



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

6136 Adobe Road  
Twentynine Palms, CA 92277  
(760)367-6799 – Fax (760) 367-5400

**To:** Planning Commission  
**From:** Community Development Director  
**Date:** March 17, 2011

**For Commission Meeting Of:** April 5, 2011

**SUBJECT:** PC 10-73 - An application from Lan T. Nguyen for a Site Plan Review to convert the existing residential structure located at 3733 Adobe Road into a commercial use (barber shop).

**RECOMMENDATION**

Conduct the open, continued Public Hearing, consider public comment, find the project Categorically Exempt pursuant to CEQA and adopt Planning Commission Resolution No. 11-03 approving the Site Plan Review, subject to the attached modified Conditions of Approval.

- | Attachments  |
|--|
| 1. Development Code Excerpts                                   |
| 2. Aerial Photo Vicinity Map                                   |
| 3. West Elevation  |
| 4. Revised North Elevation                                     |
| 5. Resolution 11-03 with Attachment "A" Conditions of Approval |

**BACKGROUND**

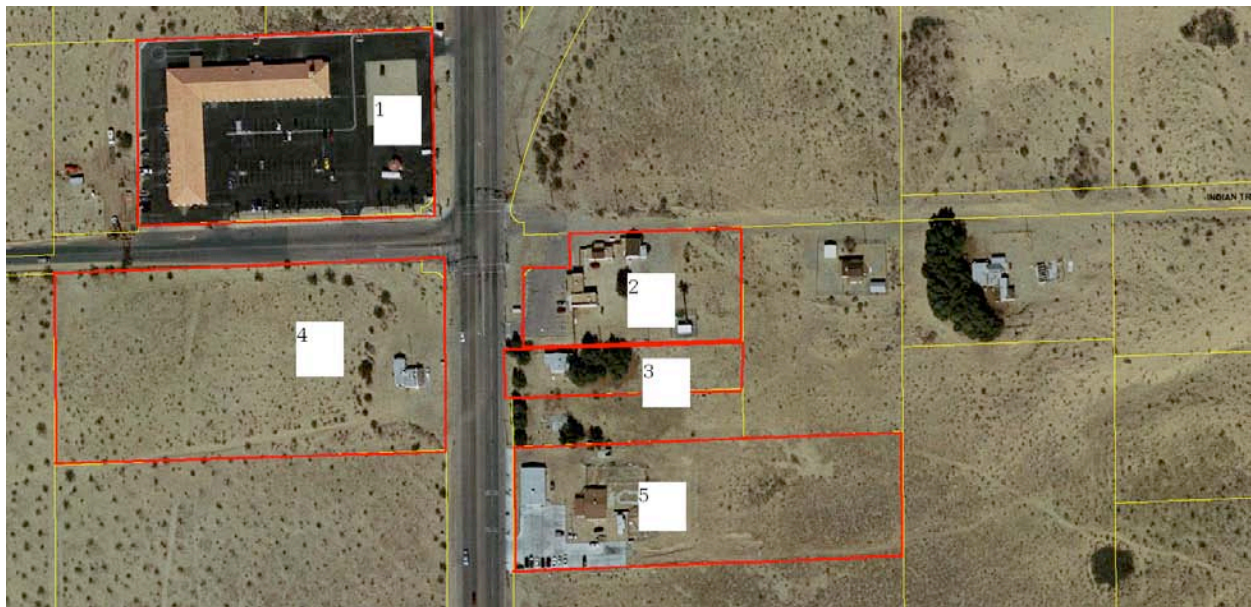
The Commission will recall that it was introduced to this item at its regularly scheduled meeting of March 15, 2011. At that meeting, the Commission, after reviewing the material provided by the applicant and staff's analysis of the request, continued the item to the April 5<sup>th</sup> regular Commission meeting and requested three (3) items. First, the Commission requested additional information regarding the physical safety/structural integrity (for issues such as seismic events) of the structure proposed to be modified (a letter from a licensed Engineer stating, in plain language, that the structure could be retrofitted to conform to current commercial Building Codes and safety regulations) and the fiscal relation between a possible retrofit verses demolition and new construction. Second, the Commission directed that the applicant provide alternatives to the northern and southern elevations to illustrate enhanced treatments to the exterior of the building. Third, the Commission requested a statement from the applicant to formally request and support, as required by Table 19.82-E "Required Number of Loading Spaces", footnote "D", Commission consideration of waiving the requirement for one (1) twelve foot by forty-five foot (12' by 45') "Truck Loading Space".

In addition to the additional information requested by the Commission in continuing the item to the meeting of April 5, 2011, changes to the proposed Conditions of Approval were also discussed. By consensus, the Commission directed that language referencing "irrigation" within Condition P8 be removed. Further, once a formal request is received and supporting comments provided, proposed Condition P13 regarding a Truck Loading Space could be removed. Further, proposed Condition P14 is to be amended by the removal of the reference to the installation of "palm trees". (This alteration to the proposed Condition, however, does not prohibit the property owner from electing to install palms trees upon his/her property as an individual choice by its/their inclusion within his/her landscaping plan.)

Although the Commission, by consensus action, directed changes to some of the proposed Conditions of Approval, it must remain clear that the Commission, in making and approving a motion on the project, may again amend any of the proposed Conditions in any manner deemed necessary to approve the project. Obviously, no changes to the Conditions of Approval would be warranted if the project were denied.

During the March 15<sup>th</sup> Public Hearing, the Commission also discussed the enhanced driveway treatment, the lighting plan and the proposed signage upon the property. None of these development features have, as of yet, been officially approved by the City and staff has requested that the applicant or his/her representative provide information that would clarify what is sought by the applicant for each of these issues.

As was noted within the report for the March 15<sup>th</sup> Public Hearing, the applicant proposes to convert the existing residential structure located at 3733 Adobe Road (APN 0621-261-17), built in 1944 and which consists of 918 square feet of residential living area and 136 square feet of porch area, into a commercial building. The applicant proposes to add approximately eighty (80) square feet of new commercial area with the conversion, creating an overall total of 1,134 square feet of area for future commercial use. The project site is located within the General Commercial (CG) land use district and will require significant modifications to the residential structure for conversion to a commercial site. The applicant, under the provisions of Section 19.10.090 "Street Dedications and Improvements" of the Development Code, shall be required to install curb, gutter, sidewalk and connecting pavement to meet the street standard established in the General Plan Circulation Element for Adobe Road (an Expressway). In addition, pursuant to Development Code 19.10 "Commercial Districts", the installation of enhanced driveway entry treatments, installation of parking lot improvements for the commercial use, installation of landscaping upon the project site and handicap accessibility to the site (per California Building Codes and the Americans With Disabilities Act {ADA}) shall be required.



### Site Characteristics

The Site Plan Review proposed under this proposal is located upon a property that is approximately 0.62 acres in size, a deep rectangular shape, with relatively flat topography and occupied by an approximately sixty-seven (67) year old residential structure and native desert vegetation. No unique or unusual physical features or aspects of the property are apparent.

## **Project Analysis**

An analysis of the proposed project was provided within the March 15<sup>th</sup> Public Hearing report. No changes to that analysis are proposed under the current review except as detailed within the “Background” section noted above. The Commission may proceed to a decision with regard to the Site Plan Review request if it believes that sufficient information has been provided to address the structural integrity question, altered and enhanced exterior elevations, truck loading space requirements, enhanced driveway treatment, the lighting plan and signage.

It is also noted that as the “Site Plan Review” is examining the physical change to the structure on site, a change from a residential structure to a commercial structure, and thus potentially allowing future commercial use of the property, Condition P11 is superfluous (for it addresses an assumed specific use of the site, a use which is allowed by right-of-zone, but a use which may or may not be established once the proposed changes to the building are complete). In consideration of the fact that the Commission’s Site Plan Review is a review of changes to the physical structure, not a specific future use of that structure, staff offers the following to change the focus of the proposed Condition (note the number of the Condition is changed for consistency within the numerical sequence of the new proposed Conditions of Approval):

“P4. The Business Owner of any Business established upon the property identified as 3733 Adobe Road is herewith and hereby informed that it is his/her sole responsibility to assure that all persons employed at or within the business located upon this property shall possess and maintain all necessary licenses, certifications, permits and approvals required by the City, County and State to perform any and all services provided at/within said business. Failure of the Business Owner to assure that all employees have the necessary licenses, certifications, permits and approvals shall constitute conclusive grounds for the City Manager of the City of Twentynine Palms to revoke any approved and issued City Business License to the Business Owner under the provisions of City of Twentynine Palms Municipal Code Chapter 5.01 ‘Business License’.”

It is also suggested that this, or similar language, be considered for inclusion within the update to the Development Code to assure that business owners are aware and are held to a specified level of responsibility for their employees. If the Commission wishes, the Commission may specify that this proposed Condition can “sunset” if the update to the Development Code does not include language of this nature.

## **CEQA Environmental Review**

Pursuant to the California Environmental Quality Act (CEQA), the project was routed to appropriate agencies and departments for public review and comment. Comments were received from the City of Twentynine Palms Building & Safety, City of Twentynine Palms Engineering and Marine Air Ground Task Force Training Command MCAGCC.

Pursuant to Section 15301 (Existing Facility) of the State Guidelines to Implement the California Environmental Quality Act (CEQA) the project, which consists of the modification of an existing small structure, was found to be Categorically Exempt from further environmental review.

## **Signage**

Although the submitted “front” elevation illustrate two (2) signs upon this structure, as no specific dimensions are provided, staff cannot determine if the submittal conforms to City standards. Under the provisions of Chapter 19.84 “Signs”, a commercial structure twenty-eight (28) feet wide would be allowed a maximum of fifty-six (56) square feet of signage. No Condition of Approval is provided for this standard, for as a Code standard it shall be required of the applicant whether or not a Condition identifies it.

## **Public Comments**

The City has received comment regarding the proposed residential conversion from the Marine Corps Air Ground Combat Center (MCAGCC). This letter (copy previously provided) notes that the site of the proposed residential conversion is located “directly under airspace used by the military” and that as such, the property will be subject to noise and vibrations from the Marine Base. Further, the letter reminds the proponent of the City’s Code requirements relative to signage and lighting (in an effort to assure that such signage and/or lighting shall not interfere with the over-flight of military vehicles). The Planning Commission has discussed this requirement at past Public Hearings and has determined that application of a Condition of Approval to note the proximity of the Base is not necessary, except under exceptional circumstances. Therefore, this letter, included within this report, shall serve as formal notice to the applicant and property owner of the location of the Base and of the property owner’s responsibility under State law to disclose this fact to any future buyer of said property. No Condition of Approval is provided for this suggestion and no further steps are warranted at this time.

## **General Plan Goals and Policies**

As noted below under “Findings for Approval”, approval of any Site Plan Review must be reviewed and considered in light of the City’s adopted General Plan and the Goals and Policies articulated therein. Any approval of a Site Plan review must be found to be consistent with both the intent and the letter of these Goals and Policies. The following Goals and Policies are offered for Council consideration and acceptance.

### **Land Use Element:**

#### **Goal #1**

A Land Use Plan which provides a desirable City in which to live.

##### **Policy #1.1**

Traffic, noise and other impacts will be considered prior to any land use designation change and/or land use intensification.

##### **Policy #1.2**

Quality standards will be applied to all new developments.

##### **Policy #1.3**

Uses shall be located in a manner which will minimize conflict and mitigate impacts.

#### **Goal #2**

Development of a variety of high quality residential neighborhoods.

#### **Goal #3**

The City will provide opportunity for commercial facilities offering a wide variety of goods and services.

##### **Policy #3.2**

The Land Use Plan will allow for the creation of limited amounts of commercial development, in commercially designated districts, in or near residential areas.

### **Safety Element:**

#### **Goal #1**

The City of Twentynine Palms will be a safe place to live and visit.

### **Findings for Approval**

The Approval Authority shall approve Site Plan Review applications and Administrative Site Plan Review applications in cases where all of the “Findings” listed within Section 19.28.050 “Findings for Approval” can be made. The following are the required Findings, along with a comment offered to address each.

- A. The proposal meets the standards of the Development Code, and will result in an appropriate and desirable development; and

Comment: With the exception of Driveway Enhancement treatment (which would be addressed by adherence to a proposed Condition of Approval), the Site Plan Review shall conform to the requirements of the Development Code as interpreted by the Planning Commission.

- B. The proposal’s design and appearance are aesthetically and architecturally pleasing while enhancing the character of the surrounding neighborhood; and

Comment: Upon review of the proposal, and with adherence to all required Conditions of Approval, the Commission finds that the proposed modifications to the exterior of the structure shall render the building’s design aesthetically and architecturally consistent and compatible with the surrounding neighborhood.

