



Memorandum

TO: HONORABLE MAYOR AND
COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: October 2, 2017

Approved

D. DSYL

Date

10/12/17

COUNCIL DISTRICT: 9

SUBJECT: ADMINISTRATIVE HEARING ON A PERMIT APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF A CONDITIONAL USE PERMIT AND SITE DEVELOPMENT PERMIT (FILE NO. CP16-035) TO ALLOW THE DEMOLITION OF AN EXISTING 1,276-SQUARE FOOT GAS STATION MINIMART WITH INCIDENTAL SERVICE AND VEHICLE REPAIR AND THE CONSTRUCTION OF A NEW 5,754-SQUARE FOOT CONVENIENCE STORE AND FULLY AUTOMATED CAR WASH, EXTENDED EARLY MORNING USE FOR THE GAS STATION AND CONVENIENCE STORE ONLY (ONE HOUR EXTENSION BETWEEN 5:00 A.M. AND 6:00 A.M.), A TEMPORARY USE TRAILER, AND AN EXCEEDANCE OF THE ZONING ORDINANCE NOISE PERFORMANCE STANDARDS BY TWO DECIBELS ON A 0.81-GROSS ACRE SITE LOCATED ON THE SOUTHEASTERLY CORNER OF SOUTH BASCOM AVENUE AND WOODARD ROAD (3702 SOUTH BASCOM AVENUE).

RECOMMENDATION

- a) Conduct an Administrative Hearing and consider the Permit Appeal of the Planning Commission's approval of the Conditional Use Permit and Site Development Permit to allow the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels.
- b) Adopt a resolution denying the permit appeal and approving the Conditional Use Permit and Site Development Permit, subject to conditions to allow the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the

October 2, 2017

Subject: File No. CP16-035

Page 2

construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels on an approximately on a 0.81-gross acre site located at 3702 South Bascom Avenue [southeast corner of South Bascom Avenue and Woodard Road].

OUTCOME

Denial of the permit appeal and adopting a resolution approving the Conditional Use Permit and Site Development Permit will allow the applicant to implement the permits. This includes the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels.

Approving the permit appeal would mean there is no approved Conditional Use Permit and Site Development Permit for the proposed project, and the applicant could continue the existing 1,276-square foot gas station minimart use with incidental service and repair.

The City Council is the decision making body of this permit appeal and the appeal hearing is de novo pursuant to Section 20.100.280 of the San José Municipal Code, which means a project is reviewed and approved or denied in its entirety. The Council's decision is final.

EXECUTIVE SUMMARY

The proposed project would demolish an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and construct a new 5,754-square foot convenience store and fully automated car wash, with early morning use for the gas station and convenience store only (one hour extension between 5:00 a.m. and 6:00 a.m.), and include an exceedance of the Zoning Ordinance noise performance standards by two decibels on an approximately 0.81-gross acre site at 3702 South Bascom Avenue [southeast corner of South Bascom Avenue and Woodard Road].

At the Planning Commission hearing on August 9, 2017, 13 members of the public spoke against the proposed project, expressing concerns about safety, crime, noise, traffic, water and sewer capacity, car wash chemicals and odor, hours of operation, undesirable clientele, and property values. Similar concerns were raised by the community through a petition (Attachment B) delivered to staff at the May 8, 2017 community meeting. Planning Commissioners inquired and commented on the sound walls, noise study, and car wash operations. The final vote was to approve the proposed Conditional Use Permit and Site Development Permit (4-3-0, Commissioners Pham, Ballard, and Bit-Badal opposed).

On August 16, 2017, a permit appeal was submitted by Kathleen Flynn. The appeal is based on concerns regarding public safety, hours of operation, traffic, proximity to residences, odor, dust, exhaust fumes, noise, impacts to the nearby elementary school, issues with the driveway closure on Woodard Road, crime, police and fire access, and construction impacts. These claims are fully addressed in this memorandum.

BACKGROUND

Project History

On July 18, 2016, the applicant, Antoine Andary on behalf of Andarys Enterprise, Inc., applied for a Conditional Use Permit and Site Development Permit to allow the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels, on a 0.81-gross acre site. There was no change to the location of the existing fuel pumps, and the existing canopy and canopy signage were replaced under separate approved permits (File No. AD16-398 and File No. AD16-900) prior to submittal of this application.

