

7360 S. Tijera Blvd.

INTRODUCTION & CASE HISTORY

Initial Application Filing: August 15, 2001

On August 15, 2001, the City of Los Angeles accepted for review an application for a Conditional Use Permit, pursuant to LAMC 12.24-W, 17, to allow a drive-through fast food establishment in the C Zone at 7360 S. La Tijera Blvd. (ZA-2001-2970-CU). The applicant, Mike Frio, filed the entitlement application in conjunction with a proposed redevelopment of an existing Chevron gas station, involving the demolition of the existing auto repair shop and convenience store and the construction of a new restaurant & convenience store building, as well as maintenance of existing fueling canopies and dispensers.

Updated Project Description and Entitlement Requests: September 24, 2002

During the project review process, due to substantial BOE and Caltrans dedication requirements, the applicant was forced to redesign the project and apply for additional entitlement requests.

On September 24, 2002, the Office of Zoning Administration released a staff report for the case, now identified as ZA-2001-2970-CU-ZV, confirming that the project was to consist in a new 1,214 sf. drive-through fast food restaurant and 3,095 sf. convenience store and food mart, along with the preservation of 1,504 sf. of existing fueling canopy and four fueling dispensers. Due to the constrained site area, of the 27 required parking spaces for the proposed uses, 20 were to be provided on-site and seven were to be provided off-site via lease. The staff report explains that the Caltrans recommendations “increased the difficulty of siting the proposed building on the lot and necessitated the need for off-site parking for employees.”

The staff report confirmed that the new list of entitlement requests was as follows:

1. Zone Variance, pursuant to LAMC 12.27, to allow off-site parking and trash & recycling enclosures in the adjacent R1-1 Zone, involving relief from the following code sections:
 - a. LAMC 12.21-A, 4: Off-street parking;
 - b. LAMC 12.21-C, 5(h): Trash & recycling enclosures in R1-1;
 - c. LAMC 12.21-A, 4(h): Access driveways.
2. Zone Variance, pursuant to LAMC 12.27, to permit off-site parking to be provided through an agreement of lease in lieu of covenant, involving relief from LAMC 12.26-E, 5.
3. Conditional Use Permit, pursuant to LAMC 12.24-W, 27, to permit relief from certain provisions of the LAMC 12.22-A, 23(a), Mini-Shopping Center/Commercial Corner Development Regulations, to allow the following:
 - a. 24-hour operation;
 - b. Off-site walls and trash enclosure;
 - c. Off-site recycling area;
 - d. Waiver of wall at C2/R1 property line;
 - e. Waiver of 5 ft. landscape setback at C2/R1 property line;
 - f. Less than 50% windows on north and west elevations;

- g. 30 ft. pole-sign.

At that time, the applicant was proposing to obtain a lease agreement for the seven off-site parking spaces from the owner of a mortuary site immediately to the south of the subject site.

The City held a public hearing for the case on October 17, 2002, but a decision letter did not issue until February 12, 2003. In the meantime, the entitlement requests were updated two additional times, as discussed below.

Post-Hearing Application Update #1: January 21, 2003

On January 21, 2003, the applicant's representative directed a letter to the Zoning Administrator, confirming that SCI California Funeral Services, Inc., the owner of the adjacent mortuary site at 7366 S. Osage Ave., had been added as a co-applicant for the case, and that the entitlement request list had been updated as follows:

1. Pursuant to LAMC 12.27, the applicant is requesting the following variances:
 - a. To vary from LAMC 12.21-A, 4, to permit a portion (11 spaces) of the required parking to be located in the R1 zone portion of the Mortuary property.
 - b. To vary from LAMC 12.25-E, 5, to permit off-site spaces via a long-term lease agreement instead of a covenant.
2. Pursuant to LAMC 12.24-W, 27, Conditional Approval to deviate from the following provisions of LAMC 12.22-A, 23, Mini-Shopping Centers and Commercial Corner Development:
 - a. Deviation from LAMC 12.22 A, 23(1), which requires businesses only to operate between the hours of 7 AM-11 PM.
 - b. Deviation from LAMC 12.22-A, 23(a)(6)(iii), which requires a landscaped area to have a minimum inside width of five feet along all street frontages and on the perimeters of all parking areas which a residential zone or use.
 - c. Deviation from LAMC 12.22-A, 23(a)(8), which requires at least fifty percent of all exterior walls (including doors) which face streets to consist of transparent windows.
 - d. Deviation from LAMC 12.22-A, 23(a)(9), which prohibits the construction of pole-signs on the site.
3. Pursuant to LAMC 12.24-W, 17, the applicant is requesting Conditional Approval for a drive-through fast food establishment.
4. Pursuant to LAMC 12.24-X, 20, the applicant requests permission to share parking spaces with the adjacent mortuary.

