



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

This meeting was conducted utilizing teleconference and electronic means consistent with State of California Executive Order No. 29-20 dated March 17, 2020, and Alameda County Health Officer Order No. 20-10 dated April 29, 2020, regarding the COVID-19 pandemic.

Members of the Planning Commission, City Staff, and members of the public participated via the Zoom Webinar platform.

MEETING

A meeting of the Planning Commission was called to order at 7:00 p.m. by Chair Roche.

ROLL CALL

Present: COMMISSIONERS: Ali-Sullivan, Bonilla, Goldstein, Mendall, Oquenda, Stevens
CHAIRPERSON: Roche
Absent: COMMISSIONER: None

Staff Members Present: Billoups, Brick, Emura, Lochirco, Monlux

PUBLIC COMMENT:

Commissioner Mendall shared the details of his special interim appointment by the City Council while the City conducts a full recruitment and appoints a new Planning Commissioner. Mr. Mendall said that it is a privilege and looks forward to working with the Commissioners and staff.

PUBLIC HEARING:

For agenda item No. 1, the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision.

1. Proposed Establishment of a Drive Thru Coffee Shop and Convenience Store at 28590 Mission Boulevard (APN: 078C-0626-003-25), Requiring Approval of a Conditional Use Permit, Site Plan Review and Variance for Building Maximum Front and Side Street Setback where 12'-0" Maximum is Required and where 107'-6" and 18'-6" are Proposed, Respectively. Application No. 201800093; Tony Singh (Applicant), Bhubinder Singh (Owner).

Associate Planner Emura provided a synopsis of the staff report and a PowerPoint presentation.



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

Mr. Tony Singh, applicant, spoke about the proposed project and noted that he is present to answer any questions.

Discussion ensued between the Planning Commission, staff, and applicant about the following:

For staff: requested sales tax projections; why is seating not provided in the coffee shop; concerns about sufficient space for queuing to not cause traffic impacts on sidewalks and Mission Boulevard; how many local jobs will be generated; are there sufficient parking spaces; trash enclosure height mitigation and landscaping; will the overflow queue create a traffic impact for cars entering the gas station; where can employees park offsite noting there is reserved BART street parking; is there a tobacco license requirement in the Mission Boulevard Form Based Code for new businesses; does the Form Based Code have a parking requirement; do the conditions of approval (COA) 67 through 69 give the City the ability to intervene if there are traffic impact spillovers; is the City concerned about taking action if the applicant does not comply with the conditions; concerns about the priority of gas and coffee during rush periods.

For applicant: have tenants been secured for the convenience store and coffee shop; will gas pumps be upgraded as part of the required approval for the project; any objection for the two EV charging stations as a requirement; current number of parking spaces versus the projected nine spaces; will there be sufficient parking for employees; the importance of complying with the COAs; has Starbucks provided input, what would occur if the operation were impacted, and will there be outside seating.

Associate Planner Emura spoke about the parking limitations and what is provided is for quick purchases; a traffic study was conducted and it was determined there would be enough space for queuing and there is the option of shutting down one of the gas lanes during high traffic times; increased staffing during peak hours; staff taking orders from customers in their cars; gas customers can purchase from store and coffee shop; expectations of walk-in customers; once pandemic eases queuing lines should shorten. Mr. Emura said this application is only for the buildings and landscaping and as part of 76 stations the gas pumps and canopy will most probably be modernized in the future. Mr. Emura said the trash enclosure must have a roof as it will contain food products. Carl spoke about the parking zoning for the count of nine (9) standard parking spaces and because of the proximity to the bus station and BART, there will be a lot of walk-in customers. He said the traffic study indicates that five additional parking spaces and thirteen spaces to allow car queuing and described how the overflow queue would work to be able to accommodate cars. Mr. Emura said that the City can impose additional conditions on this project to remedy traffic impacts that can include controlling hour of operation; requiring additional queuing lanes be provided through the gas dispensers. He



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

said the applicant cannot allow traffic to spillover into the public right of way and will need to address the situation by having mitigation measures in place such as increasing staff; have staff directing traffic and staff taking orders from the cars outside.

