



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
City Council Staff Report
October 3, 2023

Topic: Appeal No. 2023-06 appealing Planning Commission denial of modification to CUP No. 2019-41 and CUP No. 2023-03 – New Service Station at 2230 N Tustin Avenue

AGENDA TITLE

Appeal Application No. 2023-06 Appealing the Decision of the Planning Commission to Deny Modification to Conditional Use Permit (CUP) No. 2019-41 and CUP No. 2023-03 for a New Service Station at 2230 N. Tustin Avenue

RECOMMENDED ACTION

After conducting its public hearing on the item, the City Council may take one of the following three actions:

1. Adopt a resolution denying Appeal Application No. 2023-06 and upholding the determination of the Planning Commission to deny modification to Conditional Use Permit No. 2019-41 and Conditional Use Permit No. 2023-03.
OR
2. Adopt a resolution approving Appeal Application No. 2023-06 overturning the determination of the Planning Commission, thereby approving modification to Conditional Use Permit No. 2019-41 and Conditional Use Permit No. 2023-03 as conditioned.
OR
3. Adopt a resolution approving Appeal Application No. 2023-06 overturning the determination of the Planning Commission, thereby approving Conditional Use Permit No. 2019-41 and Conditional Use Permit No. 2023-03 with modified conditions of approval.

GOVERNMENT CODE §84308 APPLIES: Yes

EXECUTIVE SUMMARY

Fred Cohen with CJC Design, Inc., on behalf of Farz, Inc. (Applicant) and Heinecke Gould Properties, LLC (Property Owner), is requesting approval of a Conditional Use Permit (CUP) modification and a new CUP to facilitate construction of a new service station and convenience store located at 2230 N. Tustin Avenue. The applicant is requesting a CUP Modification pursuant to Section 41-424.5 (f) of the Santa Ana Municipal Code (SAMC) to allow a service station in the Arterial Commercial (C5) zoning district and a Conditional Use Permit pursuant to Section 41-199.4 (a) to allow the operation of a land use that requires a permit from a regional, state, or federal agency to handle, store, emit, or discharge regulated compounds, materials, chemicals, or substances located within 500 linear feet of a public park, school (K-12) or property

zoned for residential purposes. This request was made prior to recent the zoning ordinance amendments (Noxious Use ordinance), which increased the CUP separation requirement of noxious uses from sensitive receptors from 500 feet to 1,000 feet, adopted by Ordinance No. NS-3044.

Prior Planning Commission Action

At its regular meeting on June 26, 2023, the Planning Commission received a report and staff presentation, as well as public comments, on the subject CUP applications. Following staff's presentation, the Planning Commission took comments from the public, including the applicant's legal counsel, on the proposed project. The Commission voted 5:2 (Ayes: Commissioners Escamilla, Oliva, Woo, Pham, Ramos; Noes: Leo, Benninger) to adopt a resolution denying modification to CUP No. 2019-41 and CUP No. 2023-03.

Appeal Applications

On July 6, 2023, appellant Michael Ayaz, on behalf Fred Cohen with CJC Design, Inc. and Farz, Inc. (Applicants), filed Appeal No. 2023-06, pertaining to the Planning Commission's denial of the modification to CUP No. 2019-41 and CUP No. 2023-03. Pursuant to SAMC Section 41-645, the City Council is authorized to review appeals of Planning Commission decisions and may, after holding a public hearing, affirm, reverse, change, or modify the original decision, and may make any additional determination it shall consider appropriate within the limitations imposed by the SAMC.

DISCUSSION

Project Description

The applicant is proposing to construct a new single-story, 2,150-square-foot commercial building, containing a convenience store, as well as a 2,880-square-foot fueling canopy with six fueling stations. The site will provide five parking stalls, one handicap parking stall, and twelve fueling parking stalls for a total of eighteen off-street parking spaces, exceeding the required off-street parking spaces by one space. To facilitate access onto the site, an easement has been recorded on an adjacent property to authorize reciprocal vehicle access from Tustin Avenue. Moreover, a new driveway is proposed on the northern portion of the property, adjacent to the Santa Clara Avenue frontage. This driveway will be located within 150 feet from the intersection of Santa Clara and Tustin avenues (Exhibit 5). The street frontage along Tustin Avenue has been designed in anticipation of a ten-foot dedication to the City to allow for future street improvements along Tustin Avenue. The landscaped area along both street frontages (Tustin and Santa Clara avenues) will meet the minimum 15-foot requirement. The convenience store will operate between the hours of 5:00 a.m. and 12:00 a.m. (midnight) seven days per week. Should the business owner propose to offer additional hours of service for the convenience store, approval of a separate afterhours conditional use permit will be required.