The attachment to the letter confirmed that the project would now be providing only 16 of the 27 required parking spaces on-site, with the remaining eleven spaces provided on the R1 portion of the mortuary site through a long-term lease agreement, representing an increase in the number of off-site spaces from the prior submittal. The letter further explained that the mortuary site contained 41 parking spaces, of which only 34 spaces were required by Certificate of Occupancy. The seven excess parking spaces on the mortuary site would be leased to the owner of the Chevron site for his exclusive use, while the other four leased spaces would be shared between the two uses.

Although the mortuary's ownership entity, SCI California Funeral Services, Inc., was included as a co-applicant in the updated case filing, they were not willing to offer the Chevron site owner a permanent grant for the eleven parking spaces. As a result, the applicants proposed a two-part parking code relief strategy, including a Zone Variance to allow parking to be provided for the Chevron station off-site via a temporary lease in lieu of a permanent covenant, as well as a Zoning Administrator's Determination to permit four of the proposed leased spaces to be shared between the Chevron site and mortuary site uses.

If the Zoning Administrator had approved this combination of entitlements, including the lease in lieu of covenant Zone Variance request, the Chevron site owner would have been able to utilize the eleven parking spaces on the mortuary site for as long as they were available, and in the event that the lease was terminated, he could have negotiated a lease with another property owner within the required 750 ft. radius area. However, apparently at the behest of the Zoning Administrator, the lease in lieu of covenant request was later eliminated, resulting in an application filing and eventual approval that did not ultimately meet the applicant's needs.

Post-Hearing Application Update #2: February 3, 2003

On February 3, 2003, the applicant's representative sent a follow-up letter to the Zoning Administrator asking that the Zone Variance request for parking to be provided off-site via lease in lieu of covenant be eliminated and instead replaced with a Conditional Use Permit request to allow Public Parking in an A or R Zone, pursuant to LAMC 12.24-W, 37.

It is clear that this request to modify the application was made at the request of the Zoning Administrator, as the representative's letter states, "Per our discussion last week, I would like to amend our application to eliminate the following two discretionary requests..."

Zoning Administrator Determination Letter: February 12, 2003

The applicant's representative's letter was stamped received on February 4, 2003, and the following week, on February 12, 2003, the Zoning Administrator issued a determination letter for the case now identified as ZA-2001-2970-CU-ZAD, including the following approvals:

- Pursuant to LAMC 12.24-W, 17, a conditional use to permit the construction, use and maintenance of a drive-through fast food restaurant;
- Pursuant to LAMC 12.24-W, 27, a conditional use to allow for certain waivers from the Mini-Shopping Center Ordinance in conjunction with the construction of a gas station, convenience market and a drive-through restaurant;
- Pursuant to LAMC 12.24-W, 37, a conditional use to permit public parking in the R Zone;
- Pursuant to LAMC 12.24-X, 20, a Zoning Administrator's Determination to permit two or more uses to share off-street parking spaces.

In the letter dated January 21, 2003, the applicant's representative had made it clear that the owner of the mortuary site was not willing to enter into a permanent agreement for

provision of the required parking spaces, but was only planning to offer a ten-year lease with potential options for extension. Nevertheless, the Zoning Administrator's determination letter contained conditions of approval indicating that the mortuary site was to provide parking for the proposed Chevron site uses on a permanent basis. With respect to parking requirements, the determination letter included the following conditions of approval, with respect to provision of parking and a recorded covenant agreeing to all conditions, which was to run permanently with the land:

8. A minimum of 27 parking spaces shall be provided for the proposed gas station, convenience market and restaurant. Four of the parking spaces located in the R1 Zone on the mortuary property may be shared with the mortuary. Reserved or otherwise restricted spaces shall not be permitted to be shared.
9. Seven parking spaces to be provided in the R1 Zone shall be for the exclusive use of employees of the gas station, convenience market and restaurant.