- C. The site is suitable in size, shape, and topography for the proposed development; and

Comment: In consideration of the site’s size (0.62 acres), rectangular shape, relatively flat topography and location of the existing structure, the proposed development can be considered suitable to the physical characteristics of the property in question.

- D. The site improvements are appropriate and will result in a safe, well-designed facility; and

Comment: With the anticipated physical improvements proposed with the Site Plan Review (street improvements and right-of-way dedications) as well as adherence to the required Conditions of Approval, the development of the site as proposed is appropriate in consideration of the physical limitations of the site and use and will result in a safe, well-designed facility.

- E. Approval of the project is consistent with the General Plan.

Comment: Upon review of the Goals and Policies of the General Plan, as well as the General Plan Land Use Designation of the site, it can be seen that the proposed development of the site for a commercial activity is consistent with the site’s General Plan designation and the associated Goals and Policies.

### **Code Requirement Summary**

An issue that has been a discussion point between the Commission and staff of late has been the imposition of Conditions of Approval which are, in fact, simply brief summaries of the various requirements of the Development Code and/or other applicable Codes. Staff does not want to misrepresent to an applicant that the Commission has the authority to waive any Code requirements without first completing the proper procedures (including notification, a Public Hearing and “Findings) for a Variance. Staff has previously suggested that a fundamental

change to how and which “Conditions” are offered for consideration and application to any project approval shall be presented for Commission consideration. To that end, and specifically applicable to this case only, staff offers the following (which were formerly presented as proposed “Conditions of Approval”) as brief summaries of the requirements of the Development and various applicable Codes. This material is presented as information to the applicant. ***Failure to identify any specific Code requirement(s) within this material does not relieve the property owner and/or any agent of the owner, applicant and/or agent for the applicant from complying in full with all Municipal, County, State and Federal regulations and requirements.*** Proposed Conditions of Approval specifically applicable to the Site Plan Review under consideration as PC 10-73 are presented as an attachment to the draft Planning Commission Resolution as they are traditionally found within staff analysis.

### **Planning Requirements**

1. Per Section 19.28.070 “Expiration” an approved Site Plan Review shall expire twenty-four (24) months from the date the approval was granted, unless prior to the expiration date:
  - A. A Building Permit is issued and remains active for any approved phase of the project;  
or
  - B. A Certificate of Occupancy is issued for the structure.
2. As the Site Plan Review requested is not for the use of the property, but for physical changes to a structure upon said property, the physical changes to the structure must be completed as described above as per Section 19.28.070 “Expiration”.
3. The Applicant shall ascertain and comply with requirements of all State, County and Local agencies as are applicable to the project proposal.
4. The property owner shall keep the property neat, clean, and in good physical condition including open spaces, sidewalks, lighting, driveways, parking areas and landscaping (Section 19.92.030 “Public Nuisance Prohibited” and County Code 63.064 “Substandard Property”).
5. All outdoor lighting shall conform to Development Code Chapter 19.70 “Lighting Standards”, and shall be designed to not glare or reflect onto neighboring properties or public rights-of-way. Outdoor lighting shall be shielded and limited to that required for security and safety purposes.
6. All construction and improvements shall comply with “Encroachments into Yards or Setbacks” standards established in the Development Code (Section 19.10.070 “Encroachments into Yards or Setbacks”) for the underlying land use district.
7. Landscaping is required per Development Code Table 19.10-B and Section 19.10.040 “Design Standards” Subsections “B” and “D”, including the submission of Landscaping Plans, which must be reviewed, and if found acceptable, approved by the Community Development Department prior to issuance of the Certificate of Occupancy. Said Landscaping Plan must be consistent with the City’s Go Native Landscape Design Guidelines.
8. A minimum of six (6) paved parking spaces shall be provided on site, (five {5} regular parking spaces and one {1} handicap accessible space). Ingress, egress, parking areas and driveways shall comply with Development Code Chapter 19.82 “Off-Street Parking and Loading Regulations”.

9. A trash dumpster enclosure shall be provided to meet the standards established by Development Code Chapter 19.80 "Recycling and Solid Waste Disposal".
10. For businesses that provide services subject to individual licensing from any State or County authority, the applicant shall contact such authority for the required permits and provide the City of Twentynine Palms Community Development Department and/or Finance Department with copies upon permit issuance (Municipal Code Chapter 5.01 "Business License").
11. The applicant is required to obtain and maintain a current City of Twentynine Palms Business License for each business at this site (Municipal Code Chapter 5.01 "Business License").
12. One (1) truck loading zone space of twelve (12) feet by forty-five (45) feet shall be provided so as not to obstruct any parking space, drive aisle or access to any structure on site (unless waived by the Planning Commission as provided under Development Code Table 19.82-E "Required Number of Loading Spaces", Footnote "D").
13. Upon development of a property, the property owner shall install or cause to be installed "enhanced driveway treatment" and "enhanced landscaping" to the frontage of the site along all adjoining rights-of-way as required under Development Code Section 19.10.040 "Design Standards", subsection "C", prior to receipt of a formal Certificate of Occupancy for the building on site and prior to any commercial use of the site. Plans for said enhancements shall be provided to the Planning Commission for review and approval prior to installation.
14. All signage on site shall conform to the regulations and requirements as provided within Development Code Chapter 19.84 "Signs".

**Building and Safety**

15. Prior to new construction, building alteration or additional construction, a property owner or his/her representative shall submit three (3) sets of plans to the City's Building Official and secure a Building Permit in conformance with the Uniform Building Code (Building Code Section 105 "Permits"). No work is to be done prior to approvals and permit issuance.

**Engineering Division**

16. All road easements required per Code Section 19.10.090 "Street Dedications and Improvements" shall be offered for dedication to the public and shall continue in force until the City accepts or abandons such offers. All dedications shall be free from all encumbrances.
17. All Street Improvement Plans shall be reviewed and approved by the City Engineer prior to Building Permit issuance.

**Grading**

18. A grading permit shall be obtained from the City Engineer prior to any grading or other work done on the site.

19. An encroachment permit separate from the grading onsite permit shall be obtained from the City of Twentynine Palms (760-367-6799) prior to any construction occurring within the public right-of-way.

#### Utilities

20. All utilities serving new projects shall install underground utilities both onsite and in the public right-of-way (Development Code Section 19.10.100 "Utilities").
21. Soil percolation testing for the subsurface disposal system shall meet the requirements of the San Bernardino County Environmental Health Services and the City.

#### Fire Department

22. Prior to any construction, the owner shall contact the Twentynine Palms Fire Department for verification of current fire protection requirements.
23. All construction and activities shall comply with applicable sections of the 1988 edition of the Uniform Fire Code and all other state, county, and city ordinances, rules and regulations regarding fire protection.
24. Street addresses shall be posted with numbers a minimum height of four (4) inches. Posted numbers shall contrast with their background and be visible and legible from the street.

#### Approval Process

Under the provisions of the Development Code (Section 19.28.080 "Approval Authority" Subsection "B"), when the Community Development Director determines that it is in the public interest for the application to be considered by the Planning Commission, the Community Development Director shall refer the application to the Planning Commission for review and action. The Planning Commission shall become the Approval Authority for all applications referred by the Community Development Director. In taking action to approve, the Commission must find that the proposed Site Plan Review qualifies for a Categorical Exemption under CEQA, and is consistent with the General Plan. Because the subject property has the General Commercial General Plan land use designation, the proposed barber shop is consistent with the General Plan Land Use Plan and Development Code.

## DEVELOPMENT CODE EXCERPTS

### Code Section 19.10.040 “Design Standards”

#### Design Standards.

- A. A Desert Southwest theme is encouraged where possible. A modern building design may be acceptable where the Desert Southwest theme is not feasible and the proposed design will not detract from or conflict with the established theme of the neighborhood.
- B. Landscaping reflecting a desert theme, including use of drought resistant plants is encouraged. Those portions of the front setback area not improved with drive isles, walls, signage or similar features shall be landscaped using either locally adaptable drought-tolerant plants, complimented where necessary with a drip irrigation system; or decorative rock, gravel, bark or sand, or a combination thereof; provided, however, that some live plant material must be provided in all landscaped areas.”
- C. All driveway entries on Twentynine Palms Highway and Adobe Road shall have enhanced entry treatments, which shall include textured and/or colored paving or similar treatment and enhanced landscaping with accent trees and other landscape treatments, consistent with the Desert Southwest Design Guidelines.
- D. A minimum six (6) foot wide landscaped area shall separate parking areas from a street or public sidewalk.
- E. Special architectural treatments, materials, and colors shall be used to identify major building entries.
- F. All mechanical equipment shall be screened from public rights-of-way and parking lots as an integral part of the building design through the use of parapets, screen walls, equipment wells, or similar design features, a minimum of six inches above the tallest piece of mechanical equipment.
- G. All architectural structures should be coordinated with site landscaping to create attractive spaces and environments for pedestrians. Tree canopies and/or trellises with greenery trained to grow on the trellises, combined with landscaped boundaries consisting of seat walls and/or shrubs of two (2) to three (3) feet in height should be provided wherever possible to provide comfortable pedestrian spaces.
- H. Architectural quality should enhance surrounding land uses and promote compatibility. Desirable architectural treatment typically creates visual interest by breaking up uniform blank walls, glass and other building forms into areas that are more human in scale.
- I. All structure elevations visible from the public right-of-way and adjacent land uses shall provide one or more appropriate design components, including but not limited to: color variation, wall indentations, window treatment, variations in materials, columns, horizontal or vertical building plane alterations, cornices, or other similar architectural treatment that defines space and promotes visual interest.
- J. Site design should orient buildings, parking, and drive aisles, sidewalks and plazas to provide users a clear indication of the building entrance and clear pathways from

parking to the entry. Providing a view corridor along the pathway and a unique and consistent landscape or paving theme along the pathways are good techniques to achieve orientation.

- K. A trash enclosure(s) shall be provided to serve the development. Each trash enclosure shall be placed on a slab or paved area and shall be screened on at least three sides with a solid wall, made of block, masonry or other similar material, minimum five (5) feet high. The trash receptacles shall not be visible above the wall. A visually solid gate shall be provided to adequately screen the receptacles.
- L. Residential development, where allowed, shall not exceed eight (8) dwelling units per acre (gross) and shall comply with Development Code Section 19.08.090, Standards for Residential Development.

#### **19.10.090 “Street Dedications and Improvements”**

- A. Before building permits are issued for the construction of a structure or improvement which would result in an increase or change in vehicular and/or pedestrian traffic, the dedication of additional right-of-way and construction of required street improvements shall be required in accordance with the General Plan Circulation Element.

“Street improvements” include any or all of curb and gutter, sidewalks, concrete driveway approaches, drainage structures, paving, back-filling and preparation of the road surface to rough grade, and the placement of paving, and other necessary improvements as determined by the City Engineer, unless otherwise approved pursuant to Chapter 19.85, *Public Improvements - Delaying or Deferring*.