The project site is located at 3702 South Bascom Avenue [southeast corner of South Bascom Avenue and Woodard Road]. The site is currently a 1963 service station building with a small convenience store, four gas pumps (eight fueling positions), and incidental vehicle repair services. The property is bounded by multifamily residences to the north across Woodard Road, a liquor store and strip mall to the south, multifamily residential properties to the east, and a commercial strip mall to the west across South Bascom Avenue, located in the city of Campbell. Farnham Elementary School is located northeasterly of the site on Woodard Road. The site also includes a 25-foot private ingress/egress access easement at the rear of the site extending from Woodard Road to the adjacent commercial properties south of the project site.

Planning staff provided an analysis of the project in a staff report to the Planning Commission prior to their public hearing (see attached Planning Commission packet).

ANALYSIS

The proposed project's conformance with the Envision San José 2040 General Plan and the Zoning Ordinance were addressed in the Staff Report (attached) and Planning Commission Resolution No. 17-025 approving the Conditional Use Permit and Site Development Permit. This memorandum addresses only the specific comments raised by the permit appellant in the Notice of Permit Appeal.

Appeal of the Conditional Use Permit and Site Development Permit

Pursuant to Section 20.100 of Title 20 of the San José Municipal Code, an appeal shall be considered by the City Council only on the issues that were raised previously either orally or in writing to a recommending body or a decision-making body at or prior to a public hearing whenever the underlying project is considered at a public hearing. On August 16, 2017, a timely appeal of the Planning Commission's approval of the Conditional Use Permit and Site Development Permit was filed by Kathleen Flynn. A copy of the Notice of Permit Appeal is attached. The environmental clearance for the proposed project (Exempt, CEQA Section 15302 (Replacement or Reconstruction) and Section 15332 (In-fill Development Projects) was not appealed. All the concerns mentioned in the appeal were raised at some point during the public hearing process by the community. The following are staff's response to the comments raised by the appellant, and appellant comments are in *blue*.

1. *Comment: "The proposed carwash will be both a public and private nuisance. Starview Drive has approximately 16, four-plex rental properties whose bedroom and living room windows face Andoil's property. Tenants work different hours, and many have multiple jobs."*

Response: The proposed use is located in an area with a mix of commercial and residential uses. Due to the variety of current uses in the area, the proposed gas station convenience store and car wash would add to the range of commercial service and retail uses consistent with the Neighborhood/Community Commercial General Plan land use designation and Commercial Zoning Districts. The noise analysis conducted for the project determined that the operation of the project would not result in a detrimental increase in noise because even though the existing ambient noise levels already exceed the allowances under the General Plan, the increase is only 0.6 dBA Ldn with the presence of the project design features which is considered less than significant under General Plan Policy EC-1.2. Under the Zoning Ordinance, the noise levels at the property lines cannot exceed 55 dBA at any residential property line or 60 dBA at any commercial property line. With noise barriers as a project design feature incorporated, the noise at the adjacent residential property line will be exceeded by two decibels which is considered minute (at 57 dBA), and the noise at the adjacent commercial property line will be in conformance with the noise standards (at 53 dBA). As the project meets the General Plan noise standards and Policy EC-1.2, the project is considered to not adversely impact the surrounding residential neighborhood, nor be a nuisance to the community.

Consistent with City Council Policy 6-27, Evaluation of 24-Hour Uses, the project applicant shall comply with the approved Mitigation Management Plan/Operations Plan which includes trash and graffiti removal, site security and safety measures, loitering and panhandling restrictions, and mandatory employee training, all of which combat blight. Conformance with the Mitigation Management Plan is a condition of the Resolution (Condition # 7).

2. *Comment:* "The 4-6 month construction of this project, the long hours of operation of the car wash, their extended hours of operation, and the increased noise and traffic will be a huge nuisance for all of us."

Response: Construction hours are controlled by the San José Municipal Code Section 20.100.450, applied citywide, and allow outside construction work between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. This project is conditioned to meet this standard (Condition No. 25 of the proposed Resolution). On Saturday and Sunday between 9:00 a.m. and 6:00 p.m., interior construction that is not audible at the adjacent property lines is permitted pursuant to the approved use and development permits.

