

PLANNING COMMISSION MINUTES OF JULY 26, 2010

2010-7357- Watry Design Inc. [Applicant] **TWM Industries** [Owner]: Special Development Permit to allow a new drive-thru at an existing fast-food restaurant (Carl's Jr.) for a site located at **1051 E. El Camino Real**. (APN: 213-38-002). RK (*Continued from July 12, 2010*)

Ryan Kuchenig, Associate Planner presented the staff report. He said staff recommends approval of the Special Development Permit subject to the conditions in the report.

Comm. Larsson confirmed with staff that the new trash enclosure would include both trash and recycling containers regardless of the location. Comm. Larsson discussed with staff that the noise levels from ordering at the drive-thru would be required to meet the City noise standards. Comm. Larsson discussed with staff the relocation of the palm trees.

Comm. Sulser confirmed with staff that the location of the site is a couple of blocks from one of the El Camino Real (ECR) nodes. Comm. Sulser discussed with staff the driveways on Henderson and the remodel, with staff saying no seating would be removed.

Vice Chair Hendricks discussed with staff the new driveway exit, traffic flow and asked what the Transportation Division reviewed. Mr. Kuchenig said he would have to check with the Transportation Division, however certain improvements were required to bring the driveways up to standard. Vice Chair Hendricks asked staff whether there would be enough space for the drive-thru, and expressed his concern about labeling some of the parking as employee parking. Mr. Kuchenig said the applicant's architect could further address the question about the drive-thru space. Staff said the intent of the employee parking is not to limit patrons, but to help prevent patrons from parking where they possibly could be blocked by the drive-thru patrons. Vice Chair Hendricks discussed the trash enclosure recommendation and asked if the Commission is considering the inside layout or the remodel. Staff said the inside floor plan is part of the proposal, so yes, however the Building Division would be approving the building permits.

Comm. Dohadwala asked staff whether a condition could be added requiring the trash enclosure location be moved in the future, if the proposed location does not work out. **Gerri Caruso**, Principal Planner, said technically a condition could be added, however it would be expensive to move the trash enclosure. Ms. Caruso said the trash enclosure options have been reviewed by our solid waste coordinator, and Planning staff has taken that recommendation. Mr. Kuchenig further discussed the trash enclosure and location.

Chair Travis opened the public hearing.

Matt Davis, architect with Watry Design, and **Pete Samaras** part of the property ownership, represented the applicant. Mr. Davis discussed the queuing of cars in the drive-thru with 10 cars being the maximum ever expected and five cars being the maximum actually expected. Mr. Davis referred to the required off-site improvements to driveway aprons on Henderson Drive and ECR. He asked that they not be required to make the improvements as they are a financial burden on the project. He said the project already includes many ADA (Americans with Disability Act) upgrades and that they think the scale of the project is not large enough to require that the driveways be upgraded. He suggested other options to avoid having to meet these requirements. Mr. Samaras agreed and explained that the entire corner of the block would need to be jack hammered and removed adding that the applicant cannot support that level of remodel which would most likely kill the project. Mr. Samaras described some of the ADA upgrades in the remodel including upgraded bathrooms and parking spaces. He discussed landscaping improvements and the trash pickup included. Mr. Davis discussed the employee parking spaces and alternative markings.

Comm. Sulser confirmed with the applicant that the conditions they are opposed to are conditions 21, 22, 23 in Attachment B. Mr. Samaras said that they think the first drive aisle on Henderson already has a flat area and complies with the intent of the ADA requirements and discussed the driveway on ECR discussing other options. Mr. Samaras discussed the requirement of replacing sidewalks and ramps at the corner. Comm. Sulser asked staff to comment on the three conditions mentioned. Mr. Kuchenig said the conditions were reviewed by the Public Works Department and that adding the drive-thru use, staff thought there was enough scale to the project to justify bringing driveways up to the current standards.

Vice Chair Hendricks discussed with the applicant the width of the drive-thru aisle. Mr. Davis explained the proposed plans for the drive-thru, and the varied widths at different points of the aisle indicating that the narrowest section would be 9'6" wide. **Jason Thompson** with Carl's Jr., further discussed the drive-thru adding that the window would be flush with the building and that the tightest part of the aisle would be 9'6".

Mr. Samaras said he knows Vice Chair Hendricks is concerned about the drive-thru aisle width and said they are chopping off the maximum amount of building that can be cut off. Mr. Samaras added that the 9'6" is on a straight section of the aisle and has no obstructions on the sides. **Mr. Thompson** discussed the employee parking and said they should not have more than a maximum of seven

employees at anytime parked. Mr. Thompson corrected an earlier comment regarding seating and said the remodel would result in the loss of two booths or eight seats, adding that any negative impact on the seating is made up by the drive-thru patrons. **Mr. Davis** read a code excerpt for smaller upgrades intended to protect businesses when making small renovations. He said it states that the ADA upgrade requirements are capped in line with the amount of the upgrades to the building. He said that this is a smaller project and would request the Commission not financially burden the project by requiring the off-site improvements in the conditions.

