

To: BOARD OF SUPERVISORS

FROM: Planning and Building Services

MEETING DATE: May 7, 2024

DEPARTMENT CONTACT: Liam Crowley
DEPARTMENT CONTACT: Julia Krog

PHONE: 707-234-6650
PHONE: 707-234-6650

ITEM TYPE: Noticed Public Hearing

TIME ALLOCATED FOR ITEM: 30 Minutes

AGENDA TITLE:

Noticed Public Hearing – Discussion and Possible Action to Consider an Appeal of the Planning Commission’s Denial of Minor Use Permit and Variance (U_2021-0016/V_2021-0005) to Establish and Operate a Gas Station with Ten (10) Gas Pumps, Two (2) Separate Illuminated Canopies, Twenty-Eight (28) New Parking Spaces, Landscaping, Conversion of Part of an Existing Structure to a Convenience Store, and Concurrent Variance for a Sixty-Five (65) Foot Tall Business Identification Sign, Increase in the Allowable Sign Area, and to Reduce the Front Yard Setback; located at 9621 and 9601 North State Street, Redwood Valley; APNs: 162-100-58 and 162-100-59 which may include additional direction to Staff.

RECOMMENDED ACTION/MOTION:

Adopt a resolution denying the appeal and upholding the Planning Commission’s denial of Minor Use Permit and Variance (U_2021-0016/V_2021-0005) to establish and operate a gas station with ten (10) gas pumps, two (2) separate illuminated canopies, twenty-eight (28) new parking spaces, landscaping, conversion of part of an existing structure to a convenience store, and concurrent variance for a sixty-five (65) foot tall business identification sign, increase in the allowable sign area, and to reduce the front yard setback; located at 9621 and 9601 North State Street, Redwood Valley; APNs: 162-100-58 and 162-100-59; and authorize Chair to sign same.

PREVIOUS BOARD/BOARD COMMITTEE ACTIONS:

In 1987 the Board adopted Division I of Title 20 of the Mendocino County Code through Ordinance No. 3639, including Chapters 20.196 and 20.200 pertaining to Use Permits and Variances, respectively.

SUMMARY OF REQUEST:

Minor Use Permit U_2021-0016 and Variance V_2021-0005 (the “Project”) was denied by the Planning Commission on January 4, 2024. See Resolution No. PC_2024-0001 for findings in support of the action.

On January 5, 2024, attorney Brian S. Momsen, on behalf of Faizan Corporation and 898 Main Street LLC, filed an appeal of the Planning Commission’s decision. An appeal hearing was held at the March 26, 2024 Board of Supervisors meeting. At that meeting, the Board tentatively voted to deny the appeal and continued this matter to the May 7, 2024 meeting with direction to Planning & Building Services staff to work with Supervisors Williams and McGourty to document denial of the project based on health, safety, peace, morals, comfort, and general welfare.

Pursuant to direction given at the March 26, 2024 meeting, staff met with Supervisors Williams and McGourty to document denial of the project. Staff has prepared a revised resolution for denial of the project based on detrimental effects on health, safety, peace, morals, comfort, and general welfare that are documented in the record.

The associated memorandum, staff report, action sheet, appeal document, and additional materials are attached for review.

ALTERNATIVE ACTION/MOTION:

Uphold the Appeal and remand U_2021-0016/V_2021-0005 to the Planning Commission to reconsider the Project, including for purposes of CEQA, or provide direction to staff.

STRATEGIC PLAN PRIORITY DESIGNATION: A Safe and Healthy County

SUPERVISORIAL DISTRICT: DISTRICT 1

VOTE REQUIREMENT: Majority

SUPPLEMENTAL INFORMATION AVAILABLE ONLINE AT: <https://www.mendocinocounty.org/government/planning-building-services/public-notices>

FISCAL DETAILS:

SOURCE OF FUNDING: N/A

CURRENT F/Y COST: N/A

ANNUAL RECURRING COST: N/A

BUDGETED IN CURRENT F/Y: N/A

IF NO, PLEASE DESCRIBE:

REVENUE AGREEMENT: N/A

AGREEMENT/RESOLUTION/ORDINANCE APPROVED BY COUNTY COUNSEL: Yes

CEO LIAISON: Steve Dunicliff, Deputy CEO

CEO REVIEW: Choose an item.

