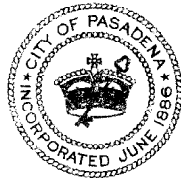


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CITY CLERK
CITY OF PASADENA PLANNING & DEVELOPMENT DEPARTMENT
PLANNING DIVISION

January 23, 2004

Anthony J. Palazzola
Design Direction Group
747 East Union Street
Pasadena, CA 91101

RE: Conditional Use Permit #4212
716 South Fair Oaks Avenue
Council District #6

*TRANS -
I WISH TO REQUEST THAT
THIS MATTER BE CALLED FOR REVIEW
TO THE CITY COUNCIL. IF ANY
FURTHER INFORMATION IS
NEEDED, PLEASE ADVISE TRANS.
STEVE MADON*

Dear Mr. Palazzola:

Your application for a **Conditional Use Permit** at 716 South Fair Oaks Avenue, was considered by the **Board of Zoning Appeals** on January 21, 2004.

CONDITIONAL USE PERMIT - The expansion of a non-conforming use. Specifically, the existing Nursing Home is classified as a Convalescent Facility and was made non-conforming when the City zoned the property as IG (Industry, General) in 1985. The applicant is proposing adding two single-story additions totaling 5,500 square feet to the existing 20,100 square feet facility.

After careful consideration of this application, and with full knowledge of the property and vicinity, the Board of Zoning Appeals made the findings as shown on Attachment A to this letter.

Based upon the findings, the Board of Zoning Appeals decided to **sustain** the decision of the Zoning Hearing Officer and **deny** the application

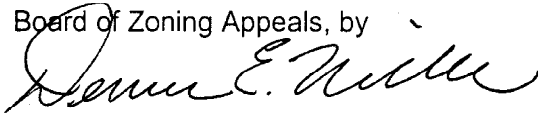
You are hereby notified that the decision of the Board of Zoning Appeals is not subject to further appeal. This decision becomes effective on the eleventh day from the date of the decision. The effective date for this case is **February 3, 2004**. However, prior to the effective date, a member of the City Council may stay the decision and request that it be called for review to the City Council.

Projects, which are denied, are statutorily exempt from the California Environmental Quality Act. Please note that the time within which judicial review of this action must be sought is governed by Section 1094.6 of the California Code of Civil Procedure.

Appeal of Conditional Use Permit #4212
Page 2

For further information regarding this case, please contact **David Sinclair** at, (626) 744-6766.

Board of Zoning Appeals, by



DENVER E. MILLER
Zoning Administrator

DEM:ds:ac

Enclosures: Attachment A

xc: City Clerk, City Council, Building Division, Public Works,
Power Division, Water Division, Design and Historic
Preservation, Hearing Officer, Code Enforcement-Ellen
Clark, Case File, Decision Letter File, Planning
Commission(9).

ATTACHMENT "A"
FINDINGS OF FACT
FOR CONDITIONAL USE PERMIT #4212

Conditional Use Permit for Expansion of a Nonconforming Use.

1. *The location of the Conditional Use Permit is not in accordance with the special purposes of Title 17 of the Pasadena Municipal Code and the purposes of the IG-SP-2 district in which the proposed project is located. Specifically, the existing use is not permitted in the IG zoning district. Although nonconforming uses such as this may be allowed to expand with the approval of a Conditional Use Permit, Chapter 17.76 (Nonconforming Uses, Structures, and Signs), section 17.76.30.A specifically prohibits the expansion of nonconforming uses onto an additional lot, adjacent or otherwise. As such, strict application of the Zoning Code would prohibit the expansion of a nonconforming use onto an adjacent lot not currently entitled for such a use.*

MINUTES
BOARD OF ZONING APPEALS
JANUARY 21, 2004

Public Meeting 6:00 P.M.
100 North Garfield Avenue
Council Chambers Room 247, 2nd Floor

1. ROLL CALL
2. PUBLIC HEARINGS

A. CUP #4212: 716 S. Fair Oaks – Council District #6

Conditional Use Permit: The expansion of a non-conforming use. Specifically, the existing Nursing Home is classified as a Convalescent Facility and was made non-conforming when the City zoned the property as IG (Industry, General) in 1985. The applicant is proposing adding two single-story additions totaling 5,500 square feet to the existing 20,100 square feet facility.

Staff Recommendation: Denial

Case Manager: David Sinclair

THE BOARD OF ZONING APPEALS DECIDED TO SUSTAIN THE DECISION OF THE ZONING HEARING OFFICER AND DENY THE CONDITIONAL USE PERMIT ON A VOTE OF 3-1.

