

May 21, 2021

VIA E-MAIL: city_clerk@riversideca.gov
AND HAND-DELIVERY

Honorable Mayor and Members of the City Council
c/o Donesia Gause, MMC, City Clerk
City of Riverside
3900 Main Street, 7th Floor
Riverside, CA 92522

**Re: Notice of Appeal of Planning Commission Denial of Conditional Use Permit
(P20-0476) and Design Review (P20-0477)**

Honorable Mayor and Members of the City Council:

This firm represents Riverside Express, LLC ("**Applicant**") in connection with its application for the above-referenced Conditional Use Permit (P20-0476) and Design Review (P20-0477) seeking to entitle, construct and operate an auto wash facility on two parcels comprising 1.15 acres located at 3729 and 3745 Van Buren Boulevard (APN Nos. 233-022-080 and 233-022-012) ("**Site**") in the City of Riverside ("**City**") (the "**Project**"). The Project Site is currently zoned as Commercial Retail (CR) and Specific Plan (Magnolia Avenue) Overlay Zones, which designation allows for auto wash facilities as a conditionally permitted use.

On May 13, 2021, the City Planning Commission voted to deny Applicant's application for the Project on the grounds that the proposed auto wash use was not consistent with certain policies and objectives of the City's current General Plan, including Objective Nos. LU-35 through LU-37 and Policy LU-37.4. The Planning Commission's denial and the written findings supporting that denial, are inadequate and insufficient to justify denial of the Project.

We respectfully request that this correspondence be included as part of the administrative record for this matter. Enclosed herewith is a check in the amount of \$2,529.00 as payment of the appeal processing fee for this matter.

In accordance with Municipal Code Sections 19.680, et seq., the Applicant respectfully submits this appeal of the Planning Commission's denial of the Project for the following reasons:

The Project is Compatible with the 2025 General Plan and Satisfies All Objective and Uniformly Applicable Development Standards.

The Planning Commission's denial is based upon the Project's alleged inconsistency with General Plan objectives and policies related to development of the City's Arlington Neighborhood, including Objective Nos. LU-35 through LU-37. These objectives, which are supported by a series of policies designed to achieve the stated goals, generally "encourage" the preservation and maintenance of Arlington's unique character while also spurring the economic revitalization of the area. Specifically, Objective Nos. LU-35 through LU-37 state:

Objective LU-35: Maintain Arlington's sense of community through careful and coordinated planning that builds upon the neighborhood's key assets and reinforces its historic development patterns.

Objective LU-36: Restore, strengthen and maintain the unique community character and identity of the Arlington Neighborhood.

Objective LU-37: Spur the economic revitalization of the Arlington Neighborhood.

Contrary to the Planning Commission's findings, the Staff Report prepared by the City recommending approval of the Project expressly determined that the Project was compatible with, and furthered, the objectives and policies of the General Plan 2025, including Objective LU-37. The Project would spur the economic revitalization of the area by converting a vacant parcel of land into a viable commercial use that will create jobs and revenue for the City. The Staff Report also concluded that the architecture and design of the Project was "consistent with the Arlington District" and evidences a "contemporary architectural style with *traditional features*." (Staff Report, pp. 3, 5 [emphasis added].) In addition, the Staff Report determined that the Project itself was "consistent with the development patterns of the Magnolia Avenue Specific Plan." (Staff Report, p. 3.) Thus, the Project is compliant with General Plan Objectives LU-35 and LU-37, and there is no legitimate or lawful basis for concluding otherwise.

Furthermore, the Planning Commission's finding that the Project failed to comply with Policy LU-37.4 is also lacking in merit. This policy states that the City should "*encourage* the redevelopment of the Magnolia Avenue corridor with mixed use development." (General Plan 2025, p. LU-63 [emphasis added].) The supposition made by the Planning Commission in support of this finding appears to be that *only* "mixed use development" is to be allowed within the Magnolia Avenue corridor. Not only is this interpretation and application inconsistent with the plain language of Policy LU-37.4, which merely "encourages" such uses in the Magnolia Avenue corridor,¹ but it also cannot be reconciled with other existing and proposed projects in the area and along Magnolia Avenue that are not mixed-use developments.

It bears emphasizing that the General Plan 2025 objectives and policies are long-term planning policies and goals – not objective development standards or planning requirements that can be applied to a particular project on an objective, dispassionate basis. To that end, there is no finding or contention by the Planning Commission that the Project fails to comply with any uniformly-applicable, mandatory development standard for uses in the Commercial Retail (CR) and Specific Plan (Magnolia Avenue) Overlay Zones. In fact, City Staff expressly determined that the Project was "consistent" with each and every applicable development standard. (Staff Report, pp. 3-4.) As such, there are no independent, objective grounds to deny the Project.

Finally, California law does not require strict compliance with every single component of the City's General Plan; rather, the law simply requires that a project be generally consistent with the General Plan. (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563 ["State law does not require perfect conformity between a proposed project and the applicable general plan" because "it is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan."]; *Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717-718 [To be consistent, a project must simply be "compatible" with the objectives, policies, general land uses and programs specified].) The Planning Commission, in denying the Project, selectively identified General Plan policies and goals that could potentially be used to justify the denial rather than evaluating the Project holistically and determining whether the Project is compatible with the entirety of the General Plan, as required by longstanding California law.

¹ We further note that the Project Site is not located directly on or adjacent to Magnolia Avenue but rather faces Van Buren Boulevard and is four (4) parcels south of the intersection with Magnolia Avenue. Thus, the Site is arguably not part of the Magnolia Avenue corridor.

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Conclusion.

Based on the foregoing, Applicant has demonstrated that the Planning Commission's denial of the CUP for the Project was not supported by valid findings and is, indeed, devoid of any legitimate or lawful basis. Applicant reserves the right to submit additional grounds in support of the appeal of the Planning Commission's decision prior to and during any subsequent City Council hearing on the matter.

We appreciate the City's processing of this appeal and look forward to a just and fair hearing on the Project before the City Council.

Please contact me if you have any questions or wish to discuss this matter further.

Very truly yours,



Paige H. Gosney, Attorney for
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

PHG:tdg

Enclosure

cc: City Director of Community and Economic Development, David Welch (via email only: dwelch@riversideca.gov)
City Attorney, Kristi Smith, Esq. (via email only: ksmith@riversideca.gov)
City Associate Planner, Alyssa Berlino (via email only: aberlino@riversideca.gov)

Gresham Savage Nolan & Tilden, PC
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Check Date
05/20/2021

Check No
146594

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CITY OF RIVERSIDE

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Vendor Inv No

Reference

Open Amt

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