

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, OVERTURNING THE PLANNING COMMISSION'S DECISION TO APPROVE DEVELOPMENT PERMIT NO. 06-18, CONDITIONAL USE PERMIT NO. 05-18, DESIGN REVIEW NO. 04-18, MITIGATED NEGATIVE DECLARATION, AND RESOLUTION OF CONVENIENCE OR NECESSITY.

WHEREAS, applicants Robert Garcia, Gary Garcia, Maria Bermudez, and Victor Elizalde (collectively the "Applicant"), have filed an application with the City of Desert Hot Springs for approval of Tentative Tract Map No. 37571, Development Permit No. 06-18, Conditional Use Permit No. 05-18, Design Review No. 04-18, Sign Variance No. 03-18, Mitigated Negative Declaration, and Resolution of Convenience or Necessity for development of an approximately 20,000 square foot discount grocery store ("Grocery Outlet") within the City of Desert Hot Springs, California (collectively, "Application"); and

WHEREAS, on March 12, 2019, a duly noticed public hearing on the Application was held by the Planning Commission; and

WHEREAS, the Planning Commission considered the staff report and all of the information, testimony, and evidence presented during the Planning Commission's public hearing and approved the Application with the removal of the following condition:

1. Underground the overhead utilities as to a portion of the project

WHEREAS, on March 25, 2019, Applicant filed an appeal of the Planning Commission's decision to approve portions of the Application, specifically, Development Permit No. 06-18, Conditional Use Permit No. 05-18, Design Review No. 04-18, Mitigated Negative Declaration, and Resolution of Convenience or Necessity ("Appealed Application"); and

WHEREAS, notice of a public hearing of the City Council of the City of Desert Hot Springs ("City") to consider Applicant's appeal of the Planning Commission's approval was given in accordance applicable law; and

WHEREAS, on May 7, 2019, a public hearing on the Appealed Application was held by the City Council; and

WHEREAS, the City Council has reviewed the proposed Appealed Application, the entire record, all evidence and testimony, and has determined that the Planning Commission's decision should be overturned and that the Appealed Application should be denied, based upon the findings detailed below.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals.

That the Recitals set forth above are true and correct and are hereby incorporated herein by this reference.

Section 2. Findings.

That the City Council makes the following findings regarding the Appealed Application:

Regarding Development Permit No. 06-18:

1. Although the proposed discount grocery store is specifically allowed as a permitted use within the C-N zone, some of the surrounding properties which are residential, would be impacted by the development and operation of the proposed grocery store. The store would create excess noise that has not been mitigated in order to reduce the noise levels to acceptable levels. In addition, the request for a type-21 (off-sale general) liquor license for the discount grocery store is located in a zip code which is already oversaturated with liquor licenses and the City Council does not see the need for any more licenses in this area;
2. A draft initial study and mitigated negative declaration have been prepared for the project. Based on those documents, City staff has determined that although the proposed discount grocery store is specifically allowed as a permitted use within the C-N zone some of the surrounding properties, which are residential, would be impacted by the development and operation of the proposed grocery store. The store would create excess noise that has not been mitigated in order to reduce the noise levels to acceptable levels; and
3. The location of the proposed grocery store is directly adjacent to existing residences on the south side of the project. The construction and day-to-day operations will produce excessive noise levels that have not been properly mitigated. In addition, the request for a type 21 (off-sale general) liquor license for the discount grocery store is located in a zip code which is already oversaturated with liquor licenses and the City does not see the need for any more licenses in this area.

Regarding Design Review No. 04-18:

1. The location of the proposed grocery store is directly adjacent to existing residences on the south side of the project. The construction and day-to-day operations will produce excessive noise levels that have not been properly

mitigated.

Regarding Conditional Use Permit No. 05-18:

1. The location of the proposed grocery store is directly adjacent to existing residences on the south side of the project. The construction and day-to-day operations will produce excessive noise levels that have not been properly mitigated;
2. The location of the proposed grocery store is directly adjacent to existing residences on the south side of the project. The construction and day-to-day operations will produce excessive noise levels that have not been properly mitigated; and
3. A market feasibility study was not conducted and the request for a type 21 (off-sale general) liquor license for the discount grocery store is located in a zip code which is already oversaturated with liquor licenses and the City Council does not see the need for any more licenses in this area.

Section 3. Overturning the Planning Commission Decision to Approve the Appealed Application.

That the City Council hereby:

(1) Overturns the Planning Commission's decision to approve Development Permit No. 06-18, Conditional Use Permit No. 05-18, Design Review No. 04-18, Mitigated Negative Declaration, and Resolution of Convenience or Necessity; and

(2) Denies approval of Development Permit No. 06-18, Conditional Use Permit No. 05-18, Design Review No. 04-18, Mitigated Negative Declaration, and Resolution of Convenience or Necessity, based upon the findings articulated in this Resolution.

Section 4. Re-affirmation of Approval of Tentative Tract Map No. 37571 and Sign Variance No. 03-18.

That the City Council re-affirms approval of Tentative Tract Map No. 37571 and Sign Variance No. 03-18, on the express condition that Applicant obtains environmental approval for Tentative Tract Map No. 37571 in accordance with applicable laws.

Section 5. Certification.

That the City Clerk shall certify to the passage and adoption of this resolution, enter the same is passed and adopted.

Section 6. Severability.

That if any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

Section 7. Repeal of Conflicting Provisions.

That all the provisions heretofore adopted by the City Council that are in conflict with the provisions of this Resolution are hereby repealed.

Section 8. Effective Date.

That this Resolution shall take effect upon its adoption.

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PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the 7th day of May, 2019 by the following vote:

AYES, and in favor thereof, Council members:

NAYS, Council members:

ABSENT, Council members:

ABSTAINING, Council members:

ATTEST:

APPROVED:

Jerryl Soriano, CMC City Clerk

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney