

PLANNING COMMISSION MINUTES OF APRIL 14, 2008

2007-0943 – ABC Tree Farms [Appellant] **Matteson Carol J Trustee & Et Al** [Owner]: Appeal of a decision by the Administrative Hearing Officer denying a modification of a previously approved Special Development Permit to allow year-round use of the site including pumpkin sales and Christmas tree lot. The property is located at **803 W. El Camino Real** (at Hollenbeck Ave.) in a C-2 / ECR (Highway Business / Precise Plan for El Camino Real) Zoning District. (APN: 201-21-007) SB

Surachita Bose, Associate Planner, presented the staff report. She said the applicant clarified that the lease of the site expires in February 2015 and not 2016 as indicated in the report. She said staff recommends that the extended use of bounce houses not be allowed at the site between January and September and that the appeal be denied and the decision of the Administrative Hearing Officer to deny the modification to the Special Development Permit (SDP) be upheld.

Comm. Babcock confirmed with staff that if the Commission denies the appeal that the original permit is still in place allowing bounce houses from September to January. Comm. Babcock asked staff what exactly defines a bounce house. Ms. Bose provided a color rendering of what the applicant is proposing. Comm. Babcock further asked if anything that is pumped up with air is a bounce house. **Trudi Ryan**, Planning Officer, said there is a definition in the sign ordinance portion of the code that defines a bounce house and explained that it is a structure inflated by air intended for bouncing use. Comm. Babcock discussed with staff the different sizes of bounce houses explaining that there is no size limit listed in the conditions for the original permit. Ms. Bose said that the original permit only allows for one bounce house on the site and the applicant had up to three at one time on the site in 2007. Comm. Babcock commented that the proposal includes a nursery use from January through May, which staff seems to feel positive about, and a summer fun use including bounce houses from June to August, which staff recommends against. She further commented that though staff is supportive of the nursery plans, staff is recommending against the entire proposal. Ms. Bose said that staff's main concern is the bounce houses and their negative visual impact. Ms. Bose said that part of the reason the project was denied and staff is recommending denial is due to the history of the site with violations and the applicant not meeting the previous conditions of the original SDP. Ms. Bose added that staff has no concerns regarding the nursery use.

Comm. Klein commented that the applicant was not complying with the conditions of the original SDP by having two bounce houses on the site and asked what the process for dealing with the non-compliance is. Ms. Bose said the process would be handled by the Neighborhood Preservation Division who

would review the code compliance, which staff initiated on this site, as the applicant had not complied with the fencing, parking, or some of landscape improvements required. She said the applicant did eventually follow through with the conditions. Comm. Klein asked if there was information about the parking affecting the neighbors near the site. Staff said the neighbors were not directly asked and the proposed site and shopping area behind this site share the same landlord. She said no parking complaints have been made to the City regarding these sites.

Vice Chair Rowe referred to page 3 of the report and asked staff what the 70 foot required setback included. Ms. Bose said the 70 foot setback from the property line is the minimum setback for C-2 zoning. She said a seasonal tent with a 23 foot setback, which was approved through the original permit, does not meet the setback requirement and was approved for the temporary use. She said the applicant is requesting approval of a flower canopy and if the Commission approves this appeal, the conditions require that the flower canopy comply with the 70 foot setback. Ms. Ryan said the zoning code says the setback is 70 feet which would only allow $\frac{1}{4}$ of the site to be available for use. Vice Chair Rowe said she is concerned about the proposed 0 foot setback for the flower canopy. Vice Chair Rowe referred to page 4 of Attachment B regarding trash containers and said the conditions seem to indicate that the trash would not be cleared out very often. She said she wondered if there is a requirement that trash receptacles be placed around the building and that a dumpster be placed at the rear of the site. Ms. Ryan said a requirement could be addressed as the part of the detailed recycling and solid waste plan. Vice Chair Rowe referred to page 4 of Attachment B and confirmed with staff that if an item cannot fit in the building then it cannot be stored on the lot.

Chair Sulser opened the public hearing.

Jerry Klima, applicant/appellant, and leaser of the property discussed the various sizes, heights and colors of the bounce houses that he has used and are available. He said that the largest bounce structure would be 1,200 square feet and the smallest structure would be 225 square feet. He said the structures can be designed to meet staff's requirements. He said they are not trying to be inconsistent with the area and are open to doing whatever staff and the Commission require. He said he would like to add bounce houses on the site from June to August and that he no longer wishes to use the bounce houses in November and December. He said he is hoping to bring the additional bounce houses to the community to provide something for kids to do during the summer. He said his current SDP allows him three months for bounce houses and he asked if it would be possible to not have the bounce houses in November and December and instead have the bounce houses Thursday through Sunday during the summer months. He said that Halloween and Christmas generate more parking and he feels there would be less parking impact during the summer. He said a lot of local residents would walk to the site. Mr. Klima said

he would like to provide entertainment that is family oriented aimed at the under 12 age group. He said in October of 2007 he obtained over 450 signatures of people who are in support of the project. He said he is willing to mitigate any visual impacts if staff is concerned about the look of the property. He said the bounce houses would not impact 24 hours a day as they would only be inflated when in use. He said he would be willing to remove the proposed seating if it would ease parking. He said, regarding trash, there are a lot of problems with trash along the outside fence line, as this site is by the bus stop. He said there was question about the multiple bounce houses that he had on the site, stating that he had the multiple bounce houses as a safety feature to accommodate various ages. He said each ride is monitored by individual operators.