If the Zoning Administrator's intention had been for the parking to be provided by lease, they should have included language stating that a lease agreement was to be filed with the City and that in the event of the lease being terminated, a new lease would be need to obtained and filed with the City. Instead, the above conditions indicate that the Chevron site owner would have the primary right to the eleven parking spaces on the mortuary site going forward. Additionally, the determination letter contained the below condition, requiring both applicants to sign on to a Master Covenant and Agreement agreeing to all conditions, to be recorded with the County and to run with the land:

17. Prior to the issuance of any permits relative to this matter, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Zoning Administrator for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.

It is unclear what conversations may have occurred between January 21 and February 3, which led the applicant's representative to withdraw the parking lease in lieu of covenant Zone Variance request, but it is unlikely that the owner of the mortuary changed their position relative to their acceptance of a parking covenant agreement in that interim. It can be assumed that there was some confusion or miscommunication, which led the applicant(s) to believe that the updated entitlement requests would allow the mortuary spaces to be leased, and for their to be flexibility in the future for the owner of the Chevron site to replace the present lease with another, in the event that the mortuary owner chose to terminate their agreement.

In a recent Zoning Administrator approval from August 2016 granting a Zone Variance to allow parking to be provided through lease in lieu of covenant (ZA-2016-1134-CUB-CUX-ZV), the condition outlining the parking lease requirement was as follows:

9. Copies of valid, executed lease agreements for required off-site parking shall be submitted for the case file and shall be maintained for the duration of the grant. The parking lease shall include the location of the off-site parking lot, the number of parking spaces and the hours that parking will be available for the property. If

the parking lease agreement is replaced, a copy of the replaced agreement shall be provided to the Zoning Administrator upon execution of the new agreement.

This condition allows for flexibility and requires only that a lease for the requisite number of spaces from a lot within the required 750 ft. radius area be maintained and kept on file with the City. The approval does not mandate that spaces be leased from an individual location, but instead allows for their replacement with another lease in the event that the original specified lease is terminated.

Since the applicant had already confirmed that it was infeasible to obtain a covenant for the eleven required spaces, it would be unreasonable for the Zoning Administrator to assume that they would be able to obtain a permanent lease at a specific location for the spaces, which in practice, is no different than obtaining a covenant. It is also unreasonable to assume that once the use is established, that in the event of a lease termination, the owner of the Chevron station would either permanently discontinue or scale back operations due to an inability to obtain the required parking elsewhere.

Nevertheless, the Zoning Administrator in this case did not grant the applicant the flexibility needed to respond to a lease termination and mandated that parking may only be provided on the adjacent mortuary site, without the option to obtain parking via lease at an alternative location. In fact, the determination letter makes no mention of a parking lease at all, whereas the September 24, 2002 City staff report and January 21, 2003 applicant letter had made it clear that a lease would be the means by which parking was to be provided.

Recorded Master Covenant & Agreement, Supplemental Covenant & Agreement and Lease Agreement: May 21, 2003

On May 21, 2003, the applicants' representative recorded a Master Covenant and Agreement agreeing to comply with all of the specified conditions of approval of the ZA-2001-2970-CU-ZAD determination letter. Additionally, they also recorded a second, supplemental Covenant and Agreement, as well as a copy of the lease, which aimed to clarify that the conditions related to parking rights on the mortuary site were only to be in effect during the term of the lease, subject to the conditions of the lease, which allowed the mortuary owner to terminate at the conclusion of the lease term or in the event of a sale.

The second covenant states, "in the event that the Lease terminated, the owner of the La Tijera Property is responsible for obtaining the eleven required parking spaces elsewhere, scaling back its operations, or applying for an additional discretionary approval from the City." The owner of the mortuary site has now entered into a sale agreement and has terminated the parking lease. The Zoning Administrator had precluded the owner of the Chevron site from obtaining parking elsewhere, scaling back or ceasing operation of the business would be unreasonable and represent an undue hardship, leaving only the option of applying for an additional discretionary approval from the City.

