



**CITY OF TWENTYNINE PALMS
PLANNING COMMISSION STAFF REPORT**

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To: Planning Commission
From: Interim Community Development Director
Date: December 2, 2008

RE: PC 08-78 (Conditional Use Permit Amendment): Modification to the parking requirements of PC 04-09 and a request to terminate a Parking Agreement required as a condition of approval by PC 04-09. CG and CO Zones, APNs 0617-105-10, and 0617-111-03, -04, and -15, Section 32, T1N, R9E.

RECOMMENDATION

Conduct the Public Hearing, consider public comment, find the project Categorical Exempt pursuant to CEQA, evaluate the property owner's request, and make a recommendation to the City Council from the noted alternatives.

PROJECT DESCRIPTION

The proposal is for a Conditional Use Permit Amendment to amend the parking requirements of PC 04-09, which was approved on May 4, 2004 and to terminate a Parking Agreement required as a condition of approval by PC 04-09. Four (4) parcels make up the project site, which totals 0.59 acres. The project site is located southerly of Twentynine Palms Highway, westerly of Tamarisk Avenue, and easterly of Desert Queen Avenue. APNs 0617-105-10, and 0617-111-03, -04, and -15; Section 32, T1N, R9E; CG and CO Zones.

Attachments

- 1) Aerial Photograph of the Project Site
- 2) October 14, 2008 City Council Meeting Minutes
- 3) May 4, 2004 Planning Commission Meeting Minutes
- 4) PC 04-09 Staff Report
- 5) Parking Agreement

BACKGROUND

Mr. Rocky L. Moore and Mr. George R. Croft have requested that the City allow the Parking Agreement entered on May 4, 2004 to be dissolved. The Parking Agreement was entered into by the property owners of APNs 0617-105-10, and 0617-111-03, -04, and -15 as a requirement of the Conditions of Approval (COA) for PC 04-09.

At the City Council's regular meeting on October 14, 2008, the City Council assessed Mr. Moore and Croft's request. The City Council requested that Mr. Moore file a CUP Amendment application.

CEQA Environmental Review

Pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines, the project, the permitting, and use of an existing facility involving negligible or no expansion of use, is categorically exempt from further environmental review under state law.

General Plan and Zoning

Surrounding Land Use, General Plan, and Zoning Designations

	Land Use	General Plan	Zone
Site	Commercial & Parking Lots	CG and CO	CG and CO
North	Commercial	CG	CG

East	Commercial	CG	CG
South	Parking Lots	CO	CO
West	Commercial	CG	CG

The project site's General Plan land use designations and zoning classifications are General Commercial (CG) and Office Commercial (CO). The project site's current land uses include:

APNs	Street Address	Use	Name of Business
0617-105-10	73471 Twentynine Palms Hwy	Fitness Center	Curves
	73475 Twentynine Palms Hwy	Retail	AJ Diamond Connection
0617-111-15	73501 Twentynine Palms Hwy	Retail	Joyce Austin Ladies Discount Clothing
		Retail	DeMorrow's Jewelry & Repair
		Health Care	Pacific Clinics
0617-111-03	N/A	Parking Lot	N/A
0617-111-04	N/A	Parking Lot	N/A

All current uses are allowed in the CG and CO land use designations and zoning classifications. All existing uses have been approved through previous entitlement applications and the proposed CUP Amendment does not seek approval of a specific use or construction of any structures on the site, but rather seeks to only amend the project's parking requirements. All other project conditions of approval remain valid and fully enforceable.

Site Characteristics

The project site has been completely developed. APNs 0617-105-10 and 0617-111-15 have been developed with commercial buildings and APNs 0617-111-03 and -04 have been developed with a 40-car parking lot.

Parking

On May 4, 2004, the Planning Commission approved PC 04-09, which granted a Conditional Use Permit (CUP) Amendment for 73501 Twentynine Palms Highway (APN 0617-111-15) to reduce the number of required parking spaces of an existing food establishment and approved a Site Plan Review application to establish a fitness center at 73471 Twentynine Palms Highway (APN 0617-105-10) with parking for both uses to be provided off-site at APNs 0617-111-03 and -04.

The Conditions of approval (COA) for PC 04-09 required the following:

- **P2:** An Off-Site Reciprocal Parking Agreement pursuant to Sections 19.82.060 (G) and 19.82.070 of the City's Development Code.
- **P8:** For the project to provide a minimum of 44 parking spaces with two (2) of them being ADA accessible in accordance with Chapter 19.82 of the City's Development Code for the duration of the use.

The staff report for PC 04-09 included a detailed description as to how the parking requirements were determined for the project; a copy of this staff report has been included for reference.

As conditioned, the project proponent entered into a Parking Agreement on May 4, 2004 to meet condition of approval P2 (see above). The required parking spaces have been and are currently being provided in accordance with the project's conditions of approval.