Pursuant to San José Municipal Code Section 20.40.500, the applicant is permitted to operate the gas service station including the proposed convenience store between 6:00 a.m. to 12:00 midnight; however, while car washes can operate under the same Code Section during those hours, car washes are further limited by the 1990 City Council Policy 6-10, "Criteria for the Review of Drive-Through Uses," when located adjacent to residential uses, reducing the allowed by-right operating hours to 6:00 a.m. to 10:00 p.m. This car wash proposal is conditioned to operate two hours less than what is permitted per the Policy, only between the hours of 7:00 a.m. to 9:00 p.m. The approved Conditional Use Permit allowed an additional late night hour of operation for the gas station and convenience store only between the hour of 5:00 a.m. to 6:00 a.m., making the full operating hours of the gas station and convenience store 5:00 a.m. to 12:00 midnight. This extension does not apply to the car wash.

3. *Comments:* "I live in the 4-plex directly behind Andoil Gas Station in an upstairs apartment. My two bedroom windows will be just 60 feet away from the proposed car wash. This is in direct violation of: The Council Drive through Policy which states that drive through uses shall be located 200 feet or more from immediately adjacent or directly opposite residential uses."

"Traffic study. Staffs report is misleading when it says that, 'The existing driveway on Woodard Road, located at the northwest corner of the site, will be closed, improving pedestrian circulation on and around the site.'"

"There are two existing driveways on Woodard Road approximately 5 feet apart on Andoil's property. The second driveway which will be left open will actually make traffic worse as drivers will use Woodard as a U-Turn to get back on S. Bascom, and will make it much more difficult for pedestrians (especially children walking to and from Farnham school) to get to existing businesses next to the Andoil Gas Station."

"I also believe that cars leaving either the convenience store or the carwash will exit at the Woodard Ave. driveway. (I've lived here 19 years and see this all the time.)"

"Further, parents dropping off and picking children up from school already park on private property, block driveways, park on red curbs on Starview Drive/Woodard Ave. This will only get worse when Andoil blocks off the driveway behind my 4-plex. Parents

October 2, 2017

Subject: File No. CP16-035

Page 6

have been using this area to park for years, and now they will be forced to go onto our street to find parking."

Response: The Council Drive-through Policy states that drive-through uses shall be located 200 feet or more from immediately adjacent or directly opposite residential uses. Pursuant to this policy, self-service car washes proposed in conjunction with existing gasoline service stations may be exempted from location criteria, provided the traffic criteria of the policy is satisfied. Consistent with the Council Policy and the Public Works Department memorandum dated December 16, 2016, the primary ingress to the proposed drive-through car wash is from South Bascom Avenue, a six-lane City Connector Street. The project is in conformance with the City's Transportation Level of Service (LOS) Policy (Council Policy 5-3) in that it will not reduce the level of service for the existing South Bascom Avenue and Woodard Road intersection. It was estimated that the proposed project would generate 33 net new Peak Hour Trips (PHT). A significant LOS impact occurs when the TIA demonstrates that the proposed development would either: (1) cause the level of service at an intersection to fall below LOS D, or (2) contribute the equivalent of 1 % or more to existing traffic congestion at an intersection already operating at LOS E or F. It has long been San Jose's policy that adding 1 % or more to an already congested intersection is a substantial increase in congestion and constitutes a significant impact, and that is still the intention of this Policy. The City performed a LOS analysis at the South Bascom Avenue and Woodard Road intersection which indicated that the existing LOS/delay of B-18.5 would increase to B-18.7 with project traffic. Since the grade of this intersection would not change from "B" and delays would only increase by 0.2, there would be no significant traffic impacts associated with the proposed project.

The site layout (see Figure 1 below) is designed to ensure that overflow stacking does not affect the ingress and egress of the site and impede the traffic on South Bascom Avenue and Woodard Road. The existing driveway on Woodard Road, located at the northwest corner of the site, will be closed, improving pedestrian circulation on and around the site. The proposed convenience store with drive-through car wash significantly upgrades the subject site by allowing improved circulation and access by vehicles and pedestrians.

Although the drive-through use is within 200 feet of a residential use, sufficient measures in regards to site design and sound attenuation walls (see response below for more on noise) would limit impact to the adjacent parcels. The proposed drive through is located 25 feet from the eastern property boundary and is further separated by a 7-foot masonry wall.

This analysis accounted for the existing traffic conditions of the neighborhood, including the school and residential traffic patterns. The analysis also anticipated that full access with both left- and right-hand turns would be accommodated by the Woodard Road driveway, and such usage would not constitute a significant impact on LOS. Parents currently utilizing the site's parking to drop off their children are doing so illegally and this practice cannot be permitted under this permit to continue.