CEO COMMENTS:

FOR COB USE ONLY

Executed By: Deputy Clerk

Date: Date Executed

Final Status: Item Status

Executed Item Type: item

Number:



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: MAY 7, 2024
TO: HONORABLE BOARD OF SUPERVISORS
FROM: LIAM CROWLEY, PLANNER II
SUBJECT: APPEAL OF MINOR USE PERMIT & VARIANCE U_2021-0016/V_2021-0005 (FAIZAN) DENIAL

On March 26, 2024, the Board continued this matter to the May 7th, 2024 meeting with direction to Planning & Building Services staff to work with Supervisor Williams and McGourty to document denial of the project based on health, safety, peace, morals, comfort, and general welfare.

Accordingly, staff has prepared a revised resolution for denial of the project based on the direction received (see attached).

Attachments:

- Draft Redline Resolution
- Draft Clean Resolution

RESOLUTION NO. 24-_____

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DENYING THE APPEAL AND AFFIRMING THE DENIAL OF MINOR USE PERMIT AND VARIANCE U_2021-0016/V_2021-0005 WHICH REQUESTED OPERATION OF A GAS STATION AND RELATED IMPROVEMENTS

WHEREAS, the applicant, Faizan Corporation & 898 Main Street LLC, filed an application for a Minor Use Permit and Variance with the Mendocino County Department of Planning and Building Services to establish and operate a gas station with ten (10) gas pumps, two (2) separate illuminated canopies, twenty-eight (28) new parking spaces, landscaping, and convert part of an existing structure to a convenience store, and allow a concurrent Variance for a sixty-five (65) foot tall business identification sign, increased allowable sign area, and reduced front yard setback (the "Project"); located at 9621 & 9601 North State Street, Redwood Valley; APNs 162-100-58 & 162-100-59; and

WHEREAS, pursuant to Public Resources Code Section 21080(B)(5), the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; "CEQA"), an Initial Study and draft Mitigated Negative Declaration (SCH No. 2023110067) was prepared for the Project and noticed and made available for agency and public review on November 2, 2023 in accordance with CEQA and the State and County CEQA Guidelines; and

WHEREAS, the Zoning Administrator referred the Project to the Planning Commission for consideration in accordance with Mendocino County Code Section 20.196.010(C); and

WHEREAS, in accordance with applicable provisions of law, the Planning Commission held a public hearing on, December 7, 2023, at which time the Planning Commission heard and received ~~all~~ relevant testimony and evidence presented orally or in writing regarding the Mitigated Negative Declaration and the Project. All interested persons were given an opportunity to hear and be heard regarding the Mitigated Negative Declaration and the Project, and the Planning Commission continued this matter to January 4, 2024 with direction to staff to prepare an alternative resolution for denial for their consideration; and

WHEREAS, in accordance with the applicable provisions of law, the Planning Commission held a continued public hearing on January 4, 2024, at which time the Planning Commission heard and received all relevant testimony and evidence presented orally or in writing regarding the Project and Mitigated Negative Declaration. All interested persons were given an opportunity to hear and be heard regarding the Project and Mitigated Negative Declaration; and

WHEREAS, CEQA does not apply to projects which a public agency rejects or disapproves, as CEQA Guidelines Section 15270(A) provides that projects which are disapproved are Statutorily Exempt from CEQA; and

WHEREAS, the Planning Commission, on January 4, 2024, adopted Resolution No. PC_2024-0001 denying the Project; and

WHEREAS, on January 5, 2024, Brian S. Momsen, on behalf of Faizan Corporation and 898 Main Street LLC, filed an appeal of the decision by the Planning Commission on multiple grounds (the "Appeal"); and

WHEREAS, the Mendocino County Board of Supervisors held a duly noticed Public Hearing on March 26, 2024, to hear ~~all relevant~~ testimony and evidence presented orally or in writing regarding the Project and Appeal. All interested persons were given an opportunity to hear and be heard regarding the Project and Appeal.

