

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council

FROM: Ken MacNab, Senior Planner

VIA: Charlene Gallina, Planning and Building Director

DATE: April 20, 2010

SUBJECT: Appeal (A 2009-03) – Consideration of an appeal of a Planning Commission Decision (Appellant – Yasmin Ali)

APPROVAL FOR FORWARDING:



James C. McCann, City Manager

1 **ISSUE:** Appeal of the Planning Commission's decision to approve a Conditional Use Permit
 2 (U 2009-13) and Design Review (DR 2009-03) for design changes and gas station
 3 operations at the former Shell gas station, 1108 Lincoln Avenue (APN 011-254-003).
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5 **RECOMMENDATION:** Adopt Resolution denying the appeal and sustaining the Planning
 6 Commission's action.
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8 **DISCUSSION:** On December 9, 2009, the Planning Commission approved a request by
 9 Noor Mohammad for Conditional Use Permit and Design Review approval to: (1) establish
 10 operational parameters for the existing gas station and convenience market uses; (2) install
 11 canopies over the existing fuel pump islands; (3) change the corporate color scheme of site
 12 signage and the fuel dispensing pumps from yellow and red (Shell) to blue and white
 13 (Chevron); and (4) install new corporate emblems. A copy of the Planning Commission Staff
 14 Report, Minutes, Resolution and graphic renderings are attached to this report.
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16 On December 18, 2009, Ms. Yasmin Ali, the owner of the business, filed an appeal of the
 17 Planning Commission's action. The focus of Ms. Ali's appeal is a condition of approval that
 18 restricts the hours of operation of the existing convenience market (see Attachment C). The
 19 City Council considered Ms. Ali's request for an appeal at its regularly scheduled meeting on
 20 January 19, 2010 and scheduled a public hearing to consider the appeal at its regularly
 21 scheduled meeting for this February 16, 2010, meeting.
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23 At the February 16, 2010, public hearing, the appellant's attorney, Mr. John Burton,
 24 requested that the appeal hearing be continued for 60 days to allow adequate time to review

25 the information presented in the staff report (see Attachment J). The appellant also
26 presented a petition signed by patrons of the service station in support of 24-hour operation
27 of the convenience market (see Attachment K). The City Council granted Mr. Burton's
28 request and continued the public hearing to its regularly scheduled meeting on April 20,
29 2010.

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31 **BACKGROUND:** The subject gas station has been in operation for more than 40 years.
32 Since its establishment a number of modifications have been made to the use and the site.
33 The most pertinent modifications include: conversion of the original automobile service bays
34 into a convenience food and beverage market in 1984 (Use Permit U 84-10); modification of
35 the gasoline pump islands, building exterior and addition of landscape and parking areas in
36 1994 (Use Permit U 93-10); and approval of the current corporate color scheme and
37 signage of Shell Gas in 2003 (Design Review DR 2003-10).

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39 On July 9, 2009, the Planning and Building Department received an application from
40 Technical Studies, Inc., to install fueling canopies and change the corporate identity / color
41 scheme at the subject station. The application was considered at a public hearing before
42 the Planning Commission on August 12, 2009. After receiving a report and presentation
43 from staff and in consideration of oral and written testimony from members of the public, the
44 Planning Commission continued the item and appointed a sub-committee to work with the
45 applicant in addressing concerns about the project's consistency with General Plan design
46 objectives for the "Lincoln Avenue at Foothill Boulevard Entry Corridor area."

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48 It should also be noted that staff's initial position was that the addition of fueling canopies
49 over the existing fuel pump islands did not represent an intensification of the use and
50 therefore did not require conditional use permit approval (see August 12, 2009, Planning
51 Commission Meeting Minutes and Staff Report – Attachments G and H). The Planning
52 Commission did not agree with staff's position and in its action to continue the item directed
53 the applicant to submit a conditional use permit application for addition of the canopies. The
54 conditional use permit would also serve to bring the gas station into conformance with
55 current requirements (the gas station use was established prior to the requirement for a
56 Conditional Use Permit and is currently considered a legally non-conforming use).

