COUNCIL AGENDA: 10-23-12
ITEM: 11.5

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** **SEE BELOW**

**DATE:** September 28, 2012

Approved

Date 10/5/12

**COUNCIL DISTRICT: 9**

**SUBJECT:** **CP10-010. APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY A CONDITIONAL USE PERMIT TO ALLOW THE ADDITION OF AN AUTOMATED CARWASH AT AN EXISTING SMOG TEST FACILITY ON A 0.40 GROSS ACRE SITE IN THE CN EIGHBORHOOD COMMERCIAL ZONING DISTRICT, LOCATED ON THE SOUTH SIDE OF CAMDEN AVENUE, 250 FEET WESTERLY OF S. BASCOM AVENUE (2270 CAMDEN AVENUE).**

## RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends that the City Council uphold the Planning Commission's decision and deny the request to allow the installation of an automated carwash on the subject site because the drive through use does not conform to the City Council Policy on the Criteria for the Review of Drive-Through Uses (Council Policy 6-10) and the proposal will have negative impacts to surrounding properties.

## OUTCOME

Should the City Council uphold the Planning Commission's decision, the existing smog test facility will be allowed to remain. The addition of an automated carwash, however, will not be allowed.

The proposed Conditional Use Permit does not have environmental clearance. The City Council can either uphold the Planning Commission's decision to deny the item; or defer the item to a later date with direction to the applicant to complete the environmental review process on the project and make the necessary modifications to the project itself. In the latter case, staff would need to bring that project back to Planning Commission for reconsideration.

## BACKGROUND

Planning Commission Hearing

On July 11, 2012, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit (File No. CP10-010). The Director of Planning recommended denial of the Conditional Use Permit request to allow the addition of an automated carwash to an existing smog test facility. The denial recommendation was based on the fact that the drive through use does not conform to Council Policy 6-10, and also that the proposal will have negative impacts on surrounding properties.

Public Testimony

The applicant and his representatives spoke in favor of approving the addition of an automated carwash to the existing smog testing facility. Two members of the public spoke in favor of the proposed car wash, stating that a car wash in that area is needed and will improve the looks and value of the neighborhood. No one spoke in opposition to the proposed project.

Planning Commission Discussion

The Planning Commission expressed concern about the noise caused by the proposed carwash and asked the applicant for more information about specific car wash equipment, the vacuuming station and car stereos. In addition, they asked for clarification about conformance with Council Policy 6-10.

Staff explained that there is flexibility about how to meet the intent of the policy. The primary objective is to determine whether or not a project achieves the major guiding principles of the policy.

The Planning Commission then made a motion to deny the Conditional Use Permit to allow the addition of the automatic car wash at an existing smog test facility, per staff recommendation. The Commissioners who supported the motion cited lack of conformance with Council Policy 6-10. In this particular case, this is way too close to adjacent residentially zoned and used properties. The site is also rather small for a car wash facility, and designed in a cramped manner. Additionally, there was no compelling reason to entertain a motion, the effect of which would be other than denying the proposed project.

The Commissioners who opposed the motion expressed concern about applying the requirements of Council Policy 6-10 too strictly, giving the current economic climate for businesses, and the fact that no one spoke against the project was perhaps an indication that the neighborhood was not worried about the proposed project.

The motion was approved with a 5-2-0 vote (Commissioners Bit-Badal and Kamkar opposed).

Appeal

On May 7, 2012, an appeal was filed by the applicant, Habib Behbahani (see attached Notice of Permit Appeal). The applicant states, in his appeal, that he disagrees with the Planning Commission's decision on his project.

## ANALYSIS

On March 17, 2010, the applicant, Bill Behbahani, on behalf of property owner Akbar Nazemian, filed an application for a Conditional Use Permit to allow a drive-through use (an automated carwash) at an existing smog check station at 2270 Camden Avenue. The existing smog doctor facility has been in existence since 1990 and is considered legal nonconforming. The 0.4 gross acre site is approximately 164 feet at its widest point and has approximately 145 feet of frontage along Camden Avenue. There are single-family residential uses located directly behind the subject site.

The original Staff Report (attached) provides a full analysis of conformance with: 1) the Envision San José 2040 General Plan, 2) the applicable provisions of the Zoning Ordinance, 3) the City Council Policy on the Criteria for the Review of Drive-Through Uses (Council Policy 6-10), and 4) the California Environmental Quality Act (CEQA).

Council Policy 6-10 was adopted to protect neighborhoods against incompatible drive-through uses with potential negative impacts such increased exposure to noise, traffic, etc. To date, the applicant has not presented an option that will conform to the policy.

## CONCLUSION

Based on the above analysis and the previous analysis provided in the attached Staff Report to the Planning Commission, staff concludes that all the required findings for issuance of a Conditional Use Permit cannot be made. Staff concludes that while the smog test facility generates noise, it is legal non-conforming in its present configuration. The inclusion of additional noise generating activities is fundamentally problematic and could negatively impact adjacent residential uses. Staff has been very forthright with the applicant from the earliest preliminary proposal, and well before the filing of the subject application, that due to the direct adjacency of residential uses, that addition of a carwash would not be well suited at this location. Staff has received complaints about the existing noise impacts (see public outreach section below).

Given the high degree of concern about noise impacts of the project, staff feels that it was not warranted to put the applicant through the expense of the preparation of the detailed environmental documents, stormwater control, architectural and landscape plans. Based on the proposed site designs, the addition of the proposed use is not likely to enhance the appearance of the site. Staff has encouraged the applicant to consider other alternatives to improve the economic viability of the site such as retail uses in conjunction with (or without) the relocation of

the existing uses. The applicant has not proposed any such alternatives. For these reasons stated in this report, staff recommends that this request for a Conditional Use Permit be denied.

## ALTERNATIVES

The City Council in their review of the project can take the following actions:

1. Uphold the Planning Commission's decision to deny the request to allow the installation of an automated carwash on the subject site because the drive through use does not conform to the City Council Policy on the Criteria for the Review of Drive-Through Uses (Council Policy 6-10) and the proposal will have negative impacts to surrounding properties, or

Direct staff to renotice the project for hearing after the applicant has completed the environmental review of the proposal.

## PUBLIC OUTREACH

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 500 feet of the project site. Additionally, a community meeting was held on March 22, 2012. This memorandum and the staff report to the Planning Commission are posted on the City website. Staff has been available to discuss the proposal with members of the public.

## COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

## CEQA

The environmental review for this project is incomplete. The applicant has not submitted the necessary documents (Initial Study) required to complete environmental review of the project, except for a noise report which was based on an earlier site design. Additional information on the storage of hazardous materials on-site, and a complete plan set, including a site plan, a grading and drainage plan and elevations, are required to evaluate the proposed carwash.

/s/
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Attachments: Notice of Permit Appeal
Planning Commission Staff Report and Attachments

For questions, please contact Lori Moniz, at 408 535-7841

P.C. Agenda: 7-11-12
Item No. 3.a.