The architecture of the building has been designed to complement the adjacent shopping center to the south. The architecture, earth tone colors, cement plaster finishes, stone

veneer, and the Spanish style flat roof blends closely with other buildings seen along the Tustin Avenue corridor (Exhibit 4). Table 2 provides a detailed comparison of the project's compliance with the applicable development standards.

Table 1: Project Location and Information

Item	Information	
Project Address & Council Ward	2230 N. Tustin Avenue – Ward 3	
Nearest Intersection	Tustin Avenue and Santa Clara Avenue	
General Plan Designation	General Commercial (GC)	
Zoning Designation	Arterial Commercial (C5)	
Surrounding Land Uses	North	Commercial (retail)
	East	
	South	
	West	Commercial (childcare facility)
Property Size	22,240 SF (0.51 acres)	
Existing Site Development	The site is currently an undeveloped 22,240 SF vacant lot.	
Use Permissions	Allowed with approval of a CUP	
Zoning Code Sections Affected	Uses	Section 41-424.5 (f)
	Operational Standards	Section 41-431

Table 2: Development Standards

Standards	Required by SAMC	Provided
Front Yard	15 Feet Minimum	Complies, 15 feet provided
Side Yard (exterior)	15 Feet Minimum	Complies, 15 feet provided
Side Yard (interior)	0 Feet Minimum	Complies, 0 feet provided
Rear Yard	0 Feet Minimum	Complies, 0 feet provided
Landscape Area	15 Feet Minimum	Complies: 15 feet provided
Lot Size & Frontage	15,000 sq. ft. and 120 feet	Complies, 22,240 sq. ft. and 290 feet
Building Height	35 Feet Minimum	Complies, 24 feet and 6 inches
Parking	17	18
Floor Area Ratio (FAR)	0.5 FAR Maximum	Complies 0.23 FAR
Driveways	No entry way or exit way shall be located within 150 feet of any intersection corner radius	Does not comply; driveway within 115 feet of the intersection corner radius (variance required)

Project Background

The property has been vacant and unimproved for several decades. In 1996, a new service station proposal was submitted to the City but the site was not ultimately developed and remained vacant. A new multi-tenant commercial building was approved for construction in 2007, but the project was never constructed due to economic factors stemming from a subsequent economic recession. On May 26, 2020, the Planning Commission held a public hearing for a proposal of a new service station and associated retail store on the subject site. The Planning Commission approved CUP No. 2019-41 and Variance No. 2019-05 to allow the operation of a service station in the C5

zoning district and to allow the construction of a driveway within 150 feet of an intersection, respectively. Following the Planning Commission's original approval, the applicant submitted a request to modify the approved project, which necessitated filing of a CUP modification application, as well as the now-required noxious uses CUP application. For a complete analysis of the project and of the facts substantiating staff's recommendation of approval to the Planning Commission, please see Exhibit 9.

Planning Commission Determination Supporting Denial

CUP requests are governed by Section 41-638 of the SAMC. CUPs may be granted when it can be shown that the proposed project will not adversely impact the community. If these findings can be made, then it is appropriate to grant the CUP. Conversely, the inability to make these findings would result in a denial. The following sections discuss the applicant's request and the Planning Commission's issues of concerns that led to their decision to deny the project.

Modification to Existing Conditional Use Permit for Service Station Use

The applicant is requesting approval of a CUP to allow the operation of a service station. The C5 zoning district allows for a range of commercial uses complementary to arterial roadways such as Tustin Avenue. Service stations in the C5 zoning district require approval of a CUP to ensure high-quality design and site planning that will not disrupt circulation and development patterns along such arterial roadways. The CUP also provides a means to ensure high-quality operations, site circulation, and to mitigate impacts on sensitive neighboring uses. Additionally, the SAMC requires specific standards for service stations, which are listed under Section 41-374.

