

RESOLUTION NO. 73-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND DENYING THE APPEAL OF JANIE HOLLAND AND APPROVING A CONDITIONAL USE PERMIT TO ALLOW AN EATING ESTABLISHMENT AND CONVENIENCE STORE AT AN EXISTING COMMERCIAL STRUCTURE LOCATED AT 925 CUTTING BOULEVARD (PLN11-057)

WHEREAS, the applicant, Bacilia Macias, filed Planning Application PLN11-057 with the City of Richmond for approval of a Conditional Use Permit to allow an eating establishment and a convenience store (the “proposed project” or “project” located at 925 Cutting Boulevard (Assessor’s Parcel Nos. 550-301-023, 550-301-024) (the “subject site” or “premises”); and

WHEREAS, on June 2, 2011, the Planning Commission held a duly noticed public hearing and voted 4-1 to approve a Conditional Use Permit to allow an eating establishment and a convenience store located at 925 Cutting Boulevard (Assessor’s Parcel Nos. 550-301-023, 550-301-024) (the “subject site” or “premises”) to operate a convenience store (the “proposed project” or project”); and

WHEREAS, Janie Holland filed an appeal with the City Clerks office on June 13, 2011; and

WHEREAS, on July 19, 2011 the City Council held a duly noticed public hearing; and

WHEREAS, the Conditional Use Permit is subject to the provisions of Section 15.04.910 of the Richmond Zoning Ordinance related to Conditional Use Permits; and

WHEREAS, under the California Environmental Quality Act Guidelines (CEQA) Section 15301, Existing Facilities, the City Council finds the proposed use under the Conditional Use Permit is categorically exempt from CEQA as it involves the use of an existing facility; and

WHEREAS, the City Council has reviewed the Conditional Use Permit for conformance with the Zoning Ordinance and all other applicable regulations of the Municipal Code; and

WHEREAS, the City Council has conducted a properly noticed public hearing pursuant to California Government Code Section 65090 and has duly considered all written and verbal testimony presented before or during the hearing, including the staff report dated June 2, 2011 and the staff report dated July 19, 2011 (the “staff report”); and

WHEREAS, on the basis of the application, plans, materials, and testimony submitted at or before the public hearing, the City Council makes the following findings with statements of facts to support the finding as required by Section 15.04.910 of the Richmond Zoning Ordinance for approval of a Conditional Use Permit:

1. *The location of the proposed conditional use is in accordance with the general plan of the City of Richmond.*

Statement of Fact: Approval of the Conditional Use Permit for the proposed use and related site improvements will help accomplish General Plan Land Use Goal LU-A which aims to improve the aesthetic and economic value of individual sites and adjacent neighborhoods. In its current state, the subject site is a major contributor of blight to the surrounding neighborhood due to the long-term disuse and the lack of consistent site maintenance. The proposed use and related site improvements will enhance the general appearance of a highly visible intersection in the City and have a positive effect on property values in the surrounding neighborhood.

2. *The location size, design, and operating characteristics of the proposed use will be compatible with and will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the proposed conditional use and the surrounding neighborhood.*

Statement of Fact: The proposed use is compatible with the surrounding residential and commercial areas for the following reasons: The proposed use is located adjacent to a residential neighborhood and will assist in reducing long-distance trips that are made for day-to-day convenience shopping and dining needs. The proposed use will not operate during late night or early morning hours when safety is of greater concern. The proposed use will not aggravate any existing problems in the neighborhood created by the sale of alcohol because alcoholic beverages will not be sold on the premises.

3. *The proposed use complies with all applicable provisions of the Zoning Ordinance of the City of Richmond.*

Statement of Fact: The project meets the landscape coverage standard of the Knox Freeway/Cutting Boulevard Corridor Specific Plan. The specific plan requires a minimum of 15% of the lot to be landscaped. As part of the proposed site improvements, approximately 17% of the lot will be landscaped. The specific plan's minimum lot area, density/intensity, building height, building coverage, and setback requirements are not triggered because the project will utilize an existing building that will not be enlarged. The required parking ratio for convenience stores is two spaces for each 1,000 square feet of gross floor area. The project will remodel an existing commercial structure with a size of 2,029 square feet so the required parking is four spaces. The project will provide 22 parking spaces with two of the proposed parking spaces ADA-accessible. Therefore, the proposed project exceeds the requirement for off-street parking.

