

# Agenda Report

**TO:** CITY COUNCIL

**DATE:** FEBRUARY 1, 1999

**FROM:** CITY MANAGER

**SUBJECT:** CALL FOR REVIEW OF VARIANCE #11285 AT 21 EAST VILLA STREET

**CITY MANAGER'S RECOMMENDATION:** It is recommended that after a public hearing, the City Council:

1. Acknowledge that the project is categorically exempt from CEQA as Class 1 for existing facilities;
2. Adopt the findings contained in Attachment B and the conditions of approval contained in Attachment C and approve the variance and conditional use permit request and variance.

## **EXECUTIVE SUMMARY:**

Approval of this application will allow an existing catering truck located at the northeast corner of Villa Street and North Fair Oaks Avenue to continue to operate as it has done for the past 10 to 11 years. The recommendation is to approve a variance from the 500-foot distance requirement for take-out restaurants and a conditional use permit to operate beyond 10:00 p.m. to 12:00 midnight. Staff's recommendation of approval was based on conditions that would be imposed on the truck's operation such that impacts would be at a minimum. The recommendation also considers that the truck has been operating on the subject property for approximately 11 years without any substantial impacts to the surrounding area, and that the site contains bathroom facilities and has room to provide on-site parking. Although there is one other take-out restaurant located within 500 feet of the subject site, this other take-out restaurant does not operate beyond 10:00 p.m. Consequently, staff felt that the proximity of this restaurant would not result in any impacts to the surrounding area due to the different hours of operation. The Zoning Hearing Officer initially heard this application in July of 1998. The Zoning Hearing Officer approved the variance for the location of the use but denied the extended hours of operation. The application was appealed to the Board of Zoning Appeals which subsequently denied the entire application on the grounds that they could not make the finding of exceptional or unusual hardship. In November of 1998 the City Council decided to call for review this application so that the Full City Council could review it.

## **BACKGROUND:**

On October 28, 1996 the City Council adopted a recommendation from the City Manager to classify catering trucks or Mobile Food Preparation Units (MFPU) that operate at one site for more than one hour as "take-out restaurants." The purpose of this policy decision was to treat

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the catering trucks the same as other take-out restaurants in terms of parking, hours of operation, distance requirement and other zoning requirements. The adoption of an ordinance by the City Council was the culmination of a two-year study related to street vending. This study was begun as a result of code enforcement receiving complaints regarding catering trucks, ice cream vendors and push cart vendors. Some of these complaints came from business owners who perceived unfair treatment since they were forced to comply with such zoning requirements as the hours of operation, distance requirement and parking while catering trucks did not. Other complaints centered on the late night operations of the catering trucks near residential districts, loud noise from customers, loitering and excessive littering. In classifying the catering trucks as take-out restaurants, the trucks are subject to all the requirements of the Zoning Code as any other take-out restaurant locating in the City. It was not the intent of this new policy to force the catering trucks out of business, but to bring them in conformance with zoning regulations. Since the enactment of this policy, the City has been contacting each catering truck operator in order to achieve compliance with the Zoning Code. Consequently, this application is the result of the City's new ordinance that treated catering trucks as take-out restaurants.

The applicant is requesting a variance to the 500-foot distance requirement between take-out restaurants, and a conditional use permit to operate a take out restaurant beyond 10:00 p.m. The applicant proposes to continue operation of a catering truck that is located on a small paved area at the northeast corner of Fair Oaks and Villa Street. According to the applicant the use would operate between the hours from 6:00 a.m. to 2:00 a.m. seven days a week. Staff's recommendation was to approve the variance for the distance requirement and the use permit for extending the hours of operation. Staff's recommendation was to limit the hours of operation from 6 p.m. to 12 midnight, daily.

The Zoning Hearing Officer heard the application on July 15, 1998. He approved the variance application for the distance requirement but denied the extended hours of operation. The Zoning Hearing Officer limited the hours of operation from 6 p.m. to 10 p.m. because of his concerns about the impact of the use on adjacent uses. The decision of the Hearing Officer was appealed by the Project Area Committee (PAC) for the Fair Oaks area. The PAC had concerns about the possibility of an over-saturation of take-out restaurants, lack of landscaping and vehicle traffic and circulation issues.