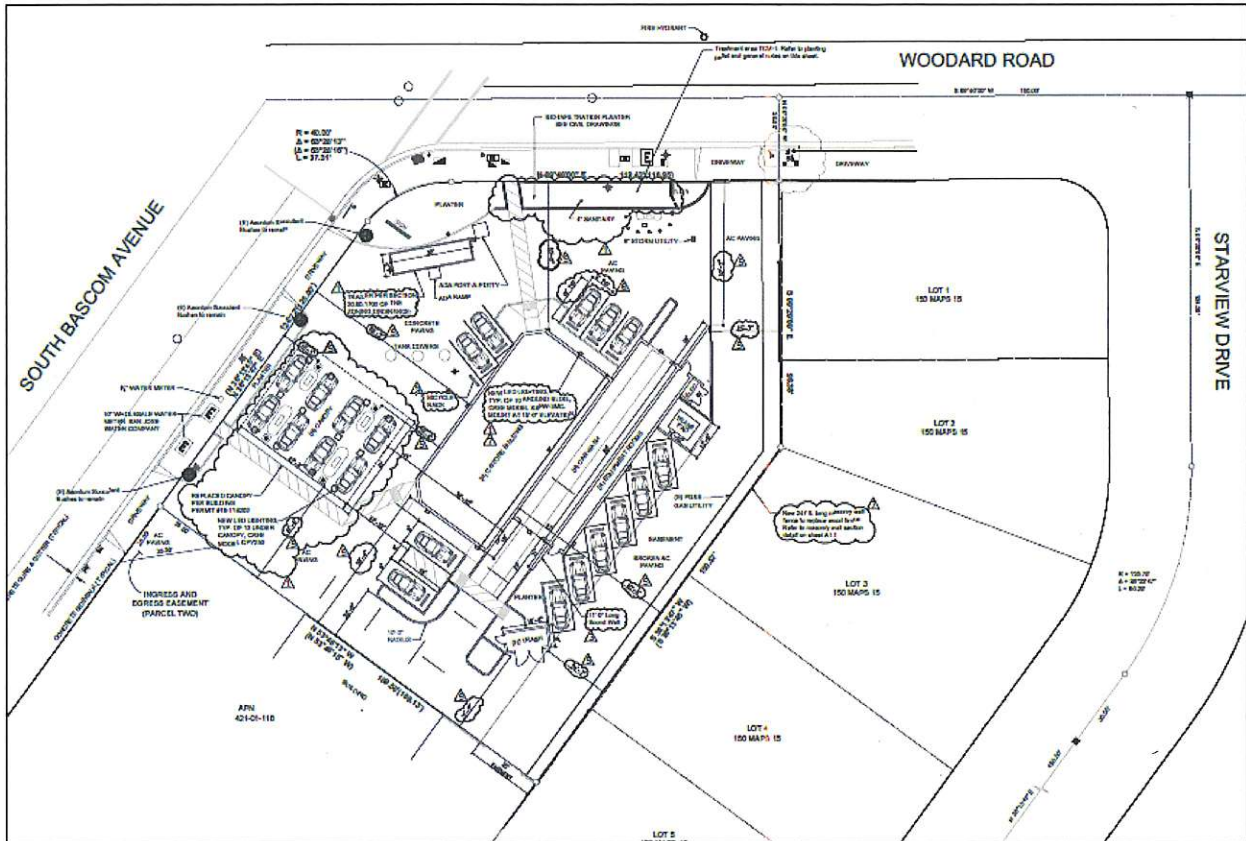


Figure 1: Site Plan

4. **Comments:** "Further, I am disabled with multiple health problems and am on Chemo therapy. My roommate has severe asthma and works until 1:00am. The odors from the carwash coupled with the current propane tank odors, noise, increased traffic, and hours of operation from said car wash, along with the 4-6 month construction for the site will cause both my roommate and I the inability to sleep."

"Also, the odors and dust from both the construction, and carwash, along with the exhaust fumes from numerous cars coming in and out of the car wash/ 25 parking spaces will cause us both increased health problems."

Response: With regards to dust during construction, Condition No. 24 of the Resolution regulates construction dust as follows:

- "Street Cleaning and Dust Control. During construction, the permittee shall sweep and wash down the public streets each working day. In any on-site area visible to the public from the public right-of-way, the site shall be clean of debris, rubbish and trash at least once a week. The permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the construction site."

If the project were in violation of this Condition, work on the project would be stopped until the construction operations are in conformance with this requirement. In regard to construction- and operation-related odor, the project was found to be exempt under the California Environmental Quality Act (CEQA), as any odor produced by the project during construction or operation would be considered minimal (less than significant).