# STAFF REPORT
# PLANNING COMMISSION

**FILE NO.: CP10-010** **Submitted: 3/17/10**

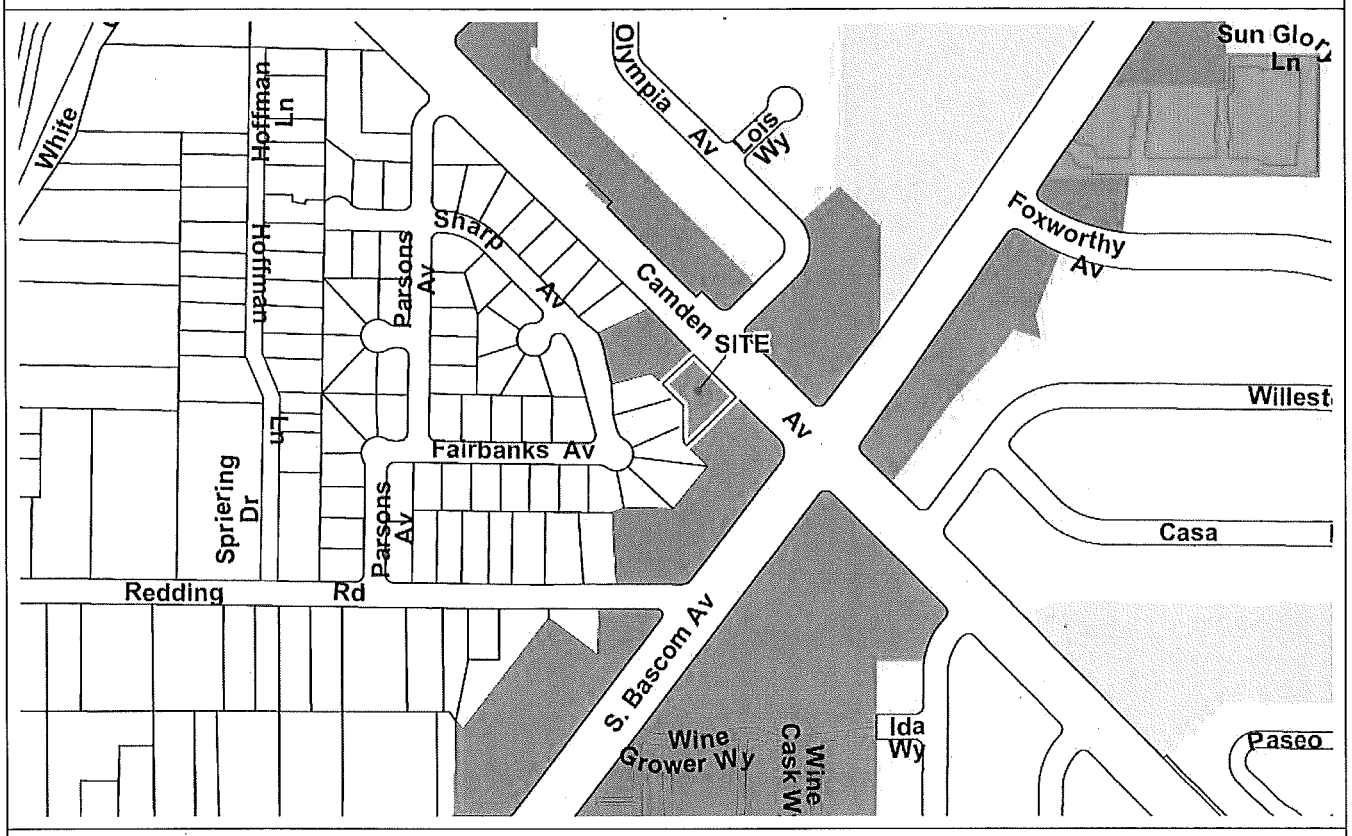
**PROJECT DESCRIPTION: Conditional Use Permit to allow the addition of an automated car wash to an existing smog test facility (Smog Doctor) on a 0.40 gross acre site.**

**LOCATION: Southwest side of Camden Avenue 250 feet northwesterly of S. Bascom Avenue (2270 Camden Avenue)**

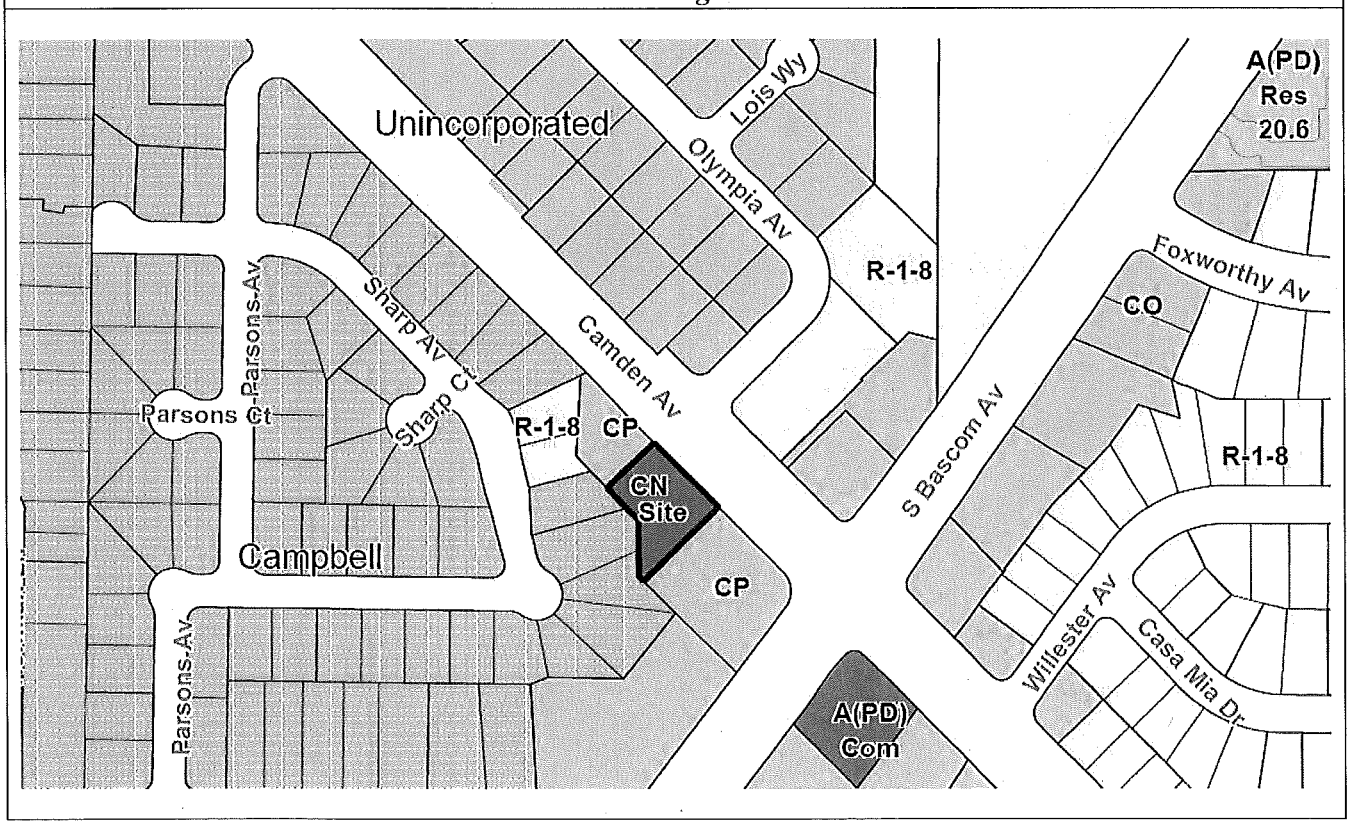
| | |
|---|---|
| Zoning | CN Commercial Neighborhood |
| General Plan | Neighborhood/ Community Commercial |
| Council District | 9 |
| Annexation Date | 06/29/1956 |
| SNI | N/A |
| Historic Resource | N/A |
| Specific Plan | N/A |

**Aerial Photo**

## General Plan




## Zoning



## RECOMMENDATION

The Planning staff recommends that the Planning Commission deny the request to allow the installation of an automated carwash on the subject site because the drive through use does not conform to the City Council Policy on the Criteria for the Review of Drive-Through Uses (Council Policy 6-10) and the proposal will have negative impacts to surrounding properties.

