

## REPORT TO THE CITY COUNCIL



**DATE:** May 7, 2019

**TITLE:** An Appeal of the Planning Commission's Decision (AP No. 01-19) to Approve the Proposed Discount Grocery Store (Grocery Outlet) Located on the West Side of Palm Drive at Park Lane and Within the C-N (Commercial Neighborhood) Land Use District

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**Reviewed by:** Rebecca Deming, Community Development Director

### RECOMMENDATION

- 1) Staff Report;
- 2) Entertain questions of Staff from the City Council;
- 3) Open the Public Hearing;
- 4) Take public testimony from the Applicant;
- 5) Take public testimony from those in favor of upholding the decision;
- 6) Take public testimony from those opposed to upholding the decision;
- 7) Take public testimony from those in a neutral position;
- 6) Opportunity for Applicant rebuttal;
- 7) Close the Public Hearing;
- 8) City Council discussion and questions to Staff; and
- 9) Consider Staff's recommendation to approve a resolution to **UPHOLD** the decision of the Planning Commission (Exhibit 3), thereby **APPROVING** the proposed 20,000 square foot discount grocery store located on the west side of Palm Drive at Park Lane (APN 656-020-034) and within the C-N (Commercial Neighborhood) Zoning District (Case Nos. DR 04-18, DP 06-18, CUP 05-18, TTM 37571, SVAR 03-18) along with a Resolution of Convenience or Necessity, subject to the attached findings of fact, the attached conditions of approval, and the mitigation measures outlined in the mitigated negative declaration.

### EXECUTIVE SUMMARY

Pursuant to Section 17.104.090 of the Desert Hot Springs Municipal Code (DHSMC), any action taken by the Planning Commission may be appealed to the City Council. This appeal must be filed within 15 days of the date of action (approval or denial) and be accompanied with the required fee and a statement clearly identifying the basis for the appeal.

On March 25, 2019 (13 days after the Planning Commission approved the Grocery Outlet), the applicants/appellants (Robert Garcia, Gary Garcia, Maria Bermudez, and Victor Elizalde) filed a request to appeal the Planning



Commission's decision to the City Council based on their belief that 1) the Mitigated Negative Declaration did not adequately identify and mitigate the potential noise impacts of the project, and 2) the Findings of Fact for the Resolution of Convenience or Necessity were in error. Staff has attached the letter from the appellants that more clearly identifies the decisions that they are appealing and the reasons for the filing of the appeal (Exhibit No. 2).

### **PRIOR ACTIONS**

On March 12, 2019 the Planning Commission held a duly noticed public hearing and in doing so, thoroughly reviewed the proposed project, the project plans/materials, the Mitigated Negative Declaration and all other associated documents. In addition, the Planning Commission received written public comments (one letter in opposition asking staff to further evaluate the project) and then opened the public hearing for public comments. No oral public comments in favor of the project, or in opposition to the project, were received during the public hearing. The Planning Commission then deliberated and made a motion to approve the project with the removal of the condition to underground the overhead utilities, but only on the back portion of the project (western side, over the rear parking area).

Staff has attached the Staff Report from the Planning Commission (Exhibit No. 1) which details the project specifics regarding the proposed architecture, building materials, building massing, on-site parking, traffic circulation, landscaping and lighting, along with staff's recommended conditions, and the request for the ABC liquor license.

### **DISCUSSION**

Since the meeting of the Planning Commission the applicant has prepared a noise study to evaluate the projects potential impacts on neighboring properties during the construction phase and during normal operations once the business opens. Staff has evaluated the study and made a determination that the noise impacts can be reduced to levels which are "less than significant" with the implementation of additional conditions of approval being added to the project.

Staff is recommending that the Council add 3 (three) conditions to the project to help mitigate the potential noise impacts. They are as follows:

- The applicant/developer shall install an 8-foot-high sound-attenuating block solid wall along the southern side of the project site (attached as Condition of Approval No. 1)
- The applicant/developer shall limit the hours of truck deliveries to 8am-8pm (attached as Condition of Approval No. 1)
- The use of hydraulic brakes by delivery trucks shall be prohibited, at all times, on the grocery store property (attached as Condition of Approval No. 3)

### **PROJECT PHASING**

The applicant/developer has indicated to staff that they are planning to build the project in one phase with construction beginning in the Summer of 2019 and anticipated completion in Spring of 2020.