At the October 14, 2008 regular City Council meeting, Mr. Moore requested that the Parking

Agreement entered on May 4, 2008 be terminated as is no longer warranted. The food establishment that had previously occupied a significant portion of APN 0617-111-15 has ceased operations at this location. As noted on the table above, retail uses and a health care facility currently occupy the building located on APN 0617-111-15. The fitness center approved under PC 04-09 and the retail use on the building adjacent to the fitness center are still currently in operation.

The City's Development Code provides relief regarding parking requirements for projects that were built prior to the City's incorporation, which is the case with this site. Section 19.82.030 notes that "Any building or structure existing on November 23, 1987 is exempt from the provisions of this chapter [Off-Site Parking and Loading Regulations], unless it is altered in any of the following ways...B) Changes the use to one requiring a greater number of parking spaces pursuant to this chapter." On May 4, 2004, the Planning Commission found that the intended project (PC 04-09) proposed a use that required a greater number of parking spaces than currently existed on-site. As such, the project was found not exempt and was conditioned to provide additional parking spaces to meet the City's Development Code requirements.

In 1987, prior to the City's incorporation, the uses at the project site were as follow:

APNs	Use	Sq. Ft. of Building	2008 Parking Requirement	Required Parking
0617-105-10	Mattress/Carpet Store	4,200 sq. ft.	1 per 400 sq. ft.	11
0617-111-15	Drug Store	5,645 sq. ft.	1 per 200 sq. ft.	29

The total number of required parking spaces would have been 40; however, parking was not originally required for these uses under the County's jurisdiction.

Based on the current uses at the site, the parking requirements are as follow:

APNs	Use	Sq. Ft. of Building	2008 Parking Requirement	Required Parking
0617-105-10	Fitness Center	2,800 sq. ft.	1 per 150 sq. ft.	19
	Retail	1,400 sq. ft.	1 per 200 sq. ft.	7
0617-111-15	Retail	5,645 sq. ft.	1 per 200 sq. ft.	29
	Health Care		1 per 175 sq. ft.	

Conversely, the current total number of required parking spaces would be 55, since the Community Development Department does not have an accurate square footage for the health care use; the total building area of APN 0617-111-15 was calculated at one (1) space per 200 sq. ft. using the retail-parking standard.

The applicant's position, which a majority of the City Council seemed to agree with, is that without the food establishment at APN 0617-111-15 and per Section 19.82.030 of the City's Development Code, the current uses at APN 0617-111-15 are similar in nature to those prior to the City's incorporation and therefore parking shall not be required for these uses. Based on the calculations provided above, the current total number of required parking spaces for APN 0617-105-10 exceeds by 15 parking spaces that which were permitted prior to 1987. As such, one can argue that this parcel does not completely qualify for the parking waiver as permitted by Section 19.82.030 of the City's Development Code. Currently, four (4) parking spaces are provided behind the fitness center building; as such, the applicant is still required to provide 11 parking spaces within the project boundaries.

If the parking agreement is dissolved, the applicant, Mr. Moore, has indicated that parking will still be provided for all uses within the project boundaries regardless of whether parking is

required or not. However, if the Parking Agreement is terminated, the City will not have any legal recourse to require the applicant from providing parking to the business located on-site. Furthermore, the Parking Agreement is merely a guarantee that parking will be provided for these business as title to the land is held by the applicant and not by the City.

Findings

Pursuant to Section 19.30.060 of the Development Code, the Planning Commission is required to make the following findings prior to approving the amendment to the CUP. The required findings are:

- A. That the proposed design and location of the conditional use and the conditions under which it will be operated are in accordance with the purpose of this Development Code, the zoning regulations applicable to the site, the City of Twentynine Palms General Plan, and other applicable development policies and standards of the City; and,
- B. That the proposed design and location of the conditional use and the conditions under which it will be operated will not be detrimental to the public health, safety, or welfare, or materially injurious to uses, properties or improvements in the vicinity; and,
- C. That the proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity.

Approval Process

When a single project requires approval of multiple permits, all such permits shall be filed and reviewed concurrently. Processing and environmental review should be done concurrently and the highest Approval Authority of all the required permits shall make the final decision on the project. The Planning Commission is the Review Authority for PC 08-78. The City Council is the Approval Authority of this application. Depending on which alternative the Planning Commission chooses, staff will return with a resolution, as appropriate, at your next scheduled meeting.

ALTERNATIVES

The Planning Commission may take any of the following actions:

- A. Deny the CUP Amendment application, which can be appealed to the City Council, and thus keeping all of the conditions of approval for PC 04-09 valid and fully enforceable including the Parking Agreement; or,
- B. Recommend that the City Council amend the parking requirements for PC 04-09 and amend the Parking Agreement to more accurately reflect the current site conditions as it relates to current uses and parking requirements of the project site; or,
- C. Recommend that the City Council amend the parking requirements for PC 04-09 by eliminating conditions of approval P2 and P8 and recommend that the City Council terminate the Parking Agreement without further consideration.