Pursuant to City Council Policy 6-10, Criteria for the Review of Drive-through Uses, the car wash will operate within the allowed hours of the Policy. Regarding emission control, the car wash is oriented north-south, in conformance with this policy. Tunneling will not occur as the adjacent buildings are over 40 feet away from the car wash building and the car wash tunnel length is more than 30 feet (measuring in at 80 feet long). The employees are protected from the idling car emissions as the entrances to the car wash are not facing the entrances of the convenience store. The drive-through use is not adjacent to patios or pedestrian use area, but rather it is adjacent to an automobile easement and parking. The stacking associated with the drive-through use is facing away from the adjacent residential uses and toward the commercial property to the south.

See previous traffic discussion in response to Comment #3.

5. **Comments:** *"This car wash will be running from 7am-9pm, 7 days a week and will interfere with both our "Right of Quiet Enjoyment" of our home, and my neighbor's rights to 'Quiet Enjoyment.'"*

"The noise study conducted by Mei Wu Acoustics is skewed. They only did a study from property line to property line and did not take into account the affects of noise from the carwash on upstairs units or two story homes which are well above the '7-foot buffer wall.'"

"In staff's report: They say, 'The above table shows that the noise levels at the nearest residential property boundary will be above the levels allowed by the Zoning Ordinance, but that they will not significantly increase the existing day night average noise levels.' Again, this does not take into account that noise travels up, and the noise study was conducted on ground-level from property line to property line."

"We already have a lot of noise from the traffic on S. Bascom Ave. and Woodard. When you add the noise of parents dropping off and picking children up from school, it is even worse."

Response: A noise study was prepared by Mei Wu Acoustics (dated December 20, 2016) which analyzed the potential impacts of the project on adjacent residential and commercial properties. Noise standards established in the General Plan serve as the City's noise thresholds for determining significant impacts under CEQA. The results of the noise study were evaluated against the Noise Element of the City of San José General Plan, which utilizes the Day Night Average (DNL). The noise study uses a different name and acronym to describe the same measurement: Day-Night Level (Ldn) 24-hour noise descriptor. The A-weighted sound level or dBA is a scale that gives greater weight to the frequencies of sound to which the human ear is most sensitive. The General Plan Noise and Vibration Policy EC-1.2 states that the City

considers significant noise impacts to occur if a project would:

- i. Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain “Normally Acceptable”; or
- ii. Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the “Normally Acceptable” level.

The General Plan establishes that this project site is located within an Existing (2008) Vehicular Noise Contour for Major Roadways area which makes the existing ambient (existing) noise levels 70 dBA Ldn (the project site falls under the 75-70 dBA Ldn contour along the boundary with the residential area representing the beginning of the 70-65 dBA Ldn contour), exceeding the General Plan “Normally Acceptable” noise levels. In order to comply with Policy EC-1.2, the project cannot increase the noise at the adjacent residential property lines by three or more dBA DNL. The existing noise level at the adjacent residential property lines is 70 dBA Ldn and the project noise levels with the noise wall project design features incorporated will result in 70.5 dBA Ldn at the eastern residential property lines and 70.6 dBA Ldn at the western commercial property lines. The increase of noise is 0.5 and 0.6 dBA Ldn over the existing ambient, in compliance with this Policy. The table below shows the noise levels with and without the project design feature barrier incorporated, as well as the exhibit showing the location of the walls (under the Zoning Ordinance Noise Compliance section below).

Receiver	Distance to Property Line [ft]	Noise Level at Receiver no Barriers [dBA]	Noise Level at Receiver with Barriers [dBA]	L _{dn} at Receiver with Barriers [dBA L _{dn}]	Existing Noise Level [dBA L _{dn}]
Residential (1)	60	62	55	70.5	70.0
Residential (2)	50	57	52	70.5	
Residential (3)	50	69	57	70.6	
Commercial (4)	70	65	53	70.5	

The City’s Zoning Ordinance utilizes the instantaneous decibels (dBA) noise descriptor. Pursuant to Section 20.40.600 of the Zoning Ordinance, uses of the CN Commercial Neighborhood Zoning District that are adjacent to a property used or zoned for residential purposes shall not exceed 55 dBA at the property line except with the approval of a Special Use Permit per Section 20.40.600.B.2 of the Zoning Ordinance. Uses of the CN Zoning District that are adjacent to a property used or zoned for commercial purposes shall not exceed 60 dBA at the property line. The table above shows the noise levels at the property lines and the graphic image below (see Figure 2) shows the location of the project design feature barriers. The project design features are explained below:

- A trash enclosure will be constructed to conceal the dumpster onsite. This enclosure will be 8 feet tall and made of concrete masonry units (CMU). The enclosure will be 16’-6” in length and positioned such that it will block noise for the residential properties

to the southeast. The wall is included in the noise report as Barrier #1 and reduces the noise at the property line to 55 dBA, to meet the required 55 dBA noise performance standards.

