

# Agenda Report

**TO:** CITY COUNCIL

**DATE:** MARCH 15, 2004

**FROM:** CITY MANAGER

**SUBJECT:** CALL FOR REVIEW OF CONDITIONAL USE PERMIT #4212 TO ALLOW THE EXPANSION OF A NON-CONFORMING USE (GEM TRANSITIONAL CARE), 716 SOUTH FAIR OAKS AVENUE.

## **CITY MANAGER'S RECOMMENDATION:**

1. It is recommended that, the City Council acknowledge that this action is categorically exempt from CEQA; and
2. Uphold the decision of the Board of Zoning Appeals to deny the conditional use permit application to allow the addition of 5,500 square feet to the existing convalescent facility at 716 South Fair Oaks Avenue.

## **EXECUTIVE SUMMARY:**

On April 22, 2003 an application was submitted for a Conditional Use Permit 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 case was heard on November 19, 2003 by the Zoning Hearing Officer. The Zoning Hearing Officer denied the application because the Zoning Code prohibits the expansion of non-conforming uses onto additional properties, adjacent or otherwise and because the proposal is not consistent with the General Plan and South Fair Oaks Specific Plan.

The applicant appealed the Zoning Hearing Officer's decision to the Board of Zoning Appeals. The appeal was heard at the January 21, 2004 hearing. The Zoning Hearing Officer's decision to deny the application was upheld by the Board, by a 3-1 vote. Those who voted in favor of upholding the Zoning Hearing Officer's decision determined that the project was an expansion of a nonconforming use onto an adjacent lot. There were no speakers from the public.

## **BACKGROUND:**

GEM Transitional Care Center is located on the east side of South Fair Oaks Avenue, just north of Fillmore Street. The one-story, 20,100 square foot facility currently accommodates 75 beds. The facility is classified as a 'Convalescent Facility' by the Zoning Code because it provides 24-hour care for persons requiring medical attention, but does not include surgical or emergency medical services.

The applicant proposes to construct two additions of approximately 300 and 5,200 square feet on an adjacent property to the south that is currently used as parking for the facility. According to the applicant, the facility operates inefficiently because of state staffing regulations and nursing station locations. It is the applicant's belief that the construction of a new laundry room and adding 26 beds (while losing two

because of the expansion) will allow the facility to operate more efficiently. Upon the expansion, the convalescent facility would increase its capacity to 99 beds.

The facility is currently a non-conforming use, as convalescent care facilities are not permitted by the IG (Industry, General) zoning district in which the facility is located. It was made non-conforming when the property was re-zoned as IG in 1985. Section 17.76 of the Municipal Code, 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".

It is the applicant's position that because the southern property is used as parking for the facility, the convalescent use is already established on the property and therefore the use is not expanding onto an additional lot.

The applicant has referenced 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 off-site parking spaces where 38 are required, a Variance to allow to elimination of a driveway that connected two one-site parking areas, and a Variance to provide one loading zone where two were required.

In the Conditions of Approval for UP#1501, the requirement for the seven off-site parking spaces makes no mention of a specific location that was to be used to satisfy this requirement. It states, "A minimum of seven parking stalls shall be provided off site within a radius equal to the distance between the parking garage serving 50 Allessandro 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.

However, in the application file for UP#1501, the parking lot is not 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. Allowing parking on a different site does not mean that the use can be established on the parking lot.

Therefore, staff has determined, and both the Zoning Hearing Officer and the Board of Zoning Appeals have upheld, 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.

#### **GENERAL PLAN CONSISTENCY:**

The proposed project is not consistent with the land use policies of the City's General Plan. Specifically, the project is not consistent with Policy 10.5 (Industrial Businesses), which promotes the protection of industrial districts and restricts IG zoning districts to industrial businesses and ancillary retail and service activities.

**SOUTH FAIR OAKS SPECIFIC PLAN CONSISTENCY:**

The South Fair Oaks Specific Plan Area encompasses the light industrial zone along Fair Oaks and Raymond Avenues. The primary intent of the specific plan is to encourage commercial activities with a particular emphasis on technology based enterprises. Residential land uses were intentionally directed away from the core area and toward the perimeter of the zone along existing residential neighborhoods. Although the convalescent facility is technically an institutional use, it does have residential character and is treated as a residential use for the purposes of the Specific Plan. Further, convalescent facilities, although not permitted through the Specific Plan area, were identified as an allowed use on the west side of South Fair Oaks Avenue, and south of Hurlbut Street.

Allowing for the expansion of this non-conforming convalescent land use on this site would be inconsistent with the Specific Plan. The interests in keeping the area near a convalescent facility quiet, and the active light industrial vision of the Specific Plan are at odds.

At the Board of Zoning Appeals hearing, it was recognized that in the time since the Specific Plan was adopted, St. Luke's Hospital has closed. Given the resulting need for more medical beds, this area may be an appropriate location for this type of use given its close proximity to Huntington Hospital. However, it was pointed out that in order to allow this use the Specific Plan would have to be amended. By amending the Specific Plan, the Zoning Code implementation of the Specific Plan (SP-2) would therefore be similarly altered to allow the 'Convalescent Facility' use. This text amendment could allow the use either throughout, or in a specific portion of the Specific Plan area.

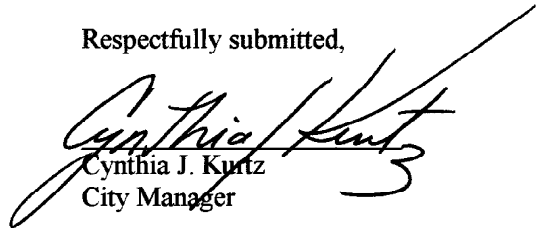
**ENVIRONMENTAL DETERMINATION:**

This project has been determined to be Categorically Exempt (Class 1) from environmental review pursuant to the guidelines of the California Environmental Quality Act, CEQA Guidelines, Section 15301, Existing Facilities.

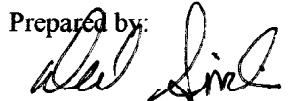
**FISCAL IMPACT:**

Because the property to the south is currently used for parking, the approval of this application and subsequent development of the property would result in an incremental property tax increase.

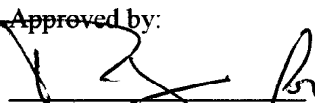
Respectfully submitted,

  
Cynthia J. Kurtz  
City Manager

Prepared by:

  
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Approved by:

JRP   
Richard J. Brueckner, Director  
Planning and Development Department

**Attachments:**

- A. Proposed Plans for Expansion
- B. Appeal Application, Board of Zoning Appeals
- C. Decision Letter and Findings of Fact, Board of Zoning Appeals