Vice Chair Hendricks said that the applicant said that the ADA requirements being required are a burden to the project. Vice Chair Hendricks asked Mr. Davis to comment further about the ADA standards being a burden versus what a handicapped person has to do to get up an incline. Mr. Davis said that burden is probably the wrong word for him to have used. Mr. Davis said what he meant to say was they have already proposed multiple ADA upgrades to the site and do not feel it is a dangerous condition along Henderson Drive. He said they would fix the cracks along ECR and feel we can provide a safe, ADA compliant, walkway across the driveway. Mr. Samaras said they are happy to do the ADA upgrades in the interior as part of the project. Mr. Samaras said the cost of the project continues to creep up as with the trash enclosure, bike racks, etc. He said with the off-site street costs included, the cost of the project no longer makes sense, and may cause the loss of Carl's Jr. as a tenant. He said they cannot compete with the other drive-thrus, and are trying to preserve a tenant and a business on ECR. He said they have increased the budget multiple times and he does not think it is possible to do the project and include the sidewalk requirements.

Comm. Sulser asked staff about the ADA parking space and if it meets Sunnyvale code in terms of accessibility. Mr. Kuchenig said the Public Works staff reviewed the project and the space should meet code. Ms. Caruso said staff does not have that expertise tonight, however the building code issue and the building division would make sure the codes are met. Mr. Davis discussed the requirements for ADA parking stalls and said this project would include a van accessible stall and one normal ADA stall.

Comm. Travis closed the public hearing.

Vice Chair Hendricks asked staff about the curb cut-out requirements and asked if it is standard practice to require conditions outside the business property lines. Mr. Kuchenig said it is based on the scale of the project and the Public Works Department recommended requiring the conditions. Vice Chair Hendricks further discussed with staff reasoning for requiring ADA upgrades to off-site

areas for a drive-thru. Ms. Caruso explained that the Public Works staff thought these were appropriate improvements for this level of project. Ms. Caruso said if the Commission approves the project as conditioned and the applicant still feels the requirements are too much of a financial burden, they do have the right to appeal the decision to City Council and in the meantime staff could continue to work with them and the Public Works Department to see if other options are available that would meet the same intent. She said at this time it is staff's understanding that the Public Works Department feels comfortable in the fact that that these are appropriate improvements for this level of project. Vice Chair Hendricks asked staff about a curb-cut project this year and asked if any of that project was targeted along ECR. Ms. Caruso said she does not know.

Comm. Sulser moved for Alternative 1 to adopt the Negative Declaration and approve the Special Development Permit with the Conditions of Approval located in Attachment B. Vice Chair Hendricks seconded the motion and offered a Friendly Amendment modifying the wording on conditions 19.a that says "employee parking shall be marked" along the eastern portion of the site. Referring to Attachment E page 2, Vice Chair Hendricks said that if he were a patron he would think only employees could park there. He said the intent is not to restrict the spots, but to help prevent patrons from being blocked in the parking spaces by cars in the drive-thru. Vice Chair Hendricks discussed possible wording with staff. Ms. Caruso said staff still believes at least a portion of these angled spaces should be labeled for employee parking. Staff suggested **labeling the path of the drive-thru aisle with Vice Chair Hendricks agreeing that the Friendly Amendment include labeling the drive-thru aisle where car 10 is on Attachment E**, not labeling the back spaces, **but the policy of restaurant be that the employees park in this back area. This was acceptable to the maker of the motion.** Ms. Caruso asked for **further clarification**, and whether any of the spaces would be marked for employees. Comm. Dohadwala suggested that the number of labeled parking spaces for employee parking be reduced to four spaces. **The maker and seconder of the motion agreed to the clarifications accepting that there be four labeled employee parking spaces and the location of four spaces would be the spaces adjacent to cars 7, 8, and 9 as shown on page 2 of Attachment E.**

Comm. Sulser said he is not a huge fan of drive-thrus, however he was able to make the findings to approve the project.

Vice Chair Hendricks said he is a huge fan of drive-thrus. He said he has concerns that the drive-thru is too narrow, however he can make findings and the experts say the dimensions will work.

Comm. Dohadwala commented that staff is allowing some compromise on the project with less landscaping and a narrower aisle. She said she understands the applicant's concern with some of the required conditions being a financial burden. She said she would rely on staff recommending that the scale of the project is large enough to support the accessibility requirements and said she would be supporting the motion.

Comm. Larsson said he would be supporting the motion, and said upgrading ADA facilities as much as possible as we go is important. He said he understands the applicant's concern with proportionality of the project and if this decision is appealed to Council there may be opportunity for the applicant to work with staff and rework the balance.

ACTION: Comm. Sulser made a motion on 2010-7357 to adopt the Negative Declaration and approve the Special Development Permit with modified conditions: to clearly label the drive-thru aisle by painting "drive-thru" on the aisle, and to label the four parking spaces identified (those adjacent to cars 7, 8 and 9 on page 2 of Attachment E) as employee parking. Vice Chair Hendricks seconded. Motion carried 5-0, with Comm. Chang and Comm. Hungerford absent.

APPEAL OPTIONS: This action is final unless appealed to City Council no later than August 10, 2010.