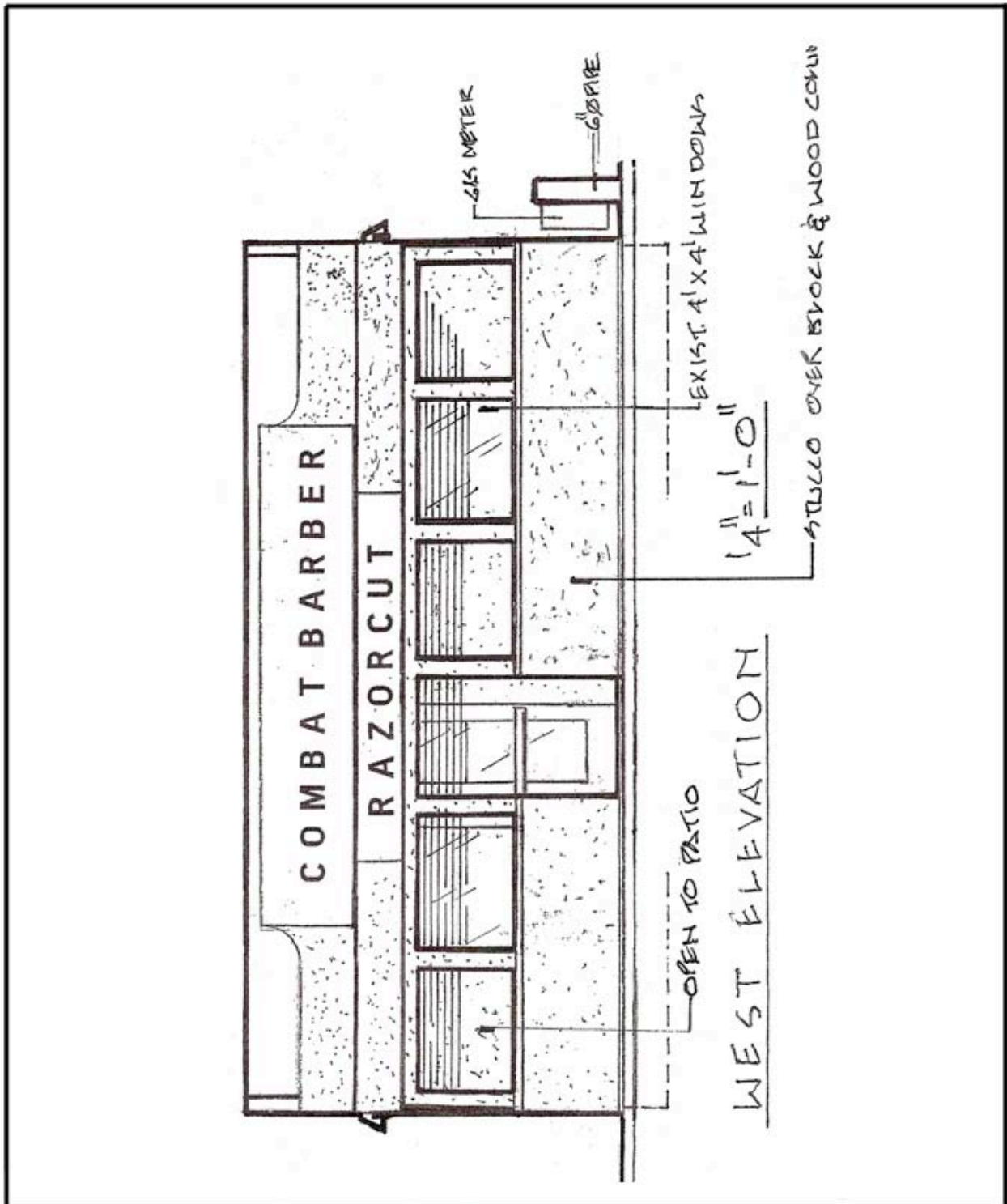
- B. Before occupancy shall be granted for any such building or improvement, the Building Official shall determine the following:
  - 1. That all of the required dedications have been provided.
  - 2. That all of the required street improvements have either been installed or that a cash deposit, surety bond or other form of surety acceptable to the City Council in an amount equal to the estimated cost of the street improvements has been posted with the City to assure the installation of said street improvements.
- C. In all Commercial Districts, the following street improvement standards shall apply to all rights-of-way:
  - 1. Concrete curbs and gutters shall be installed.
  - 2. Sidewalks shall be installed.



**Aerial**



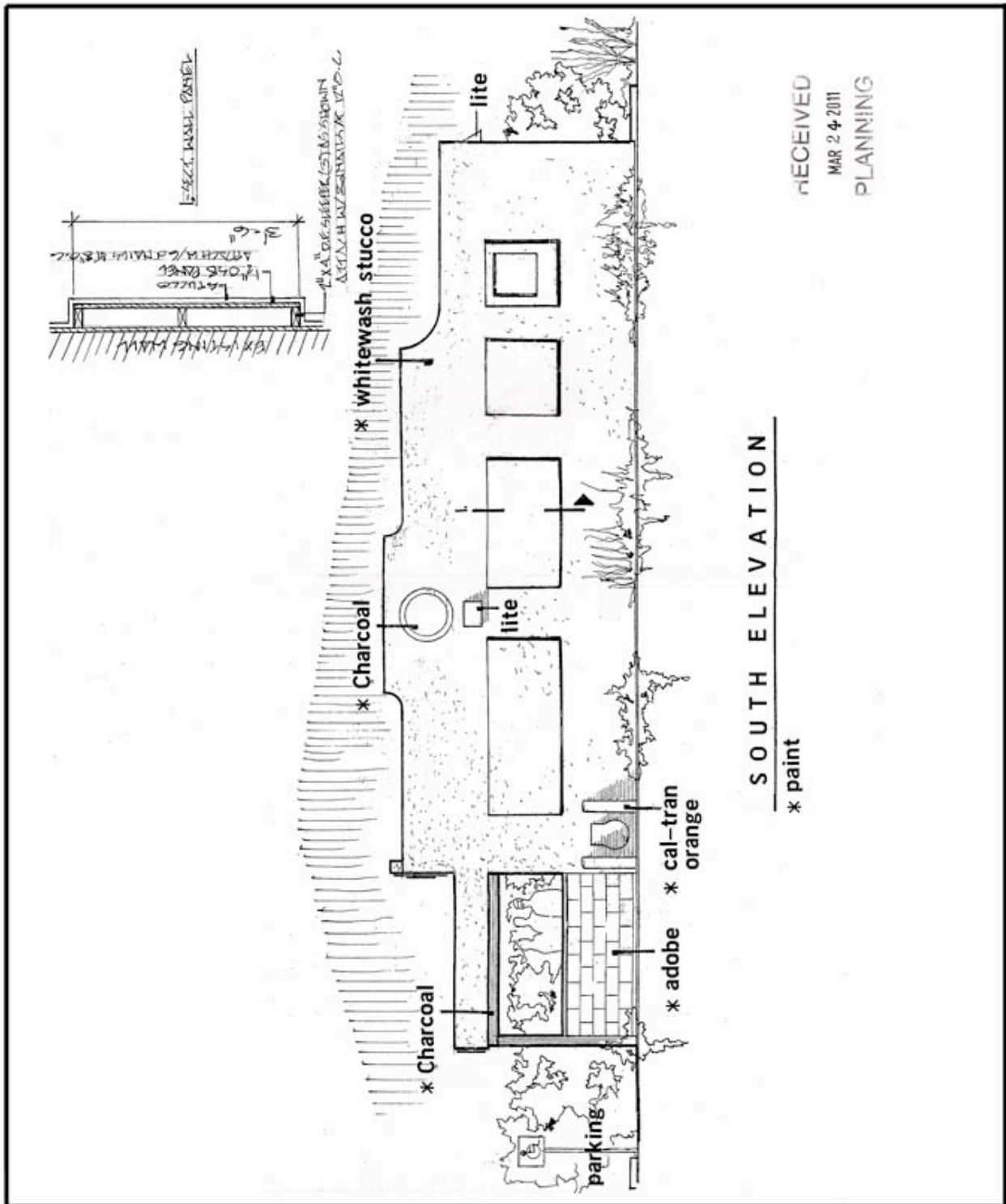
**PC 10-73  
April 5, 2011**



**West  
Elevation**



**PC 10-73  
April 5, 2011**



**Revised  
North Elevation**



**PC 10-73  
April 5, 2011**

CITY OF TWENTYNINE PALMS  
PLANNING COMMISSION  
RESOLUTION NO. 11-03

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF TWENTYNINE PALMS, CALIFORNIA, APPROVING PC 10-73, FOR A SITE PLAN REVIEW TO ALLOW THE CONVERSION OF A RESIDENTIAL STRUCTURE TO A COMMERCIAL STRUCTURE WITHIN THE GENERAL COMMERCIAL LAND USE DISTRICT LOCATED AT 3733 ADOBE ROAD; APN 0621-261-17.

**WHEREAS**, on Sept 23, 2010 an application was received from Lan T. Hguyen for approval of a Site Plan Review to convert an existing residential structure to allow a barber shop at 3733 Adobe Road; Zone CG; T1N, R9E, Section 9; APN 0621-261-17; and

**WHEREAS**, the current land use for the subject property is a residential structure built in 1944; and

**WHEREAS**, the land use designation (zoning) for the subject property is General Commercial (CG); and

**WHEREAS**, a barber shop is a permitted land use within the General Commercial (CG) Zone with approval of a Site Plan Review; and

**WHEREAS**, pursuant to Section 15301 of the CEQA Guidelines, the project (considered a Class 1 exemption), which consists of the modification of an existing small structure, is Categorically Exempt from further environmental review under state law; and

**WHEREAS**, the City Planning Commission finds on the basis of the whole record before it (including the review of CEQA Guidelines and any comments received) that there is no substantial evidence that the project will have a significant effect on the environment and that the Determination of Exemption reflects the Planning Commission's independent judgment and analysis; and

**WHEREAS**, the project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations; and

**WHEREAS**, the Planning Commission, acting as the Approval Authority, has considered the following Goals and Policies of the adopted City of Twentynine Palms General Plan in its consideration of the proposed Site Plan Review:

**Goal #1**

A Land Use Plan which provides a desirable City in which to live.

**Policy #1.1**

Traffic, noise and other impacts will be considered prior to any land use designation change and/or land use intensification.

**Policy #1.2**

Quality standards will be applied to all new developments.

**Policy #1.3**

Uses shall be located in a manner which will minimize conflict and mitigate impacts.

**Goal #2**

Development of a variety of high quality residential neighborhoods.

**Goal #3**

The City will provide opportunity for commercial facilities offering a wide variety of goods and services.

**Policy #3.2**

The Land Use Plan will allow for the creation of limited amounts of commercial development, in commercially designated districts, in or near residential areas.

**Safety Element:**

**Goal #1**

The City of Twentynine Palms will be a safe place to live and visit.

**WHEREAS**, the site can be adequately served by all required utilities and public services; and

**WHEREAS**, Public Hearing notices were published on March 3, 2011 in a newspaper of record and notice was mailed to all property owners located within 300 feet of the project site on or before the same date; and

**WHEREAS**, Public Hearing was held by the Planning Commission on March 15, 2011; and

**WHEREAS**, with respect to the Site Plan Review application the Planning Commission made the following findings:

- A. With the exception of Driveway Enhancement treatment (which would be addressed by adherence to a proposed Condition of Approval), the Site Plan Review shall conform to the requirements of the Development Code as interpreted by the Planning Commission.
- B. Upon review of the proposal, and with adherence to all required Conditions of Approval, the Commission finds that the proposed modifications to the exterior of the structure shall render the building's design aesthetically and architecturally consistent and compatible with the surrounding neighborhood.
- C. In consideration of the site's size (0.62 acres), rectangular shape, relatively flat topography and location of the existing structure, the proposed development can be considered suitable to the physical characteristics of the property in question.
- D. With the proposed physical improvements proposed with the Site Plan Review (street

improvements and right-of-way dedications) as well as adherence to the required Conditions of Approval, the development of the site as proposed is appropriate in consideration of the physical limitations of the site and use and will result in a safe, well-designed facility.

- E. Upon review of the Goals and Policies of the General Plan, as well as the General Plan Land Use Designation of the site, it can be seen that the proposed development of the site for a commercial activity is consistent with the site's General Plan designation and the associated Goals and Policies.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Twentynine Palms determines that PC 10-73 is Categorically Exempt from further CEQA review and approves the Site Plan Review, subject to the attached Conditions of Approval.

APPROVED AND ADOPTED THIS 5th DAY OF APRIL, 2011

AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSENT: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:

\_\_\_\_\_  
Bill Easter, Chairman

ATTEST:

Jacqueline Palmer, Deputy City Clerk

I hereby certify that the foregoing is a true copy of Resolution No. 11-03 duly adopted by the Planning Commission of the City of Twentynine Palms in a meeting held on the 5<sup>th</sup> day of April, 2011, in Twentynine Palms, California.

Dated this 5<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
Jacqueline Palmer, Deputy City Clerk

CITY OF TWENTYNINE PALMS  
DRAFT CONDITIONS OF APPROVAL  
PC 10-73

Applicant: Lan T. Nguyen

Project: Site Plan Review to allow the conversion of an existing residential structure to a Barber Shop.

Location: 3733 Adobe Road

APN# 0621-261-17

Approved: April 5, 2011

Expire: April 4, 2013

The following Conditions of Approval shall be applicable to the Commission's approval of PC 10-73. The City's Planning Commission, in making the "Findings" necessary for approval, shall impose the following Conditions of Approval which it establishes as reasonable and appropriate to achieve the purposes of the Development Code and to justify making the necessary Findings. Further, under the provisions of Development Code Section 19.30.110 "Revocation", failure to conform to the following Commission approved Conditions of Approval shall constitute a failure to conform to the Findings made by the Commission in approving the requested alteration to the structure on site and, therefore, may be the basis upon which the Commission may revoke its approval of the Site Plan Review which may prohibit the issuance of Building Permits or void issued Permits.