On October 21, 1998, the Board of Zoning Appeals conducted its hearing to consider the PAC's appeal of the Hearing Officer's decision. At the public hearing the staff continued to make the same recommendation to approve the variance and limit the hours of operation from 6 p.m. to 12 midnight. The Board of Zoning Appeals denied the application on a vote of 3 to 2. The Board of Zoning Appeals stated that their reason for denying the application was because they could not make the variance findings for the distance requirements. The variance process requires that a finding of exceptional or unusual circumstances associated with the site be made. The Board of Zoning Appeals did not think that there was anything unusual or exceptional about this particular site that warranted the granting of the variance.

Concerns were raised by the City Council about the denial of the application by the Board of Zoning Appeals. In November, the City Council decided to call for review this application. Councilmembers raised concerns about this use being put out of business after having operated at this site for such a long period of time without any apparent negative impacts. Issues were also raised about the needs of the adjoining community to have reasonably priced food that is within walking distance to their residences.

#### **ANALYSIS:**

The location of this application is on an 8,130 square foot corner lot that contains a two-story storage and warehouse facility. The building is set back approximately 50 feet from the Fair

Oaks Avenue frontage. The perimeter of the site is enclosed with a six-foot high fence except for the small triangular paved corner of the property where the catering truck has been located. There is a take-out restaurant on the adjoining property to the north. North Fair Oaks Avenue is a mixture of residential, commercial and industrial uses. Residential districts are located on either side of the North Fair Oaks corridor.

In reviewing this application, staff had a number of concerns regarding the potential impact of this proposal. A number of concerns were also expressed at the Fair Oaks Project Area Committee (PAC) meeting held July 8, 1998. These concerns included the following:

1. The lack of adequate parking for mobile catering trucks.
2. The lack of bathroom facilities.
3. The increased traffic and noise during late hours generated by catering trucks.
4. The late hours those catering trucks operate.
5. The number and proximity between catering trucks.
6. Security.

It was staff's opinion that these issues could be resolved through conditions of approval. According to the applicant a catering truck has been located on this site for approximately 11 years, and there has been a minimum number of complaints about the operation of the use. The site contains bathroom facilities. There is sufficient on-site parking for the existing storage use as well as the catering truck. As indicated earlier, there is only one other take-out restaurant within 500 feet and that use is located on the adjacent lot to the north. The neighboring restaurant does not operate beyond 10:00 p.m.; thus the proximity of these uses would not result in substantial impacts to the surrounding area due to the different hours of operation and conditions restricting the hours of operation for the catering truck. Staff recommended to the hearing officer that the hours of operation be limited from 6 p.m. to 12 midnight, daily, so that there would be a minimum of overlap between the two uses. Staff recommended a variety of other conditions to further minimize the impact of the catering truck. These conditions included: requiring trash containers, requiring the applicant to maintain the area free of litter, restricting the use of amplified music, requiring bathroom facilities, requiring the posting of "no loitering" signs, and limitations on the placement of signs that advertise the use. These conditions are included in Attachment C.

The basis for the appeal by the PAC included the following issues: concerns about the over-saturation of take-out restaurants in this area, the need for additional landscaping, and vehicle traffic and circulation problems.

#### ***Over-saturation of take-out restaurants***

The Zoning Code requires take-out restaurants (with or without a drive-thru window) to be located a minimum of 500 feet from other take-out restaurants. The purpose of this requirement is to prevent an over-saturation of take-out restaurants in a commercial area. However, this provision does not apply to restaurants. The distinction between a restaurant and a take-out restaurant is whether the food is served on disposable containers or on permanent diningware.

It is staff's opinion that the area does not have an over-saturation of take-out restaurants. There are no drive-thru restaurants within the corridor and only four take-out restaurants. The largest of the take-out restaurants is the Church's Chicken located at Fair Oaks and Orange Grove Blvd. There are three, small family-run take-out restaurants also without drive-thrus, including Moy's Chinese Palace also at Fair Oaks and Orange Grove, Maritza's Mexican Food at 752 North Fair Oaks and La Estrella's Tacos at 502 North Fair Oaks. Only La Estrella's Tacos is within 500 feet of the catering truck site. See Attachment A, a location map of take-out restaurants on North Fair Oaks Avenue. There are also two restaurants within the area, but these are not subject to the

distance requirements. There have been proposals to locate new take-out restaurants within the Renaissance Plaza shopping center. However, this shopping center is more than 500 feet from the catering truck site.

