

RESOLUTION NO. 2023-20

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA DENYING MODIFICATION TO CONDITIONAL USE PERMIT NO. 2019-41 TO ALLOW THE CONSTRUCTION OF A SERVICE STATION, AND DENYING CONDITIONAL USE PERMIT NO. 2023-03 FOR A LAND USE THAT REQUIRES 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 RESIDENTIAL ZONE IN THE ARTERIAL COMMERCIAL (C5) ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 2230 NORTH TUSTIN AVENUE

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

**Section 1.** The Planning Commission of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Fred Cohen with CJC Design, Inc., on behalf of Farz, Inc. (Applicant) and Heinecke Gould Properties, LLC (Property Owner), is requesting approval of modification to Conditional Use Permit (CUP) No. 2019-41 to facilitate the construction of a new service station and convenience store located at 2230 North Tustin Avenue.
- B. Applicant is also requesting approval of Conditional Use Permit (CUP) No. 2023-03, to allow a land use that requires 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 residential zones in the Arterial Commercial (C5) zoning district at 2230 North Tustin Avenue.
- C. Santa Ana Municipal Code ("SAMC") Section 41-424.5(f) requires approval of a CUP for service stations within the Arterial Commercial (C5) zoning district.
- D. Santa Ana Municipal Code ("SAMC") Section 41-199.4(a) requires a conditional use permit for any use that requires a permit from a regional, state, or federal agency to handle, store, emit or discharge regulated compounds, materials, chemicals, or substances that is located within 500 linear feet of a public park, school (K-12) as defined in section 11362.768 of the Health and Safety Code, or property used or zoned for residential purposes.

- E. On May 26, 2020, the City of Santa Ana Planning Commission held a public hearing for the proposal of a new service station on the subject site. The Planning Commission unanimously approved CUP No. 2019-41 and Variance No. 2019-05 to allow the construction of a new service station on the subject site.
- F. On December 20, 2022, the City Council adopted an ordinance to require businesses requiring 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 residential zones to obtain a CUP (Ordinance No. NS-3038).
- G. On June 20, 2023, the City Council adopted an ordinance amending various sections of Chapter 41 (Zoning) of the SAMC, which include Section 41-199.4 Noxious uses, to expand the distance measured from subject properties to the closest point of any public park, school, or property used or zoned for residential purposes from 500 linear feet to 1,000 (Ordinance No. NS-3044).
- H. The applicant is proposing modifications to the original CUP 2019-41 entitlement to allow construction of 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. Based on the date on the application, the project is subject to Ordinance No. NS-3038 and subject to a 500 linear foot separation requirement instead of 1,000 linear feet.
- I. Pursuant to SAMC Section 41-638, the Planning Commission is authorized to review and approve both CUPs for this project as set forth by the SAMC.
- J. On June 26, 2023, the Planning Commission held a duly noticed public hearing for modification to CUP No. 2019-41 and CUP No. 2023-03.
- K. At the public hearing, the Planning Commission received a report and staff presentation, as well as public comments, for modification to CUP No. 2019-41 and CUP No. 2023-03. During the public hearing, representatives of the adjacent property at 2112 East Santa Clara Avenue, as well as community members consisting of residents, representatives and parents of children attending the neighboring child-care facility, spoke in opposition of the project. The comments in opposition were regarding concerns about the potential environmental and operational impacts of the new service station on the surrounding area.
- L. After receiving a staff presentation and public comments regarding the changes to the project, the Planning Commission voted to adopt a resolution denying modification to CUP No. 2019-41 and CUP No. 2023-03, providing two findings for denial pursuant to SAMC Section 41-638. The proposed motion passed with five votes in favor and two against.

- M. Staff prepared a resolution for denial of modification to CUP No. 2019-41 and CUP No. 2023-03 for consideration by the Planning Commission on the consent calendar of the regularly scheduled August 28, 2023 meeting to affirm the action to deny the subject applications, which took place on June 26, 2023.
- N. The Planning Commission determines that the following findings, which must be established in order to grant this CUP pursuant to SAMC Sections 41-638 and 41-645, cannot be established for modification to CUP No. 2019-41 to allow the construction of a new service station and CUP No. 2023-03 to allow a land use that requires 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 residential zone, at 2230 North Tustin Avenue in the C5 zoning district:
1. That the proposed use will be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The proposed project 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. As part of the proposal, potential impacts onto surrounding properties, including the adjacent child care facility, from health risks, air quality, and noise were not addressed or evaluated to the satisfaction of the Planning Commission, and the proposed project modification does not contribute to enhancement that addresses these topics.

These findings support several goals and policies outlined in the General Plan. 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, as part of the proposal, potential impacts onto surrounding properties, including the adjacent child care facility, from health risks, air quality, and noise were not addressed or evaluated to the satisfaction of the Planning Commission.

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.

2. That the proposed use will adversely affect the present economic stability or future economic development of properties surrounding the area.

The service station will adversely affect the economic stability or future economic development of properties in the surrounding 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 therefore negatively impacting business operations of the adjacent properties.

These findings support several goals and policies outlined 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 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.

**Section 2.** The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

**Section 3.** The Planning Commission of the City of Santa Ana, after conducting the public hearing on June 26, 2023, hereby denies modification to CUP No. 2019-41, and denies CUP No. 2023-03.

ADOPTED this 26<sup>th</sup> day of June 2023 by the following vote.

AYES: Commissioners: Carl Benninger, Manuel J. Escamila, Christopher Leo, Jennifer Oliva, Bao Pham, Isuri Ramos, Alan Woo (7)  
NOES: Commissioners: (0)  
ABSENT: Commissioners: (0)  
ABSTENTIONS: Commissioners: (0)

  
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Bao Pham  
Chairperson

APPROVED AS TO FORM:  
Sonia R. Carvalho, City Attorney

By: John M. Funk  
John M. Funk  
Chief Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Nuvia Ocampo, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2023-20 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on June 26, 2023.

Date: 9/26/2023

Nuvia Ocampo  
Nuvia Ocampo  
Recording Secretary