*Also see the "Code Requirement Summary" on page 5 of 19 of the PC 10-73 Public \_\_\_\_\_  
Hearing report for the Planning Commission meeting of April 5, 2011. Initial*

### **General Conditions**

- G1. All Conditions are continuing Conditions. Failure of the Applicant and/or operator to comply with any of the said Conditions at any time may result in the revocation of the Site Plan Permit approval and/or citation for code violation.
- G2. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees, including reimbursement for all City expense in ensuring compliance with the Conditions of Approval.
- G3. The applicant shall provide a signed copy of the Conditions of Approval to the Planning Division within 10 days of approval.

### **Planning Conditions**

- P1. Site Plan approval is granted by the Planning Commission acting as Approval Authority on April 5, 2011, to permit the conversion of a structure originally constructed as a residential home into a commercial structure at the above referenced location. All development of the site shall be in substantial conformance with the adopted site plan and shall comply with all Conditions of Approval.
- P2. The applicant shall defend, at its sole expense (with attorneys approved by the City), and indemnify the City against any claim, action, or proceeding brought by any third party against the City, its agents, officers or employees resulting from or relating to this approval. The applicant shall reimburse the City, its agents, officers or employees for any judgment, court costs and attorney's fees which the City, its agents, officers or employees may be required to pay as a result of such claim, action, or proceeding. The

City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of its obligations under this condition.

- P3. Landscaping shall be installed on site as required by the Development Code and in conformance to the Landscaping Plans approved by the Community Development Department. Said landscaping shall be installed prior to issuance of the certificate of occupancy. Further, the applicant shall install and maintain, in a clean and disease free manner, the landscaped area(s) as illustrated on the approved Landscaping Plans planted with vegetation reflecting a desert theme, including use of drought resistant plants. This landscaping shall be maintained at all times consistent with the landscaping concept approved by the Planning Commission with its approval of the Site Plan Review and consistent with the landscaping plans approved by the Community Development Department. In the event that the approved and installed landscaping is not maintained in a manner consistent with the approved plans, the applicant shall have fifteen (15) days from written notice from the Community Development Department to bring the landscaping back into conformance with the approved landscaping/irrigation plans or provide evidence to the Community Development Department of appropriate efforts to bring the landscaping into conformance with the approved plans. Failure to return the landscaping to its approved state shall be considered a failure to conform to the Commission approved Conditions of Approval and may be grounds to initiate Code Enforcement action against the property owner.
- P4. The Business Owner of any Business established upon the property identified as 3733 Adobe Road is herewith and hereby informed that it is his/her sole responsibility to assure that all persons employed at or within the business located upon this property shall possess and maintain all necessary licenses, certifications, permits and approvals required by the City, County and State to perform any and all services provided at/within said business. Failure of the Business Owner to assure that all employees have the necessary licenses, certifications, permits and approvals shall constitute conclusive grounds for the City Manager of the City of Twentynine Palms to revoke any approved and issued City Business License to the Business Owner under the provisions of City of Twentynine Palms Municipal Code Chapter 5.01 "Business License".

### Engineering Division

- E1. A sixty-two (62) foot half-width street dedication along Adobe Road shall be dedicated to the City of Twentynine Palms prior to Final Occupancy.

The undersigned applicant verifies that he/she has read the Conditions of Approval, understands each Condition, and agrees to adhere to the Conditions of Approval.

\_\_\_\_\_  
Applicant/Developer (Please print name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**Notice of Exemption**  
City of Twentynine Palms  
Community Development Department  
6136 Adobe Road  
Twentynine Palms, CA 92277  
(760) 367-6799 Fax (760) 367-4890

- To:  County of San Bernardino Clerk of the Board of Supervisors  
385 North Arrowhead Avenue 2<sup>nd</sup> Floor  
San Bernardino, CA 92415-0130
- Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

**Project Title:** PC 10-73 – Lan T. Nguyen Barber Shop

**Project Location:** 3733 Adobe Road

**Project Location (city and county):** Twentynine Palms, San Bernardino County

**Description of nature, purpose and beneficiaries of Project:** Site Plan Review to allow the conversion of a residential structure to a commercial barber shop.

**Public Agency approving Project:**  Twentynine Palms Planning Commission

**Name of Person Carrying Out Project:** Mr. Lan T. Nguyen

**Exempt Status (check one):**

- Ministerial (Sec. 15073)  
 Declared Emergency [Sec. 15071 (a)]  
 Emergency Project [Sec. 15071 (b) and (c)]  
 **Categorical Type/Sec. 15301**

**Reason(s) Project is Exempt:** Pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guideline, the project, which consists of the modification of a small structure, is Categorically Exempt from further environmental review under state law.

For information, contact Charles K. LaClaire, Community Development Director, City of Twentynine Palms. (760) 367-6799

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Community Development Director  
Title



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

6136 Adobe Road  
Twentynine Palms, CA 92277  
(760) 367-6799 – Fax (760) 367-5400

**TO:** Planning Commission  
**FROM:** Community Development Director  
**DATE:** March 22, 2011

**FOR COMMISSION MEETING:** April 5, 2011

**SUBJECT:** PC 11-18 – Appeal of the Community Development Director’s interpretation of how to apply Development Code Section 19.48.030 “Accessory Uses in Residential Districts” regarding a proposed metal carport.

**RECOMMENDATION**

Open the discussion, consider public comment and determine whether the Community Development Director interpreted the requirements of Code Section 19.48.030 “Accessory Uses in Residential Districts” correctly as it would apply to the proposed RV carport.

**ORDER OF PROCEDURE**

- Request Staff Report (Charles LaClaire Presenting)
- Commission Questions of Staff
- Open to Public Comment
- Commission Discussion
- Motion/Second
- Discussion of Motion
- Call the Question

- | <b>Attachments</b>  |
|---|
| 1. Applicant Drawn Site Plan  |
| 2. Design Information   |
| 3. Aerial/Surrounding Properties  |
| 4. Photographs of Home and Surrounding Properties (4)                           |
| 5. Development Code Section 19.48.030 “Accessory Uses in Residential Districts” |

**PROJECT DESCRIPTION**

Appeal of the Community Development Director’s interpretation of Development Code Section 19.48.030 “Accessory Uses in Residential Districts” regarding the architectural requirements applicable to an accessory structure that would apply to the proposed construction of a metal Recreational Vehicle (RV) carport structure.

**BACKGROUND**

Recently applicant Carl (C.J.) Horn requested Building Permits to allow the installation of a metal Recreational Vehicle (RV) carport upon his property located at 5789 La Luna (APN 0618-073-25), Twentynine Palms. The metal roofed and partially metal sided structure shall measure eighteen feet (18’) by forty-two feet (42’), with a footprint totaling 756 square feet. The structure shall consist of a metal pole framework, partially covered with metal, forming a peaked RV “carport” of fourteen (14) feet in height, without eaves and with siding that extends to within six (6) feet of the ground (See Design Information attached). The metal structure is proposed to be located to the rear of the home on site, utilizing the existing home to shield the view of the RV carport from the public right-of-way (See Site Plan attached). Although partially shielded from view from the public street by the home on site, portions of the proposed structure shall still be visible from the street and clearly visible from neighboring and adjoining properties.

The existing one-story, 1,886 square foot home is located on a lot of 301 foot by 110 foot (33,110 square feet or 0.76 acres), situated within a Single-Family Residential zoning district (RS-4) (See attached Aerial and site photographs). The existing home is treated with stucco siding material (non-reflective), eaves of between eighteen (18) and twenty-four (24) inches, a sloped roof covered with asphalt shingles and stucco window pop-outs as decorative treatments. No portion of the exterior of the structure has an appearance that could be considered consistent with or matching that proposed by the applicant for the requested RV carport (examples of consistency being use of metal trim, flat, smooth siding, lack of an eave overhang or either vertical or horizontal accents to give an appearance of lines that would be similar to or mimic metal siding).

Surrounding the property in question are single-family residential homes, all one-story in nature, with stucco siding, predominantly asphalt shingled roofing and various, but minimal, decorative treatments or architectural relief (such as window surrounds and pop-out, archways, rock and/or stucco columns. As may be seen upon the attached aerial of the neighborhood, few properties have accessory structures. A field investigation of the neighborhood revealed that within the immediate area two (2) homes have small metal sided/roofed buildings without eaves (neither appear to be over 200 square feet in size). In addition, it was observed that two (2) properties have one cargo container each; neither of which are provided with any architectural or decorative treatments.

#### **Code Provision**

Listed below is an excerpt from the Development Code Section in question (the entire Section is attached to the end of this report).

**19.48.030 Accessory Uses in Residential Districts.** The following uses shall be permitted as accessory uses to each single dwelling unit which is allowed:

>>>>>>

B. Accessory Structure Regulations. The following additional regulations shall apply to accessory structures as specified:

1. All accessory buildings shall be required to be architecturally compatible with the main structure(s).

#### **ANALYSIS**

Currently, under the provisions of Development Code Section 19.48.030 "Accessory Uses in Residential Districts" the Code requires that "All accessory buildings shall be required to be architecturally compatible with the main structure(s)." Staff has interpreted this requirement to mean that whenever an accessory structure is proposed within the community, that proposed accessory structure must have the fundamental characteristics (appearance, texture, style and architectural/decorative features or complimentary features) as the main structure on site. This would entail a similar exterior color and texture (lap siding, wood, stucco or combinations thereof), similar roofing material (shingle, tile or tile simulation material), and physical features such as eaves and notable architectural decorations (for example, vertical accents, window surrounds or "pop-outs", etc.). Further, it appears that all accessory structures including "Non-habitable accessory facilities such as a cabana, play yard, tennis court, porch, ramada, awning, patio slab, water tower and well, swimming pool, storage buildings and similar uses" (Code Section 19.48.030 C) are subject to these same requirements.

Under the above interpretation of this Code provision, staff believes that this is a prudent and fair interpretation of the written material. Thus, as the proposed RV carport is inconsistent with the primary structure on site (home) in the following manner:

The home does not have smooth, flat metallic appearing exterior siding, and/or potentially reflective siding;  
The proposed RV carport exterior walls do not cover the sides of the structure to the ground;  
The roofing material does not resemble, imitate or compliment the roofing of the home;  
The proposed RV carport does not have eaves; and,  
The proposed structure has no architectural enhancements to match, compliment or imitate the main home.

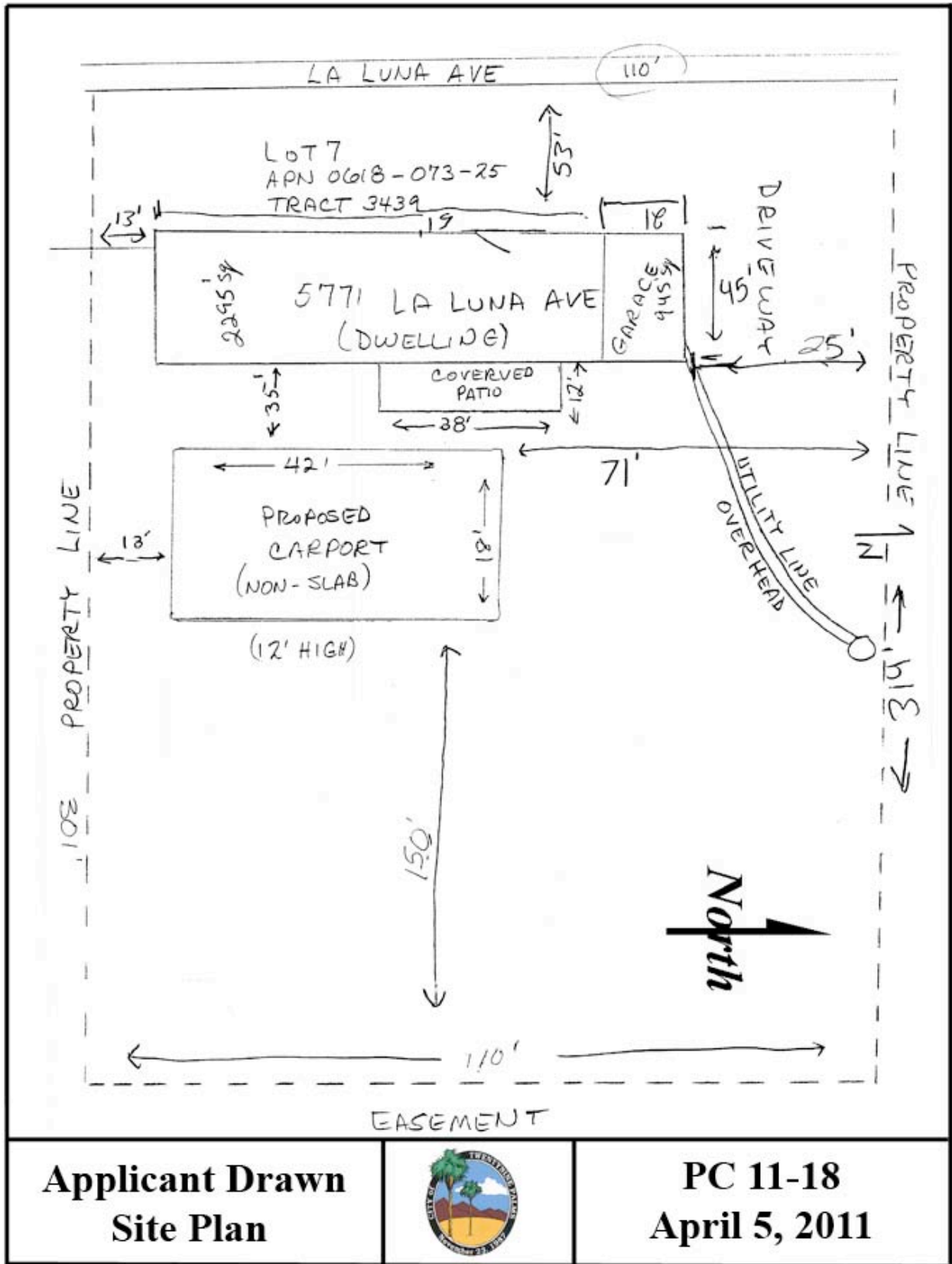
The Commission may examine the language within the Code to provide an alternative interpretation of the material presented to provide staff with an alternative on how to apply the Code to this request. The Commission must be aware, however, that whatever interpretation and application that is provided to this request shall be carried forth to other future requests for accessory structures once the precedent is set. The Commission may, however, identify that it is reviewing the Code at this time and advise the appeal applicant that until the Commission has completed its review of the Code, no decision on the appeal request shall be rendered. The applicant may then have the opportunity to appeal the Commission's decision to withhold a final decision to the Council, allowing that body to make the Code interpretation or direct the Commission to act upon this applicant's individual request.

