric studies conducted by the applicant to ensure the site could mitigate the effects of regular operations of the service station on the surrounding community. Moreover, several community members spoke during the public hearing, at which concerns were raised with the proposed project. Concerns regarding the station's health, economic, traffic, and safety impact on the adjacent child-care facility and neighborhood were discussed. Other concerns regarding overconcentration of service stations and the long-term effect of the permanent presence of the unhoused population in the area. Lastly, as part of the proposal, the applicant did not submit any studies or additional information to evaluate potential impacts onto surrounding properties, including the adjacent child care facility. Technical studies such as a health risk assessment, air quality assessment, or noise study were not provided with the application.

Comment 9: This comment claims that the Planning Commission provided no written determination/decision which as of the date of filing had not been provided to the application.

Response 9: This comment is similar to comment 4. The Planning Commission's determination was supported by the making of two findings, which were verbally mentioned in the record. Additionally, the recording of the commission's determination/decision is publicly available via the city's website the following day. The Planning Commission voted 5:2 to approve the denial of modification to CUP No. 2019-41 and CUP No. 2023-03. On the regularly scheduled August 28, 2023 Planning Commission meeting, staff prepared a resolution for denial of modification to CUP No. 2019-41 and CUP No. 2023-03 for consideration by the Planning Commission to affirm the action to deny the subject applications, which took place on June 26, 2023.