Mr. Singh said the convenience store will be run by the owner Mr. Bhubinder Singh; there is Starbucks has submitted a letter of intent and are waiting the Planning Commission's decision prior to signing a lease. He shared that the idea for a drive-thru coffee shop came from Starbucks and there will no outside seating. He spoke about the many options they will have in place to keep the customers happy and have a good experience. Mr. Singh had no objections for the EV charging stations be a condition; explained the existing car repair shop will be gone where there are a lot of cars parked and their plan is that employees will not be parking on site. Mr. Singh said that COAs 67 through 69 are based on the traffic study, the Form Based Code does not require parking spaces, they are proposing the nine parking spaces onsite plus the eight at the dispensers for a total of seventeen. He said they fully understand that they need to comply to the conditions. Mr. Singh spoke about traffic mitigation measures such as employees will monitor the traffic situation and if it appears that the cars would be encroaching on the public right of way then they will take action to block off some of the gas lanes. He also said that during the evening times they will have employee parking to ensure that their employees are safe. Mr. Singh wanted to assure everyone that they will be flexible. Mr. Singh said what has been submitted to the City has been shared with Starbucks.

Acting Planning Manager Lochirco said the Form Based Code does not have a parking requirement and it was meant to be on a case-by-case basis. Mr. Lochirco said that staff added the additional COA that the City reserves the right to ensure that if the traffic situation arises there are provisions to address them.

Assistant City Attorney Brick said the City has no concerns about the applicant complying with COAs. He said if the cars were to spillover into the City streets, in addition to the COAs, the City can file a nuisance action to enforce the City's rights and there are different avenues that the City can take.

Commissioner Bonilla said that he lives a half mile from the project site and asked Assistant City Attorney Brick to make sure there is not a conflict of interest. Mr. Brick said there is not a conflict of interest. Mr. Bonilla stated that it is important to watch the traffic impacts and it would be prudent to have a written condition about the shutting down of a gas lane for the car queuing for the coffee patrons.

Chair Roche opened and closed the public hearing at 8:28 p.m.

Commissioner Mendall favored the project, likes the uses of an expanded convenience store and drive thru coffee shop, likes the building and the lack of seating in coffee shop is a wise



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

decision. Mr. Mendall has two concerns which are the cars queuing which has been discussed at length and that it at some point especially during high use time, cars will spillover onto Mission Boulevard and encourages the applicant to have mitigation measures in place; the other concern is that there are only nine parking spaces; noting that this is a highly impacted traffic and parking area. Mr. Mendall asked if the Commission was comfortable with the City's authority and COAs to address these concerns or should the Commission impose additional conditions to require sixteen parking spaces and is looking forward to hearing from the Commissioners.

Commissioner Oquenda said he recognizes that there will be impacts and noted that he personally does not drive often or use drive thru. He said COA 69 imposes enough flexibility for determinations to be made by the Public Works Director and Transportation Manager to their satisfaction should traffic impacts arise that need to be mitigated. Mr. Oquenda said he feels there are ways to mitigate and support this kind of entrepreneurship which is wanted in Hayward. He has faith in the applicant and staff to follow-up on the COA obligation if needed. Mr. Oquenda's concern is for the employees and their safety to force them to park somewhere else and agrees with Commissioner Mendall to have the applicant come up with better options for his employees. He would like to hear from his fellow Commissioners and if they felt strongly to address this concern with the applicant. Mr. Oquenda said that he does support the project and to trust that the City can intervene if necessary.

Commissioner Bonilla relayed several current traffic issues at the gas station and noted that a grocery store in the area will be closing soon which can result in more business for the expanded convenience store. Mr. Bonilla spoke about his concerns about the cars queuing and spoke about the high-density development occurring in this area and the multiple traffic impacts existing and projected. Mr. Bonilla said the Starbucks will generate a lot of business which will result in compounded traffic impacts. In response to the question if he has confidence in the City's ability to enforce these requirements, he said that he does not as the City lacks enforcement capabilities in a lot of different areas such as tobacco requirements; the City is short staffed and does a lot with a limited budget. Mr. Bonilla wonders if the applicant is trying to do too much on a site with physical and environmental limitations.

Commissioner Ali-Sullivan said he is not concerned about the parking; he perceives that life is about incentives and once the facility is built, it can incentivize walking to the business or utilizing the drive-thru. He said that when the public experiences parking limitations then that will become a learned behavior and they will alter their buying pattern. Mr. Ali-Sullivan has a concern that the discussion tends to be surrounding the worst case scenario and said if he was driving by any drive-thru and it is at capacity, then he will leave and not sit in a long line. He is not convinced that this project will create nightmare traffic impacts and if there is congestion it will only be during limited times during the day. He noted the concern by Commissioner Mendall about the employee parking onsite. He said that if the owner lets his



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

employees know that they are not to park onsite then the employee should not be expecting to park there. Mr. Ali-Sullivan said that it is good practice to not have employees utilize parking spaces for customers; and noted seeing employees leaving Burger King who are walking when leaving their shifts. He said most likely employees will be living in the neighborhood and can walk or take public transit. He is impressed by what has been included in the project, it will be an improvement for the neighborhood as currently it is an eyesore. Mr. Ali-Sullivan stated the project will go along way to improve the physical aesthetics of the area noting that there is a lot of new development going on in this area and this project will provide services for the surrounding residents.