4. *The site of the proposed use is adequately served by highways, streets and other public service facilities.*

Statement of Fact: The subject site is located in the Santa Fe neighborhood which is an urbanized area of the City that is adequately served by existing public service infrastructure, streets, and highways such as Cutting Boulevard, Harbour Way South and Interstate Highway 80.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Richmond, does hereby deny the appeal and affirm the Planning Commission's approval of Conditional Use Permit PLN11-057, subject to the following conditions of approval:

Project Specific Conditions:

1. This Conditional Use Permit is granted for operation of an eating establishment and a convenience store at 925 Cutting Boulevard (APNs: 550-301-023, 550-301-024), as illustrated on the project plans in Exhibit A to the staff report.
2. Completion of Improvements: The proposed improvements as shown on the project plans in Exhibit A to the staff report shall be completed prior to operation of the convenience store. The safety features required by Conditions of Approval Nos. 6 through 13 shall be put into effect prior to operation of the convenience store.
3. Hours of Operation: The convenience store's hours of operation shall be limited from 7:00 a.m. to 9:00 p.m. seven days a week.
4. Exterior Lighting:
 - a. Light standard height shall not exceed the roof height of the existing commercial building.
 - b. Standards, poles, and fixtures shall be of a single color.
 - c. Lighting shall contain high pressure sodium or equivalent with illumination intensity between one and four foot-candles.
 - d. Lighting shall be directed and shielded so as not to glare onto adjoining residential properties and must have a housing to protect against breakage.
 - e. Broken or burned out lights shall be replaced within 72 hours.
5. Alcohol Sales: Alcoholic beverages shall not be sold on the premises.

6. Safety Training Program: All newly-hired employees, managers, and immediate supervisors of managers must complete a safety training program before reporting for duty and at least annually thereafter. "Safety training program" shall mean any training program provided by the Richmond Police Department for commercial establishments or an equivalent nationally recognized training program.
7. Trespass Affidavit by Owner: The owner of the subject property and/or convenience store shall execute a trespass affidavit as promulgated by the Richmond Police Department in order to enforce all applicable trespass laws on the owner's behalf at such property. A true and correct copy of the trespass affidavit shall be posted at the convenience store at all times in a conspicuous place accessible at all times to the public.
8. No Loitering Signage: The convenience store shall have posted at all exits and entrances "No Loitering" and "No Trespassing" signs in lettering two inches or larger, in English and in Spanish. Additionally, the convenience store shall post such signs on the front, sides, and rear of the convenience store.
9. Height Strips: The convenience store shall have height strips posted at all public exits. "Height strip" means marking to aid in estimating the height of suspects.
10. Store Visibility: The convenience store shall maintain an unobstructed line of sight allowing a clear view of and from the cash register and sales transaction area through all windows and public access doors. Such windows and doors must be clear of all items that would obstruct a clear view including, but not limited to, tinting, signage, advertisements, shelving, and merchandise. Such unobstructed line of sight must, at a minimum, extend from three feet above the ground to at least six feet above the ground.
11. Alarm System: The convenience store shall have a silent panic or holdup alarm system. This system shall, at a minimum, include a panic button located within reach of the cash register and out of view of the customer. Such panic button will generate an alarm signal indicating a holdup or other life-threatening emergency requiring police response. The convenience store shall have posted at all public exits and entrances signs or decals indicating that a security alarm system is in use.
12. Drop Safe: The convenience store shall have a drop safe on the premises to keep the amount of cash available to employees to a minimum. A drop safe means a cash management device where money can be deposited without the depositor having access to the contents. The drop safe must be bolted to the floor. The drop safe may have a time-delay mechanism to allow small amounts of change to be removed. The convenience store shall have posted at all public exits and entrances signs or decals indicating that employees cannot open the safe and that employees have minimum cash on hand.
13. Surveillance Camera System: The convenience store shall have a minimum of two color digital high-resolution surveillance cameras.
 - a. One camera must have an overall view of the counter/register area and the other camera a view of the main entrance/exit area and both shall display the date and time of the recording.
 - b. The entrance/exit area camera shall be placed to provide a clear and identifiable full frame of the filmed individual's face.
 - c. The cameras shall be operated at all times, including hours when the store is not open for business.
 - d. The owner shall provide the police department with digital color images in connection with crime investigations upon request.
 - e. The owner shall maintain a library of the recorded digital images for not less than 30 days.
 - f. The convenience store shall have posted at all public exits and entrances signs or decals indicating that surveillance cameras are in use.
14. Signs: The owner of the property shall not allow handmade signs on the property and