## BACKGROUND

On March 17, 2010, the applicant, Bill Behbahani, on behalf of property owner Akbar Nazemian, filed an application for a Conditional Use Permit to allow a drive-through use (an automated carwash) at an existing smog check station at 2270 Camden Avenue. The 0.4 gross acre site is approximately 164 feet at its widest point and has approximately 145 feet of frontage along Camden Avenue, and is surrounded by commercial retail in the CP Commercial Pedestrian Zoning District to the north and south, single-family detached residences to the west, and a church to the east.

The site was originally developed with a service station use that was constructed on the subject site in 1962 under the C-1 Commercial Zoning District. The existing smog check station (Smog Doctor) has been at this location since 1990. The CP Commercial Pedestrian Zoning District replaced the C-1 Commercial District citywide in February 2001. The subject property was rezoned to the CN Commercial Neighborhood Zoning District in June 2009.

Drive-through uses and "Tires, batteries, lube, oil change, smog check station, air conditioning servicing of passenger vehicles and pick-up trucks" uses require the approval of a Conditional Use Permit. The existing smog test facility is legal non-conforming in that it does not have Conditional Use Permit.

### History

On May 22, 2007, Bill Behbahani, filed an application for an Enhanced Preliminary Review for a new carwash facility at 2270 Camden Avenue. The proposal included the preservation of the existing building for the smog testing business. Preliminary Review is a voluntary, fee-based service that provides a prospective applicant with information regarding the City's codes, policies and development review processes. It is intended to be a time saving process by providing necessary information and initial feedback on potential projects prior to submittal of a formal application. Also, it offers a prospective applicant the opportunity to find out if there might be challenges with a proposal prior to investing a lot of time and money. Anyone can submit a request for Preliminary Review on any property. Submittals for preliminary review do not constitute a formal development application with the City. Only after a complete Planning development application (e.g. Conditional Use Permit)

has been submitted, including environmental clearance and the appropriate filing fees, is a project considered "on file."

On August 15, 2007, staff responded to Mr. Behbahani's Preliminary Review application explaining that the addition of a new carwash is not permitted within the CP-Commercial Pedestrian Zoning District. To pursue the proposal, it would be necessary to rezone the property to CN-Commercial Neighborhood. A Conditional Use Permit would be required subsequently to allow the addition of a drive-through carwash. Conformance with City Council Policy 6-10, Criteria for the Review of Drive-Through Uses, would be part of the evaluation of the Conditional Use Permit application. Based on the information provided in the Preliminary Review and the configuration of the lot, staff concluded that the proposal would not meet the Policy's criteria that "drive-through uses shall be located 200 feet or more from immediately adjacent or directly opposite residentially used, zoned, or General Planned properties." Therefore, staff stated in response to the Enhanced Preliminary Review Application that we would not be able to support or recommend approval of a subsequent application for the addition of a drive through carwash facility at this location.

On September 25, 2008, Joe Horwedel, the Director of Planning, sent a follow up letter to Bill Behbahani reiterating the initial response from the Preliminary Review Request by explaining that although a rezoning to change the designation to CN-Commercial Neighborhood could most likely be approved, a subsequent Conditional Use Permit would also be required. The Director went on to explain that a carwash proposal would not comply with City Council Policy for Drive-Through Uses because there are residential uses located directly behind the subject property (see attached letter). Since the commercial property is small, it would not be possible to place a new carwash on the site in a location that would conform to the City Council Policy. The 200-foot separation from residential uses generally reflects the distance whereby the mechanical equipment would not likely result in noise impacts that exceed that City's noise standards. For these reasons, the Director indicated that a carwash would probably not be an appropriate use for this site. Other uses, such as retail sales would be a more appropriate alternative.

In the letter, the Director indicated a willingness to reconsider staff's position if special considerations were shown with respect to the building orientation/design, hours of operation and equipment that would meet the "intent" of the policy and the City's noise standards. However, the Director stressed that even if there was a way to meet the intent of the policy, similar proposals for carwash facilities that were supported by staff resulted in considerable controversy with area residents and ultimately not approved during the hearing process.

On February 24, 2009, Mr. Behbahani submitted a request for a Conforming Rezoning (File C09-012) from CP-Commercial Pedestrian to CN-Commercial Neighborhood per Section 20.210.110 of the San José Municipal Code. The rezoning facilitates a variety of potential commercial uses consistent with the enumerated uses noted in the Zoning Ordinance. The staff report to City Council for the rezoning included an explanation that proposals for permitted and conditional uses would be evaluated at the applicable permit review stage to ensure that the project conforms to City ordinances, policies, and guidelines. Drive-through uses, which are conditional uses in the CN Commercial Neighborhood Zoning District, would be reviewed for conformance with the City Council Policy on the Criteria for the Review of Drive-Through Uses (Council Policy 6-10). The staff report to the City Council explained that a carwash proposal on this property would not comply with City Council Policy 6-10 in that the Policy indicates that new drive-through uses, such as a carwash, should be located at least 200 feet from residential uses in order to limit residents from direct noise impacts. In this particular case, the single-family residential uses are located directly behind the subject property. The rezoning of the subject property to the CN Commercial Neighborhood Zoning District would allow the Planning

Commission to consider drive-through use via a Conditional Use Permit.

On June 2, 2009, the City Council passed ordinance 28586 for publication to rezone the real property at 2270 Camden Avenue from the CP Commercial Pedestrian to the CN Commercial Neighborhood Zoning District to allow commercial uses. One neighbor commented in writing that he did not object to the rezoning of this site; however, he strongly opposed any commercial development on this site that would increase noise, pollution, or traffic to the residential neighborhood.

On March 17, 2010, Mr. Behbahani filed a Conditional Use Permit to add a carwash to an existing smog testing facility. On May 7, 2010, staff commented on the proposal and identified concerns related to vehicle stacking, circulation, parking, noise and need for a community meeting. The applicant was asked to submit revised plans to address these issues. After a long period of inactivity by the applicant, on November 22, 2010, December 15, 2010 and February 15, 2011, staff sent an email to Bill Behbahani asking if he was still interested in pursuing the project and if so, for a timeline to submit the revised documents. On April 26, 2011, staff received a letter from Mr. Behbahani inquiring about the status. Staff again sent the May 7, 2010 letter.

Staff received a revised plan in May 15, 2011. Although the plan addressed a few of staff's comments, it created new problems with regard to vehicle movement on the site. In addition, staff remained concerned that a 6-foot tall sound attenuation barrier would not be tall enough to mitigate for noise at the property line, especially if the adjacent property owners chooses to build second story additions to their houses 20 feet from the rear property line. Staff requested information regarding the proposed Ryko tunnel entrance doors, including examples of existing installation in San Jose and operations data to document when the doors open and close during the car wash cycle.

When staff met with the applicant on October 12, 2011, the applicant discussed conformance with the noise standards; however, he did not provide staff with any documentation to support the claim. Per the letter from the Director in 2008, if the applicant is able to provide evidence that special considerations exist, staff would be willing to reconsider a recommendation of denial of the proposed automated carwash. To date, that evidence has not been provided.