#### **CEQA Environmental Review**

Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), the proposal has been reviewed for its potential to impact the environment. It has been determined that the proposal, consisting of a decision as to how to apply an existing Code provision addressing accessory structures, cannot by itself have a direct impact upon the environment. As such, under the provisions of Government Code Section 15303 (new construction of small structure) the request is exempt from further environmental review.

#### **Findings**

Pursuant to the City's Development Code, there are no specific "Findings" that must be made to provide staff with an interpretation of the Code. If the Commission initiates a Code Amendment to formalize a change to the intent or language of the Code, at that time the Development Code would require making four (4) specific "Findings" of approval, in a positive manner, prior to recommending (Planning Commission) or adopting (City Council) a Development Code Amendment.





OWNER:  
AMERICAN CARPORT

LOCATION: CALIFORNIA

DRAWING NO.: AMS-18

DATE: 5/4/2010

PROJECT NUMBER:  
233-10-0347

DRAWN BY: JMS

CHECKED BY: OA

**A & A ENGINEERING**  
CIVIL • STRUCTURAL

5911 Karamatou Pl., Suite 111  
Tomball, Texas 77375  
Tel: (419) 265-1888  
Fax: (419) 265-9955

DRAWING TITLE:  
**COVER**

SHEET NO.: 1 OF 9



DATE SIGNED: 7/21/2010

**AMERICAN CARPORT INC.**

457 N. BROADWAY  
JOSHUA, TX 76058  
MAIN - 1-866-730-9865  
FAX - 1-866-730-2354



REGULAR / A-FRAME - VERTICAL / HORIZ.  
18' CARPORT  
(STATE OF CALIFORNIA)  
AS PER DESIGN CRITERIA

DESIGN NOTES	DESIGN CRITERIA	DRAWING INDEX
<p>1. ALL CONSTRUCTION SHALL BE PROVIDED IN ACCORDANCE WITH BC 2006, OSHA, WISC, ASCE7-05, AWS D 1.1 CODES AND ALL APPLICABLE LOCAL REQUIREMENTS.</p> <p>2. SHELTER BASE CONNECTIONS SHALL BE PROVIDED AS SHOWN ON SHEET 9</p> <p>3. ALL MATERIALS IDENTIFIED BY MANUFACTURER NAME MAY BE SUBSTITUTED WITH MATERIAL EQUAL OR EXCEEDING ORIGINAL CONNECTIONS.</p> <p>4. ALL SHOP CONNECTIONS SHALL BE WELDED CONNECTIONS.</p> <p>5. ALL FIELD CONNECTIONS SHALL BE TKS #12 (1/4"x1/2").</p> <p>6. STEEL SHEATHING SHALL BE 29GA. CORRUGATED GALV. OR PAINTED STEEL - MAIN 8/8 HT. 3/4" (P=20KSI) OK 10.</p> <p>7. ALL STRUCTURAL LIGHT GAUGE TURNING AND CHANNELS SHALL BE GRADE 50 STEEL.</p>	<p>PREVAILING CODE: CBC 2007</p> <p>USE GROUP: U (CARPORTS, PARKS)</p> <p>BASIC WIND VELOCITY: 90 TO 100 MPH (SEE SCHEDULE)</p> <p>ROOF DEAD LOAD: 2.0 PSF</p> <p>ROOF LIVE LOAD: AS PER GROUND SNOW MIN. 20 PSF / MAX. 30 PSF</p> <p>GROUND SNOW LOAD: 20 TO 40 PSF (SEE SCHEDULE)</p> <p>IMPORTANCE FACTOR = SNOW: 0.8 WIND: 0.87 SEISMIC: 1.0</p> <p>SEISMIC DESIGN CATEGORY: D</p> <p>LOAD COMBINATIONS: DL + LL + 0.6R + W DL + 0.75LL + 0.75WL</p>	<p>1.....COVER SHEET</p> <p>2.....FLOOR PLAN</p> <p>3.....REGULAR / A-FRAME BLDG. SECTIONS (SEE SCHEDULE)</p> <p>4.....SIDE ELEVATIONS</p> <p>5.....SECTION DETAILS</p> <p>6.....END WALL DETAILS</p> <p>7.....OFFERING DETAILS</p> <p>8.....LEAN-TO OFFION</p> <p>9.....ANCHORAGE</p>

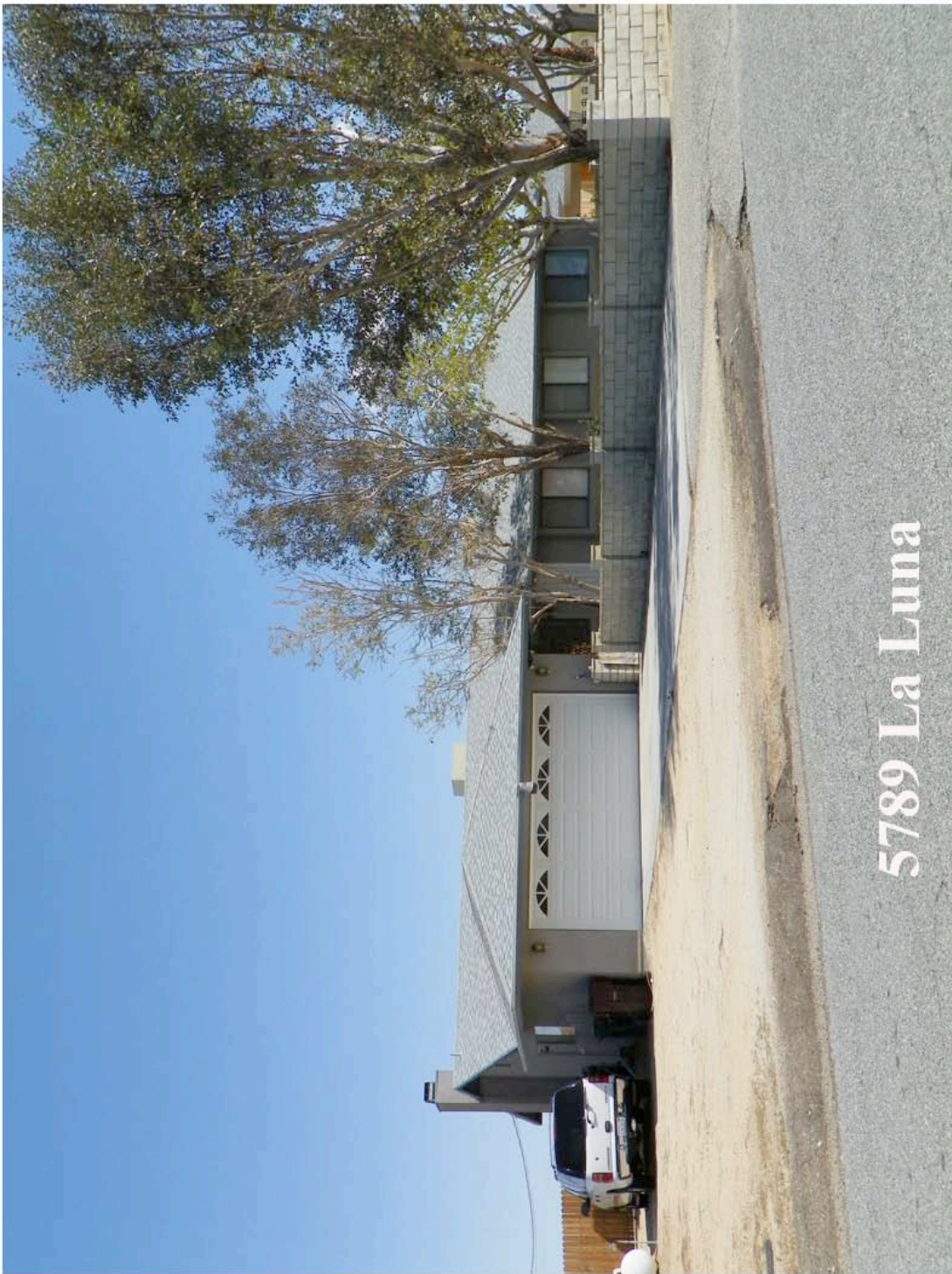
THE INFORMATION CONTAINED IN THESE DRAWINGS ARE THE SOLE PROPERTY OF A & A ENGINEERING. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF A & A ENGINEERING IS PROHIBITED.

**Design Information**



**PC 11-18  
April 5, 2011**

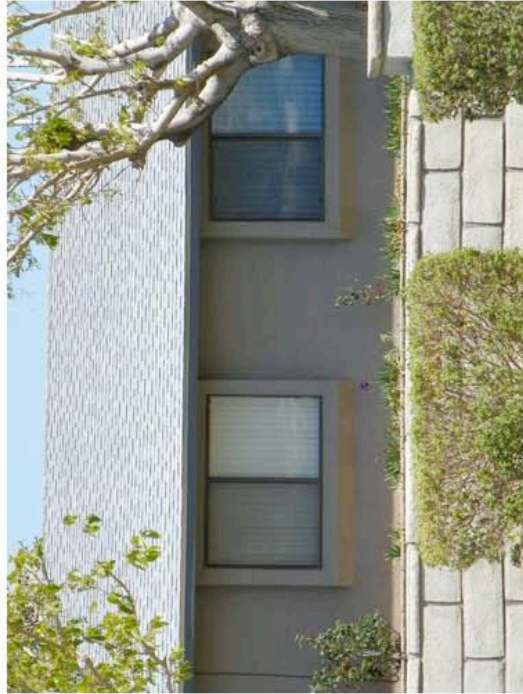




**Photographs**



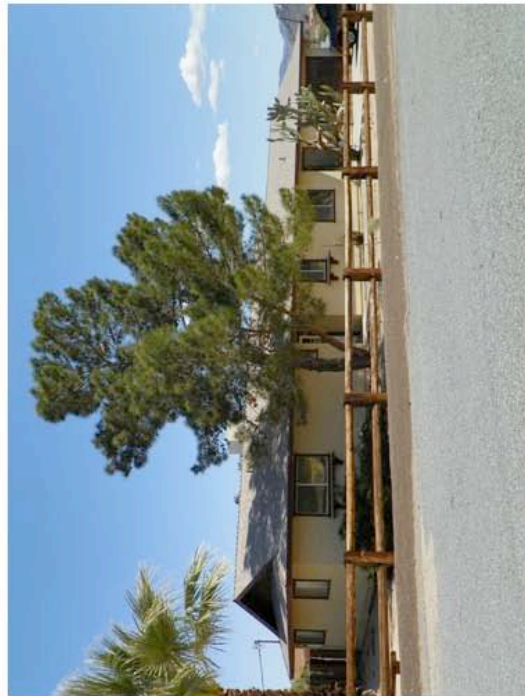
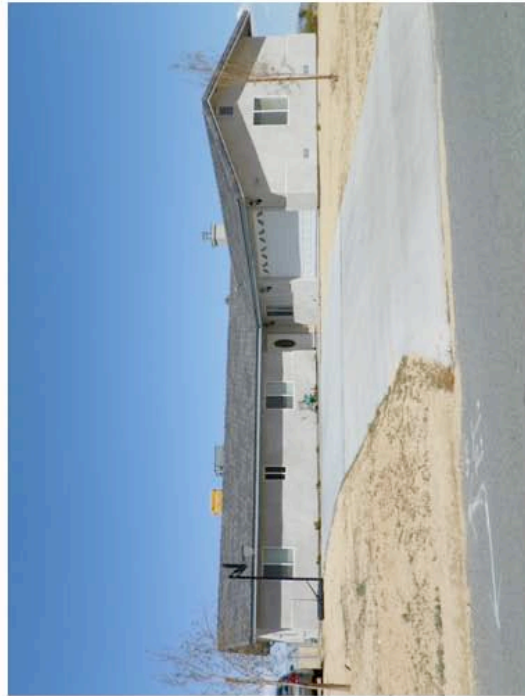
**PC 11-18  
April 5, 2011**