Commissioner Stevens agrees with Commissioner Ali-Sullivan, likes the work done to incorporate the project on this site; there was a detailed traffic study completed; it is an ambitious use of the site with great conditions of approval that will help regulate the use; and is hopeful that the City will enforce the conditions. Mr. Stevens said he is concerned for the owner that he is taking on more than he can handle and that if things do not go well, it would be a challenge to their investment. Mr. Stevens said he is in full support of the project and suggested that the applicant consider a few options that could make this project easier and more accessible. Mr. Stevens encouraged the applicant to consider these options to protect his investment: 1) on northside of the gas pumps at the 25 foot clearance move the median over to provide more space for cars; 2) at the site of the tiered retaining wall, consider a one wall solution that could free up space for parallel parking where employees could park; and 3) on the southside of building B, there is a City retaining wall easement, wrap the City wall into the site wall which could open the south façade of building B and would shift it to the south and provide more space for the building and added parking spaces. Mr. Stevens does not favor changing any of the COAs or placing requirements on the applicant and thanked the applicant for preparing such detailed plans.

Commissioner Goldstein agreed with Commissioner Ali-Sullivan that if there are too many cars waiting in line, he will just go to another coffee shop. He does not agree with Commissioner Bonilla as he has found the City's staff and enforcement divisions to be on top of matters, he likes that City staff takes a libertarian approach to enforcement and communicates with landowners and developers to work out issues. Mr. Goldstein favors the development of this site which will attract further development, this is good for business, housing, and employment. He suggested the applicant communicate with their neighbor Saudagar Grocery and work out a parking arrangement for the employees. He hopes this business is profitable and that in the future the applicant could consider curbside pickup. Mr. Goldstein is in favor of the project and that there is ample opportunity to benefit the local community and opportunity to mitigate any potential issues.

Chair Roche is in favor of the project but does have reservations about queuing issues which has been discussed at length and the applicant has acknowledged the potential issues and that



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

he will need to have a mitigation plan in place as well as communicate to Starbucks the discussion and concerns discussed at this public hearing. Ms. Roche noted that the City has remedies in place. She agrees with Commissioner Goldstein that the applicant should have discussions with his business neighbors to work out a parking arrangement for his employees during the daytime. She wondered if the bus stop can be moved and that this will be an attractive addition to this corner.

Commissioner Bonilla inquired about the possibility of having the applicant participate in the Adopt-A-Block program.

Commissioner Mendall asked if there can be a condition that requires the employees be provided parking on site.

Assistant City Attorney Brick responded that it is best to stay away from the business relationship such as addressing specific parking for employees. Mr. Brick said it is a fair statement that if there are employees they need to park somewhere. He said the subject of sufficient parking is a matter the Commission can discuss and condition.

Commissioner Oquenda commented that when he mentioned his apprehension regarding the no onsite employee parking, his concern was that asking employees to walk to their cars brings up issues of safety. Mr. Oquenda said gas stations and convenience stores tend to be targets for robbery and violent crimes. He urged the applicant to invest a bit more to find more onsite parking and support his employees as this can remediate the Commission's concerns surrounding employee safety. Mr. Oquenda stated that he is prepared to make a motion in support of the staff recommendations.

Chair Roche asked if there can be a condition to add two more parking spaces.

Assistant City Attorney Brick responded that if the Commission feels that parking is inadequate that is an issue that the Commission can address.

Acting Planning Manager Lochirco added that the City has been encouraging the employers to adapt a transportation demand management (TDM) program to incentivize getting employees out of their cars. Mr. Lochirco said this project has six bicycle racks and the City has found TDM programs to work successfully and is one option to augment reduced demand.

Commissioner Oquenda made a motion to approve the staff recommendation with the added condition of approval to require two EV charging stations as previously stated by Commissioner Mendall.

Commissioner Stevens seconded the motion.



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

Commissioner Mendall inquired about including a condition of approval for six parking spaces for employees either onsite or offsite.

Assistant City Attorney Brick responded that this added condition would be tied to the use indicating the need for more parking spaces and could be offsite for employees.