Comm. Babcock asked Mr. Klima about the proposed nursery sales. He said he felt that staff was in support of the nursery. He explained this would not be a big business due to the size of the site and that the nursery would run from about January to May.

Vice Chair Rowe discussed with the applicant a diagram of the site which shows placement of the bounce houses with the largest house closest to El Camino Real, which Vice Chair Rowe did not favor. The applicant said the bounce house placement is flexible as the applicant would be installing underground electricity and new poles allowing more placement choice. Vice Chair Rowe asked Mr. Klima how he would tame down the colors of the bounce houses so they blend in. Mr. Klima said that their bounce house supplier can make whatever shape and color requested. Vice Chair Rowe and the appellant discussed the deflating of the houses with Mr. Klima confirming that the houses would be deflated each day and covered with a tarp when not in use. Vice Chair Rowe said that Mr. Klima said he could remove some of the tables and asked if that meant there would be more parking. Mr. Klima said that removing the tables would not provide additional parking, just more space on the lot. Mr. Klima explained the problem with the parking and said there is only access from Pastoria Avenue. He said he cannot provide a turn around, discussed some options, and added that even with a project redesign he would not meet the minimum 54 spaces as required by code.

Mr. Klima said the issues are negotiable and he will do whatever is required for a project approval. He commented that the bounce houses are an important part of his business and to limit the allowance to one bounce house is more of an insurance risk than if there were more houses allowed. He said he believes there is a need in this community for bounce houses in the summer.

Chair Sulser closed the public hearing.

Comm. Simons asked staff about this kind of service, if there are other places in the City that have anything similar to this, and would there be another place in the City that would allow this type of service to be placed. Ms. Ryan said this

application is a collection of different uses, which makes it a unique situation. Ms. Ryan said any one of the various uses can be found in other parts of the community and this site is unique because the proposed outdoor uses changing with each season. Ms. Ryan said this is a difficult site due to the smaller size and the corner location. Ms. Ryan said there are no current similar applications for these combined uses for another site in the City.

Vice Chair Rowe said she is concerned that this permit is for eight years and asked if there is anyway that someone can ask for a continuance of this use past the eight year mark. Ms. Ryan said that if the Commission approves this use that staff is recommending that the use sunset at the eight year mark. Ms. Ryan said for the use to continue at this location that a new SDP would be required. Vice Chair Rowe commented that she is concerned about setting a precedent.

Comm. Simons moved for Alternative 1, to deny the Appeal and uphold the decision of the Administrative Hearing Officer to deny the modification to the Special Development Permit. Vice Chair Rowe seconded the motion.

Comm. Simons said he agrees with staff's conclusion. He commented that when a decision on an application is on the edge or borderline, that the past history of a site comes into the decision making process. Comm. Simons said the history of this site includes a number of different issues that he would be concerned about.

Vice Chair Rowe said she would be supporting the motion based on the two findings the Commission has been given to work with.

Comm. Klein said he would be supporting the motion. He commented that the site has definitely improved over the way it looked several years ago due to the applicant meeting the previous use permit conditions. Comm. Klein said the applicant is asking for a permit for other uses, which he is partially supportive of. He said he thinks there are other uses that could be allowed on this site and that the proposal tonight is not the final version. He said there would have to be a lot of negotiation and this is not the forum for that negotiation. Comm. Klein suggested the applicant further work with staff to address the issues and conceivably apply for a new use permit when the issues are resolved.

Ms. Ryan advised that if the Commission chose to, they could continue this item and have the applicant further work with staff and then return to the Commission with a revised proposal. Ms. Ryan said if the motion prevails that the applicant can appeal the decision to the City Council.

Comm. Simons said that he would not necessarily agree to continue the item, but said if the Commission chose to continue this item, that he would like the Planning Commission to have a chance to review the item in Study Session so they could share their concerns.

Comm. Babcock said, as the motion stands, she will be supporting the motion. She said she could have supported the use of the nursery from January to May and the main problem for her is the bounce houses. She said she does not feel this site on El Camino Real is the appropriate place for bounce houses. She said she is also concerned about the use of the temporary structures with no requirements about their maintenance. She said she would prefer to deny this application tonight and recommend the applicant further work with staff and present an entirely new application. Comm. Babcock said she does not support adding bounce houses along El Camino Real.

Chair Sulser said he would be supporting the motion. He said he recognizes that this is a difficult site to work with and the site has definitely been improved. He said he cannot make the findings and the current application is not consistent with the Precise Plan for El Camino Real.

ACTION: Comm. Simons made a motion on 2007-0943 to deny the Appeal and uphold the decision of the Administrative Hearing Officer to deny the modification to the Special Development Permit. Vice Chair Rowe seconded. Motion carried, 6-0, Comm. Hungerford absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than April 29, 2008.