Conclusion

The applicant stated consistently over the course of the approval process that the required off-site parking could only be provided by lease, and that negotiating a parking covenant or other legal mechanism for permanent parking rights on a given property was

infeasible. The mortuary owner joined as a co-applicant under the assumption that they would be providing off-site parking via lease and that they would maintain the right to terminate the lease agreement at will. This is all stated in the staff report and other documentation submitted to the Zoning Administrator prior to and after the public hearing. However, due to a communication from the Zoning Administrator nearly four months after the hearing, 18 months after the initial filing, the applicant's representative was convinced to modify the application request, ultimately resulting in a final approval that did not reflect the stated project goals and limitations.

Due to the consistent assumption of both applicants throughout the review process that any potential approval would allow for the off-site parking to be provided via lease, and not involve a permanent right to parking on the mortuary site, following the issuance of the determination letter, they proceeded to record a covenant and agreement clarifying that the off-site parking would indeed be subject to lease and not indefinite.

However this miscommunication occurred, the action of the Zoning Administrator ensured that eventually, at some point in the future, when the owner of the mortuary site sought to sell the property, which has now occurred, the applicant would have no choice but to apply for a Zone Variance, in order to merely continue the existing business operation, as it was well-established that there was no other means of providing the required parking.

Current Proposal: Bicycle Parking, Lot Reconfiguration and Zone Variance Relief

In the years since the prior approval was granted, the City introduced the Bicycle Parking Ordinance, which permits commercial uses to reduce up to 20% of required parking through the provision of replacement bicycle parking at a ratio of four bicycle spaces for every one automobile space. The applicant is proposing to add 20 bicycle parking spaces, including ten short-term spaces and ten long-term spaces, reducing the total automobile parking requirement for the project from 27 spaces to 22 spaces.

There are currently 12 parking spaces in the existing surface parking lot and another eight parking spaces beneath the fueling canopy, adjacent to fueling dispensers, for a total of 20 parking spaces. However, the Department of Building and Safety does not permit spaces beneath a fueling canopy to count toward the parking requirement of a convenience store or restaurant use. As a result, only the four spaces needed to satisfy the parking requirement for the 1,976 sf. fueling canopy (1 space/500 sf. of area) may count toward the overall 22-space parking requirement.

Through reconfiguration and restriping of the parking lot, including increasing the quantity of compact parking spaces and by creating of a new disabled access parking area, the applicant can increase the total number of non-fueling canopy parking spaces to 16 spaces, for a total of 20 legal parking spaces on the site. This still leaves a two-space deficiency, necessitating the current Zone Variance request.

ZONE VARIANCE FINDINGS

(i) The strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations.

The applicant had originally requested a Zone Variance to allow for relief from the LAMC parking requirements due to the imposition of certain dedication requirements, which made it difficult to site the proposed uses and necessary parking. The applicant sought to obtain the right to provide parking at a nearby off-site location via lease agreement in lieu of covenant, but due to a miscommunication, the project was ultimately not granted the necessary Zone Variance, but instead an overly restrictive grant allowing for parking to be located only on the immediately adjacent parcel to the south.

The owner of the property to the south always maintained the right to terminate the parking agreement in the event of a proposed sale of the property, which is now imminent, imperiling the ability of the applicant to continue to maintain the existing uses on the site and to operate his business. The applicant has explored all available avenues to provide parking on-site, including through the provision of replacement bicycle parking and reconfiguration of the lot, but it is not possible to provide all of the 22 required spaces on-site.

The intent of the zoning regulations is to ensure that there is an adequate supply of parking for the various uses present. In this case, the LAMC has established the total automobile parking requirement for the existing uses at 27 spaces. Through the provision of bicycle parking, that total may be reduced to 22 spaces. Including the eight spaces beneath the fueling canopy, there will actually be 26 spaces on the site, which is more than adequate to supply the existing uses. However, due to a technicality in the building code, only four of the eight fueling canopy spaces may count toward the official parking total.

In reality, it is very common for customers to park their cars beneath the fueling canopy and to visit the convenience store or fast food restaurant while filling their tanks. Although the Department of Building and Safety considers the project site to be deficient with respect to parking from a technical standpoint, from a practical standpoint, the parking supply is adequate. If the owner is not granted relief from the strict provisions of the zoning ordinance, he will be forced to close his business or to scale back his operation substantially, which is an extreme and unnecessary hardship, especially considering that the proposed gross parking space count is over the required minimum parking limit.

(ii) There are special circumstance applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity.