- An 11-foot long, 10-foot high barrier will be constructed at the entrance of the car wash which blocks noise at the eastern property line for residential buildings located to the south of the site. The wall is included in the noise report as Barrier #2 and reduces the noise at the property line to 52 dBA, to meet the required 55 dBA noise performance standards.
- An 18-foot long, 10-foot high sound barrier will be constructed at the exit of the car wash which will block noise at the eastern property line for the northernmost residences. The wall is included in the noise report as Barrier #3 and reduces the noise at the property line to 57 dBA, which is two decibels above the 55 dBA noise performance standards. This Conditional Use Permit grants this slight exceedance of the noise performance standards as the two decibel increase is considered minimal.
- An existing 6-foot tall concrete masonry units (CMU) wall is between the adjacent commercial property and the subject site. The wall is included in the noise report as Barrier #4 and reduces the noise at the property line to 53 dBA, well below the required 60 dBA noise performance standards.

In addition to the three noise barriers above, a 247-foot long, 7-foot high masonry wall shall be installed along the eastern property boundary, extending from the site's property line near Woodard Road to its southern property line, to reduce noise levels and to increase security and separation between the project site and adjacent residential properties. This wall was not considered as a project design feature under the noise study, but was integrated into the project to replace the existing wooden fence and increase sound attenuation. It is not necessary to meet the noise requirements of the General Plan, CEQA, or the Zoning Ordinance.

With incorporation of all the project design features specified above, noise levels would not be significant.