WHEREAS, just one day prior to the public hearing, the applicant submitted what it referred to as an Addendum to the Traffic Study prepared by the Applicant for the project and which was considered by the Planning Commission; and

WHEREAS, at the March 26, 2024, hearing, the Board of Supervisors took a tentative vote to deny the project and directed staff to prepare a revised resolution for denial and to bring it back at the May 7, 2024 regular meeting.

NOW, THEREFORE, BE IT RESOLVED that on the basis of the whole of the record before it, the Mendocino County Board of Supervisors denies the Appeal and makes the following findings and determinations:

1. The Board of Supervisors hereby affirms the determinations of the Planning Commission.
2. The Board of Supervisors hereby denies the Appeal and affirms the Planning Commission's denial of the Project, and findings regarding the Project and making the following additional findings in support of the denial: -as follows:
 - a. The granting of such Minor Use Permit would constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in or passing through the neighborhood of the proposed use and would be detrimental or injurious to property and improvements in the neighborhood. The projected increased traffic and safety impacts of the proposed Project would require closure of the US 101 median at the intersection of North State Street (CR 104) and Uva Drive (CR 239). Increased traffic due to the Project would increase the number of cars and trucks crossing US 101 at this intersection, increasing the likelihood of additional collisions which given the speeds of traffic on US 101 would likely be severe if not fatal. Closure of the intersection is necessary mitigation to reduce potentially significant transportation safety impacts caused by the project to less than significant levels. This closure would eliminate the current ability of motorists to turn from either County road onto US 101 or turn from US 101 onto either County road. In addition, motorists would be unable to cross US 101 from one County road to the other. If the median were to be closed, motorists traveling along US 101 would be required to use the West Road (CR 237) interchange to access North State Street and in turn the project site and neighboring properties. If the Project were to be approved, the required transportation mitigation would be a detriment to the general welfare of those residing or working in the vicinity because it would limit circulation options and would increase the length of trips made to and from the vicinity and would place an undue burden on the existing businesses in the area by possibly limiting customer traffic. There are no alternative mitigation measures that are equivalent or as effective in mitigating or avoiding the potentially significant transportation impacts caused by the Project. Therefore, finding (C) contained in Mendocino County Code Section 20.196.020 cannot be made.
 - b. The Addendum to the Traffic Study submitted on the day before the public hearing by the Applicant is found to be inadequate. The Addendum attempts to revise the traffic counts for the project based upon a sample size of a single other fueling station located in Ukiah, which is also owned by the Applicant. During the public hearing, the preparer of the Addendum also stated that the traffic counts were not as firm as they would ordinarily like them to be and that it was not normal to compare to one other business. The seemingly low number of transactions at the Ukiah gas station could be a result of a number of factors which were not addressed in the Addendum, including, but not limited to, that the density of nearby gas stations in the Ukiah area may result in greater competition and therefore lower average sales because consumers are free to choose other stations. As stated by Caltrans in their letter of February 18, 2022, the proposed Project would be the first fueling station motorists see when traveling southbound on US 101 since Laytonville. Lesser competition in the Redwood Valley area would indicate that a greater share of US 101

travelers would stop at the proposed Project. There are additional factors which have not been considered when comparing the two, and the conclusions are therefore clouded by uncertainty. The Addendum was based on data provided to the Applicant's traffic consultant by Applicant and was not based on actual counts but was based on customer transaction data. The Addendum to the Traffic Study did not utilize data from weekend activities and only focused on weekdays, did not account for non-customer trips (employees), and did not include data from the summertime peak trip season. The Applicant's own traffic consultant described the numbers provided in the Addendum to the Traffic Study were not as firm as she would have liked and were "a little bit squishy."

b.c. In addition and as otherwise set forth in the record, approval of the Project would be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in or passing through the neighborhood of the proposed Project.

e.d. The applicant sought a front yard setback variance as well as variances from the County's signage limitations for sign height and size. The requested Variance application is processed concurrently with the Minor Use Permit and have no independent value if the Minor Use Permit is denied. As such, the Variance cannot be approved independently of the Minor Use Permit and is denied.

