



AGENDA REPORT

Department: Community Development
Prepared by: David Welch, Associate Planner
Meeting Date: Tuesday, September 6, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Public hearing for an Appeal of a Planning Commission Denial of a Request for a Conditional Use Permit (CUP) for a Drive-Through Fast Food Restaurant to be Located at 1900 East Plaza Boulevard.

RECOMMENDATION:

Staff recommends upholding the Planning Commission decision based on the attached findings. Staff initially recommended approval of the CUP to the Planning Commission.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

The Planning Commission denied the Conditional Use Permit by majority vote of those present. Ayes: Castle, Natividad, Sanchez, Yamane Nays: Sendt, Valenzuela Absent: Miller

EXPLANATION:

Executive Summary

The applicant proposes to construct a 3,879 square-foot fast food restaurant (In-N-Out) with two drive-through lanes. The approximately 1.3-acre property would have a total of 55 parking spaces provided in addition to the drive-through lanes. Planning Commission held a public hearing on August 1, 2022 and denied the CUP based on the attached recommended findings for denial. The applicant has appealed the decision of the Planning Commission is thereby afforded the opportunity to present their appeal to the City Council. The requested action by City Council is to either uphold or reverse the decision of the Planning Commission (grant or deny the appeal request).

Site Characteristics

The project location is a 1.3-acre property currently occupied by a 6,178 square foot restaurant building (Family House of Pancakes), which is proposed to be demolished, as well as existing wireless communication facilities. The two facilities are mounted on an artificial palm tree and a pylon sign respectively. No change to the facilities is proposed as part of this CUP. The site is at the southwest corner of East Plaza Boulevard and Interstate 805. The area is mixed-use with both commercial and residential properties. The north side of East Plaza Boulevard across from the site has a condominium complex and a Chinese restaurant. To the south, there are residential properties that are separated from the site by a drainage easement. East of the site is Caltrans right-of-way including the on ramp to southbound I-805. This right-of-way wraps around the north side of the subject property. An existing carwash is adjacent to the subject property to the west and has driveway access on the northwest corner of the subject property.

Proposed Use

The applicant proposes to demolish the existing restaurant building and construct a 3,879 square-foot drive-through fast food restaurant. A double lane drive-through aisle is proposed. The lanes would be entered on the southwest corner of the property directly south of the existing driveway off of East Plaza Boulevard. This would create circular movements for drive-through vehicles starting on the west side of the property, looping around the east and north sides of the proposed building, before existing at the same driveway. The applicant proposes to provide 55 parking spaces, which is more than required by the code. The extra spaces may provide an alternative to the drive-through for customers.

Interior seating accommodating up to 84 customers will be provided as well as an outdoor patio with seating for 52. The restaurant will operate from 10:30 am to 1:00 am Sunday through Thursday and 10:30 am to 1:30 am Friday and Saturday. Approximately 10 to 15 staff members will be on each shift.

Analysis

General Plan

A restaurant is a commercial use, which is consistent with the mixed-use land use designation established for this area of the City, and is permitted by right. However, a drive-through restaurant requires a CUP and also contributes to the restaurant being considered a “fast food” restaurant. A fast food eating place is defined as follows:

"Fast food eating place" means any retail food establishment that primarily provides short order food services for on-site dining or take-out service, where such food and beverage is served on paper, plastic, or other disposable containers, and including drive in and drive-through restaurants where ready-to-eat foods are served primarily to be consumed off the premises. This definition includes all self-service restaurants, except cafeterias, sit-down pizza parlors, and donut shops.

There are two General Plan policies that reference fast food restaurants:

Policy HEJ-4.2: Encourage the development of healthy food establishments in areas with a high concentration of fast food establishments, convenience stores, and liquor stores.

Policy HEJ-5.4: Discourage unhealthy fast food outlets from locating near schools.

This segment of East Plaza Boulevard does not have the type of businesses mentioned in HEJ-4.2 (between Palm Avenue and I-805). Existing food outlets include Bistro City, a Chinese food restaurant, Kung Fu Tea, and California Produce. To the east of I-805 there are four other drive-through businesses within a half mile of the site, including McDonald's, Popeye's Louisiana Kitchen, Dunkin' Donuts and Starbucks Coffee. However, the freeway presents a significant barrier between these segments of East Plaza Boulevard. In-N-Out has a limited menu consisting of burgers, fries, shakes, and soft drinks. Without healthy menu options, the proposed restaurant would qualify as an “unhealthy fast food outlet.” Despite this fact, California Produce is a pre-existing healthy food option in close proximity to In-N-Out that is consistent with HEJ-4.2.

With regard to HEJ-5.4, the nearest school is Las Palmas Elementary, which is more than a half-mile away in walking distance. Therefore, the restaurant is not near a school.