all signs shall be in compliance with #8 under the project specific conditions.

15. Displays: The owner of the property shall not display food stands or hanging clothing outside of the convenience store or outdoor eatery.
16. Vendors: The owner shall not allow other vendors to come onto the property and sell goods, etc., nor shall the owner establish other businesses on the property, including but not limited to: Carwash, additional portable food stands.
17. Banners: The owner may display banners but not create cluster and blight.
18. The owner shall be responsible for securing the property during off hours and providing appropriate lighting and signage to discourage loitering, vandalism and other unacceptable activity on the property.
19. The owner will, at all times, abide by all other applicable City of Richmond laws and ordinances in regard to the manner in which this business is operated.
20. Five street trees will be planted by the owner in addition to the approved landscape plan.

Standard Conditions:

21. Noise: All noise disturbances, as defined by Section 9.52 of the Richmond Municipal Code, related to the convenience store use and occurring in the parking lot are prohibited. The convenience store operator/premises owner shall be responsible for maintaining a “good neighbor” policy with the adjacent residential uses, and a policy of preventing disturbances to the neighborhood.
22. Graffiti Removal: The operator/premises owner is responsible for the removal of all graffiti from the walls, fences, pavement, or buildings within 48 hours of its appearance on the premises.
23. Litter Control: The operator/premises owner shall be responsible for maintaining the parking lot and the area adjacent to the premises free of litter at all times.
24. Maintenance: The operator/premises owner shall maintain in good repair all building exteriors, walls, lighting, drainage facilities, driveways and parking areas.
25. Conditional Use Permit: Authorization of a Conditional Use Permit granted pursuant to the provisions of Section 15.04.910 of the Richmond Zoning Ordinance shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application provided that the proposed use is established and a certificate of occupancy is issued no later than July 28, 2013, and all provisions of the ordinance, the Zoning Ordinance, and all conditions placed on approval of the Conditional Use Permit are continually met.
26. Revocation: Pursuant to Section 15.04.910.070.E of the Richmond Zoning Ordinance, this Conditional Use Permit may be revoked if the exercise of rights granted by the Conditional Use Permit is discontinued for six (6) consecutive months. The use may not be resumed if the Conditional Use Permit is revoked unless a new application for a Conditional Use Permit is submitted and approved by the Planning Commission.
27. Indemnity: The applicant agrees, on behalf of himself, his successor in interest and assigns, to defend, indemnify, and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City 's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or

brought against the City due to acts or omissions in any way connected to the applicant's project, but excluding any approvals governed by California Government Code Section 66474.9. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorneys fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by applicant or City. If applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City.

I CERTIFY that the foregoing resolution was adopted by the City Council of the City of Richmond, California at a regular joint meeting held on July 19, 2011, by the following vote:

AYES: Councilmembers Bates, Beckles, Ritterman, Rogers, Vice Mayor Butt, and Mayor McLaughlin.

NOES: Councilmember Boozé.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES

Clerk of the City of Richmond

SEAL

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to Form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 73-11**, finally passed and adopted by the City Council of the City of Richmond at a joint meeting held on July 19, 2011.