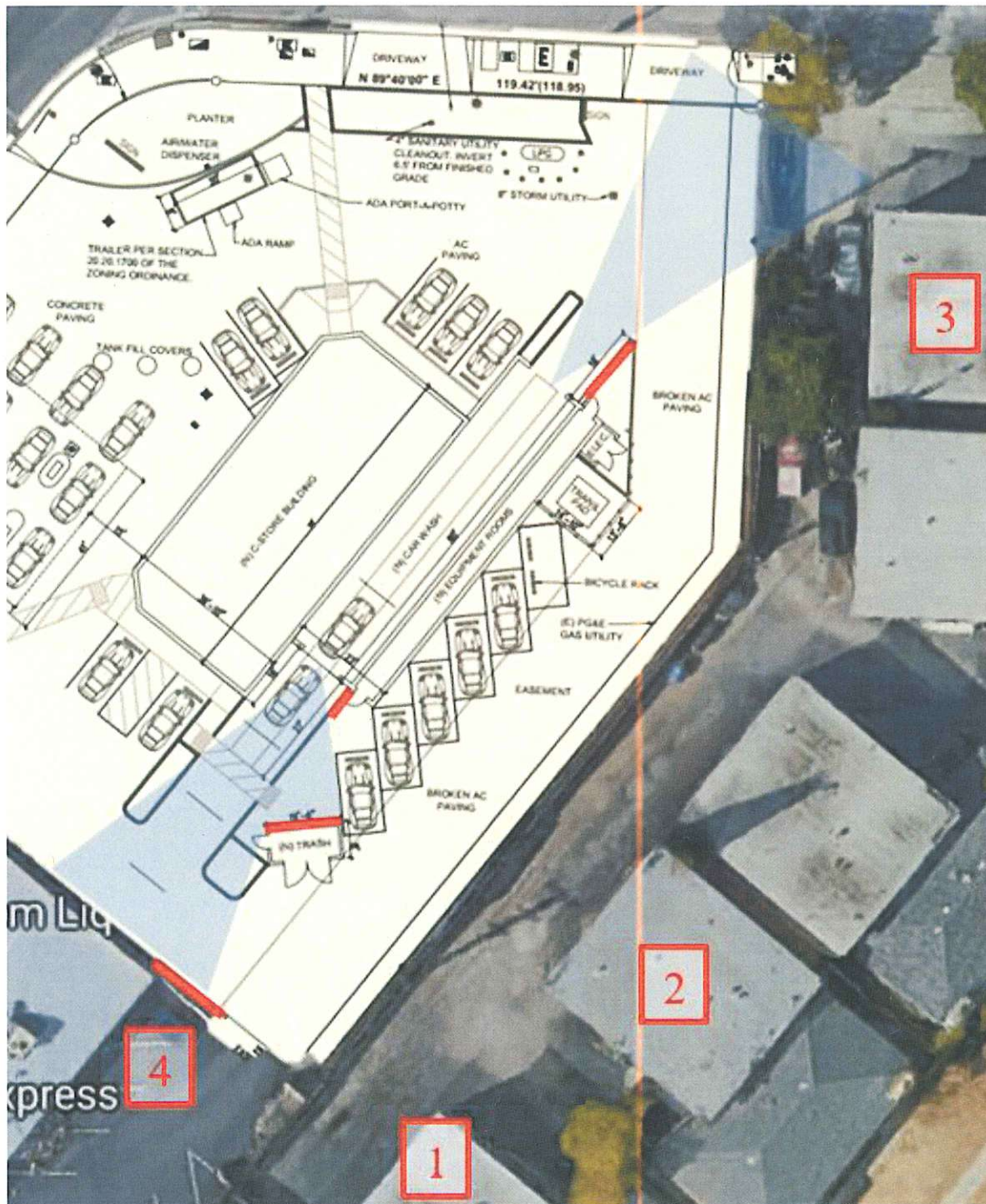


Figure 2: Project Design Features

6. *Comment:* "Please be advised that Council Member Rocha held a community meeting in May 2017. Approximately 25-30 residents attended. Not one person approved of this carwash. Further, all the residents and businesses owners who attended the City's Planning Commission Meeting held 8-9-17, opposed this carwash as well."

Response: Comment is acknowledged. No response is required.

7. **Comment:** *"It should be noted that a petition signed by neighborhood residents and business owners opposing this carwash was given to the Planning Department to give to the Planning Commission for review, but I heard no mention of that petition at that meeting." "Also, we already have three existing carwashes within a half a mile of our residence. None of them are in a residential area. There are also two carwashes within a mile of our neighborhood in Campbell. One is a Pacific Car Wash which is in a mixed use area, and the other one is not. None of these carwashes run as early or as late as the one proposed by Andoil."*

Response: The petition was provided to the Planning Commissioners at the meeting. There are no drive-through uses in the immediate vicinity of the site. The closest car washes to the site and their hours of operation are:

- Classic Car Wash at 16500 Lark Avenue, Los Gatos (a hybrid automated and hand wash car wash operating between the hours of 7:30 a.m. to 5:30 p.m., approximately 1 mile away, within 50 feet of residences),
- Classic Car Wash at 981 E. Hamilton Avenue, Campbell (a hybrid automated and hand wash car wash operating between the hours of 7:00 a.m. to 7:00 p.m., approximately 2.5 miles away, within 600 feet of residences),
- Chevron Gas Station at 700 Blossom Hill Road, Los Gatos (an automated car wash operating between the hours of 6:00 a.m. to 11:00 p.m., approximately 1.9 miles away, within 350 feet of residences).

The proposed car wash is similar to the referenced car washes in the general area and the hours of operation are comparable, if not more restrictive in some cases.

8. **Comments:** *"In an effort to resolve these issues and meet the owners of Andoil halfway, I met with the owners of Andoil, Mr. And Mrs. Andary, and asked them if they would reduce their carwash hours. They said they would think about it."*

"Also, I sent them the attached email asking them to consider having a hand carwash like Pacific Car Wash because it would be less of a nuisance, and would provide jobs. Please see their response."

Response: The operations of a hand car wash, similar to Pacific Car Wash, would be comparable to an automated car wash, because cars are kept running as they are taken through a tunnel washing system. The primary differences include the vacuuming/cleaning prior to entering the car wash and the hand drying after the car wash. The hand drying could replace the blowers of the car wash, but extra queuing to store the cars while they are dried is required, which the site cannot provide due to its limited size.

9. **Comments:** *"Property values of homeowners and a landlord's ability to rent units with an automated car wash directly behind their buildings."*

“Further, potential homebuyers and renters will not relish the idea of living in an already noisy, congested location complete with an automated carwash running from 7am-9pm, 7 days a week, or near a convenience store.”

Response: Property values are not a consideration in approving development permits.