As indicated by staff earlier, a catering truck has been operating on the subject property for approximately 11 years without any substantial impact to the surrounding area apparent to staff. The site met the requirement of Section 10.40.200, which regulates catering trucks in that the site contains bathroom facilities and has room to provide on-site parking. Although there is only one other take-out restaurant located within 500 feet of the subject site, this restaurant does not operate beyond 10:00 p.m. Consequently, staff felt that the proximity of these restaurants would not result in any adverse impacts to the surrounding area due to the different hours of operation, the limited size of this use, and long term record of this use being on this site with a minimum impact. Additionally, staff does not believe that this area has an over-saturation of take-out restaurants or is likely to have such an over-saturation. The only take-out restaurant is on the adjoining lot to the north. There are no other take-out restaurants between Maple Street and Orange Grove Boulevard.

***No conditions requiring the applicant to provide landscaping for a take-out operation***

No condition requiring landscaping for the MFPU was recommended. The site has a minimum of landscaping. Since the area that the catering truck is located has been paved for many years, there was no recommendation for additional landscaping.

***Vehicle traffic and circulation problem***

During staff's inspection of the subject property, vehicle circulation and traffic problems were not readily apparent. The issue of traffic problems relating to the catering truck was not analyzed or considered in staff's recommendation of approval because the use services adjacent neighborhoods and many of the customers either walk or ride bikes to the catering truck site. Vehicle circulation problems associated with the catering truck arose during the public testimony portion of the public hearing. Since the initial public hearing the traffic engineer from the Department of Transportation and Public Works has visited the site and confirms that vehicles do park in the red zone located in front of the catering truck. To address illegal parking associated with this operation, staff recommended a condition requiring the applicant to post on-site signs requesting patrons not to park on the public right-of-way in front of the catering trucks. A second condition is also recommended which requires the applicant to provide on-site crowd control devices to prevent customer spillage onto the public right-of-way. Such devices may include barricades, railing, rope and stanchion, planters, and/or combination of these devices. These conditions have been included within the overall conditions of approval in Attachment C.

***Finding of exceptional or unusual circumstances***

The Board of Zoning Appeals denied this application because they could not make the finding of exceptional or unusual circumstances. The Zoning Code explains the purpose of a variance and says that special circumstances may result from the size, shape, or dimensions of a site or the location of existing structures or from geographic, topographic or other physical conditions on the site or in the immediate vicinity. As discussed earlier in this report, the intent of the distance requirement for take-out restaurants is to prevent an over-saturation of such uses.

It is staff's recommendation that the finding of exceptional or unusual circumstances can be made based on the geography of the area and the physical condition of the immediate vicinity because of the size, and the existing development within this commercial area.

This lot is located in an area in which there are a number of large properties with single uses.

These uses prevent the establishment of additional take-out restaurants. Directly to the south is Throop Lumber, which inhabits about 2/3 of this block. On the west side of the street is a two-story office building that houses the Unemployed Insurance Appeals Board, as well as Tru-Value Hardware and Smart and Final.

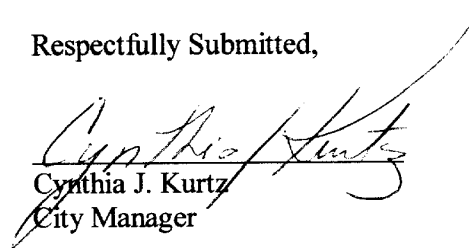
To the north, the west side of the street is dominated by two uses, the Postal Services has its repair facilities and there is an auto repair shop just north of the postal facilities. On the east side, are smaller industrial buildings to the north as well as residential uses. These large uses reduce the possibility of additional take-out restaurants within the area from being established. These uses prevent the area from being developed with small uses such as take-out restaurants. It is only to the north in the existing blockface is there a possibility of a take-out restaurant since these lots are small and separately owned. North on this blockface, the street is devoted to residential uses.

In conclusion, the recommendation is for approval of this catering truck because an oversaturation of take-out restaurants does not exist on the Fair Oaks corridor. Additionally, the finding of exceptional or unusual circumstances can be made based upon geographic circumstances. The use can operate with a minimum of neighborhood disturbances as been demonstrated over the past 11 years. Conditions of approval will ensure that the use operates so that it is compatible with the neighborhood.

**FISCAL IMPACT:**

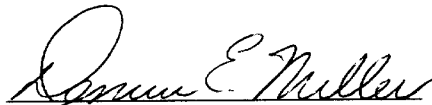
Approval of this application will not have a fiscal impact. The use will continue to pay \$139 for its annual business license and its annual health inspections that are \$300 a year.

Respectfully Submitted,



Cynthia J. Kurtz  
City Manager

Prepared by:



Denver E. Miller  
Principal Planner

Approved by:



Darrell L. Lewis  
Director of Planning