B. CUP #4257: 102 East Colorado Boulevard – Council District #6

Conditional Use Permit: To allow the on-site sale of alcohol (beer and wine) in conjunction with the expansion of an existing restaurant (Hooters).

Staff Recommendation: Approval with conditions

Case Manager: David Sinclair

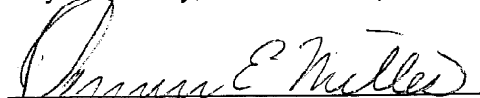
THE BOARD OF ZONING APPEALS DECIDED TO APPROVE THE DECISION OF THE ZONING HEARING OFFICER ON A VOTE OF 3-1.

3. COMMENTS AND REPORTS FROM STAFF
4. COMMENTS AND REPORTS FROM BOARD
5. ADJOURNMENT

POSTING STATEMENT:

I hereby certify that this Agenda was posted in its entirety on both the Council Chamber Bulletin Board, Room 247, and the Information Kiosk in the rotunda area at City Hall, on the 16th

day of January, 2004, at 5:30 p.m.


Denver E. Miller, Zoning Administrator


Angelica Cruz, Recording Secretary

**BOARD OF ZONING APPEALS
STAFF REPORT
January 21, 2004**

SUBJECT: Conditional Use Permit #4212

LOCATION: 716 South Fair Oaks Avenue

ZONING DESIGNATION: IG-SP-2 (General Industry, South Fair Oaks Specific Plan Overlay)

GENERAL PLAN DESIGNATION: South Fair Oaks Specific Plan

CASE PLANNER: David Sinclair

APPLICANT/APPELLANT: Anthony J. Palazzola

ZONING HEARING OFFICER AND ZONING ADMINISTRATOR'S RECOMMENDATION: Acknowledge the Environmental Determination that a denial is statutorily exempt and adopt the Specific Findings in Attachment A to deny this application.

ENVIRONMENTAL DETERMINATION: This project has been determined to be Statutorily Exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act, (Public Resources Code 21080(b) (5) CEQA Section 15270 – Projects which are Disapproved).

STAFF ADDENDUM:

On September 17, 2003, the Zoning Hearing Officer adopted findings to deny Conditional Use Permit #4212. The applicant, Anthony J. Palazzola, had filed a Conditional Use Permit application to allow the construction of two additions totaling 5,500 square feet to an existing 20,100 square foot convalescent facility at 716 S. Fair Oaks Ave. The applicant proposes to construct the two additions on an adjacent property to the south that is currently used as parking for the facility. Section 17.76, Nonconforming Uses and Structures, requires the approval of a Conditional Use Permit in order to expand a non-conforming use. However, Section 17.76.030A states, "There shall be no expansion of a nonconforming use onto an additional lot, adjacent or otherwise". The staff had recommended denial because the lot to the south, as determined by the Zoning Administrator, is an adjacent lot and secondly because expansion of the use is not consistent with the South Fair Oaks Specific Plan.

The applicant and his representative spoke in favor of the application. There were no other speakers. One letter in favor was received from the Chief Executive Officer of Huntington Hospital.

The applicant has filed an appeal of the Zoning Hearing Officer's decision to deny the Conditional Use Permit. The argument contained in this appeal is that the parking lot to the

CONDITIONAL USE PERMIT #4212
BOARD OF ZONING APPEALS
STAFF REPORT – January 21, 2004
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south is part of the site because it has operated as parking for the convalescent facility since the early 1980's and was used to satisfy a requirement for off-site parking as a part of an approval of a Use Permit in 1985. Additionally, the applicant believes the site is appropriate for this use. Further, no one spoke in opposition to the Conditional Use Permit at the public hearing.

The primary issues before the Board of Zoning Appeals is (1) whether or not the lot to the south is a separate lot or whether the lot was approved as part of the convalescent facility; and (2) if the lot is considered part of the site, whether or not the findings can be made to approve the expansion.

The appellant's written appeal refers to Use Permit #1501 approved by the Board of Zoning Appeals in April of 1985. This Use Permit included the approval to enlarge the facility within the boundaries of its site, a Variance to provide 24 on-site parking spaces and a minimum of seven (7) off-site parking spaces where 38 are required, a Variance to allow to elimination of a driveway that connected two (2) one-site parking areas, and a Variance to provide one (1) loading zone where two (2) were required.

In the Conditions of Approval for UP#1501, the requirement for the seven (7) off-site parking spaces states makes no mention of a specific location that was to be used to satisfy this requirement. It states, "A minimum of seven (7) parking stalls shall be provided off site within a radius equal to the distance between the parking garage serving 50 Allesandro Place and the subject property." The appellant's written appeal asserts that because the adjacent property was utilized to satisfy this requirement and was used as additional parking for the facility prior to the approval of UP#1501, the convalescent use is therefore tied to the parking lot.