BE IT FURTHER RESOLVED that the Board of Supervisors designates the Clerk of the Board of Supervisors as the custodian of the documents and other materials, which constitutes the record of proceedings upon which the Board of Supervisors' decision herein is based. These documents may be found at the office of the Office of the Clerk of the Board of Supervisors, 501 Low Gap Road, Room 1010, Ukiah, CA 95482

The foregoing Resolution introduced by Supervisor _____, seconded by Supervisor _____, and carried this ~~26th~~^{7th} day of ~~March~~^{May}, 2024, by the following vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: DARCIE ANTLE
Clerk of the Board

Deputy

APPROVED AS TO FORM:
JAMES R. ROSS
Interim County Counsel

MAUREEN MULHEREN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: DARCIE ANTLE
Clerk of the Board

Deputy

RESOLUTION NO. 24-_____

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DENYING THE APPEAL AND AFFIRMING THE DENIAL OF MINOR USE PERMIT AND VARIANCE U_2021-0016/V_2021-0005 WHICH REQUESTED OPERATION OF A GAS STATION AND RELATED IMPROVEMENTS

WHEREAS, the applicant, Faizan Corporation & 898 Main Street LLC, filed an application for a Minor Use Permit and Variance with the Mendocino County Department of Planning and Building Services to establish and operate a gas station with ten (10) gas pumps, two (2) separate illuminated canopies, twenty-eight (28) new parking spaces, landscaping, and convert part of an existing structure to a convenience store, and allow a concurrent Variance for a sixty-five (65) foot tall business identification sign, increased allowable sign area, and reduced front yard setback (the "Project"); located at 9621 & 9601 North State Street, Redwood Valley; APNs 162-100-58 & 162-100-59; and

WHEREAS, pursuant to Public Resources Code Section 21080(B)(5), the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; "CEQA"), an Initial Study and draft Mitigated Negative Declaration (SCH No. 2023110067) was prepared for the Project and noticed and made available for agency and public review on November 2, 2023 in accordance with CEQA and the State and County CEQA Guidelines; and

WHEREAS, the Zoning Administrator referred the Project to the Planning Commission for consideration in accordance with Mendocino County Code Section 20.196.010(C); and

WHEREAS, in accordance with applicable provisions of law, the Planning Commission held a public hearing on, December 7, 2023, at which time the Planning Commission heard and received relevant testimony and evidence presented orally or in writing regarding the Mitigated Negative Declaration and the Project. All interested persons were given an opportunity to hear and be heard regarding the Mitigated Negative Declaration and the Project, and the Planning Commission continued this matter to January 4, 2024 with direction to staff to prepare an alternative resolution for denial for their consideration; and

WHEREAS, in accordance with the applicable provisions of law, the Planning Commission held a continued public hearing on January 4, 2024, at which time the Planning Commission heard and received all relevant testimony and evidence presented orally or in writing regarding the Project and Mitigated Negative Declaration. All interested persons were given an opportunity to hear and be heard regarding the Project and Mitigated Negative Declaration; and

WHEREAS, CEQA does not apply to projects which a public agency rejects or disapproves, as CEQA Guidelines Section 15270(A) provides that projects which are disapproved are Statutorily Exempt from CEQA; and

WHEREAS, the Planning Commission, on January 4, 2024, adopted Resolution No. PC_2024-0001 denying the Project; and

WHEREAS, on January 5, 2024, Brian S. Momsen, on behalf of Faizan Corporation and 898 Main Street LLC, filed an appeal of the decision by the Planning Commission on multiple grounds (the "Appeal"); and

WHEREAS, the Mendocino County Board of Supervisors held a duly noticed Public Hearing on March 26, 2024, to hear testimony and evidence presented orally or in writing regarding the Project and Appeal. All interested persons were given an opportunity to hear and be heard regarding the Project and Appeal; and

WHEREAS, just one day prior to the public hearing, the applicant submitted what it referred to as an Addendum to the Traffic Study prepared by the Applicant for the project and which was considered by the Planning Commission; and

WHEREAS, at the March 26, 2024, hearing, the Board of Supervisors took a tentative vote to deny the project and directed staff to prepare a revised resolution for denial and to bring it back at the May 7, 2024 regular meeting.