## ANALYSIS

The primary areas analyzed for the Conditional Use Permit include conformance with: 1) the Envision San José 2040 General Plan, 2) the applicable provisions of the Zoning Ordinance, 3) the City Council Policy on the Criteria for the Review of Drive-Through Uses (Council Policy 6-10), and 4) the California Environmental Quality Act (CEQA).

### Envision San José 2040 General Plan Conformance

The subject site is designated Neighborhood/Community Commercial on the General Plan Land Use/Transportation Diagram, which supports a very broad range of commercial activity, including commercial uses that serve the neighboring area, such as retail, personal services and commercial/professional office development. Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction.

When the property was rezoned, the San Jose 2020 General Plan designation for the site was General Commercial. The rezoning to the CN Commercial Neighborhood Zoning District was deemed to be consistent with the site's designation of General Commercial in that this designation supported a

variety of commercial uses.

**Zoning Ordinance Conformance**

On February 24, 2009 the City Council adopted an ordinance rezoning the property to the CN Commercial Neighborhood Zoning District. A drive through use may be approved with the issuance of a Conditional Use Permit in the CN Commercial Neighborhood Zoning District. Per the Zoning Ordinance passenger vehicle and pick-up truck servicing (consisting of tires, batteries, lube, oil change, smog check, air conditioning and other incidental non-engine and exhaust related service and repair conducted within a fully enclosed building) requires the issuance of a Conditional Use Permit. Other more intensive automobile service uses are limited to the LI Light Industrial and HI Heavy Industrial Zoning Districts. As previously noted, the smog check facility is legal non-conforming and barring any suspension of use, may continue to lawfully operate without any required permits from the City. This existing facility with roll-up doors on two sides of the building, allows vehicles to drive through upon completion of the smog check service. Two of these doors face directly to the residential properties approximately 70 feet away. There is noise issues associated with this use, most notably those that come from revving engines for short, but sustained periods as part of the State requirements for smog checks.

The CN Commercial Neighborhood Zoning District has a setback requirement of 15 feet for parking and structures. This is to facilitate landscaping along the edge of the street to improve the appearance of a site. This project does not currently propose any new landscaping around any of the site's perimeter, including the area adjacent to residential uses. Should the Planning Commission, or City Council on appeal, be inclined to approve this project, it should be modified to include such landscaping as a part of the site modifications prior to any consideration for approval.

**Council Policy 6-10: Drive-Through Uses**

A carwash proposal would not comply with City Council Policy 6-10 in that the policy indicates that new drive-through uses, such as a carwash, should be located at least 200 feet from residential uses in order to limit residents from direct noise impacts. In this particular case, the single-family residential uses are located directly behind the subject property. This project can not comply with this key element of the Policy because the lot is only 164 feet deep. Based on the most current plan, dated May 6, 2011, the carwash building is proposed to be 39 feet from a residential property line with the entrance opening facing directly towards residential uses. The stacking lane for the carwash accommodates up to 10 vehicles and extend directly adjacent to the residential property line. This is an inefficient on-site vehicle circulation design in that in order for customers to use the vacuum equipment after the carwash, they must exit the site on Camden Avenue and re-enter using a different driveway. Upon completion of the vacuum activities, also located directly adjacent to the residential property line, the customer must cross the cross the stacking lane for the carwash in order to leave the premises.

A noise report based on an earlier site design was prepared by a noise consultant that indicates that many elements of the project, without mitigation, would substantially exceed the City's noise requirements. With mitigation, the project could meet, albeit just barely, the City noise averaging requirements (55 DNL) identified in the General Plan and the single-event noise requirements (55 dBA) to the residential property line. Issues beyond the control of the business owner, such as loud car stereos within the stacking lane were not addressed. The proposal did not consider impacts or mitigation measures to address any second story additions to the adjacent houses that might occur in the future. It should be noted the site already generates noise from the existing smog check operations in which the business owner, at a meeting with staff on June 11, 2012, indicated is louder than the proposed carwash. Specific noise issues related to the legal non-conforming smog test operation were not studied.

As a way of meeting the intent of the policy, in terms of the use separation recommendations for the carwash, the applicant is proposing the use of a Ryko folding door system that is designed to close off the entrance to the carwash once a vehicle has entered. In theory, the mechanical carwash equipment would then start up once the doors are closed. This proposal could meet the City's noise requirement if the doors are properly maintained, sealed well at all times, and not later disabled and thereby allowing the carwash use with the doors open. This is a system that has not been used in San Jose. The project as proposed, with a carwash stacking lane placed near the residential property line, has the potential to further generate additional unpredictable noise impacts as a result of idling cars and playing stereos which is beyond the direct control of the business owner. Additionally, a separate unenclosed car vacuum area is proposed directly adjacent to the residential property line.

**Environmental Review**

The environmental review for this project is incomplete. The applicant has not submitted the necessary documents (Initial Study) required in order to complete environmental review of the project, except for a noise report which was based on an earlier site design. Additional information on the storage of hazardous materials on-site, and a complete plan set, including a site plan, a grading and drainage plan and elevations, are required for the proposed carwash.

## CONCLUSION

Based on the above analysis, staff concludes that while the smog test facility generates noise, it is legal non-conforming in its present configuration. The inclusion of additional noise generating activities is fundamentally problematic and could negatively impact adjacent residential uses. Staff has been very forthright with the applicant from the earliest preliminary proposal, and well before the filing of the subject application, that due to the direct adjacency of residential uses, that addition of a carwash would not be well suited at this location. Staff has received complaints about the existing noise impacts (see public outreach section below).

Given the high degree of concern about noise impacts of the project, staff feels that it was not warranted to put the applicant through the expense of the preparation of the detailed environmental documents, preparation of grading, stormwater control, architectural and landscape plans. Based on the proposed site designs, the addition of the proposed use is not likely to enhance the appearance of the site. Staff has encouraged the applicant to consider other alternatives to improve the economic viability of the site such as retail uses in conjuction with (or without) the relocation of the existing uses. The applicant has not proposed any such alternatives. For these reasons stated in this report, staff recommends that this request for a Conditional Use Permit be denied.

## PUBLIC OUTREACH

Beginning on May 7, 2010, staff informed the applicant that a community meeting needed to be held with the property owners/tenants within 500 feet of the proposed site prior to any public hearing on this project. Applicants typically take the initiative to set up outreach meetings. Since staff had not seen performance by the applicant, staff initiated and held a community meeting to discuss the proposal with the neighbors on Thursday, March 22, 2012. Five (5) residents, all living adjacent to the site, attended the meeting. They expressed concern about increases in noise, traffic, and air pollution from idling cars. They were opposed to the carwash, but would like to see the site improved.

Notices of the community meeting and public hearing for this project were sent to all property owners within 500 feet of the subject property. The Planning Commission Agenda is posted on the City of

San José website, which includes a copy of the staff report and staff has been available to discuss the project with members of the public.

**Project Manager:** Lori Moniz **Approved by:** _____ **Date:** 6/29/2012

| Owner/Applicant: | Attachments: |
|---|---|
| Bill Behbahani (applicant)<br>2270 Camden Avenue<br>Campbell, CA 95008<br><br>Akbar Nazemian (owner)<br>12055 Covina Court<br>Saratoga, CA 95070 | Draft Resolution<br>Site Plan |

# RESOLUTION NO.

Resolution of the Planning Commission of the City of San José denying a Conditional Use Permit to allow the addition of an automated car wash to an existing smog test facility (Smog Doctor) on a 0.40 gross acre site at the southwest side of Camden Avenue, 250 feet northwesterly of S. Bascom Avenue (2270 Camden Avenue).

