

RESOLUTION NO. 36A-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S FINDING THAT OPERATION OF A 7-ELEVEN CONVENIENCE STORE AT 700 HICKEY BOULEVARD (APN 009-540-030) IS SUBSTANTIALLY IN CONFORMANCE WITH USE PERMIT UP-41-15 (FILE NO. 2019-016), AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, the City Council of the City of Pacifica upheld an appeal in part and approved Specific Plan SP-150-15 and Use Permit UP-41-15 for a 7-Eleven convenience store and service station without 24 hour operations and with limited alcohol sales at 700 Hickey Boulevard (APN 009-540-030), subject to conditions of approval included as Exhibit A to Resolution No. 40-2015, at a duly noticed public hearing on September 14, 2015; and

WHEREAS, Condition No. 56 of Exhibit A of Resolution No. 40-2015 of the City Council of the City of Pacifica requires the Planning Commission to perform an annual review of Use Permit UP-41-15 commencing one year from the issuance of the certificate of occupancy for the 7-Eleven convenience store. The annual review process shall afford the Planning Commission with the ability to modify the conditions of approval, and to evaluate whether ongoing operation of the site is in accordance with the use permit; and

WHEREAS, the City of Pacifica issued a certificate of occupancy for the 7-Eleven convenience store at 700 Hickey Boulevard on June 9, 2017; and

WHEREAS, the Planning Commission conducted the first required annual review on July 16, 2018, at which time it adopted Resolution No. 998 finding that the operation of the 7-Eleven convenience store at 700 Hickey Boulevard (APN 009-540-030) was substantially in accord with Use Permit UP-41-15; and

WHEREAS, after holding a duly noticed public hearing on August 5, 2019, the Planning Commission of the City of Pacifica conducted an annual review of Use Permit UP-41-15 and considered a modification to Condition No. 56 of Exhibit A of Resolution No. 40-2015, and adopted Resolution No. 2019-027 finding that operation of a 7-Eleven convenience store at 700 Hickey Boulevard (APN 009-540-030) is substantially in conformance with Use Permit UP-41-15; and

WHEREAS, an appeal was filed by Betty Duran ("Appellant") on August 14, 2019, in opposition to the Planning Commission's action ("Appeal"); and

WHEREAS, the City Council of the City of Pacifica did hold a duly noticed public hearing on September 23, 2019, at which time it considered all oral and documentary evidence presented relating to the Appeal, and incorporated all testimony and documents into the record by reference.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Pacifica as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its findings, the City Council relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.
3. The annual review is exempt from the California Environmental Quality Act (CEQA) pursuant to § 15378 of the CEQA Guidelines because the annual review is not a “project,” as defined; because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; and, pursuant to § 15061(b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the potential modification to annual reporting requirements will have a significant effect on the environment.

BE IT FURTHER RESOLVED that the City Council of the City of Pacifica does hereby deny the Appeal based upon all of the reasons set forth in the Staff Report and upholds the Planning Commission’s determination on August 5, 2019, and makes the following findings pertaining to its denial of the appeal of the Planning Commission’s action to find operation of the 7-Eleven store in substantial conformance with the terms and conditions of Use Permit UP-41-15:

Basis 1: “This neighborhood is in opposition to Resolution [No.] 2019-027”

The Appellant purports to represent the views of her neighborhood. However, there is insufficient evidence to indicate the views or perceptions of other residents of the neighborhood. Only the Appellant submitted an appeal of the Planning Commission’s action to adopt Resolution No. 2019-027. Moreover, only the Appellant, one other public commenter, and a representative of 7-Eleven spoke at the public hearing on August 5, 2019, despite the City’s publication of a legal notice of the hearing in the Pacifica Tribune and mailing notifications of the hearing to owners and occupants within 500 feet of the store (staff received no written public comments in advance of the hearing). Therefore, there is insufficient evidence to support the Appellant’s claim that the neighborhood is in opposition to Resolution No. 2019-027. Even if a broader segment of the neighborhood did oppose Resolution No. 2019-027 or the 7-Eleven store, the bases for such objections would be speculative as would their relationship to the terms and conditions of Use Permit UP-41-15.

The Planning Commission considered the staff report detailing the status of compliance with respect to the 63 conditions of approval which were part of the original project approval, staff testimony, public testimony, and information submitted by two public commenters at the hearing prior to adoption of Resolution No. 2019-027 on August 5, 2019. Staff acknowledged in the August 5, 2019 staff report that the 7-Eleven site was not in full compliance with the terms and conditions of Use Permit UP-41-15. Specifically, Condition of Approval No. 16 provides that the “Applicant shall maintain its site in a fashion that does not constitute a public nuisance and that does not violate any provision of the Pacifica Municipal Code. Applicant shall further maintain its site in conformance to the Good Neighbor Plan prepared in accordance to Condition No. 62.” Staff determined that although there was not a record of complaints regarding the condition or operation of the site, there were items requiring the Applicant’s further action by addressing the following: (1) rusted roof access ladder; (2) rusted side yard gates; (3) small deposits of trash located at the front-left gate and in planters along Gateway Dr.; and (4) bare mulch within planters. Based on these items, staff determined that the Applicant was not in compliance with Condition No. 16. Documents submitted by the public at the hearing on August 5, 2019 also suggested 7-Eleven may have sold alcohol outside of the authorized hours for sales provided in Use Permit UP-41-15 and in state law. However, based on the totality of the evidence presented,

the Planning Commission concluded the operation was in substantial compliance with the terms and conditions of Use Permit UP-41-15. Therefore, there was substantial evidence to support the Planning Commission's finding.

BE IT FURTHER RESOLVED that the next annual review of Use Permit UP-41-15 shall be on or after June 9, 2020, and before December 31, 2020.

NOW, THEREFORE, BE IT FURTHER RESOLVED that based on the aforementioned findings, the City Council of the City of Pacifica does hereby make the finding that the operation of a 7-Eleven convenience store at 700 Hickey Boulevard (APN 009-540-030) is substantially in conformance with Use Permit UP-41-15.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 23rd day of September 2019.

AYES, Councilmembers: Vaterlaus, Martin, O'Neill, Beckmeyer, Bier

NOES, Councilmembers: None.

ABSENT, Councilmembers: None.

ABSTAIN, Councilmembers: None.


Sue Vaterlaus, Mayor

ATTEST:


Sarah Coffey, City Clerk

APPROVED AS TO FORM:


Michelle Kenyon, City Attorney