



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember
Donald Rocha

SUBJECT: CP16-035

DATE: October 23, 2017

Approved: Don Rocha Date 10/23/17

RECOMMENDATION

That the City Council approve one the two options below:

- Option 1:** Approve the Conditional Use Permit and Site Development Permit as proposed, with the exception that the Council not approve construction of a car wash on the site.
- Option 2:** Defer consideration of the Conditional Use Permit and Site Development Permit until such time as the following additional analysis of car wash noise impacts has been conducted:
- a) Conduct a revised noise study that takes measurements of existing background noise levels. The current noise study did not take measurements of existing background noise levels, and instead assumes a background noise number based on the General Plan diagram.
 - b) Identify noise reduction measures that could reduce noise at the adjacent residential property line such that the car wash complies with the noise standards in the Zoning Code. The current car wash proposal is not in compliance with the Zoning Code noise standard.
 - c) When assessing compliance with the Zoning Code noise standard, attempt to estimate the anticipated project noise level at the residential property line at the height of the second story windows of the adjacent apartment buildings, in addition to whatever height is standard for such measurements.
 - d) Analyze compliance with General Plan policy EC-1.3, which requires mitigation of noise levels generated by a new non-residential use to 55 dBA DNL at a residential property line.

ANALYSIS

This project proposes multiple improvements to a gas station located at the corner of Bascom Ave. and Woodard Rd. I'm supportive of most of these improvements, including construction of a new convenience store on the site, but I am not yet ready to

support the proposed automated car wash. The car wash is proposed to be located within 50 feet of a residential property line. Based on the project noise analysis, I'm concerned that this project does not meet the City's noise standards.



The City's Noise Standards

It may be useful to provide a quick overview of the City's noise rules. The City uses two different noise standards: the standard found in the Zoning Code and the standard found in the General Plan. The Zoning code requires that commercial development generate no more than 55 decibels (dBA) at an adjacent residential property line. In this case, the proposed car wash does not meet that standard, as we can see in the below chart taken from the noise report for this project (red text is my addition.)

Receiver	Distance to Property Line [ft]	Noise Level at Receiver no Barriers [dBA]	Zoning Code Analysis	General Plan Analysis	Existing Noise Level [dBA L _{dn}]
			Noise Level at Receiver with Barriers [dBA]	L _{dn} at Receiver with Barriers [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	

Table 2: Predicted noise levels at sensitive receptors

Exceeds 55 dBA

Doesn't cause increase of 3 or more dBA L_{dn} over existing, but existing noise level of 70 dBA L_{dn} isn't based on actual measurements at site.

The General Plan standard is somewhat different. Instead of measuring noise impact in decibels (dBA), it measures the impact using a method known as the "Day/Night Noise Level" (dBA L_{dn}) which is an average of noise at a given location over a 24 hr. period. One way to think about the difference between the Zoning Code and the General Plan is

that the Zoning Code focuses on the highest peak decibels, while the General Plan focuses on how noise is spread out over an entire day.

The General Plan establishes that 60 dBA L_{dn} is the maximum “Normally Acceptable” noise exposure for residential land uses. When a project is proposed at a site where the existing noise level already exceeds 60 dBA L_{dn}, then the General Plan considers there to be a significant impact if the noise level increases by 3 dBA L_{dn} or more above the existing level.

In this case, the noise report indicates that the existing noise level at the site is 70 dBA L_{dn}, which exceeds the Normally Acceptable level, and that the added project noise would increase the noise level to a maximum of 70.6 dBA L_{dn}. Because the increase over the existing noise level is less than 3 dBA L_{dn}, the noise report concludes that the project complies with the General Plan noise standard.

I have a concern with how this analysis was conducted: the existing noise level of 70 dBA L_{dn} used in the report is an assumption based on the City’s General Plan diagram. It is not based on actual measurements taken at the site. It is possible to take noise measurements at the project site to ensure that the existing noise level is measured as accurately as possible, but no measurements were taken in this case.