The subject site is irregularly shaped, which makes efficient siting of parking and structures more difficult than if the site was rectangular like the majority of similar properties in the area. However, the primary special circumstance applying to this property that does not apply to others in the area is the fact that the applicant was granted a prior entitlement by the City, which did not accurately reflect the development's requirements, ensuring that a future Zone Variance application would be required.

At the time of the public hearing for the prior approval (ZA-2001-2970-CU-ZV), the applicant was requesting a Zone Variance to allow for parking to be provided off-site via lease in lieu of covenant. The Staff Report issued in advance of the hearing seemed to

suggest that the City found the request reasonable and that there was not any opposition from members or the public or government agencies.

However, nearly four months after the public hearing, the applicant was convinced by City staff to withdraw the Zone Variance request, resulting in a situation wherein the applicant was limited to provide the required off-site parking only on the adjacent mortuary property to the south, while also preserving the right of the mortuary owner to terminate the parking agreement at will.

The circumstances of the prior approval seem irregular and leave the owner of the property at 7360 S. La Tijera Blvd. in a peculiar predicament, in which he must obtain the presently requested Zone Variance, or cease operating his business. He had sought to avoid this situation by requesting a Zone Variance in the prior application round, based on justifications reflecting the unique physical circumstances of the site, but ultimately was led to withdraw that prior request, thus necessitating the current application.

(Iii) The variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question.

As discussed above, the applicant is seeking this Zone Variance merely to continue the operation of the existing uses on the site, including the gas station, convenience store and fast food restaurant. Prior to the construction of the current improvements, the applicant had sought to obtain entitlements that would allow for permanent and continuous operation of the facility. However, following the public hearing, the applicant was encouraged to modify the prior entitlement request, resulting in the current situation, wherein the subject uses require access to off-site parking on the mortuary property immediately to the south, and the mortuary owner maintains the right to unilaterally terminate that access.

Other property owners in the vicinity can generally expect to enjoy the right to maintain their existing uses and continue operation of their businesses, without concern that their permits may be invalidated due to termination of a parking lease agreement, which they are unable to replace with another lease agreement.

Had the applicant's entitlement requests previously been denied outright, they would not have invested the money and moved forward with the construction of the proposed uses. Due to the prior action of City staff, they are now in a position where they have no choice but to request the present Zone Variance to merely continue operation of the existing uses.

(iv) The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located.

The granting of the variance will not be detrimental to the public welfare or injurious to property or improvements in the same zone or vicinity, as the applicant is not proposing to change or intensify the existing business operation. The applicant is proposing to add

more parking spaces to the actual project site, as well as bicycle parking, which will make it easier for customers to access the property.

Further, as discussed above, if all of the parking spaces located beneath the fueling canopy were counted toward the official parking total, the applicant would not have any parking deficiency. It is also unlikely that other property owners could cite this case as precedent for further variance requests, as the circumstances of the case are so unique and particular.

(v) The granting of the variance will not adversely affect any element of the General Plan.

The granting of the variance will not adversely affect any element of the General Plan. The project is located within the Westchester – Playa Del Rey Community Plan, which promotes the following Objectives and Policies:

Objective 2-1: Preserve and strengthen viable commercial development in the community, and provide additional opportunities for new commercial development and services within existing commercial areas.

Policy 2-1.3: Enhance the viability of existing neighborhood stores and businesses which support the needs of local residents and are compatible with the neighborhood.

Objective 2-2: Strengthen and enhance the major commercial districts of the community into distinctive, pedestrian-friendly areas providing shopping, civic, social and recreational activities.

The Zone Variance is necessary to enable the applicant to continue operating his existing business. He is not proposing to intensify or expand the use, but merely to maintain the current operation. It is clear that by granting the Variance, the City would be supporting the stated policies and objectives of preserving and strengthening viable commercial development in the community and enhancing the viability of existing neighborhood stores and businesses which support the needs of local residents and are compatible with the neighborhood. Additionally, by providing additional bicycle parking, the proposed approval would also support the objective of strengthening and enhancing the major commercial districts of the community into distinctive, pedestrian-friendly areas.

The proposed variance request will have no impact on the other elements of the General Plan. Additionally, the request would not result in an increase in the number of Trips, as determined by the Department of Transportation, and so it would not be considered a Project under the Los Angeles Coastal Transportation Corridor Specific Plan.