NOW, THEREFORE, BE IT RESOLVED that on the basis of the whole of the record before it, the Mendocino County Board of Supervisors denies the Appeal and makes the following findings and determinations:

1. The Board of Supervisors hereby affirms the determinations of the Planning Commission.
2. The Board of Supervisors hereby denies the Appeal and affirms the Planning Commission's denial of the Project and findings regarding the Project and making the following additional findings in support of the denial:
 - a. The granting of such Minor Use Permit would constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in or passing through the neighborhood of the proposed use and would be detrimental or injurious to property and improvements in the neighborhood. The projected increased traffic and safety impacts of the proposed Project would require closure of the US 101 median at the intersection of North State Street (CR 104) and Uva Drive (CR 239). Increased traffic due to the Project would increase the number of cars and trucks crossing US 101 at this intersection, increasing the likelihood of additional collisions which given the speeds of traffic on US 101 would likely be severe if not fatal. Closure of the intersection is necessary mitigation to reduce potentially significant transportation safety impacts caused by the project to less than significant levels. This closure would eliminate the current ability of motorists to turn from either County road onto US 101 or turn from US 101 onto either County road. In addition, motorists would be unable to cross US 101 from one County road to the other. If the median were to be closed, motorists traveling along US 101 would be required to use the West Road (CR 237) interchange to access North State Street and in turn the project site and neighboring properties. If the Project were to be approved, the required transportation mitigation would be a detriment to the general welfare of those residing or working in the vicinity because it would limit circulation options and would increase the length of trips made to and from the vicinity and would place an undue burden on the existing businesses in the area by possibly limiting customer traffic. There are no alternative mitigation measures that are equivalent or as effective in mitigating or avoiding the potentially significant transportation impacts caused by the Project. Therefore, finding (C) contained in Mendocino County Code Section 20.196.020 cannot be made.
 - b. The Addendum to the Traffic Study submitted on the day before the public hearing by the Applicant is found to be inadequate. The Addendum attempts to revise the traffic counts for the project based upon a sample size of a single other fueling station located in Ukiah, which is also owned by the Applicant. During the public hearing, the preparer of the Addendum also stated that the traffic counts were not as firm as they would ordinarily like them to be and that it was not normal to compare to one other business. The seemingly low number of transactions at the Ukiah gas station could be a result of a number of factors which were not addressed in the Addendum, including, but not limited to, that the density of nearby gas stations in the Ukiah area may result in greater competition and therefore lower average sales because consumers are free to choose other stations. As stated by Caltrans in their letter of February 18, 2022, the proposed Project would be the first fueling station motorists see when traveling southbound on US 101 since Laytonville. Lesser competition in the Redwood Valley area would indicate that a greater share of US 101

travelers would stop at the proposed Project. There are additional factors which have not been considered when comparing the two, and the conclusions are therefore clouded by uncertainty. The Addendum was based on data provided to the Applicant's traffic consultant by Applicant and was not based on actual counts but was based on customer transaction data. The Addendum to the Traffic Study did not utilize data from weekend activities and only focused on weekdays, did not account for non-customer trips (employees), and did not include data from the summertime peak trip season. The Applicant's own traffic consultant described the numbers provided in the Addendum to the Traffic Study were not as firm as she would have liked and were "a little bit squishy."

- c. In addition and as otherwise set forth in the record, approval of the Project would be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in or passing through the neighborhood of the proposed Project.
- d. The applicant sought a front yard setback variance as well as variances from the County's signage limitations for sign height and size. The requested Variance application is processed concurrently with the Minor Use Permit and have no independent value if the Minor Use Permit is denied. As such, the Variance cannot be approved independently of the Minor Use Permit and is denied.

BE IT FURTHER RESOLVED that the Board of Supervisors designates the Clerk of the Board of Supervisors as the custodian of the documents and other materials, which constitutes the record of proceedings upon which the Board of Supervisors' decision herein is based. These documents may be found at the office of the Office of the Clerk of the Board of Supervisors, 501 Low Gap Road, Room 1010, Ukiah, CA 95482

The foregoing Resolution introduced by Supervisor _____, seconded by Supervisor _____, and carried this 7th day of May, 2024, by the following vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: DARCIE ANTLE
Clerk of the Board

MAUREEN MULHEREN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

Deputy

APPROVED AS TO FORM:
JAMES R. ROSS
Interim County Counsel

BY: DARCIE ANTLE
Clerk of the Board

Deputy