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SECONDARY SUBMISSIONS

DAY OF HEARING SUBMISSIONS

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South Valley Area Planning Commission
CITY OF LOS ANGELES

Re: **South Valley Area Planning Commission August 26, 2021 Agenda Item No. 5**
4801 N. Laurel Canyon Blvd. (APCSV-2019-1481-SPE-SPP-CU-ZV)

Dear Planning Commissioners and City Staff:

I am proving this revised and summary letter because I have been advised that the Commission is not accepting comments exceeding 2 pages. I had submitted a comment letter yesterday that was 5 pages and a separate letter transmitting a peer review of the noise study. I believe your refusal to accept my 5 page comment letter violates the Brown Act and your own procedures set forth on your agenda. I ask that my prior letters be made part of the record.

A. The “Project” Is Not Correctly Defined And Is Subject To CEQA

Pursuant to Section 15378 of the CEQA Guidelines, a “project” means the whole of the action. City staff appears to define the “project” as being limited to the actual construction of the car wash. The staff report does not consider that the project includes the approval of a specific plan exception, approval of a conditional use and a zoning variance.

B. The Categorical Exemption Established by CEQA Guideline 15303 Is Not Applicable To The Project

The CEQA Regulation 15303 exemption is not applicable. The full scope of the project does not fall within the 15303 exemption. Even if the “project” is limited to the construction of the car wash, such a project does not constitute a small structure such as a garage, carport, patio, etc. The use of the exemption is improper.

C. The Use Of A Variance To Approve The Use Is Illegal

The establishment of a car wash at the subject site is not permitted by the City’s zoning ordinances. A variance cannot be granted to allow a use unauthorized by the zoning ordinance. (Gov. Code § 65906.) “A zoning variance, and by analogy a specific plan exception, must be ‘grounded in conditions peculiar to the particular lot as distinguished from other property’ in the

specific plan area. Unnecessary hardship therefore occurs where the natural condition or topography of the land places the landowner at a disadvantage vis-à-vis other landowners in the area, such as peculiarities of the size, shape or grade of the parcel.” *Committee to Save the Hollywood Specific Plan v. City of LA* (2008) 161 Cal.App.4th 1168, 1183. Further, the special circumstances pertaining to the property must be such that the property is distinct in character from comparable nearby properties. LAMC § 11.5.7 F also requires a finding, like a variance, “[t]hat there are exceptional circumstances or conditions applicable to the subject property involved or to the intended use or development of the subject property that do not apply generally to other property in the specific plan area.” LAMC § 11.5.7 F (b).

Staff’s proposed findings state that the “strict application of the specific plan creates an unnecessary hardship because it limits the improvement and expansion of an existing legal use to include a service on site which will mitigate total vehicle trips and be desirable to the public convenience.” The staff report also points out that the current use as a gas station and convenience store were established prior to the establishment of the Specific Plan in 1993. Staff argues that allowing for customers to receive a car wash at this location further allows the applicant to develop a use which is typically accessory to such gas station uses. The fact the use preexisted the Specific Plan, which does not permit the use, means that the use is a “legal nonconforming use” which may not be expanded. *Hansen Bros. Ent. v. Bd. of Supvs. of Nevada County* (1996) 12 Cal.4th 533, 551. Staff is improperly advocating the expansion if a nonconforming use.

The staff report analysis is not focused on the actual characteristics of the subject site. The proposed findings point out that the proposed use is not allowed in the subject zone. The proposed findings then indicate that, because the site already has an existing automotive use and is big enough and located near a freeway, it can handle the proposed use. This is not a proper variance or specific plan exemption analysis.

The fact that the City may have previously allowed a car wash on another property, does not justify the failure in this case to properly consider the legal variance requirements.

If the applicant or the City desire to proceed with the use, they are required to seek a change in the zoning ordinance and comply with all of legal requirements necessary for such a change. Such requirements cannot be avoided by use of the variance procedure.

For all of the above reasons, the Planning Commission should deny the proposed project.

Sincerely,



Eduardo Olivo
Attorney at Law