Land Use Code

A restaurant is generally a permitted use within the MXD-2 zone. However, businesses with a drive-through require the issuance of a CUP. In addition, Chapter 18.41 – Site Planning Standards – has specific design requirements for drive-through businesses, including:

- Minimum queuing distances (established by CUP).
- Minimum 25-foot interior turning radius for drive-through aisles.
- Location of drive-through window and landscaping requirements.

The site plan shows approximately 200 feet of vehicle queuing distance prior to the ordering/menu board. This first portion of the drive-through is a double aisle, which is about 400 feet or 21 cars worth of storage. There is another approximately 150 feet of single drive aisle distance to the pick-up window, which provides another eight cars worth of storage for a total of 29 cars. Other drive-through businesses with circulation issues in National City have little-to-no storage prior to their ordering windows, which causes back-ups into parking lots and sometimes the public right-of-way. With an overall queuing distance of approximately 350 feet, overflow issues during peak periods are not anticipated to cause any serious issues, particularly with the drive aisle in the parking area to accommodate another seven vehicles before the driveway entrance to the site.

The interior turning radii of the drive-through aisles vary and are generally consistent with the Land Use Code requirement of 25 feet. There is a radius of only 16 feet at the northeast corner of the proposed building. Additional driveway width is provided at this turn to accommodate the tighter curve and the City Engineer is permitted to approve a smaller radius. Staff is recommending a condition of approval for a revised site plan in conformance with this section of code or an alternate design approved by the City Engineer.

The Land Use Code states that a drive-through window may not be located between the right-of-way and the building without a minimum 10-foot wide landscape buffer. The buffer shall have a minimum three-foot height continuous hedge and ornamental trees spaced a minimum of 20 feet on center. The location of the drive-through window and drive aisles is adjacent to Caltrans property and not directly adjacent to East Plaza Boulevard right-of-way. The landscape plan for the project is mostly consistent with the intent of requirements, in that the shrubs shown in the landscape plan typically reach heights of three feet. However, the placement of the shrubs is not continuous on the plan. A condition of approval requiring the planting of shrubs, or other plants that will create a continuous three-foot tall hedge, is included.

Section 18.30.360 of the LUC has additional requirements for fast food eating places. However, the public notice requirements are consistent with standard noticing for a CUP and the distance requirements do not apply in the MXD-2 zone.

Parking/Circulation

The proposed design shifts the site layout to place the new restaurant building and drive-through aisles closer to I-805. Although the new restaurant is significantly smaller than the building proposed to be demolished, the drive-through aisles, outdoor patios, and increased landscape area result in less space for parking with the number of spaces on site decreasing from 77 to 55. This is nine more spaces than required by the code and sufficient for the proposed use.

Based on a traffic impact analysis conducted by the applicant, the proposed project is projected to generate approximately 1,655 net new daily trips compared to the existing restaurant. A reduction of 60 AM peak hour trips and an increase of 103 PM peak hour trips is forecasted. Pass-by and diverted trips were also accounted for in the analysis provided. The analysis, inclusive of existing In-N-Out locations, also shows that the site plan demonstrates sufficient queuing capacity for the drive-through. Nearby intersections, with the exception of Palm Avenue and East Plaza Boulevard, will continue to operate at an acceptable level of service (LOS). The intersection at Palm Avenue and East Plaza Boulevard currently operates at a substandard LOS. However, the proposed development is only forecasted to contribute an insignificant 0.2 second delay to the existing condition.

The analysis did not provide evidence of a need for any changes to the existing roadway conditions as a result of the proposed development, but two additional scenarios were investigated, both related to the extension of the median between east and westbound lanes of Plaza Blvd. According to the review conducted by the City Engineer's office of the traffic impact analysis, a median extension on East Plaza Boulevard west to Palm Avenue would result in decreased LOS at the Palm Avenue intersection. A median extension of approximately 300 feet, however, would not affect LOS. The City could consider this option should unforeseen traffic issues arise following the opening of the new restaurant. A condition of approval is recommended to provide for this option available should it be deemed necessary.

Noise

Noise issues related to drive-through businesses are usually related to vehicle queuing and ordering windows/speakers. Noise is not likely to be an issue given the location close to Interstate 805 and the provision of a solid six foot high CMU wall separating the proposed use from adjacent residential properties. However, recent approvals for drive-through businesses have required noise-attenuating speakers at the ordering window and this business proposed to be open until 1:00 am Sunday through Thursday and 1:30 am Friday and Saturday. This type of speaker automatically adjusts its volume to compensate for ambient noise (streets, vehicles, etc.). Therefore, the volume is lower during quieter periods, such as at night. There is a condition requiring the noise-attenuating speakers.

Mailing

All property owners and occupants within a distance of 300 feet are required to be notified of a public hearing for a CUP application. Notice of this public hearing was sent to 249 occupants and owners.

