

PC RESOLUTION NO. XXX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA, CALIFORNIA APPROVING VARIANCE (VAR 6924-2017) TO ALLOW FOR A REDUCTION IN THE REQUIRED 15-FOOT NORTH BUILDING SETBACK TO ZERO ON A 39,909 SQUARE FOOT LOT IN THE M-2 (GENERAL INDUSTRIAL) ZONE ON PROPERTY LOCATED AT 2488 S. RESERVOIR STREET (APNS: 833-001-2010, 833-001-2025).

WHEREAS, the applicant, Thomas Kim, has submitted an application for a Variance (VAR 6925-2017) from side property line setback standards for automobile service stations as part of an addition of a car wash tunnel to an existing automobile service station and convenience store at a 39,909 square foot lot in the M-2 (General Industrial) zone on property located at 2488 S. Reservoir Street;

WHEREAS, the subject property is located within the M-2 (General Industrial) zone;

WHEREAS, the subject property is on parcels designated as "Workplace District Edge" on the General Plan Land Use Map;

WHEREAS, a Conditional Use Permit for an automobile service station and mini-mart was issued on May 25, 1988;

WHEREAS, the applicant has concurrently submitted a request for a Modification of Conditional Use Permit (MODCUP 6924-2017) for the addition of an automatic car wash tunnel along the northern property line and a Modification of Conditional Use Permit (MODCUP 10990-2018) for an existing off-sale beer and wine license;

WHEREAS, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on November 28, 2018 concerning Variance (VAR 6925-2017); and

WHEREAS, the Planning Commission has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Pomona, California, as follows:

SECTION 1. The Planning Commission exercising their independent judgment has determined that pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA), that the project is Categorically Exempt under Section 15303, Class 3 (New Construction or Conversion of Small Structures) of CEQA, in that the proposed project is in an urbanized area, the carwash does not involve the use of hazardous substances and is less than 10,000 square feet in floor area.

SECTION 2. In any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

SECTION 3. Pursuant to Section .560 of the Zoning Ordinance, the Planning Commission must make four (4) findings in order to approve the Variance. The Planning Commission hereby finds and determines that the project does meet the findings required for approval of a variance for the following reasons:

1. *That there are special circumstances applicable to the property including, but not limited to size, shape, location, topography or surroundings that deprive such property privileges enjoyed by other properties in the vicinity and under identical zoning classification.*

One intent of the 15 foot setback is to allow for building separation between adjacent properties; however, after the addition of a car wash tunnel along the side property line, there will remain approximately 120 feet from the industrial building to the north. This is an adequate amount of building separation to meet the intent of code requirement for automobile service stations. Furthermore, each property line of the subject property is adjacent to other M-2 General Industrial uses, and is not shared with any residential use or zoning district.

After the addition of a car wash tunnel, approximately 13% of this 39,909 square foot lot will be covered by roofed structures. This is a low lot coverage percentage, which reflects that the addition of a car wash tunnel would not overcrowd the property or impede circulation.

The car wash tunnel has been designed to be automatic, without the addition of a new employee, and is intended to serve existing customers of the gas station and convenience market; therefore, allowing the car wash along the side property line would not significantly increase the intensity of the existing operation.

Requiring compliance with a 15 foot side property line setback to allow the addition of a car wash tunnel may burden the applicant to alter the existing site improvements such as the fuel pump islands and canopies and may make it impractical for the owner to improve the site with an additional accessory use.

2. *That the granting of the variance will not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.*

The granting of the variance will not constitute a special privilege and is consistent with the allowances placed upon other adjacent industrial properties to the north, east and south because the neighboring properties do not have the same setback or lot coverage

requirements as this project site. In addition, based upon the proposed site configuration, the intent of the 15 foot side yard setbacks from Section .5804 of the Zoning Ordinance will not be circumvented because the nearest structure to the north of the carwash tunnel is approximately 120 feet, and the nearest structure to the west is approximately 170 feet away. Therefore, granting this variance request will not constitute a special privilege.

3. *That the granting of the variance will not be materially detrimental or injurious to the surrounding properties nor to the general development patterns in the neighborhood.*

The granting of the variance will not be materially detrimental or injurious to the surrounding properties nor to the general development pattern in the neighborhood. Based upon the site configuration of neighboring properties and the approximate distances of neighboring structures, the location of the proposed carwash tunnel will have negligible impacts to the surrounding properties.

- 4 *That the granting of the Variance will be consistent with the adopted General Plan.*

The proposed project is in the “Workplace District Edge” land use designation under the Pomona General Plan. The variance conforms to the goals and policies found in the Plan, specifically to “*provide for continued operation of older industrial and service commercial businesses at specific locations*” (Goal 6F.G2) and “*incrementally redevelop eastern employment lands with contemporary industrial and light industrial uses*” (Goal 6F.G3).

SECTION 4. Based on the above findings, the Planning Commission hereby approves Variance (VAR 6925-2017), subject to the following conditions:

PLANNING DIVISION

General Conditions

1. The subject property shall be developed and/or used in a manner consistent with the project plans reviewed and approved by the Planning Commission on November 28, 2018, and as illustrated in the stamped approved plans dated November 28, 2018. Any major modifications to the approved project plans shall be reviewed and approved by the Planning Commission as part of a modification to the approved plans. Any minor modifications that do not affect the overall intent of the approved project, may be reviewed and approved by the Planning Manager.
2. The applicant shall make reductions of all approved resolutions related to the project, which shall be placed on the title sheet of construction plans prior to the Plan Check submittal.
3. Written appeals may be filed with the City Clerk within 20 days of approval of

Variance (VAR 6925-2017) by the applicant or any person owning property within four hundred (400) feet of the exterior boundary of the applicant's property.

4. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.
5. In case of violation of any of the conditions of approval or City law, the property owner and tenant will be issued a Notice of Correction. If said violation is not remedied within a reasonable period of time and/or a subsequent violations of the conditions of approval and/or City law occurs within ninety days of any Notice of Correction, the property owner shall be held responsible to reimburse the City for all staff time directly attributable to enforcement of the conditions of approval and/or City law, including, but not limited to, revocation of the herein conditional use permit.
6. The approved Variance (VAR 6925-2017) shall lapse and become void if the use authorized is not utilized or where some form of construction pursuant to issuance of a building permit, which deals with the construction of the proposed car wash tunnel, has not commenced by November 28, 2019. The Planning Commission may extend this period for one year upon receipt of a written request by the applicant at least thirty (30) days before the expiration date of this approval.

SECTION 4. The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

APPROVED AND PASSED THIS 28TH DAY OF NOVEMBER 2018

DR. KYLE BROWN
PLANNING COMMISSION CHAIRPERSON

ATTEST:

MARIO SUAREZ, AICP, CNU-A
PLANNING COMMISSION SECRETARY

APPROVED AS TO FORM:

ANDREW JARED
ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF POMONA)

AYES:
NOES:
ABSTAIN:
ABSENT:

"Pursuant to Resolution No. 76-258 of the City of Pomona, the time in which judicial review of this action must be sought is governed by Sec. 1094.6 C.C.P."