

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal
From: Susan Emery
Dept: City Manager
Dept: Community Development
Subject: AN APPEAL OF CONDITIONAL USE PERMIT NO. CUP-257-09 AND VARIANCE NO. V-181-09
Date: April 28, 2009

OBJECTIVE

To consider the appeal of Conditional Use Permit CUP-257-09 and Variance No. V-181-09 to operate a 3,944 square foot cosmetology school, ASEL Beauty College, located within an existing multi-tenant shopping center, and a Variance request to allow the school to deviate from the minimum parking requirement. The proposed cosmetology school will be located at 9240 Garden Grove Boulevard, Suite 10, in the C-2 (Community Commercial) zone.

BACKGROUND

The site has a General Plan Land Use designation of Light Commercial and is zoned C-2 (Community Commercial). The site is improved with a one-story, in-line multi-tenant shopping center that consists of various retail, restaurant, and medical uses.

The applicant proposes to operate a 3,944 square foot cosmetology school called ASEL Beauty College that will offer cosmetology, manicurist, and esthetician courses.

Zoning Administrator Meeting

At the January 22, 2009, Zoning Administrator Public Hearing, Mr. Edward M. Chavez of the Chavez Law Firm, representing Jenny Sim Beauty Salon and Avanti Skin Care, raised concerns about the proposed operation of the beauty college. These concerns included inconsistent land use, public safety concerns, and overall beneficial use of the land. A letter was submitted to the Zoning Administrator by Mr. Chavez describing his clients' concerns about the proposal. The various concerns raised in this letter are identified below. Other members of the audience expressed concerns about parking.

The January 21, 2009, letter from Mr. Chavez argues that the proposed beauty school is inharmonious with the existing land uses, and will have harmful economic impacts on Avanti and Jenny Sim. One main concern raised in the letter on this point is that the beauty school will provide "near 'free' services" to the same

clientele that Avanti and Jenny Sim service. The letter seems to argue that "competing" businesses lead to problems with co-existence. The letter also mentions how other cities have treated the location of beauty schools, but fails to show how the regulations in those other cities compare to Garden Grove's regulations. The City reviews land use applications pursuant to Garden Grove's regulations, which dictate the parameters within which the hearing officers review and decide on the application. Mr. Chavez further explicitly argues that the City should deny the beauty school application because it will eliminate his two clients' businesses. On this point, the City's Code does not regulate economic competition amongst businesses. The fact that two or more businesses compete in a given center is evidence that the uses are similar and, therefore, compatible.

The second portion of the January 21 letter raises issues with the unavailability of parking and possible health and safety concerns with the beauty school. As to parking, the parking study directly refutes the argument that parking is unavailable. As to the health and safety concerns, the letter raises questions based on various standard conditions of approval. There is no evidence of actual problems not resolved by the conditions of approval for staff or the City to address.

The Zoning Administrator expressed a desire to continue the hearing to allow Mr. Chavez and his clients the opportunity to study and evaluate the parking analysis, and to give them an opportunity to meet and discuss the parking concerns with the applicant for an agreeable compromise.

The applicant asked if the item could be continued to the Planning Commission to prevent any further delays to the project that would result if the Zoning Administrator's decision was subsequently appealed to the Planning Commission.

The Zoning Administrator closed the public hearing and moved that the item be considered by the Planning Commission with staff's recommendation in place.

ASEL Beauty College Meeting

On February 4, 2009, the applicant held a meeting at the site, located at 9240 Garden Grove Boulevard, to hear and discuss the business owners' concerns about the proposed cosmetology school. The applicant, four (4) business shop owners in the center, the landlord and City Planning staff were present at the meeting. Mr. Chavez and his clients, Jenny Sim Beauty Salon and Avanti Skin Care, did not attend the meeting.

At the meeting, the business owners expressed that they were in support of the proposed school, and mentioned that there are no parking problems at the center. One business owner mentioned that the parking spaces located directly in front of the building should be restricted to 30-minute parking.

The property manager agreed to work with the current business owners to find a solution to address their concerns about the parking spaces located in the front of the building, such as restricting the spaces to 30-minute parking. Also, the applicant mentioned that the students would be instructed to park in the spaces located away from the building.

Planning Commission Meeting

On February 19, 2009, a Planning Commission Public Hearing commenced to review the request. At the meeting, Edward M. Chavez, of the Chavez Law Firm, representing Jenny Sim Beauty Salon and Avanti Skin Care, again raised concerns about the date the traffic study was conducted; the City should address the health and safety of children crossing the parking lot; and that additional traffic will be generated by the cosmetology school. A letter dated February 18, 2009, was submitted to the Planning Commission by Mr. Chavez that described his clients' concerns about the proposal, which is described in more detail below.

Seven additional people spoke in opposition of the project. Their testimony included comments that there are safety concerns with the parking lot, including accidents and lack of parking, and that the existing businesses will experience an economic loss.

Seven people spoke in favor of the project. Their testimony included comments that there are no parking problems at the center; the school will serve a mutual benefit to the existing commercial uses; the school will provide new career opportunities, especially for Korean speaking individuals; and that those in opposition of the project are worried about losing customers.

The February 18 letter raises similar issues as in the January 21 letter. In the introduction, it asserts that the City has failed to consider the health and safety impacts of the proposed beauty school on school children. It fails to identify what those impacts would be, but attaches various letters from the customers of the two businesses that have appealed the Planning Commission's decision. The customers of these two businesses raise fears of possible future parking problems, increase in traffic, state that school age children patronize the salon and the children could be endangered by the addition of the beauty school and the increase in traffic. The letter goes on to state that beauty schools have caused problems at other centers, without identifying such problems or providing evidence that such problems would occur.