Department Comments

Comments were provided by the Engineering and Fire Departments related to standard requirements for new developments. The Engineering Department also requested and provided

review of the traffic impact analysis for the proposed use. The Planning Division also provided a cursory review of the proposed plans with comments related to the Land Use Code. Sweetwater Authority comments related to the provision of water services to the proposed development were received. All comments have been incorporated as conditions of approval for the CUP.

Public Comment

Two (2) public comments were received in response to the Planning Commission hearing that was held on Monday, August 1, 2022.

Recommended Findings for Approval of the Appeal

The Municipal Code contains six required findings for CUPs as follows:

1. The proposed use is allowable within the applicable zoning district pursuant to a Conditional Use Permit and complies with all other applicable provisions of the Land Use Code.

Drive-through businesses are identified as a conditionally-allowed use in the Major Mixed-Use District (MXD-2) zone, and the conditions of approval will assure the proposed drive-through aisle will meet all requirements as contained in NCMC §18. 41 – Site Planning Standards.

2. The proposed use is consistent with the General Plan and any applicable specific plan.

The Land Use Code conditionally allows drive-through businesses in the MXD-2 zone; the Land Use Code is consistent with the General Plan. Additionally, there are no Specific Plans affecting this location.

3. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity.

The property will be completely redeveloped and will provide enough parking spaces based on provisions outlined in the Land Use Code. In addition, the proposed drive-through aisle, subject to the conditions of approval, meets all requirements for such uses outlined in the Land Use Code, as discussed above.

4. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

The project is expected to generate a reduction in approximately 60 AM peak hour trips and an increase of 103 PM peak hour trips and 1,655 net new daily trips, which can be accommodated by existing road network. Intersections in this location are currently operating at an LOS of D or better (passing), with the exception of Palm Avenue and East Plaza Boulevard, and are calculated by the provided traffic impact analysis to continue to have a passing LOS after construction. The intersection of Palm Avenue and East Plaza Boulevard has a LOS E and is calculated to have a less than significant increase in delay.

5. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located.

Noise issues related to drive-through businesses are usually related to vehicle queuing and ordering windows/speakers. Noise is not likely to be an issue given that the area is close to both arterial streets and a freeway. Residential areas will be physically separated from the proposed development by a solid six-foot high wall. Recent approvals for drive-through businesses have required noise-attenuating speakers at the ordering board. This type of speaker automatically adjusts its volume to compensate for ambient noise (streets, vehicles, etc.). Therefore, the volume is lower during quieter periods, such as at night. There is a condition requiring the noise-attenuating speakers. In addition, the new business will be a benefit the public interest by providing new jobs.

6. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA) and has been determined to be categorically exempt from environmental review pursuant to Class 32, Section 15332 (In-fill Development Projects) for which a Notice of Exemption will be filed subsequent to approval of this Conditional Use Permit.

Findings for Denial

There are two findings for denial as follows:

1. The proposed use is not deemed essential and desirable to the public convenience and welfare, because there are four other drive-through eating places within a half-mile of the site: Dunkin' Donuts, McDonald's, Popeyes Louisiana Kitchen, and Starbucks.
2. Granting the permit would constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located, because it would contribute to a concentration of unhealthy fast food eating places.

Conditions of Approval

Conditions of Approval are included that address City Department comments, as well as Sweetwater Authority. Conditions cover code requirements (Fire & Building), grading and improvement requirements (Engineering), and design and performance regulations for the drive-through and potential traffic issues (Planning). Sweetwater Authority requires specific plans as part of the development process.

Summary

The proposed drive-through is consistent with the Land Use Code with the approval of a CUP. Conditions of Approval will ensure that the business operates in harmony with existing uses in the area. The potential impacts are minimal since design guidelines ensure an appropriately-designed project. In addition, the 29-vehicle storage capacity of the drive-through aisle will avoid impacts to adjacent City streets.

Options

1. Approve the appeal, reversing the Planning Commission decision, thereby approving 2021-11 CUP, subject to the conditions listed within, based on the attached findings, or findings to be determined by the City Council; or
2. Deny the appeal and uphold the Planning Commission decision to deny 2021-11 CUP based on the attached Planning Commission findings, or findings to be determined by the City Council; or
3. Continue the item to a specific date in order to obtain additional information

FINANCIAL STATEMENT:

Not applicable

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is a project under CEQA subject to a Categorical Exemption. In-fill Development Projects CCR 15332. This project qualifies for a Notice of Exemption. CCR 15374.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

- Exhibit A – Overhead Map
- Exhibit B - PC Resolution No. 2022-18
- Exhibit C - Exhibit A to the PC Report – Plans
- Exhibit D - PowerPoint Slides from PC meeting
- Exhibit E – Resolution – AFFIRM APPEAL
- Exhibit F – Resolution – DENY APPEAL