The proposed site plan relocates the location of the approved fuel canopy from the southwestern end of the site to the northeastern end of the site near the intersection of Tustin Avenue and Santa Clara Street. The relocation of the fuel canopy increases the buffer between the project site and the adjacent school use to the west. The convenience store is proposed to be relocated from the northeastern end of the property to the south western end, adjacent to the western side property line. However, the proposed location of the service station adjacent to a child care facility will contain several negative impacts onto the surrounding community which the redesign of the site does not address.

The Planning Commission found that the applicant's request for a CUP modification to allow a service station and convenience store will be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity. The location of the proposed service station is within the vicinity of an existing child care facility and a residential neighborhood. The proposed use will introduce potential health impacts to occupants and owners of surrounding properties, including staff and children of the adjacent child care facility. Moreover, the established use of a service station will adversely affect the present economic stability or future economic development of

properties surrounding the area as the use will contribute to an increase of traffic in the area and negatively affect business operations of the adjacent child care facility.

Conditional Use Permit for Noxious Uses

In response to community concerns related to environmental pollution and the proximity of certain industrial uses in relation to homes, schools, and parks, the City has adopted environmental justice policies and actions in its General Plan to amend use regulations and development standards. On December 20, 2022, the City Council adopted an Urgency Ordinance establishing Section 41-199.4 of the SAMC to require a conditional use permit for certain land uses of an industrial nature near sensitive land uses. Pursuant to Section 41-199.4(a), land uses requiring a permit from a regional, state, or federal permit to handle, store, emit, or discharge regulated compounds, materials, chemicals, or substances within 500 linear feet of a public park, school (K-12), or residences are subject to approval of a CUP, which has since been amended to specify applicability to noxious uses within 1,000 feet of these sensitive land uses.

The Planning Commission discussed the need for the applicant to include studies or additional information to help evaluate the 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 should have been provided with the application.

The Commission also found that the applicant's request for a CUP for a noxious use will be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity. The location of the proposed service station adjacent to a child care facility and residential neighborhood will negatively impact the future health of persons residing and working in the vicinity. Additionally, the proposed use will adversely affect the present economic stability or future economic development of properties surrounding the area. The existence of a service station near a child care facility, including secondary impacts resulting from fueling operations, fuel deliveries, and convenience store deliveries, will create noise and vibration impacts on surrounding properties, including the adjacent child care facility.

General Plan Consistency

In its decision to deny the requested applications, the Planning Commission found that approval of this application will not be consistent with the goals of the General Plan, specifically Goals 1 and 2 of the Land Use Element, Goal 4 of the Mobility Element, Goal 1 of the Conservation Element, and Goal 2 of the Safety Element. The project is located within the General Commercial (GC) land use designation, which allows for highly visible and accessible shopping opportunities along arterial corridors and supports the development and continued operation of recreational, cultural, entertainment, employment, and educational opportunities near established residential neighborhoods. The approval of modification to CUP No. 2019-41 and CUP No. 2023-03 fails to support several policies contained in 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.

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 and 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 M 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 negatively to the increase in vehicular traffic in the area.

Goal 1 of the Conservation Element (“CN”) supports the protection of air resources, improve regional and local air quality, and minimize the 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 avoiding the 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. As stated earlier, 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 2.6 of the Safety Element supports the determination of the presence

of 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.

Appeal Applications

Pursuant to Section 41-645 an appeal from a decision of the Planning Commission can be made by an interested party, individual, or group. An appeal application was received appealing the Planning Commission's decision to deny modification to CUP No. 2019-41 and CUP No. 2023-03.

The appellant is requesting that the City Council overturn the Planning Commission's decision and approve modification to CUP No. 2019-41 and CUP No. 2023-03 based on nine factors. These include concerns related to how the Planning Commission public hearing was conducted, General Plan consistency, and concerns regarding State law violations; these nine factors were provided without the benefit of evidence.

As it relates to the concerns about the public hearing process, the Planning Commission held a duly-noticed public hearing on the item in accordance with all SAMC and State requirements, after which it denied the CUP. The Planning Commission agenda packet prepared for the project contained all necessary information for the Planning Commission to evaluate the applicant's request. The agenda packet is provided as Exhibit 9. A copy of the submitted appeal application is provided as Exhibit 6 attached to this report, and a full response to the nine claims made in Appeal No. 2023-03 is provided as Exhibit 8 attached to this report.