Mr. Singh said that the design complies with all the City's codes and requirements, they are complying with both the Form Based Codes and the Hayward Municipal Code and if the City is willing to grant a variance on the retaining wall height, then they can carve out another three spaces for employees.

Commissioner Mendall commented that it is ironic to hear an applicant who owns a gas station and is proposing a drive-thru coffee shop say this project is accommodating mass transit. Mr. Mendall made a friendly amendment to add a condition of approval to provide six more parking spaces onsite and if not possible then to secure an additional six employee parking spaces nearby offsite.

Commissioner Oquenda accepted the friendly amendment and said that he is comfortable having the applicant figure this out with the help of City staff if needed to define offsite parking. He noted Commissioner Goldstein's suggestion of looking at neighboring parking lots; validated parking passes; and TDM programs such as bike racks, noting there are several different options that the applicant can chose from.

Commissioner Goldstein asked if the friendly amendment makes the six parking spaces a requirement, Commissioner Mendall confirmed as such. Mr. Goldstein likes the idea that applicant have TDM options for his employees and asked Mr. Mendall is he would agree to add language about having a negotiated parking agreement with nearby businesses as part of the friendly amendment. Mr. Mendall said it was unclear how to include language about what Mr. Goldstein was asking.

Chair Roche clarified if the applicant said he could add three parking spaces.

Mr. Singh reiterated that if the City would grant a variance to the retaining wall height then they would be able to add the three parking spaces for employees, he added that they plan to have employee lockers where they can place transit option stickers. Ms. Roche asked if this would change the Commissioner Mendall's friendly amendment.



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

Commissioner Mendall clarified for Chair Roche that this is not an option as what the applicant is saying is that they can add three parking spaces if the City gives up the easement on the retaining wall which will completely redesign the retention system for the hillside. Mr. Mendall said that his friendly amendment is clear.

Commissioner Goldstein asked for a mechanism to mitigate the parking situation rather than requiring the parking upfront.

Assistant City Attorney Brick responded that Commissioner Mendall's friendly amendment is to require the six parking spaces up front onsite unless for employees where the spaces can be located offsite.

Chair Roche asked Commissioner Goldstein if he does not accept Commissioner Mendall's friendly amendment as proposed. Mr. Goldstein stated that he is seeking an alternative to the parking requirement.

Assistant City Attorney Brick inquired as to who seconded the motion.

Chair Roche replied that Commissioner Goldstein was the seconder.

Commissioner Oquenda said in an effort to find middle ground, he proposed that the friendly amendment is to require the applicant to have a designated plan for employee parking as needed and that the six parking spaces need to be identified. Mr. Oquenda said that he agrees with Commissioner Mendall that there needs to be a proactive step to ensure that the parking spaces are identified or at least the transportation supports are in place.

Commissioner Goldstein asked if the applicant were to obtain a written agreement for parking spaces from a neighboring business will this satisfy the requirement.

Both Commissioners Oquenda and Mendall nodded in the affirmative. Mr. Oquenda added that this would still be at the discretion of the Public Works Director and Transportation Manager should there be an issue with the queuing and parking. He recommended that prior to the Certificate of Occupancy that the parking agreement would need to be submitted.

Commissioner Mendall wanted to make sure that the motion and amendment are clear to staff.

Assistant City Attorney Brick stated that the motion included two additional conditions of approval 1) add two EV charging stations; 2) provide six additional parking spaces onsite and if not possible then secure through a written contract for an additional six employee parking spaces offsite within an eighth of a mile.



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

Commissioner Ali-Sullivan said it is very clear from the map that space does not exist to add six additional parking spaces onsite so to add an amendment does not make sense; secondly if the applicant is required to have six employee parking spaces, then it is incentivizing the use of vehicles. He does not support the idea that the Commission should be dictating to employers how they manage their employees and shared that he has worked at many jobs that did not provide parking thus he took BART. He said it is very confusing and he is not clear on why the Commission feels that parking needs to be provided for all the employees.

Commissioner Stevens agrees with Commissioner Ali-Sullivan, as the applicant is the one assuming the risk and the Commission should not require the applicant to provide six employee parking spaces. He pointed out that per the applicant they would be able to add three more parking spaces to the east of building and not impact the City's easement if the City would grant a variance on the retaining wall height. Mr. Stevens recommended that the City provide the applicant the flexibility to provide those three additional spaces and grant the variance from the City's wall height easement.

Commissioner Bonilla made a friendly amendment that the applicant participates in the City's Adopt-A-Block program noting that the area needs this kind of ongoing attention.