## FILE NO. CP10-010

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 17, 2010 application (File No. CP10-010) was filed for a Conditional Use Permit to allow the addition of an automated car wash to an existing smog test facility (Smog Doctor), on that certain real property (hereinafter referred to as "subject property"), situate in the CN-Commercial Neighborhood Zoning District, located at the southwest side of Camden Avenue, 250 feet northwesterly of S. Bascom Avenue (2270 Camden Avenue); and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a plan for the subject property entitled, "Proposed Carwash Addition to Existing Smog Doctor, 2270 Camden Avenue, San Jose, CA", dated May 6, 2011. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Neighborhood/Community Commercial on the adopted San José 2040 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CN-Commercial Neighborhood Zoning District.
3. The proposed use is located on a 0.40 acre site with approximately 164 feet at its deepest point and approximately 145 feet of frontage along Camden Avenue.
4. The rear of the subject site is directly adjacent to single family houses to the west.
5. The site is surrounded by commercial retail in the CP Commercial Pedestrian Zoning District to the north and south and a church across Camden Avenue to the east.
6. The site was originally developed with a service station use that was constructed on the subject site in 1962.
7. The applicant is requesting a Conditional Use Permit (CUP) to allow the addition of an automated carwash to an existing smog test facility (Smog Doctor).
8. The existing smog check facility is legal non-conforming.
9. Per Table 20-140 of the San José Municipal Code, a Conditional Use Permit is required for a carwash use in the CN Commercial Neighborhood Zoning District.
10. On May 22, 2007, Bill Behbahani, filed an application for an Enhanced Preliminary Review for a new carwash facility at 2270 Camden Avenue. The proposal included the preservation of the existing building for the smog testing business.
11. On August 15, 2007, staff responded to Mr. Behbahani's Preliminary Review application explaining that the addition of a new carwash is not permitted within the CP-Commercial Pedestrian Zoning District. To pursue the proposal, it would be necessary to rezone the property to CN-Commercial Neighborhood. A Conditional Use Permit would be required subsequently to allow the addition of a drive-through carwash. Conformance with City Council Policy 6-10, Criteria for the Review of Drive-Through Uses, would be part of the evaluation of the Conditional Use Permit application. Based on the information provided in the Preliminary Review and the configuration of the lot, staff indicated that the proposal would not meet the Policy's criteria that "drive-through uses shall be located 200 feet or more from immediately adjacent or directly opposite residentially used, zoned, or General Planned properties." Therefore, staff stated in response to the Enhanced Preliminary Review Application that it would not be able to support or recommend approval of a subsequent application for the addition of a drive through carwash facility at this location.
12. On September 25, 2008, Joe Horwedel, the Director of Planning, sent a follow up letter to Bill Behbahani reiterating the initial response from the Preliminary Review Request by explaining that although a rezoning to change the designation to CN-Commercial Neighborhood could most likely be approved, a subsequent Conditional Use Permit would also be required. The

Director went on to explain that a carwash proposal would not comply with City Council Policy for Drive-Through Uses because there are residential uses located directly behind the subject property.

13. The project as proposed includes a new free-standing carwash building 39 feet from the closest residential property line. Additionally, the vehicle stacking lane is immediately adjacent to the property line wall next to the residential uses. Self-service vacuuming equipment is also placed directly next to the residential property line wall.
14. The City Council Policy on the Criteria for the Review of Drive-Through Uses (Council Policy 6-10) indicates that new drive-through uses, such as a carwash, should be located at least 200 feet from residential uses in order to limit residents from direct noise impacts.
15. The proposed drive through use does not conform to the separation recommendations noted in City Council Policy 6-10.
16. A noise report indicates that many elements of the project, without mitigation, would substantially exceed the City's noise requirements.
17. The noise report indicates that with mitigation, the carwash equipment and vacuum equipment could meet the City noise averaging requirements (55 DNL) identified in the General Plan and the single-event noise requirements (55 dBA) to the residential property line provided that if the doors are properly maintained, sealed well at all times, and not later disabled and thereby allowing the carwash use with the doors open.
18. The noise report did not address noise issues beyond the control of the business owner, such as loud car stereos within the stacking lane. The proposal did not consider impacts or mitigation measures to address any second story additions to the adjacent houses that might occur in the future.
19. Noise is currently generated noise from the existing smog check operations in which the business owner, at a meeting with staff on June 11, 2012, indicated is louder than the proposed carwash.
20. The project does not propose any new landscaping along the front or rear sides of the property.
21. The California Environmental Quality Act (CEQA) review for this project is incomplete.

## FINDINGS

Based on the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will:
    a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
    b. Impair the utility of value of the property of other persons located within the vicinity of the site; or
    c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is not adequate in size and shape to accommodate the yards, walls, fences parking, loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the surrounding area.
3. The proposed site is adequately served:
   a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
   b. By other public or private service facilities as are required.

Based on all of the above findings for the Conditional Use Permit application, this proposal for to allow the installation of an automated carwash on the subject site is hereby denied.

**DENIED on this 11th day of July 2012**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

EDESA BIT-BADAL
Chairperson

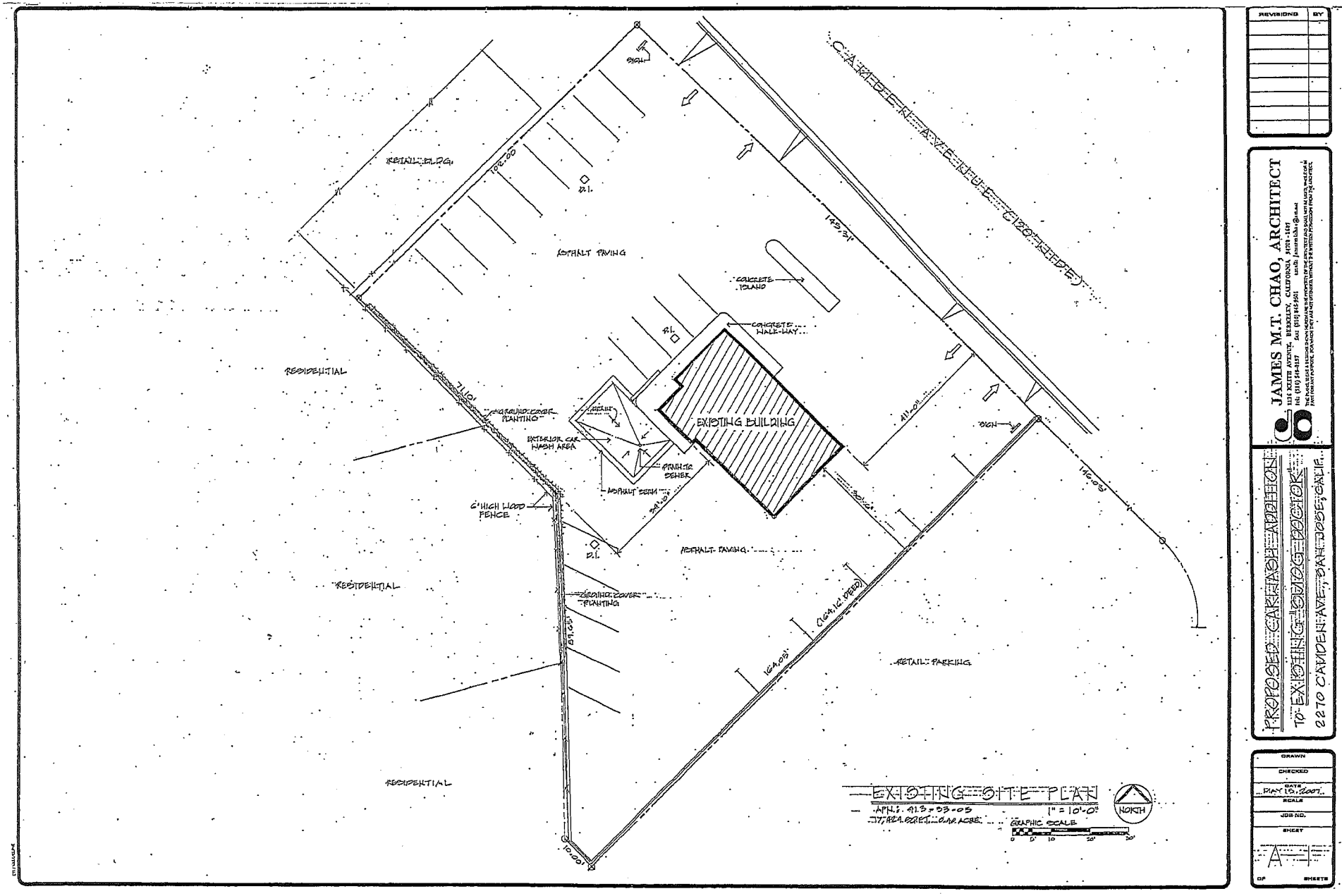
ATTEST:

JOSEPH HORWEDEL
Director of Planning Building & Code Enforcement
Planning Commission Secretary

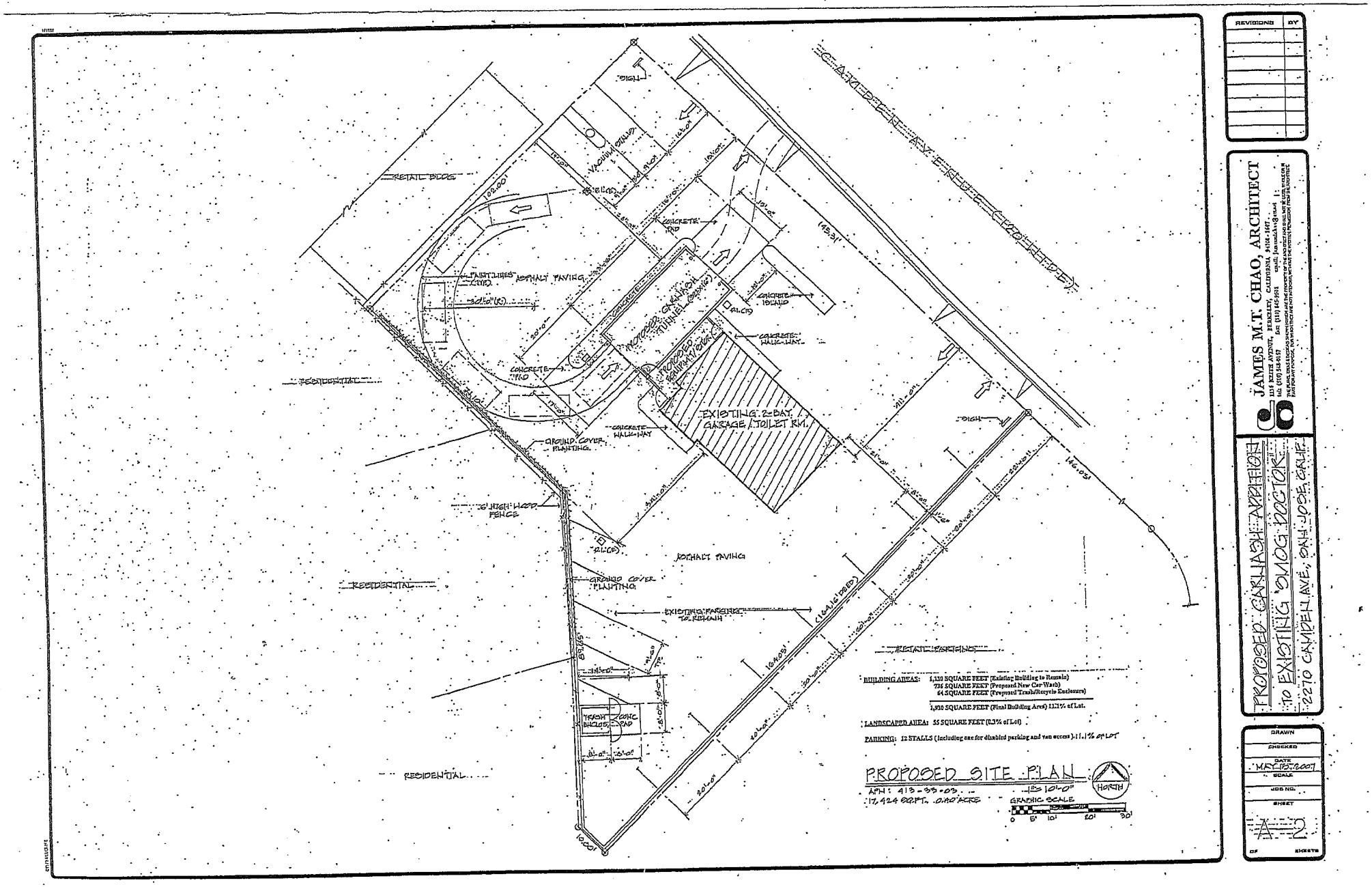
**NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