Recommendations to City Council

The City Council has the option to consider any one of the recommended actions presented in the Recommended Actions section of this staff report. The information and analysis contained in this report reflect the Planning Commission's discussions, concerns, and findings leading to their decision to deny the requested entitlements. Action No. 1 would uphold the denial as determined by the Planning Commission. The draft denial resolution supporting this action has been included herein as Exhibit 1a.

Staff's 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). This recommendation was based on multiple factors, including the project's redesign to buffer sensitive land uses from the proposed service station's fuel pumps, site plan enhancements, and because the project would lead to development of a long-vacant parcel at a key intersection of the City. These factors were also taken into account when the Planning Commission voted to approve the

project's original entitlements on May 26, 2020. As an option for consideration, the City Council may approve the applicant's appeal and overturn the Planning Commission's June 26, 2023 decision to deny the project, based on the analysis presented in the June 26, 2023 staff report (Exhibit 9). Action No. 2 would result in approval of the project as originally conditioned by staff. The findings supporting this Action are as contained in the draft resolution included herein as Exhibit 1b.

Alternatively, the City Council may approve the project as originally recommended by staff, also based on the on the analysis presented in the June 26, 2023 staff report, but with modified conditions as determined to be appropriate by the City Council. By following this alternative, Action No. 3, the City Council would find that the project satisfies all five findings of fact enumerated in the draft resolution included herein as Exhibit 1c.

Public Notification and Community Outreach

Public notifications were posted, published, and mailed in accordance with City and State regulations. Copies of the public notice, including a 1000-foot notification radius map, and the site posting are provided in Exhibit 10.

The property is located within the Meredith Parkwood Neighborhood Association. Staff contacted the representatives of this Neighborhood Association by email and by phone in advance of the City Council hearing on the appeal application. At the time of this report's printing, no additional concerns were identified.

During the Planning Commission hearing, several community concerns were discussed in regards to toxic fume impacts, traffic impacts, unintended loitering and concern with an increase in the presence of the unhoused population within the area. Moreover, in advance of the Planning Commission hearing, a total of 20 written comments were submitted and are attached to Exhibit 9, the Planning Commission agenda packet for the project.

ENVIRONMENTAL IMPACT

Denial of Appeal No. 2023-06, Action No. 1, would result in upholding the Planning Commission's June 26, 2023 denial of the requested entitlements, thereby resulting in no project. Therefore, there is no environmental impact associated with Action No. 1.

Approval of Appeal No. 2023-06, thereby resulting in approval of modification to CUP No. 2019-41 and approval of CUP No. 2023-03, Action No(s). 2 or 3, would result in approval of the project entitlements. Therefore, approval of the requested entitlements is subject to the requirements of environmental review by the California Environmental Quality Act (CEQA). In the original analysis based on staff's recommendation of approval, staff found that pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is exempt from further review pursuant to Section 15303 of the CEQA Guidelines (Class 3 – New Construction or Conversion of Small

Structures). This exemption applies to the construction of small structures, which, in urbanized areas, applies to up to four commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances, where all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive. The proposed structures total less than 10,000 square feet and will be served by all necessary utilities. The project site's location does not include any environmental features indicating that it is sensitive. As such, a Notice of Exemption, Environmental Review No. 2017-83, will be filed for this project if it is approved by the City Council.

FISCAL IMPACT

There is no fiscal impact associated with this action.

EXHIBIT(S)

- 1a. Appeal No. 2023-06, Modification to Conditional Use Permit No. 2019-41, and Conditional Use Permit No. 2023-03 Resolution of Denial
- 1b. Appeal No. 2023-06, Modification to Conditional Use Permit No. 2019-41, and Conditional Use Permit No. 2023-03 Resolution of Approval as conditioned
- 1c. Appeal No. 2023-06, Modification to Conditional Use Permit No. 2019-41, and Conditional Use Permit No. 2023-03 Resolution of Approval with modified conditions of approval
2. Vicinity Zoning & Aerial Map
3. Site Photos
4. Architectural Plans
5. Previously-Approved Site Plan
6. Appeal Application
7. Planning Commission Resolution No. 2023-2320 (Denial Resolution)
8. City Response to Blake & Ayaz on behalf of Fred Cohen and Farz Inc. LLC
9. Planning Commission Agenda Packet with Public Comments
10. Copy of Public Notices

Submitted By:

Minh Thai, Executive Director of Planning and Building Agency

Approved By:

Kristine Ridge, City Manager