# Photographs



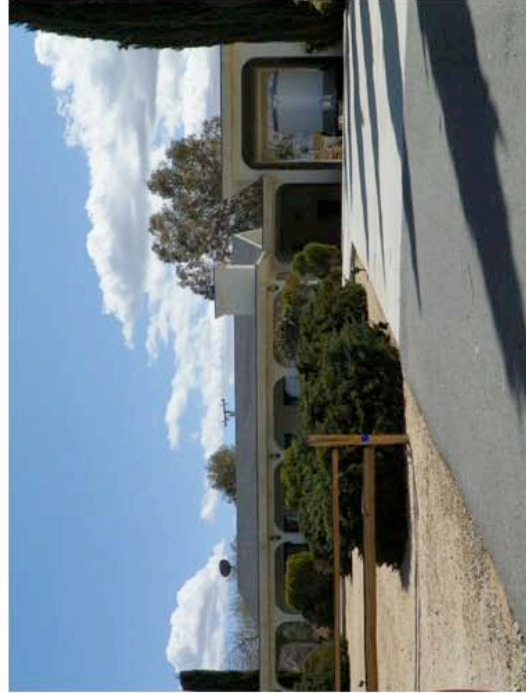
**PC 11-18  
April 5, 2011**



# Photographs



**PC 11-18  
April 5, 2011**



# Photographs



**PC 11-18  
April 5, 2011**

## Development Code Excerpt

**19.48.030 Accessory Uses in Residential Districts.** The following uses shall be permitted as accessory uses to each single dwelling unit which is allowed:

- A. Guest Housing. Residential occupancy of a living unit, with no kitchen plumbing, located on the same parcel as the primary dwelling unit, but separated from it by at least ten (10) feet. This housing is for use by the occupants or temporary guests of the occupants of the premises and is not to be rented or otherwise used as a separate dwelling, except as provided by this Section.
- B. Accessory animal raising as specified by Chapter 19.52, *Animal Keeping*.
- C. Non-habitable accessory facilities such as a cabana, play yard, tennis court, porch, ramada, awning, patio slab, water tower and well, swimming pool, storage buildings and similar uses.
- D. Accessory Structure Regulations. The following additional regulations shall apply to accessory structures as specified:
  - 1. All accessory buildings shall be required to be architecturally compatible with the main structure(s).
  - 2. In RM and RS districts, the following size restrictions shall apply to accessory structures unless a greater size is approved with a Minor Use Permit:
    - a. In the RS District, the area of accessory buildings or features may not exceed fifty percent (50%) of the area of the main structure or 1,000 sq. ft., whichever is larger.
    - b. In both districts, an accessory building may not be higher than the height of the established main structure.
  - 3. In all districts, the setback of an accessory building shall be greater than the minimum established for the district in question when the height of the structure is greater than the yard setback; in which case the structure shall be setback at least to the line where the height is not greater than the distance from the structure to the property line.
- E. Permanent use of sea-going cargo containers and similar storage devices may be permitted as permanent storage facilities on a lot containing a residence subject to the following conditions:
  - 1. Approval of an Administrative Cargo Container Review where it is demonstrated that the requested container(s) is proposed to be located within the rear yard area of the lot, screened from view of the neighbors and the public rights-of-way by residential structures, landforms or physical features of the lot, landscaping or opaque fencing of up to six (6) feet in height with any visible remaining exterior portion of the container(s) painted in a manner compatible with the principal residence on site.
  - 2. Screening shall be waived if the container(s) is/are completely encased within an on-site, stick-built skin and eaves, which are architecturally consistent with the main home on site and located no closer than fifty (50) feet to any adjoining property line.
  - 3. Containers shall be maintained in "reasonable aesthetic condition" at all times, shall not exceed fifty percent (50%) of the floor area of the primary building on site nor be stacked one atop another, and shall not be used for habitation of persons or animals.

4. Alternative allowances, including size, screening, condition, location, habitation, etc., may be considered and approved by the Planning Commission under review and approval of a Conditional Use Permit.



**CITY OF TWENTYNINE PALMS  
PLANNING COMMISSION STAFF REPORT**  
6136 Adobe Road  
Twentynine Palms, CA 92277  
(760) 367-6799 – Fax (760) 367-5400

**TO:** Planning Commission  
**FROM:** Community Development Director  
**DATE:** March 22, 2011

**FOR COMMISSION MEETING:** April 5, 2011

**SUBJECT:** PC 08-06 – An amendment to the Conditions of Approval (specifically P10) regarding the provision of parking for an approved Conditional Use Permit by applicant Karen Provost of Bistro 29 for a restaurant and bar at 73527 Twentynine Palms Highway (APN 617-112-12).

**RECOMMENDATION**

Conduct the Public Hearing, consider public comment and move to recommend that the Council find the project Categorical Exempt pursuant to CEQA and that the Council amend Condition No. P10 of the approved Conditional Use Permit to allow the applicant twenty-four (24) months from the date of Council action to provide the Code required off-site parking upon the property identified as APN 617-112-18 for the Bistro 29 Restaurant.

**Attachments**

1. Minute Excerpt from Council Meeting of April 22, 2008
2. Approved Conditions of Approval
3. Council Resolution 08-07
4. Aerial Map

**ORDER OF PROCEDURE**

Request Staff Report (Charles LaClaire Presenting)  
Commission Questions of Staff  
Request Public Comment  
Commission Discussion  
Motion/Second  
Discussion of Motion  
Call the Question

**Background**

In early 2008, the Planning Commission considered a request from applicant Karen Provost for approval of a Conditional Use Permit to establish a restaurant and a Letter of Public Convenience and Necessity for a Type 41 liquor license within an existing 2,200 square foot building at 73527 Twentynine Palms Highway (APN 617-112-12) on a 2,700 square foot lot. The property in question is located within the General Commercial (CG) zoning district. The Conditional Use Permit was approved using an existing public parking lot adjacent to the restaurant as temporary parking and a requirement that a separate off-site parking area owned by the applicant (unimproved, but located within 140 feet from the site; APN 617-112-18) be improved within 180 days for the parking necessary to meet the requirements of the Development Code.

At the April 1, 2008 regularly scheduled Planning Commission meeting, the Commission conducted a Public Hearing on the original restaurant CUP application. At that time, the Planning Commission asked a series of questions regarding parking and handicapped accessibility, and directed staff to work with the applicant to ensure that disabled accessible parking would be provided as close as possible to the business entrance and that the path of travel from the parking spaces to the building be designed to meet all legal requirements. The

Planning Commission voted to recommend that the City Council approve the project, giving the applicant up to six (6) months to provide a paved parking lot for the new business. The proposed parking lot is a permitted use in the Office Commercial (CO) zoning district.

At its regularly scheduled meeting of April 22, 2008, the City Council considered the restaurant Conditional Use Permit request, as well as the Commission's recommendation. The staff report for the April 22<sup>nd</sup> meeting noted that the site and associated unimproved parking lot were previously used as the Bella Rouge Bakery (a restaurant use approved in 1999 and discontinued in 2002) and related parking. At the April 22, 2008 Public Hearing (Minute excerpt attached), the Council approved the Conditional Use Permit for the restaurant, approved the Letter of Public Necessity and Convenience, and allowed the opening of the restaurant subject to Conditions of Approval (P10 being the completion of the off-site parking lot improvements within 180 days of the site's occupancy).

**Surrounding Land Use, General Plan and Zoning Designations**

	Land Use	General Plan	Zone
Site	Commercial	CG	CG
North	Commercial	CG	CG
East	Commercial	CG	CG
South	Parking	CO	CO
West	Commercial	CG	CG

**General Plan and Zoning**

The General Commercial (CG) land use district allows restaurants and bars with the approval of a Conditional Use Permit. The Office Commercial (CO) land use district allows parking lots as a permitted use. As designed, the project is consistent with the General Plan Land Use Element.

**Parking**

Section 19.82.060, (B) of the Development Code allows off-street parking within 300' of the land use for which the parking is needed and will serve. It is noted that the restaurant in question is located within the Downtown area and as such under the provisions of Development Code Section 19.82.040 (B) the Code allows a twenty-five percent (25%) reduction in required parking where the parking facility is available to the general public. A total of twenty-one (21) parking spaces are required for the restaurant, one of which must be a handicap accessible space.

**Project Phoenix**

As the Commission may be aware, the City is actively pursuing the development of an enhancement program that would affect the properties along the south side of Twentynine Palms Highway between Tamarisk and Yucca Avenues (see attached aerial). This enhancement program, known as Project Phoenix, would result in the improvement of the existing alleyway into a pedestrian oriented paseo, a façade enhancement program and the acquisition of three (3) properties, to be added to the one (1) property already owned by the City, for development (by the City) as parking area for all of the businesses Downtown. Dependent upon the success of this first effort, additional lands both east and west of these properties may be added to the program, with additional enhanced paseo and public parking for Downtown businesses developed. If the four (4) properties to the south of the businesses between Tamarisk and Yucca Avenues are developed within the next twenty-four (24) months, the Council would then have the opportunity to relieve the Bistro 29 owner of the responsibility of providing the parking expected upon APN 617-112-18 (as needed parking would be provided by the City under the Phoenix Project). The Commission may elect to include within its motion

regarding the parking Condition a recommendation to the Council that if Project Phoenix comes to fruition within the twenty-four month time frame of the amended Condition of Approval, that the Council waive the parking improvement required upon APN 0617-112-18. (It is noted that if Project Phoenix is developed by the City, its completion would provide the needed parking for all businesses along the south side of Twentynine Palms Highway between Tamarisk and Yucca Avenues.)

### **Analysis**

With the approval of a Conditional Use Permit, the applicant was allowed to open a family restaurant (Bistro 29) at 73527 Twentynine Palms Highway (APN 617-112-12) within the General Commercial (CG) zoning district. Approval of the restaurant was predicated upon fulfilling several Conditions of Approval, one of which addressed the applicant's need to conform to Development Code requirements for the provision of an improved customer parking lot. A total of twenty-one (21) parking spaces are required for the restaurant, one of which must be a handicap accessible space. Condition of Approval "P10" allowed the restaurant to open using a nearby "public" parking lot to serve as temporary parking, but stipulated that the applicant was to improve the nearby lot (that she owned) to fulfill the Code's requirements for restaurant parking. That Condition of Approval allowed the applicant 180 days to provide the needed parking. (It is also noted that Condition P9 identified that the applicant may apply for Redevelopment funding to assist in completing the needed improvements to the parking area.)

It is noted that although curb, gutter and a driveway approach were installed along the Yucca Avenue public right-of-way edge of the parcel anticipated to be improved for the needed restaurant parking lot (APN 0617-112-18) many, many years ago, other physical improvements have not been initiated or completed. Further, while specific, unique adverse impacts cannot be identified from the use of the public parking lot for the modest period of time that the restaurant has been in operation, the Code does require that the restaurant provide its own parking, the Conditions of Approval requires that the restaurant provide its own parking and as development in the "Downtown" area increases, the public lot will be increasingly needed for those future customers for the entire area.

The request before the Commission is not to consider a waiver of the Code's parking requirements, as a variance application has not been submitted, but instead to add additional time to Condition P10 for the restaurant owner to provide the required parking, an allowance similar, but longer, to that previously recommended by the Commission and granted by the Council. It is suggested that the restaurant be allowed to remain open and in operation for an additional eighteen (18) months to allow the owner the opportunity to improve the identified lot for restaurant parking to fulfill the requirements of the Development Code.