Commissioner Oquenda and Commissioner Goldstein accepted the friendly amendment.

Commissioner Goldstein said the friendly amendment regarding parking is for the applicant to have parking available but not forcing the applicant to build six parking spaces or pay for spaces offsite if not being used.

Commissioner Ali-Sullivan asked Assistant City Attorney Brick to clarify the motion and amendments.

Assistant City Attorney Brick said the motion included three additional conditions of approval 1) add two EV charging stations; 2) provide six more parking spaces onsite and if not possible then secure through a written contract an additional six employee parking spaces offsite within an eighth of a mile; 3) the applicant will participate in the City's Adopt-A-Block program.

Commissioner Ali-Sullivan requested that the maker of the amendment remove the language to require six parking spaces onsite because it is not physically possible.

Commissioner Oquenda said his thought was for the applicant to allow the employees to park onsite.



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

Commissioner Mendall clarified that Assistant City Attorney Brick is correct on the motion and amendment language and responded to Commissioner Ali-Sullivan that there is room for six additional parking spaces on site. He said the only reason it does not appear to be room is because the convenience store is being enlarged; the applicant can build a smaller building and easily add the six parking spaces. Mr. Mendall stated there are currently 26 parking spaces which are being removed to add additional uses to generate revenue.

A motion was made by Commissioner Oquenda, seconded by Commissioner Goldstein, to approve the staff recommendation with three additional conditions of approval 1) add two EV charging stations; 2) provide six additional parking spaces onsite and if not possible then secure through a written contract an additional six employee parking spaces offsite within an eighth of a mile; 3) the applicant shall participate in the City's Adopt-A-Block program.

Commissioner Ali-Sullivan said that he is conflicted as he is supportive of the project but does not support the parking amendment.

Assistant City Attorney Brick said his comments are noted, and that if he voted no on the motion and the vote fails then the floor would be open for another motion.

Commissioner Ali-Sullivan stated that in his estimation, the Commission should not be dictating the parking and to place this additional requirement on the applicant is excessive and unnecessary. He said the parking will sort itself out and an employee will figure out how to get to their shift. Mr. Ali-Sullivan said that the Commission is assuming that there needs to be a parking space for each employee working at the site.

The following comments were made during the vote:

Commissioner Stevens stated that he does not support the motion because of the amendment.

Commissioner Oquenda stated that he supports the motion and explained that the purpose here is not to impose parking but that employers should be responsible for meeting the needs of their employees as is required of the downtown businesses to accommodate their employees with parking and parking structures. He said this is not a new phenomenon or requirement but essentially a benefit that the employer should be responsible for.

The motion passed with the following roll call votes:

AYES:	Commissioners Ali-Sullivan, Bonilla, Goldstein, Mendall, Oquenda Chair Roche
NOES:	Stevens
ABSENT:	None



**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

ABSTAIN: None

APPROVAL OF MINUTES

2. Approval of the Planning Commission Meeting Minutes of March 25, 2021

A motion was made by Commissioner Bonilla, seconded by Commissioner Stevens, to approve the Planning Commission Meeting Minutes of March 25, 2021.

Commissioner Mendall noted that he submitted a correction to the minutes in which Commissioner Bonilla was referred to as Chair Bonilla. Staff indicated that the minutes would be corrected.

The motion passed with the following roll call votes:

AYES:	Commissioners Ali-Sullivan, Bonilla, Goldstein, Mendall, Oquenda, Stevens Chair Roche
NOES:	None
ABSENT:	None
ABSTAIN:	None

COMMISSION REPORTS

Oral Report on Planning and Zoning Matters:

Acting Planning Manager Lochirco announced that for the April 22nd meeting there will be two items; the Noise Ordinance and General Plan amendment; and the annual CIP program report.

Commissioners' Announcements, Referrals:

Chair Roche welcomed Commissioner Mendall and said that it is good to have a full commission.

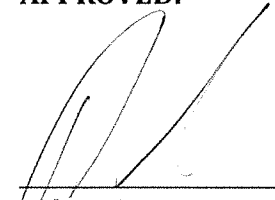
ADJOURNMENT

Chair Roche adjourned the meeting at 9:35 p.m.




**PLANNING COMMISSION MEETING
REMOTE PARTICIPATION
Thursday, April 8, 2021, 7:00 p.m.**

APPROVED:



Robert Stevens, Secretary
Planning Commission

ATTEST:



Denise Chan, Senior Secretary
Office of the City Clerk