Comparison to Past Car Wash Project

I had two concerns after reviewing the noise report: first, that the project would not meet the Zoning Code Noise Standard, and second, that the existing noise level used as part of the General Plan noise analysis was not based on actual measurements. In order to get a sense of how serious each of these issues are, I went back and reviewed the noise analysis for another car wash that was approved in my district in 2015. It was located at 2270 Camden Ave. and the file number was CP10-010.

What I found was that the 2270 Camden car wash, which I had voted to approve, met the Zoning Code standard of 55 dBA. It also used actual measurements of the existing noise levels in assessing the General Plan standard, instead of making an assumption. Below is a comparison between the findings and methods of the noise reports for the Camden car wash and the Bascom car wash.

	Camden Car Wash (Approved 2015)	Bascom Car Wash (Currently Proposed)
Zoning Code Standard	“At the most impacted residence to the south of the site, 77ft. from the car wash tunnel entry, the car wash washing cycle noise level was calculated to be 42.6 dBA. The drying cycle noise level was calculated to be 54.2 dBA. Thus, the noise levels will be within the standards of the City	“Table 2 shows that the noise levels at the property planes will be above the levels allowed by the zoning code. ” (page 10, Mei Wu Acoustics Noise Analysis)

	of San Jose Zoning Ordinance.” (pg. 8, Edward L. Pack Associates Noise Analysis)	
How Existing Noise Levels Were Determined	“To determine the existing noise environment at the most impacted residential property line closest to the proposed car wash, continuous recordings of the sound levels were made on a Sunday morning on August 9, 2009 from 7:00 am to 9:00 am.” (pg. 7, Edward L. Pack Associates Noise Analysis)	“According to the San Jose General Plan, the project site falls under the 75-70 dBA Ldn contour with the boundary with the residential representing the beginning of the 70-65 dBA Ldn contour. Therefore, the noise levels at the residential and commercial property lines are assumed to be 70 dBA Ldn.” (pg 7, Mei Wu Acoustics Noise Analysis.)

My Recommendations

Residents who live behind the project have expressed serious concerns about noise from the car wash. Based on my review of the noise report, I believe their concerns may have merit. At this point I’m not convinced we can make the required CUP finding that the car wash will not “adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area.”

With my recommendations, I present two options as to how we can proceed. Option 1 would approve the entire project but deny the car wash. This option would have the benefit of allowing the applicant to move forward immediately with portions of the project that do not involve the car wash.

Option 2 would defer the entire project and give the applicant an opportunity to do more work on the noise issue. In particular, I think we should request four additional items of analysis. First, we should request a new noise study be done that uses actual measurements for existing noise. I will leave it up to staff to determine when and how noise data should be collected, but it’s worth noting that in the Camden car wash example, data was collected on a Sunday morning, which is the time that car wash noise might be most audible over background noise levels. Second, we should request that mitigations be identified that would allow the project to meet the Zoning Code noise standard. Third, we should request that there be an attempt to estimate the impact of the noise at the second story. Residents indicate that the second story noise impact causes them most concern, as that’s where their bedrooms are located. It seems reasonable to ask for an analysis at that height, given that sound walls may have a different effect on noise at different heights. Fourth, we should request analysis of the project under General Plan policy EC-1.3. This policy requires mitigation of noise levels generated by a new non-residential use to 55 dBA DNL at a residential property line. Since this policy is separate from policy EC-1.2, which establishes the 3 decibel increase standard, it seems reasonable that it also be evaluated.

Peer Review Noise Study

The applicant submitted a peer review of their noise study to the Planning Department on October 23, the day before the meeting. The peer review confirms the finding of the original noise study that the project would not increase the Day/Night Noise Level by 3 decibels or greater, but like the original study, the peer review did not collect actual data on existing noise levels. The peer review study also does not evaluate compliance with the Zoning Code noise standard, which as I have explained is separate from the General Plan standard. Thus, I don't believe that the peer review study answers the concerns expressed in this memo.