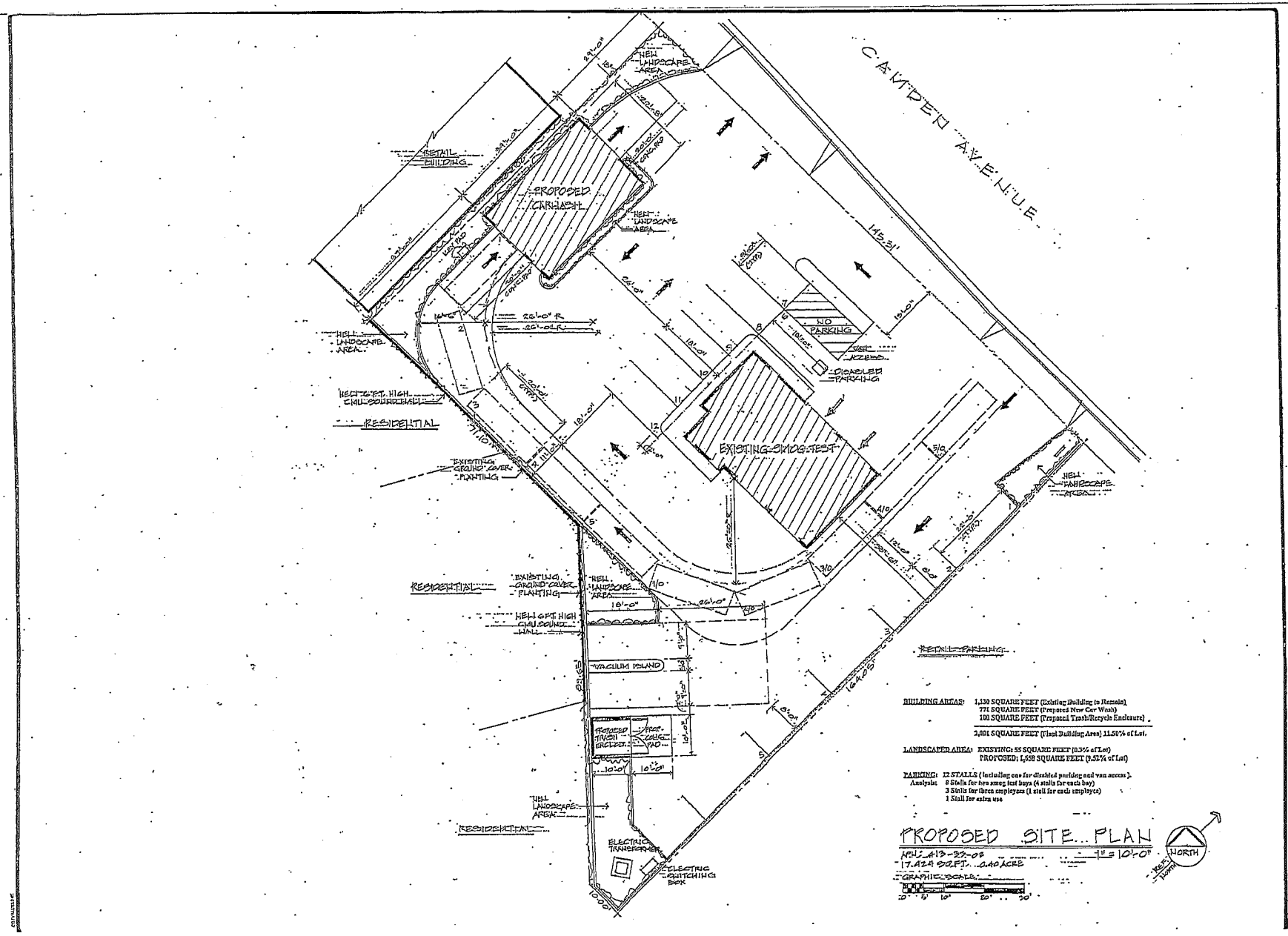
# CP10-010 Existing Site Plan



# CP10-010 Proposed Site Plan #1, May 15, 2007



# CP10-010 Proposed Site Plan #2, May 6, 2011



**Moniz, Lori**

**From:** James Cohen [jim.cohen@sbcglobal.net]
**Sent:** Thursday, March 29, 2012 2:34 PM
**To:** Moniz, Lori
**Subject:** File No. CP10-010

City of San Jose:
Planning Services Division
Atten: Lori Moniz
Project Planner

As a close neighbor to the proposed development for a car wash on the property where the Smog Doctor is currently located we are strongly opposed to this development. We are concerned the increased noise, traffic and exhaust fumes will negatively affect the quality of the neighborhood and our general health. We ask that the San Jose planning division reject the conditional use permit for this project.

Sincerely

James and Debora Cohen
1436 Sharp Ave
Campbell, CA 95008
408 596-6306

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

*Department of Planning, Building and Code Enforcement*
JOSEPH HORWEDEL, DIRECTOR

September 25, 2008

Bill Behbahani
The Smog Doctor
2270 Camden Avenue
Campbell, CA 95008

RE: Carwash Proposal @ 2270 Camden Avenue (File PRE07-166)

Dear Mr. Behbahani:

Our staff reviewed the preliminary proposal for a new carwash facility that you filed on May 22, 2007. As we previously indicated, there were two basic problems with the proposal. First, the subject property is zoned CP-Commercial Pedestrian, which does not allow carwash facilities. Although a rezoning to change the designation to another zoning district, such as CN-Commercial Neighborhood could most likely be approved, a subsequent Conditional Use Permit would also be required.

Secondly, a carwash proposal would not comply with City Council Policy 6-10 (Drive-Through Uses). An analysis of a proposal's conformance with policies, such as this, occurs as part of the Conditional Use Permit review process. One of the key purposes of the policy is to protect nearby residential uses from noise impacts of drive-through uses, such as carwashes. More specifically, the policy indicates that new drive through uses should be located at least 200 feet from residential uses. In this case there are residential uses located directly behind the subject property. Since the commercial property is small, it would not be possible to place a new carwash on the site in a location that would conform to the City Council Policy. The 200-foot separation recommendation from residential uses generally reflects the distance whereby the mechanical equipment would not likely cause noise impacts that exceed that City's noise standards. For these reasons, staff had indicated that a carwash would probably not be an appropriate use for this site. Other uses, such as retail sales would be a more appropriate alternative.

Although you have indicated that your proposal would include state-of-the art equipment that is relatively quiet, specific noise specifications of your carwash equipment were not provided as part of the preliminary review proposal. In the event that you *were* to file a formal Conditional Use Permit application that included a noise report, prepared by a qualified consultant, that noted that the due to special considerations with respect to the proposed building orientation/design, hours of operation and proposed quiet equipment

that a carwash proposal could meet the "intent" of the policy and meet the City's noise standards, staff would be willing to reconsider our position.

By way of history, there was a similar recent proposal in this area for a new carwash facility at the Chevron station at the corner of Bascom and Camden. There was considerable controversy with area residents about potential noise issues. Interestingly, that project site was not directly adjacent to residential uses as is the case with your property.

If you have any questions, feel free to contact Mike Enderby, Senior Planner at (408) 535-7843.

Sincerely,

Joseph Horwedel, Director
Planning, Building & Code Enforcement

C: Honorable Mayor Chuck Reed
Honorable Judy Chirco, Council District 9
Debra Figone, City Manager

PRE07-166.ltr

# City of San José, California

# CITY COUNCIL POLICY

| TITLE | PAGE | POLICY NUMBER |
|---|---|---|
| CRITERIA FOR THE REVIEW OF DRIVE-THROUGH USES | 1 of 3 | 6-10 |
| | EFFECTIVE DATE 3/13/1979 | REVISED DATE |
| APPROVED BY | | |

## BACKGROUND

On March 13, 1979, the City Council approved an amendment to the Zoning Ordinance requiring that all applications for development of establishments, with drive-through facilities reviewed for adherence to current and applicable criteria and that such development proceed only after issuance of appropriate Planning & Building permits by the City. The policy has continued to evolve over time, with revisions in 1979, 1990 and most recently in 1992.

## PURPOSE

To provide guidelines for the development of establishments with drive-through facilities within the City of San Jose.

## POLICY

It is the policy of the City Council that development of establishments with drive-through facilities within the City of San Jose shall be governed as specified in this policy statement. Approval of such development shall be subject to the following conditions:

1. Development of drive-through uses, except car wash facilities, shall be restricted to properties with Commercial (CN or CG) Zoning or Planning Development (PD) Zoning which permit such drive-through uses. Development may not proceed until a Conditional Use or Planned Development (PD) Permit is approved by the City.

2. Car wash facilities are permitted on properties with CN or CG Commercial Zoning or LI or HI Industrial Zoning or Planned Development (PD) Zoning which permits such car wash facilities. Development may not proceed until a Site Development or Planned Development (PD) Permit is approved by the City.

3. Development of drive-through uses shall not be allowed within 1000 feet of existing or planned transit stations or along major transit thoroughfares.

4. Conditional Use Permits or Planned Development (PD) Permits for establishments with drive-through facilities shall be granted only after applicable criteria adopted by Council have been applied to each application to the satisfaction of the City's Director of Planning and the City Planning Commission.

Furthermore, it is the policy of the Council that gasoline service stations which do not include car wash facilities as well as vehicle repair and storage facilities shall be exempt from the provisions in this policy statement.