### **Findings**

Pursuant to requirements of Development Code Section 19.30.050, the Approval Authority is required to make specific "Findings" in a positive manner prior to approving a Conditional Use Permit. Conditions of Approval, such as P10 which addressed the provision of parking to meet Code requirements, can be applied to a project to form the bases upon which the required Findings can be made in a positive manner (as was the case for the April 22, 2008 Council approval). The Code required Findings are listed below as A through C. How those Findings were addressed by the Council in approving the Conditional Use Permit are also listed below as 1 through 6.

- 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.
  - 1. The subject site is approximately 0.06 acres and is therefore adequate in size to accommodate the proposed use.
  - 2. The shape of the parcel is typical, and allows for orderly development such as the proposed use.
  - 3. With the recommended conditions, the proposed project will meet the objectives of the General Plan, CG and CO land use designation.
  - 4. The proposed project, as conditioned, does not conflict with and is consistent with the goals and objectives of the Twentynine Palms General Plan.
  - 5. This project would provide for fine dining opportunities in the Downtown.
  - 6. This project would eliminate one vacancy in the area and add to the vitality of the Downtown.

### **CEQA Review**

Pursuant to the State Guideline to Implement the California Environmental Quality Act (CEQA), the original project was routed to appropriate agencies and departments for public review and comment. Pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines, Class 1 Categorical Exemptions consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features. The project consists of minor alterations to an existing building and was, therefore, determined to be Categorically Exempt from further environmental review under state law. The request before the Commission at the April 5, 2011 Hearing addresses only the timing of the provision of required parking and, therefore, changing this timing would not alter the previous determination of Exemption.

### **Approval Process**

The Planning Commission was the Review Authority for the original Conditional Use Permit and Letter of Public Convenience and Necessity. To amend the approved Conditions of Approval, the Commission is again the Review Authority, forwarding a recommendation to the City Council which shall make a final decision on whether or not to amend the approved Conditions. It is again noted that the Commission may wish to include within its motion making a recommendation to the City Council on this Condition amendment, language addressing whether or not the Commission supports the concept of the Council waiving the Condition if project Phoenix is developed.

**Alternative**

The Planning Commission has the opportunity to find that modifying the approved Conditions of Approval to allow an extension of time to fulfill the requirements of the Development Code relative to the provision of an improved parking lot for the restaurant will not serve the public welfare and, therefore, recommend to the Council not to amend the approved Condition P10. If the Council concurs, and Condition P10 is not modified, proceedings may be initiated under Code Section 19.30.110 "Revocation" to revoke the restaurant's Conditional Use Permit for failure to comply with the applied Conditions of Approval.

# MINUTE EXCERPTS

TWENTYNINE PALMS CITY COUNCIL/REDEVELOPMENT AGENCY  
CITY COUNCIL CHAMBERS, 6136 ADOBE ROAD  
TWENTYNINE PALMS, CALIFORNIA  
TUESDAY, April 22, 2008  
6:00 P.M.

- 1.0 **CALL TO ORDER** – Mayor Bernal called the meeting to order at 6:02 p.m.  
**PLEDGE OF ALLEGIANCE** – Councilmember Klink led the Pledge of Allegiance to the Flag.

*INVOCATION* – Minister Melvin Brock gave the Invocation.

*ROLL CALL* - The following Councilmembers were present: Flock, Harris, Klink, Spear and Mayor Bernal.

>>>>>>

## 8.0 PUBLIC HEARINGS

- 8.2 PC 08-06 – An application by Karen Provost of Sam’s Grille for a Conditional Use Permit and Letter of Public Convenience and Necessity for a restaurant and bar in the existing 2,200 sq. ft. building at 73527 Twentynine Palms Hwy (APN 617-112-12). Parking to be provided on a parking lot, located on the west side of Yucca Avenue, south of Twentynine Palms Highway, located on APN 617-112-18.  
RECOMMENDATION: Conduct the Public Hearing, consider public comment, find the project Categorically Exempt pursuant to CEQA, adopt Resolution No. 08-07 and approve the project, subject to the attached Conditions of Approval.

Director Meyerhoff presented a staff report to the City Council.

Mayor Bernal opened the Public Hearing.

Karen Provost, applicant, spoke to the Council about the dining she would offer at her restaurant.

Mayor Bernal closed the Public Hearing.

On a motion made by Councilmember Klink, seconded by Councilmember Harris and approved with a 5-0 roll call vote the City Council conducted the Public Hearing, considered public comment, found the project Categorically Exempt pursuant to CEQA, adopted Resolution No. 08-07 and approved the project, subject to the Conditions of Approval.

>>>>>>

- 12.0 **ADJOURN**- City Manager Tree announced the Study Session had been cancelled and would be held at a later date. Mayor Bernal adjourned the meeting of the City Council at 7:48 p.m.

**Respectfully Submitted,**

**Jacqueline Palmer, Deputy City Clerk**

CITY OF TWENTYNINE PALMS

**CONDITIONS OF APPROVAL (Council approved on April 22, 2008)**

PC 08-06

Applicant: Karen Provost

Project: 2,200 square foot restaurant

Location: 73527 Twentynine Palms Highway

APN 0617-112-12 and -18

Approved: April 22, 2008

Expire: April 21, 2009

The following Standard Conditions of Approval shall be applicable to all Conditional Use Permits in the City. Additionally, site-specific conditions will be applicable as necessary to protect the public health, safety and welfare.

**Planning Division**

Per Section 19.30.090 (A) of the Development Code, Conditional Use Permits shall expire one (1) year from the date the approval was granted, unless prior to the expiration date:

1. A Building Permit is issued and remains active for any approved phase of the project; or
2. A Certificate of Occupancy is issued for the use or structure; or
3. The site is occupied in accordance with the approved use. (A use permit for a public utility installation may be valid for a longer period if specified by the Approval Authority or City Council.)
4. The site is occupied in accordance with an approved phase as part of a phased development.

Per Section 19.30.090 (B), an approved Conditional Use Permit shall expire if the use has been commenced and then is discontinued for a period of one (1) year or more.

**Planning Conditions**

- P1. Conditional approval is granted by the City Council acting as Approval Authority on April 22, 2008, to permit a full service restaurant with alcoholic beverage sales at the above referenced location. All development of the site shall be in substantial conformance with the adopted site plan and shall comply with all Conditions of Approval.
- P2. The Applicant shall ascertain and comply with requirements of all State, County and Local agencies as are applicable to the project proposal.
- P3. The property owner shall keep the property neat, clean, and in good physical condition including open spaces, sidewalks, lighting, driveways, parking areas, and landscaping.
- P4. All outdoor lighting shall conform to Development Code Chapter 19.70, *Lighting Standards*, and shall be designed to not glare or reflect onto neighboring properties or public rights-of-way. Outdoor lighting shall be shielded and limited to that required for security and safety purposes.

- P5. Prior to rehabilitation, the applicant shall submit three sets of plans to the City's Building Official and secure a Building Permit in conformance with the Uniform Building Code.
- P6. All construction and improvements shall comply with *Encroachments into Yards or Setbacks* standards established in the Development Code for the underlying land use district.
- P7. The applicant shall defend, at its sole expense (with attorneys approved by the City), and indemnify the City against any claim, action, or proceeding brought by any third party against the City, its agents, officers or employees resulting from or relating to this approval. The applicant shall reimburse the City, its agents, officers or employees for any judgment, court costs and attorney's fees which the City, its agents, officers or employees may be required to pay as a result of such claim, action, or proceeding. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of its obligations under this condition.
- P8. The applicant shall provide a recordable instrument guaranteeing use of the parking facility for the benefit of the property and its use(s) for the duration of the use(s) for which the parking is provided. Said instrument shall be approved by the City Attorney and, upon approval, shall be recorded in the County Recorder's Office as a deed restriction on all subject properties.
- P9. The applicant may apply for Redevelopment Area funding to construct paved parking lot improvements on APN 0617-112-18.
- P10. The applicant shall provide 21 paved parking spaces (minimum 1 disabled accessible) in accordance with the Americans with Disabilities Act and Title 24 of the California Code of Regulations and City of Twentynine Palms Development Code 19.82, within 180 days of the occupancy of the site.

### **General Conditions**

- G1. All Conditions are continuing Conditions. Failure of the Applicant and/or operator to comply with any of the said Conditions at any time may result in the revocation of the Conditional Use Permit and/or citation for code violation.
- G2. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees, including reimbursement for all City expense in ensuring compliance with the Conditions of Approval.

### **Building and Safety**

- B1. The County of San Bernardino Environmental Health Services and the California Regional Water Quality Control Board prior to issuance of building permits shall approve the sewage disposal system.

- B2. The applicant/developer shall submit plans and obtain city building permits for all sewage disposal, structures, walls and rehabilitation work. No work is to be done prior to approvals and permit issuance.

## **Engineering**

### General

- E1. The project shall comply with all applicable City ordinances and resolutions.

### Improvements

- E2. Sidewalks shall be constructed adjacent to the parking lot to City Standards.
- E3. An encroachment permit separate from the grading onsite permit shall be obtained from the City of Twentynine Palms (760-367-6799) prior to any construction occurring within the public right-of-way.
- E4. Right-of-way and improvements (including offsite) to transition traffic and drainage flows from proposed to existing shall be required as necessary.

### Utilities

- E5. All proposed construction of utilities adjacent to and onsite shall be underground.

## **Fire Department**

- F1. Prior to any construction, the owner shall contact the Twentynine Palms Fire Department for verification of current fire protection requirements.
- F2. All construction and activities shall comply with applicable sections of the 1988 edition of the Uniform Fire Code and all other state, county, and city ordinances, rules and regulations regarding fire protection.
- F3. All flammable vegetation shall be cleared a minimum distance of 30 feet, or to the property line, from any flammable building materials or finished structures.
- F4. Street addresses shall be posted with numbers a minimum height of four (4) inches. Posted numbers shall contrast with their background and be visible and legible from the street.
- F5. Prior to commencement of construction, an approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed. The following are the minimum requirements for the proposed development:

A: SYSTEM STANDARDS

Fire Flow: 1500 GPM @ 20 PSI Residual Pressure

Duration: 2 Hours  
Hydrant Spacing: 660 Feet

B: DISTRIBUTION SYSTEM

Mains: 6-Inch Minimum  
Laterals: 6-Inch Minimum  
Riser: 6-Inch Minimum

C: FIRE HYDRANTS

Number: To be determined  
Type: 6-Inch, with one (1) two and one half (2 ½) inch outlet and one (1) four (4) inch outlet with National Standard Threads.  
Street Valve: 6-Inch Gate

- F6. The developer shall furnish the fire department with a copy of the water system improvement plans. A letter from the water purveyor stating what fire flow can be met shall be required.
- F7. The applicant shall install a Knox Box.

The undersigned applicant verifies that he/she has read the Conditions of Approval, understands each Condition, and agrees to adhere to the Conditions of Approval.

\_\_\_\_\_  
Applicant/Developer

\_\_\_\_\_  
Date

CITY OF TWENTYNINE PALMS

RESOLUTION NO. 08-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TWENTYNINE PALMS, CALIFORNIA, APPROVING PC 08-06 – AN APPLICATION BY KAREN PROVOST OF SAM'S GRILLE FOR A CONDITIONAL USE PERMIT AND LETTER OF PUBLIC CONVENIENCE AND NECESSITY FOR A FULL SERVICE RESTAURANT AND BAR IN THE EXISTING 2,200 SQ. FT. BUILDING AT 73527 TWENTYNINE PALMS HWY (APN 617-112-12), AND APPROVAL OF A NEW PAVED PARKING LOT, LOCATED ON THE WEST SIDE OF YUCCA AVENUE, SOUTH OF TWENTYNINE PALMS HIGHWAY(APN 617-112-18).

