

September 14, 2015

VIA FACSIMILE (650) 359-6038

Mayor Karen Ervin and Members of the City Council
City of Pacifica
City Hall
170 Santa Maria Avenue
Pacifica, CA 94044

Re: 7-Eleven Convenience Store, 700 Hickey Boulevard

Honorable Mayor Karen Ervin and Members of the City Council:

This letter is submitted on behalf of 7-Eleven Inc., applicant in the above referenced matter, and responds to the staff report released on Friday afternoon. In particular, this letter addresses the findings in support of Option 1, the motion to grant the appeal and deny the Project. Starting at City Council packet page 127, the staff report, which forms the foundation for the resolution found at Attachment C, discusses the potential grounds for denial under two broad headings, general plan consistency and design, each addressed below. The applicant's concerns may be summarized as follows. First, we respectfully disagree with the interpretation of the various policies. The staff report relies upon unbelievably broadly stated, advisory provisions of City policy. Given the potential for inconsistent or arbitrary application, why would an applicant seek to make a major investment in the City given the lack of standards? Second, as to certain grounds, the applicant is now being told, for the first time, what the alleged use/design conflicts are. These concerns not only comes as a complete surprise given the close working relationship the applicant had with staff, but raises issues of due process and fundamental fairness. The public hearing is closed. The applicant has been denied a meaningful opportunity to evaluate and respond, or to make timely design changes to address the City's concerns.

General Plan Consistency

Encourage the upgrading and maintenance of existing neighborhoods.

At the outset, the City's policy is one to "encourage". It is not a mandatory requirement. It is such a remarkably amorphous general plan statement of policy that it lends itself to inconsistent and arbitrary application.

The staff report notes two points of concern: (a) the narrow alleys encouraging loitering and criminal activity, and (b) air compressor noise and vacuum. Addressing first the "narrow alleys", the identical statement can be said with respect to every building that is built close to the

property line. Is the City effectively downzoning existing commercial properties on small parcels? More importantly, there is no evidence in the record which correlates crime to the alley ways. This is a post hearing rationalization lacking evidentiary support. Third, the analysis is in error when it states that there are no remedial measures. Had this issue surfaced during the extensive collaborative effort with staff during the application process or during Commission review, it could have been remedied by the installation of locking gates to prevent non authorized access, a remarkably simple solution.

As to the air dispenser noise and vacuum, this site has been an active service station site, with automotive related work for roughly 60 years. As the staff report notes, this is an area of high noise exposure. There is nothing in the record which indicates that the noise levels will violate any adopted City noise standard, or that the anticipated noise levels will cause land use conflicts. California law requires that service stations provide air and water dispensers. As the final documents in the City Council packet reflect (see site plan on page 236), there is no vacuum equipment proposed only air and water as required by law, and accordingly, the proposed finding lacks factual foundation.

Encourage commercial vitalization in older, but potential viable, commercial districts.
(Community Design Element, Action Program No. 5)

The analysis contains two errors. First, it equates the Fairmont shopping center to a *commercial district*, an interpretation not supported by the City's own general plan. Second, the analysis assumes that Fairmont is not viable. As noted in the staff report, Safeway will take over the Lucky's space. A Safeway anchored center is a viable center under any metric of analysis. As one of the largest grocery chains in the United States providing a multi-product retail customer experience, there is no reason to believe that a 7-Eleven would put Safeway at an economic disadvantage. If there is evidence that 7-Eleven would adversely affect an existing shopping center, the applicant is entitled to the opportunity to review that evidence and have a meaningful opportunity to respond.

Land use and development shall protect and enhance the individual character of each neighborhood. (Land Use Element, Policy No. 8)

First, the staff report relies upon the same unsupported conclusions regarding crime (already addressed above.)

The analysis goes on to state "... , thus the continuous operation of an intensive convenience store retail activity 24 hours a day would not be in keeping with the character of the area." The reality is that the neighborhood has grown up around the commercial uses at the Shell, Fairmont and the proposed 7-Eleven operation and thus retail is an existing part of the area and neighborhood. The 7-Eleven does not introduce new uses to the commercial quadrant. The proposed use precludes heavy commercial use (auto repair) which would otherwise be allowed, as well as removes 50% of the fuel dispenser further de-intensifying the use, and expands general retail, an existing activity. The proposed store *enhances* the neighborhood by providing a retail

option to the immediate neighborhood, which means that the residents do not have to cross a major intersection.

Design Guidelines Inconsistency

The staff report next turns to the Design Guidelines. The Guidelines warrant two immediate comments. First, they are guidelines not regulation, leaving significant discretion and opportunity for arbitrary application. Second, they lack any effective standards. It is remarkably frustrating (and expensive) for an applicant to work closely with staff, successfully navigate the Planning Commission only to be told many months later that that the wrong lighting or landscaping plan was incorporated into design. It begs the question, if these requirements are so significant to the City of Pacifica, how is it that the applicant really only learns of the significance months after an application is filed, after the planning commission has approved the development plan and after the first city council hearing where the original planning report was 150+ pages supporting the proposed store and design?

The staff report highlights (a) the criminal element associated with alleys, (b) lighting spillover and (c) landscaping. The alley argument is addressed above. With respect to the spillover lighting, the evidence in the record from the prior staff report is that the rear lighting will not cause negative impacts, so there is no credible evidence of the lighting impacts on adjacent properties which would justify denial.

As to the landscaping issues, the Guidelines "discourage" but do not mandate any particular design requirement. This was not an area of concern raised during the Planning Commission or City Council hearing and so the applicant has been denied a meaningful opportunity to respond. As to the merits of the criticism in the staff report, the project is criticized because pedestrian access is not separate from vehicle access. How exactly is that to be accomplished on a small site, located on a corner? Similarly, the applicant is taken to task because the parking stalls at the fueling pumps are not shielded by landscaping? What gas station in Pacifica has fully landscaped screened fueling pumps? What gas station in Northern California has fully landscaped screened fueling pumps? The proposed rationale for denial does not survive critical review.

Sincerely,



William W. Abbott

WWA/sb

cc: Staff and City Attorney