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58 A revised application was submitted on November 30, 2009, and considered at a public
59 hearing before the Planning Commission at their regularly scheduled meeting on December
60 9, 2009. Testimony was received from neighboring residents and business owners
61 expressing concern about the history of late evening/early morning noise created by the 24
62 hour operation of the gas station and convenience market and the failure of the operator to
63 resolve this issue. In response to this testimony, the Planning Commission imposed a
64 condition of approval requiring that only the convenience market close between the hours of
65 12:00 a.m. and 4:00 a.m. (see Condition No. 12 of PC Resolution 2009-20, Attachment D).

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67 **ANALYSIS:** Goal N-1 of the Noise Element in the General Plan is to "preserve current low
68 levels of noise in Calistoga to maintain the City's rural atmosphere." Objectives under Goal
69 N-1 direct that noise exposure compatibility between neighboring land uses be ensured
70 through enforcement of existing noise regulations and by minimizing the potential for
71 development to create unacceptable noise levels at sensitive receptors.

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73 Nearby residents and business owners have long been concerned about the noise
74 generated by 24-hour operation of the subject gas station. Specifically, there have been
75 complaints of customers leaving their motors running and/or stereos playing late at night
76 when visiting the convenience market or when fueling. There have also been complaints of
77 early morning product deliveries. While such noises are not uncommon to the operation of a
78 gasoline service station and convenience market, the site's close proximity to private
79 residences and visitor accommodations warrants consideration of the issue pursuant to the
80 objectives under Goal N-1.

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82 The City has made efforts in the past to work with the business operator and their
83 employees in addressing noise concerns. Options discussed at the time included closing
84 the convenience store earlier, closing the Foothill Avenue entrance to the convenience store
85 in the late evening/early morning hours, limiting store access to the Lincoln Avenue
86 entrance, and having employees play a more pro-active role in ensuring that customers turn
87 their motors and/or stereo's off. To date, none of these alternatives has been implemented
88 successfully or on a sustained basis.

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90 At the December 9, 2009, public hearing, the Planning Commission considered the history
91 of noise concerns and a number of approaches for addressing the continuing concerns of
92 nearby residents and business owners, including:

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94 1. Seeking voluntary measures from the business operator to address noise
95 impacts.
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97 2. Imposition of restrictions on the hours of operation.
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99 3. Imposition of restrictions on the hours of the convenience market only.
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101 4. Imposition of restrictions on the hours when product deliveries can occur.
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103 5. Imposition of conditions requiring certain management practices.
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105 At the conclusion of deliberations, the Planning Commission imposed a condition of
106 approval (Condition No. 12) requiring that only the convenience market close between the
107 hours of 12 a.m. and 4 a.m. The Planning Commission's action to impose a restriction on
108 operational hours to address noise conflicts between commercial and residential uses is
109 consistent with and implements the objectives under Goal N-1 of the Noise Element in the
110 General Plan.

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112 **STAFF RECOMMENDATION:** Staff recommends that the City Council adopt City Council
113 Resolution 2010-_____ denying the appeal and sustaining the Planning Commission's
114 decision to approve the requested Conditional Use Permit and Design Review. The basis
115 for this recommendation is:

- 116
117 • The Planning Commission's action to impose a condition of approval restricting the
118 operational hours of the convenience food and beverage market to minimize noise conflicts
119 between commercial and residential uses is consistent with and implements the objectives
120 under Goal N-1 of the Noise Element in the General Plan.

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- No design-related issues or concerns have been raised by the appellant.

FISCAL IMPACT: Action on the appeal will not result in a fiscal impact to the City. It should be noted that the Appellant, Ms. Ali, provided a \$50.00 filing fee to initiate this appeal. Any additional analysis on this appeal request (per Council direction) will be at the expense of Ms. Ali.

ATTACHMENTS:

- A. Vicinity Map
- B. Draft City Council Resolution 2010-_____
- C. Appeal from Yasmin Ali, dated December 18, 2009.
- D. Planning Commission Resolution No. 2009-20.
- E. Minute Excerpt from December 9, 2009, Planning Commission Meeting.
- F. Planning Commission Staff Report dated December 9, 2009.
- G. Minute Excerpt from August 12, 2009, Planning Commission Meeting
- H. Planning Commission Staff Report dated August 12, 2009.
- I. Graphic renderings of requested design changes.
- J. Correspondence from John H. Burton, III, dated February 16, 2010.
- K. Petition Signatures in Support of 24-Hour Operation of Convenience Market