WHEREAS, on January 29, 2008, an application was received from Karen Provost of Sam's Grille for a Conditional Use Permit and Letter of Public Convenience and Necessity to allow a full service restaurant with alcoholic beverage sales at 73572 Twentynine Palms Highway, APN 0617-112-12, in the CG zone; and

WHEREAS, the applicant is proposing parking on a gravel parking lot, located on the west side of Yucca Avenue, south of Twentynine Palms Highway, located on APN 617-112-18, in the CO Zone; and

WHEREAS, the location was previously approved as a restaurant on August 17, 1999 and utilized as such between August 1999 and December 2002; and

WHEREAS, the land use designation (zoning) for the subject property is General Commercial (CG) and Office Commercial (CO); and

WHEREAS, the proposed project is an existing commercial building and parking lot; and

WHEREAS, with the proposed conditions of approval, the proposed project design is consistent with the General Plan and Development Code; and

WHEREAS, Pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines, Class 1 Categorical Exemptions consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, therefore the project is Categorically Exempt from further environmental review under state law; and

WHEREAS, the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; and

WHEREAS, the project site has no value as habitat for endangered, rare or threatened species; and

WHEREAS, approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and

WHEREAS, the site can be adequately served by all required utilities and public services; and

WHEREAS, a public hearing notice for the Planning Commission and City Council public hearings was published in a newspaper of record and notice was mailed to all property owners located within 300 feet of the project site; and

WHEREAS, a public hearings was held by the Planning Commission on April 1, 2008; and

WHEREAS, following the public hearing, including consideration of all written and oral testimony, the Planning Commission voted to recommend approval by the City Council; and

WHEREAS, a public hearings was held by the City Council on April 22, 2008; and

WHEREAS, with respect to the Conditional Use Permit application the City Council finds the following:

- A. The proposed site is located adjacent to the Twentynine Palms Highway and will therefore not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
- B. The subject site is approximately 0.06 acres and is therefore adequate in size to accommodate the proposed use.
- C. The shape of the parcel is typical, and allows for orderly development such as the proposed use.
- D. With the recommended conditions, the proposed project will meet the objectives of the General Plan and CG land use designation.
- E. The proposed project, as conditioned, does not conflict with and is consistent with the goals and objectives of the Twentynine Palms General Plan.
- F. This project would provide for fine dining opportunities in the Downtown.
- A. This project would eliminate one vacancy in the area and add to the vitality of the Downtown.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Twentynine Palms adopts the Categorical Exemption, adopts this resolution, and approves the Conditional Use Permit and Letter of Public Convenience and Necessity, subject to the attached Conditions of Approval.

APPROVED AND ADOPTED THIS 22nd DAY OF April, 2008

AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:  
ABSTAIN: COUNCILMEMBERS:

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Elaine Bernal, Mayor

ATTEST:

Char Sherwood, City Clerk

I hereby certify that the foregoing is a true copy of Resolution No. 08-07 duly adopted by the City Council of the City of Twentynine Palms in a meeting held on the 22nd day of April 2008, in Twentynine Palms, California.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Char Sherwood, City Clerk



**Project Phoenix**



**Aerial of Site**  
 Assessor Parcel Number  
**0617-112-12**



**PC 08-06**  
**April 5, 2011**



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

6136 Adobe Road  
Twentynine Palms, CA 92277  
(760) 367-6799 – Fax (760) 367-5400

**TO:** Planning Commission  
**FROM:** Community Development Director  
**DATE:** March 17, 2011

**For Commission Meeting Of:** April 5, 2011

**SUBJECT:** PC 03-40 – Request for clarification of how to apply a Condition of Approval relative to the installation of required roadway improvements for the Southern California Vipassana Center; southwest corner of Twentynine Palms Highway and Mantonya Road (APNs 613-071-03, 10 and 11).

**RECOMMENDATION**

Receive and file report, giving direction to staff as appropriate.

<p style="text-align: center;"><b>Attachment</b></p> <p style="text-align: center;">Letter from Philip Block dated March 16, 2011</p>
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**ORDER OF PROCEDURE**

- Request Staff Report (Charles LaClaire Presenting)
- Commission Questions of Staff
- Commission Discussion
- Guidance to Staff

**PROJECT DESCRIPTION**

The City’s Community Development Department has received a letter (dated March 16, 2011, received on same date) from Mr. Philip Block representing the Southern California Vipassana Center requesting an interpretation and/or clarification of a Condition of Approval pertaining to the phasing of the development of the Vipassana project. Specifically, Mr. Block would like the opportunity to bond for, in lieu of installing, roadway improvements along Twentynine Palms Highway and Mantonya Road.

**BACKGROUND**

On October 21, 2003, the Planning Commission approved a Conditional Use Permit (CUP) for the development of a 55,055 square foot meditation center at the above identified location. The approval included standard Conditions of Approval, including requirements for both on-site improvements and off-site roadway improvements such as curb & gutter, pavement, sidewalks and a bus shelter. In 2005, an amendment to the project increasing the size of the proposed structures on site to 63,503 square feet was approved. Further amendments were also granted to the Conditional Use Permit in 2007, at which time the Commission approved an amended Phasing Plan for the installation of off-site physical improvements to the public rights-of-way.

Staff believes that as the phasing was reviewed and approved by the Planning Commission through the imposition of Conditions of Approval detailing that phasing, that to change how those Conditions would be required of the applicant would require Planning Commission review and approval. While it is true that under the provisions of Development Code Chapter 19.85 “Street Improvements - Delaying or Deferring”, specifically Section 19.85.030 “Deferral of

Requirements – Procedure” the City Manager may defer street improvements with the submission of appropriate application and bonds or other surety mechanisms, staff believes that as the Commission specifically considered a phasing of the development of the property, not once but twice, at which time off-site improvements were considered, that changing the timing of these improvements would require Commission review and approval. When questioned, the City Attorney opined that although the Code allows the City Manager to accept bonds in lieu of completing public improvement before occupying a building, that as it was a Condition from the Commission, only the Commission (or under 19.40.040 “Approval Authority”, subsection “E” Referral to Next Succeeding Approval Authority, i.e., the City Council) may change the intent and/or requirements of that Condition.

Staff does not disagree with the information provided by Mr. Block relative to the provisions of Chapter 19.85 “Street Improvements - Delaying or Deferring”, nor the authority or responsibility of the City Manager to defer off-site improvements within the public rights-of-way. Staff believes, however, that this authority is limited in this case due to the specific way previous amendment approvals for the proposed center have been decided upon by the Commission.

Staff also notes that approximately ten (10) of the proposed buildings on site are nearing completion and the project applicant is seeking final inspections and formal Certificates of Occupancy for these structures. With the exception of the off-site street improvements, staff is under the understanding that the applicant will seek final inspections, and therefore occupancy, of these structures in roughly mid-April.

#### **SITE CHARACTERISTICS**

The property in question is currently being developed with a variety of the buildings approved under the original and amended Conditional Use Permit, including various support structures and improvement.

#### **ANALYSIS**

The City has received a request from Mr. Philip Block, representative of the Southern California Vipassana Center, requesting that the Center be allowed to bond for the needed roadway improvements along Twentynine Palms Highway and Mantonya Road. Staff believes that as the Commission imposed the needed roadway improvements at specific phases in the overall development of the property, that it is only the Commission that may grant, through interpreting the Condition, the City Manager the opportunity to consider allowing a deferral of the required roadway improvements.

Staff does not disagree with the citations raised by Mr. Block with regard to the Code allowances that the City Manager may, under typical project development circumstances, consider and allow deferral of roadway improvements if all of the requirements of Chapter 19.85 “Street Improvements - Delaying or Deferring” are met. Further, staff does not disagree with Mr. Block that receiving approvals from CalTrans on the design and improvements to Twentynine Palms Highway may take many months. The difference of opinion between staff and Mr. Block is that staff believes that as the roadway improvements are tied to the phasing of the project, which was specifically reviewed and approved by the Planning Commission, that only the Commission may alter the timing of this responsibility, thus allowing the City Manager to consider (and if appropriate) approve a deferral. If the Commission’s understanding is that staff is placing more emphasis upon the Commission review and tying the roadway improvements to the phasing of the project than was its intention, guidance to that effect would allow the Vipassana Center to submit a deferral request to the City Manager for processing.

If, however, staff is correctly interpreting the Commission's intention in tying roadway improvements to phasing, the Commission may now accept, through motion action, that this tie was not meant to prohibit the applicant from taking advantage of the allowance made by the Development Code, specifically Chapter 19.85 "Street Improvements - Delaying or Deferring", which would then allow the Vipassana Center to submit the necessary materials to the City Manager to consider and, if appropriate, approve the deferral of the required roadway improvements. Although providing guidance to staff that tying roadway improvements to phasing of the project does not prohibit the applicant from requesting a deferral of those improvements, it also, by itself, does not authorize that deferral (such authorization lies only through the procedures established under Code Section 19.85.030 "Deferral of Requirements – Procedure"). The Commission may, however, offer its recommendation to the City Manager on this issue if the applicant elects to formally submit a deferral request to the City Manager.

Any submission of a deferral request to the City Manager must be in full conformance to Code Section 19.85.030 "Deferral of Requirements – Procedure" and shall be evaluated and a determination made based solely upon the merits of the material submitted, and may be forwarded from the City Manager to the City Council, for a final decision.

### **CEQA ENVIRONMENTAL REVIEW**

Pursuant to the provisions and requirements of the California Environmental Quality Act (CEQA), the proposal is a request to clarify a Condition of an approved project, initiating no action beyond that anticipated and expected with the original approval. As such, the guidance provided by the Commission is not considered a "Project" under the State Guidelines to Implement the California Environmental Quality Act (CEQA) and, thus, the request currently before the Commission is Exempt from further environmental review.

### **FINDINGS**

The City's Development Code does not identify any "Findings" that must be made by the City to receive and file this report, or to provide direction/guidance to staff or the applicant on a future course of action.

Southern California Vipassana Center  
68561 Twentynine Palms Highway  
Twentynine Palms, California

Please Reply to:  
Philip Block  
cell 323-496-1193  
philipablock@gmail.com

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March 16, 2011

Chairman and Members of the Planning Commission  
City of Twentynine Palms  
6136 Adobe Road  
Twentynine Palms, CA 92277

SENT BY EMAIL

Cc: Charles LaClaire, Director of Community Development

Re: BONDING FOR STREET IMPROVEMENTS, Conditional Use Permit PC 03-40,  
Southern California Vipassana Center, 68561 Twentynine Palms Highway,  
Twentynine Palms, CA

Dear Chairman and Members of the Planning Commission,

The Southern California Vipassana Center project is nearing completion of its first phase construction. Under our current schedule we expect to request occupancy permits so that we can begin operations in mid- to late April.

Several months ago we made a request to the city to post a cash bond to guarantee construction of the first phase street improvements as permitted under Development Code Section 19.85.020. We made this request because of the impracticality of receiving timely CalTrans approval of street improvement plans. On February 15 city staff informed me that Planning Commission approval was required to bond for the project's first phase street improvements because a phased street improvement plan had been approved by the Commission previously.

We are seeking an interpretation from the Commission that will allow us to proceed with bonding for street improvements in order to obtain occupancy permits.

### **I. The Development Code Allows Bonding For Street Improvements Regardless of Whether A Phased Street Improvement Plan Is in Place**

Section 19.85.020, which covers bonding, applies to the "installation of street improvements," and makes no exception for the situation when a phased street improvement plan is in place:

#### **"19.85.020 Delayed Improvements - Bonding.**

Where it is impractical to dedicate right-of-way and/or complete installation of street improvements prior to occupancy or commencement of a use subject to these requirements, an agreement in writing shall be entered into with the City to make such improvements. Additionally, a cash deposit, a surety bond, an irrevocable letter of credit, or such other form of surety as may be acceptable to the City

Attorney, in an amount equal to the estimated cost of the improvements, shall be posted with the Community Development Department in lieu thereof, to guarantee the installation of such improvement. In that event, the actual installation of street improvements may be delayed until a time certain as identified in the agreement or upon written demand by the City. If surety bonds are submitted, they shall be furnished by a surety company authorized to write such bonds in the State of California.” (emphasis added)

Furthermore, the section of the Development Code that requires street improvements for Rural Living districts (where the project is located) allows bonding as a means to obtain a grant of occupancy, and makes no exception with regard to projects for which a phased street improvement plan has been approved:

**“19.07.060 Street Dedications and Improvements.**

B. Before occupancy shall be granted for any such building or improvement, the Building Official shall determine the following:

1. That all of the required dedications have been provided.
2. That all of the required street improvements have either been installed or that a cash deposit, surety bond or other form of surety acceptable to the City Council in an amount equal to the estimated cost of the street improvements has been posted with the City to assure the installation of said street improvements. In lieu of requiring the installation of curbs, gutters, and sidewalks, a Street Improvement Impact Fee may be required and assessed in accordance with Section 19.85.040, at the discretion of the City Engineer.” (emphasis added)

**II. The Conditions of Approval for this Project Specifically Allow Bonding.**

Original Condition #44 (October 21, 2003) provides:

“44. All required offsite improvements shall be constructed and approved prior to occupancy unless bonded in accordance with City Development Code or deferred pursuant to City policy. (emphasis added)

There is no conflict between the phased street improvement plan and the bonding, as the bonding is a short-term measure that allows the delay of street improvements until proper plan approvals can be received. We respectfully request that we be allowed to post a cash bond for street improvements as allowed by the Development Code.

Sincerely,

Philip Block

Southern California Vipassana Center