The Planning Commission voted 6 to 0 to approve the project, with Commissioner Brietigam absent. In approving the project, the Planning Commission determined that the only two (2) businesses opposing the project were the Jenny Sim Beauty Salon and Avanti Skin Care, and that the comments expressed by the audience were fears about losing customers and the possible business competition presented by the beauty salon.

The Planning Commission determined that there are no traffic problems at the center; the center has sufficient parking to accommodate the proposed school based on the traffic study; Commissioners' observations of the property during routine site visits; the statements by the other business owners who attended the site meeting; the conditions of approval will mitigate any potential problems that the opponents suggested might arise; and that the school will benefit everyone. The Commission further noted that all of the negative comments were from the businesses opposing the project, who feared the possible competition by the beauty school.

DISCUSSION

Appeal of the Proposed:

Edward M. Chavez, of the Chavez Law Firm, representing Jenny Sim Beauty Salon and Avanti Skin Care, appealed the Planning Commission's decision and is requesting that the City Council deny or modify the project.

In his appeal, Mr. Chavez expressed that the Planning Commission and the Zoning Administrator ignored his clients' concerns including the proposed operation of ASEL Beauty College, which justify a denial or modifications to the conditions of approval; health and safety code deficiencies relating to the use of the parking lot by minor children; and inadequate Americans with Disability Act (ADA) access to the property.

Staff has replied to Mr. Chavez concerns as follows:

- ASEL Beauty College will operate Monday through Friday from 9:00 a.m. to 5:00 p.m. to alleviate any parking congestion that may occur at the site in the evenings and on the weekends. Also, the number of students that can be on the premises at any one time is limited to 25 students and the number of employees is limited to three. All the standards conditions of approval for a cosmetology school have been included to minimize impacts to the center.
- The shopping center is improved with various retail, restaurant and medical uses, including an after-school tutoring center, Leader Academy, and Eugene Art Center, which offers art classes (see Exhibit "A"). After-school tutoring centers and art studios are permitted in the C-2 zone.

CONSIDERATION OF AN APPEAL OF

CUP-257-09 AND V-181-09

April 28, 2009

Page 5

- According to Police Department records, the last reported traffic accident occurred on July 12, 2007, which was described as a non-injury and was handled at the scene. Also, there have been several reports of juveniles disturbing the peace that is most likely attributed to skateboarding complaints. There is currently a sign posted on the building that reads "No Skateboarding."
- The center currently has four (4) handicap parking spaces. The Building Division will not require additional handicap parking spaces to permit the tenant improvement of the cosmetology school, as no new parking spaces will be added to the shopping center. Also, the project provides the required path-of-travel for accessibility purposes.

Parking Variance

Staff has reviewed the parking study submitted by the applicant, and has determined that the addition of the proposed cosmetology school will not create a parking shortage.

According to the parking study, the shopping center has a total of 132 parking spaces, and currently less than 50% of the parking spaces are occupied. The parking study shows that the average peak demand for the site is 64 parking spaces, which results in a surplus of 68 parking spaces.

In order to minimize potential parking shortages to the site, the applicant is conditioned to limit the number of students that can be on the premises, at any one time, to 25 students and the number of employees to three (3). The addition of the school will attract more patrons to the center, which will increase the number of vehicles that are parked at the site; however, it is not anticipated that the cosmetology school will create a parking shortage.

In conclusion, the C-2 zone allows cosmetology schools with a Conditional Use Permit. The proposed school will be a compatible use with the shopping center and existing uses. The parking study demonstrates that there is sufficient on-site parking to accommodate the school, and the conditions of approval will ensure that the cosmetology school will remain a harmonious use.

FINANCIAL IMPACT

No financial impacts are anticipated with this request.

COMMUNITY VISION IMPLEMENTATION

The Community Vision Statement seeks to ensure the compatibility between new and existing developments, and also to foster the development of small businesses. The proposed cosmetology school will be a compatible use with the existing businesses located within the shopping center, and will provide a benefit to the community by encouraging new career opportunities.

RECOMMENDATION

It is recommended that the City Council:

- Uphold the Planning Commission decision approving Conditional Use Permit No. CUP-257-09 and Variance No. V-181-09, and thereby deny the Appeal of the Conditional Use Permit and Variance, as indicated on the attached City Council Resolution.



SUSAN EMERY
Community Development Director



By: Maria Parra
Urban Planner

Approved for Agenda Listing



Matthew Fertal
City Manager

- Attachment 1: Appeal Form
Attachment 2: Planning Commission Staff Report dated February 19, 2009
Attachment 3: Planning Commission Resolution No. 5672 with Exhibit "A"
Attachment 4: Letter dated February 18, 2009 from Edward M Chavez, of Chavez Law Firm relating to concerns about ASEL Beauty College, addressed to the Planning Commission
Attachment 5: Planning Commission Draft Minutes Excerpt of February 19, 2009
Attachment 6: Zoning Administrator Staff Report dated January 22, 2009 with Decision No. 1570 and Exhibit "A"
Attachment 7: Letter dated January 21, 2009 from Edward M Chavez, of Chavez Law Firm relating to concerns about ASEL Beauty College, addressed to the Zoning Administrator
Attachment 8: Minutes Excerpt from the January 22, 2009 Zoning Administrator Meeting
Attachment 9: Parking Study dated November 19, 2008 as prepared by Kunzman Associates, and as presented to the Zoning Administrator and Planning Commission
Attachment 10: Draft City Council Resolution denying the Appeal of Conditional Use Permit No. CUP-257-09 and Variance No. V-181-09