10. **Comments:** *“Andoil’s property has already been robbed twice, and their parking lot is currently a haven for drug deals and drug addicts, as well as the homeless. (The owner of Andoil, Sam Andary, and I discussed this issue on 8-5-17, and he acknowledged that he is aware of this type of activity on his property.) This 7 foot “buffer wall,” will give these folks a better place to hide their activities from the public eye.”*

“Any security cameras Andoil puts out back or on the sides of his business will probably be destroyed by these criminals. It is a proven statistic that convenience stores are robbed more than any other business.”

Response: The project will operate during standard operating hours of 6:00 a.m. to 12:00 midnight, with a one-hour late night allowance between 5:00 and 6:00 a.m. The car wash will only be operable between the hours of 7:00 a.m. to 9:00 p.m. Ample lighting consistent with the Commercial Design Guidelines will be provided in all outdoor areas increasing safety and security. Also, the project applicant shall comply with the approved Mitigation Management Plan/Operations Plan, which includes trash and graffiti removal, additional site security and safety measures, loitering and panhandling restrictions, and mandatory employee training. Furthermore, this project does not include automotive repair and the car wash would not operate between the hours of 9:00 p.m. and 7:00 a.m. The restroom facilities, to be located inside the proposed convenience store, will be available during business hours and security and safety of the patrons maintained in accordance with the aforementioned Plan.

See above for a discussion concerning traffic.

11. **Comment:** *“Further, we all have deep concerns about Police and Fire having full access to this site. Please note in Staffs report that the San Jose Police Department remained neutral on this new proposed project.”*

Response: The site is configured to accommodate police vehicles if required. Fire access is provided either by aerial fire apparatus access or by the ingress/egress easement situated between the residences and the car wash. The Fire Department reviewed the site plan for conformance with its standards and will ensure continued adequate fire access and code compliance during the Building Permit process. The Police comments are in reference to their neutral stance to the off-sale of alcohol at the site. The Police do not submit comments concerning site design on development projects.

12. **Comments:** *“Access to adjacent businesses for pedestrians will be impeded by this new project.”*

“Currently, we can walk to the nearby Liquor and Food Mart, the laundry mat, and the Sports Medicine facility beside it. Once this project goes through, it will impede access to these businesses due to the 4-6 month construction and the increased traffic this new project will bring into this strip mall.”

Response: Construction impacts to the area will be temporary and kept to a minimum as is realistically possible. Conditions in the Resolution control construction staging and any closures of the public sidewalk or street are subject to review and approval of a street encroachment permit issued by the Department of Public Works. Alternative pedestrian and vehicular routes accessing adjacent businesses would be identified during the temporary interruption. The resulting improvements to the curb, gutter, and sidewalks will increase the usability of the sidewalk and roadway, improving the connections throughout the neighborhood. As detailed above, the increase in trips is minimal and there would be no significant traffic impacts associated with the proposed project.

EVALUATION AND FOLLOW UP

If the Council denies the permit appeal and upholds the Planning Commission’s approval of the Permits and categorical exemption, the applicant can proceed with obtaining demolition, grading, and building permits.

POLICY ALTERNATIVES

As discussed in the Analysis section, the Council has one distinct decision to make. The Council can either:

- a. Approve the Conditional Use Permit and Site Development and deny the permit appeal;
or
- b. Grant the permit appeal and deny the project.

Staff recommends that the City Council deny the permit appeal and uphold the Planning Commission’s approval of the Permits and reliance on a categorical exemption.

PUBLIC OUTREACH

Pursuant to the requirements in Title 20 of the San José Municipal Code for permit appeals, a hearing notice for the City Council public hearing was mailed to the owners and tenants of all properties located within 1,000 feet of the project site, and a copy of this City Council Memorandum was mailed to adjacent property owners, the appellants, and applicant.

October 2, 2017

Subject: File No. CP16-035

Page 15

COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office and Department of Public Works.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable Zoning Code provisions and General Plan goals and policies.

CEQA

Exempt, CEQA Section 15302 (Replacement or Reconstruction) and Section 15332 (In-fill Development Projects).

/s/

ROSALYNN HUGHEY, INTERIM DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Steve McHarris, Planning Official, at (408) 535-7819.

Attachments: Attachment A – August 16, 2017 Notice of Permit Appeal
Attachment B – Project Petition
Attachment C – Planning Commission Packet
Attachment D – Signed Planning Commission Resolution No. 17-025
Attachment E – Mitigation Management Plan
Attachment F – Noise Study dated December 20, 2016
Attachment G – Plan Set dated May 26, 2017