Staff continues to recommend that the application be denied. Nowhere in the application file for UP#1501 is the parking lot included as a part of the convalescent use. The site plan does not show it, the legal description does not include it, and the notification radius map does not include it as a part of the subject site. Additionally, there is nothing in the file or minutes that gives any indication as to where the parking requirement would be satisfied. The documents show that the applicant would obtain parking off-site within certain distance parameters. The application was never amended or modified to include this parking lot. If the parking lot to the south were part of the site and the 1985 application, then there would have been no need for the variance to have parking "off-site" since the parking would have been "on-site" and meet the requirements of the code.

The argument made by the appellant is that the approval of the expansion in 1985 approved the convalescent facility on this lot because this is where the required off-site parking was located. However, it is not unusual for projects in Pasadena to have parking off-site by a lease or rental agreement. The current code has provisions for off-site parking spaces. Additionally, in various parts of the City there are Parking overlay (PK) districts that allow commercial parking to be located in residential districts. If approval of parking off-site constitutes approval of a use at the parking lot site, it would lead to unintended results. For example, if the City approved a Bar or Tavern, and it has leased parking off-site, then following the logic of this argument, the approval would mean that the City has also approved a Bar or Tavern at that parking lot regardless of the land use restrictions applicable to the parking lot.

**CONDITIONAL USE PERMIT #4212
BOARD OF ZONING APPEALS
STAFF REPORT – January 21, 2004
PAGE 3**

Therefore, staff has determined that the proposed expansion is not permitted under Section 17.76.030A of the Zoning Code that prohibits the expansion of a non-conforming use onto an additional property.

The applicant argues that the lots merged into a single site when the Huntington Hospital became owner of both lots in 1988. Because the lots were owned by the same entity does not automatically merge the lots. The lots would have to be merged either through a lot line adjustment or a parcel map. There is no record that this occurred.

In addition, the appeal states that the City has previously recognized that the parking lot property is a part of the convalescent facility in the past by approving a sign for the convalescent facility that is located on the parking lot property. Staff acknowledges that there is signage for the facility on the parking lot property but the only sign permit found in the City records is from 1958 and it is not clear as to what the signage is for. Additionally, as this facility had not been built at that time, it is not likely that this sign permit was for this building. Regardless, the past approval of a sign does not 'tie' the use of the two properties together.

The appeal also states that the site would not accommodate another use but provides no evidence that this is so. According to proposed plans the property is 75 feet by 184 feet (13,800 square feet). The IG zoning district permits a wide variety of commercial and industrial uses from retail and restaurant uses to all types of industrial uses as defined in the Zoning Code. There is no required front, side, or rear setback, but because the property is located on Fillmore Street, the minimum corner-yard setback increases from five (5) feet to ten (10) feet.

Finally, there has not been any information presented that has caused Staff to re-think its denial recommendation. Staff continues to recommend denial of the Conditional Use Permit.

ZONING HEARING OFFICER ADDENDUM:

The public hearing concerning this matter was conducted on September 17, 2003. The applicant and applicant's representative spoke in favor of the application. There was no opposition to the request.

The applicant's testimony in support of the request was:

1. The south portion of the property, which is now used for parking for the convalescent facility, and is where the addition to the facility is proposed, was a part of the original Conditional Use Permit approval. Therefore, this proposed expansion would not be on a new site, which is specifically not permitted; it would be on an existing nonconforming Conditional Use Permit site.
2. Convalescent facilities are or should be considered consistent with the South Fair Oaks Specific Plan.

The staff recommended denial. I concurred with the staff recommendation and denied the request. The staff has identified the south portion of the property where the proposed addition would be constructed as not part of the original Conditional Use Permit approval. The use is now nonconforming. The Code clearly prohibits the expansion of nonconforming uses into an adjacent lot not entitled for that use. The proposed use is inconsistent with the IG district in

**CONDITIONAL USE PERMIT #4212
BOARD OF ZONING APPEALS
STAFF REPORT – January 21, 2004
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which it is located. The proposed project also is not consistent the City's General Plan and the South Fair Oaks Specific Plan. The South Fair Oaks Specific Plan only allows Convalescent Facilities in the area south of Hurlbut Street and west of Fair Oaks Avenue.

Attachments:

- Attachment A – ZHO and ZA Recommended Findings of Fact
- Attachment B – Staff Report, September 17, 2003
- Attachment C – Decision Letter
- Attachment D – Appeal Application
- Attachment E – Correspondence for ZHO hearing
- Attachment F – Correspondence for BZA hearing
- Attachment G – Site Plan