### **EMPLOYMENT**

The proposed 20,000 square foot discount grocery store will employ approximately 15-20 people during its normal day-to-day operations.

### **FISCAL IMPACT**

The proposed Grocery Outlet would be included in the Grocery Stores business type category of sales tax which consists of 4 stores which contributes an estimated \$130,000 to \$140,000 annually to the City's sales tax revenue.

## **ENVIRONMENTAL CLEARANCE**

In accordance with the California Environmental Quality Act ("CEQA"), an Initial Study and Mitigated Negative Declaration (MND) was prepared, including certain mitigation measures for Noise, and Cultural & Biological Resources. The Mitigated Negative Declaration was circulated for comments between Monday February 18, 2019 and the Planning Commission meeting on March 12, 2019. Staff received one comment on March 12, 2018, during the comment period, which was presented at the Planning Commission meeting. Additionally, as of this writing no additional comments (other than the appeal letter) have been received.

## **FINDINGS**

The Desert Hot Springs Municipal Code ("DHSMC") and California Business and Professions Code provides for approvals of the associated applications and related actions, as follows:

- Chapter 17.08.010 – 040 of the DHSMC provides for the approval of Design Review applications;
- Chapter 17.92.010 – 120 of the DHSMC provides for the approval of Development Permits;
- Chapter 17.76.010 – 120 of the DHSMC provides for the approval of Conditional Use Permits;
- Chapter 16.24 of the DHSMC provides for the approval of Tentative Tract Maps (subdivision maps);
- Chapter 17.14 of the DHSMC provides for the approval of Variances; and
- Section 23958.4 of the California Business and Professions Code provides for the approvals of Resolutions of Convenience or Necessity

The Planning Commissions made findings, which are listed and analyzed in Exhibit No.1 (Planning Commission Staff Report). Staff has prepared resolutions including findings to both Uphold Planning Commission's approval and to overturn the Planning Commission's approval. Exhibit No. 3 includes a resolution with findings to UPHOLD the Planning Commission's decision, and Exhibit No. 4 includes a resolution with findings to OVERTURN the decision of the Planning Commission. Staff recommends that the City Council approved the resolution and adopt the findings in Exhibit No. 3, as its findings of fact.

## **RECOMMENDATION**

A recommendation from staff to approved the resolution to UPHOLD the decision of the Planning Commission (Exhibit 3), thereby approving the proposed 20,000 square foot discount grocery store located on the west side of Palm Drive at Park Lane and within the C-N (commercial Neighborhood) zoning district, subject to the additional recommended conditions.

### **Case Nos.**

- Design Review No. 04-18
- Development Permit No. 06-18
- Conditional Use Permit No. 05-18
- Tentative Tract Map No 37571
- Sign Variance No. 03-18
- Mitigated Negative Declaration for the Grocery Store Outlet project
- Resolution of Convenience or Necessity for the Grocery Outlet project

**EXHIBITS**

- 1) Planning Commission Staff Report (March 12, 2019)
- 2) Letter Requesting Appeal of PCs Decision
- 3) Resolution Upholding PC Approval
- 4) Resolution Overturning PC Approval
- 5) Updated Draft Conditions of Approval
- 6) Project Site Aerial
- 7) Site Photos
- 8) Site Plan
- 9) Floor Plan
- 10) Color Elevations and Materials
- 11) Building Sections
- 12) Preliminary Grading Plans
- 13) Materials Board
- 14) Proposed Landscape Plan
- 15) Site Photometric/Lighting Plan
- 16) Pole Light Fixtures
- 17) Wall Pack Light Fixture
- 18) ADA Parking Details
- 19) Traffic Study
- 20) Initial Study and Mitigated Negative Declaration
- 21) ABC Liquor License Application
- 22) Map of Census Tract 445.15
- 23) 500-foot Radius Map (schools, parks, churches, etc.)
- 24) Resolution of Convenience or Necessity
- 25) Revised Noise Study