## CRITERIA

The following criteria shall be applied to all applications for development of establishments with drive-through facilities which meet the applicable conditional requirements:

### Traffic

a. Primary ingress and egress to drive-through type parking lots should be from at least a four-lane major street.

b. The drive-through stacking lane shall be situated so that any overflow from the stacking lane shall not spill out onto public streets or major circulation aisles of any parking lot. Overflow capacity shall be 50 percent of required stacking for overflow restricted to the parking lot and 100% of required of required stacking if the overflow is directed to the street.

c. No ingress and egress points shall conflict with turning movements of street intersections.

d. No drive-through use shall be approved with ingress or egress driveways within 300 feet of a signalized intersection operating at a Level of

Service D, E, or F unless a traffic analysis demonstrates, to the satisfaction of the Director of Public Works, that vehicles entering or leaving said use will not impair the efficiency or operation of the intersection.

e. The drive-through stacking lane shall be separated physically from the user's parking lot and shall have a capacity of:

| | |
| --- | --- |
| 1. Financial Institutions | 8 cars per lane or 16 total* |
| 2. Restaurants | 8 cars per lane* |
| 3. Photo Uses | 2 cars per lane* |
| 4. Self-Service Car Washes | 5 cars per lane* |
| 5. Full-Service Car Washes | 15 cars* (may be in multiple lanes) |
| 6. Other | Capacity requirement to be determined on an individual basis |

* Allow 20 feet per car

The storage required for savings and loans may be less than for banks and should be reviewed on an individual basis. Eight (8) vehicles per lane for a drive-through restaurant is a maximum. Certain types of fast-food restaurants may require less storage if substantiated by acceptable data.

f. No pedestrian crossing of the drive-through lane shall be allowed.

g. Proposed drive-through uses at or near signalized intersections may compound existing traffic congestion and make it intolerable even is the intersection meets the Transportation LOS policy. In these situations proposed drive-through uses should be discouraged.

**Noise**

a. Drive-through speakers shall not be audible from adjacent residentially used, zoned, or General Planned properties.

b. Drive-through speakers shall not be used when the drive-through lane abuts residentially used, zoned, or General Planned properties.

c. Use of sound attenuation walls and landscaping shall be encouraged.

**Hours of Operation**

a. No drive-through portion of land use shall operate after the hour of 10:00 p.m. when adjacent to residentially used, zoned, or General Planned properties.

**Emission Control**

It is recognized that auto emissions are particularly objectionable where "tunneling" effects occur due to prevailing wind patterns in combination with building orientation and where idling vehicles are in close proximity to concentrations of people.

a. An east-west orientation of drive-through lanes is discouraged, especially on the south side of main buildings.

b. "Tunneling" will be deemed to occur where adjacent buildings are within thirty (30) feet of each other, or where roof/wall structures enclose a space less than thirty (30) feet. Such situations are discouraged unless air quality analyses performed by the applicant shows that unusual pollutant concentrations will not occur.

c. Applicants shall take positive steps to protect employees of the drive-through facility from emissions caused by idling cars.

d. Drive-through lanes shall not be located adjacent to patios and other pedestrian use areas, other than walkways.

e. Drive-through use stacking lanes are discouraged in close proximity to residential uses, existing or planned.

**Urban Design**

a. The architecture of drive-through uses shall be compatible and harmonize with that of the shopping center motif or immediate neighborhood in terms of building color, materials, mass, scale and form. Standardized, "corporate" building designs shall be discouraged.

b. Drive-through lanes shall be buffered from adjacent properties by means of heavy landscaping and sound attenuating uses where appropriate and necessary.

c. Drive-through restaurants shall incorporate seating within the restaurant, and drive-through banking facilities shall provide a walk-up window.

**Lighting**

a. Reference is made to Section 19204.37 of the Zoning Ordinance.

**19204.37 Lighting.** Any and all lighting facilities hereafter erected, constructed, or used for or in connection with any off-street parking spaces located in any residential district or adjacent to any residential district shall be so arranged and shielded that light will be reflected away from lands located in such residential district, and so that there will be no glare which will cause unreasonable annoyance to occupants of properties in such residential district, or otherwise interfere with the public health, safety, or welfare.

b. Lighting devices located on roofs are considered an advertising device and will not be permitted.

In addition, the following specific criteria are recommended:

Recommended maximums for all drive-through uses:

| | |
| --- | --- |
| At Residential Property Line | 0.1 fc |
| At Other Property Line | 0.5 fc |
| Detached Signs | 50 FL |
| Attached Signs | 20 FL |
| Parking Lots (drive-in) | 0.5 foot-candles at surface |
| Parking Lots (walk-in) | 0.2 foot-candles at surface |

fc = Foot Candle = illumination level on work surface
FL = Foot Lamberts = brightness one sees at the source

**Location**

a. Drive-through uses shall be located 200 feet or more from immediately adjacent or directly opposite residentially used, zoned, or General Planned properties.

b. Drive-through facilities are discouraged in the Downtown Core Area (bounded by Julian Street, Fourth Street, Freeway 280, and the Freeway 87).

c. Buildings with drive-through facilities shall be located with a minimum separation of 500 feet from any structure containing a drive-through facility. Self-service car washes which are proposed in conjunction with existing gasoline service stations may be exempted from this locational criterion.

**Other Criteria**

a. Water drippage on public streets at the exit of car washes shall be minimized through either automatic drying systems or hand drying in connection with full-service car wash facilities or through on-site grading and drainage patterns or other design features in connection with self-serve car wash facilities.

**Development Review Process**

On and off-site circulation, traffic safety, curbside parking, number or proximity of drive-ways, speed bumps, and other site development factors shall be considered during the Conditional Use Permit or Planned Development (PD) Rezoning/Permit process and evaluated on a site-by-site basis.

N
Camden Ave
Camden Ave
Olympia Ave
Camden Ave
Camden Ave
Camden Ave
Camden Ave
Rack N Road
Truck and
Vehicle Outfitters
Smog
Doctor
Al Castello
Ristorante
Sharp Ave

TEST ONLY

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

**CITY OF SAN JOSE**
Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113-1905
tel (408) 535-3555 fax (408) 292-6055
Website: www.sanjoseca.gov/planning

# NOTICE OF PERMIT APPEAL

## TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER: CP10-010

PROJECT LOCATION: SHOG DOCTOR
2270 Camden Ave
Campbell, Ca. 95008

RECEIPT # 672161.
AMOUNT $2232.00
DATE 7/17/12
BY SS

## TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

2270 CAMDEN Ave. CAMPbell. Ca 95008

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):
I disagree with the planning commission decision for my project

## PERSON FILING APPEAL

| NAME | | DAYTIME TELEPHONE |
|---|---|---|
| Habib behbahani | | (408) 559-3127 |
| ADDRESS | CITY | STATE / ZIP CODE |
| 3685 S Bascom Ave #8 | Campbell | Ca 95008 |
| SIGNATURE | | DATE |
| Habib | | 7/16/2012 |

RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet)

## CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME: LEO B. SIEGEL, ESQ

| ADDRESS | CITY | STATE / ZIP CODE |
|---|---|---|
| LAW OFFICE OF LEO B. SIEGEL, 3425 S. BASCOM AVE., STE. I | CAMPBELL | CA 95008 |

| DAYTIME TELEPHONE | FAX NUMBER | E-MAIL ADDRESS |
|---|---|---|
| (408) 377-7785 | (408) 377-5270 | leob@legalsiegel.org |

## PROPERTY OWNER

| NAME | | DATE |
|---|---|---|
| AKBAR NAZEMIAN | | |
| ADDRESS | CITY | STATE / ZIP CODE |
| 447 QUEENS CT. | CAMPBELL | CA. 95008-1992 |

**PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.**