Saied Pouldar -- Appeal of South Valley Area Planning Commission Determination - APCSV-2019-1481-SPE-SPP-CU-ZV

I. HOW THE APPELLANT IS AGGRIEVED BY THE DECISION

Saied Pouldar is a resident and taxpayer of the City of Los Angeles and has an interest in seeing the City comply with the California Environmental Quality Act, as well as its zoning code and applicable zoning laws. He is aggrieved by the decision because the Planning Commission has violated CEQA and the City's zoning code and applicable laws.

II. REASONS FOR THE APPEAL; POINTS AT ISSUE; DECISIONMAKER'S ERRORS/ABUSE OF DISCRETION

The Planning Commission is considering, among other things, the following:

1. Whether the "project" is categorically exempt from the California Environmental Quality Act (CEQA) by CEQA Guidelines Section 15303;

2. Whether, pursuant to Los Angeles Municipal Code (LAMC) Section 11.5.7.F (Specific Plan Exceptions) to allow, among other things:

   - An accessory car wash use, although such use is not permitted by the C4 use limitations of Section 5.B. of the Valley Village Specific Plan;
   - Pursuant to LAMC Section 12.24.W.27, a Conditional Use to allow a Commercial Corner Development with the following deviations from the standards of Los Angeles Municipal Code Section 12.22.A.23;
   - Pursuant to LAMC Section 12.27, a Zone Variance from "Q" Conditions of Ordinance No. 165,108 to allow a car wash where otherwise prohibited.

A. The "Project" Was Not Correctly Defined And is Subject To CEQA

The Planning Commission was required to comply with the requirement of California Environmental Quality Act ("CEQA") (Public Resources Code ("PRC") Sections 21000, et. seq.) in connection with its consideration of the "project" being considered.

PRC Section 20180 (a) provides that:

> Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

CEQA defines a "project" as an activity that (1) is a discretionary action by a governmental agency and (2) will either have a direct or reasonably foreseeable indirect impact on the environment. (PRC § 21065.) The test for whether an action constitutes a "project" must

take place in the abstract. The courts have established that a proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur. Government agencies examining whether an action constitutes a project under CEQA should be sure to focus on whether the activity could, in general, have a direct or indirect environmental impact and not on whether the action is likely to have specific impacts.

Pursuant to Section 15378 of the CEQA Guidelines, a "project" means the whole of the action. In this case, the Planning Commission defined the "project" as being limited to the actual construction of the car wash. The Planning Commission did not consider that the project included the approval of a specific plan exception, approval of a conditional use and a zoning variance. The failure to properly define the project prevented a proper analysis and violated CEQA.

B. The Categorical Exemption Established by CEQA Guideline 15303 Is Not Applicable To The Project

CEQA Regulation 15303 exempts from CEQA projects that consist of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The Planning Commission found that the project is exempt pursuant to subsection (e) of Regulation 15303: "Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences."

As discussed above, the "project" is not properly defined; the full scope of the project does not fall within the 15303 exemption. Even if the scope of the project could be limited to the construction of the car wash, such a project would not constitute a small structure such as a garage, carport, patio, etc. The use of the exemption was therefore improper.

C. The Use of a Variance to Approve the Use That Is Not Permitted By The City's Zoning Ordinance, Is Illegal

The establishment of a car wash at the subject site is not permitted by the City's zoning ordinances. Staff stated, in part, that:

> Pursuant to Ordinance 165,108 (Sub Area 6740) adopted in 1989, 'the use of the property shall be limited to the uses existing upon the effective date of this ordinance and thereafter to those of the C1.5-1-VL Zone.' This ordinance, then, in essence restricts the zoning of this previously-C2 lot to C1.5 for the determination of whether a use is allowed on the lot; car washes are first allowed in the C2 zone and therefore not allowed in the C1.5 zone.

Staff advised that the applicant must apply for and receive both a Specific Plan Exception and Zone Variance.

A variance is a permit to build a structure or engage in an activity that would not otherwise be allowed under the zoning ordinance; it cannot, however, be granted to allow a *use* unauthorized by the zoning ordinance. (Government Code § 65906.) Typically, variances provide relief from regulations such as those governing setbacks, height, square footage, and density. A variance may be granted "only when, because of the special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification." (Government Code § 65906.)

"A zoning variance, and by analogy a specific plan exception, must be 'grounded in conditions peculiar to the particular lot as distinguished from other property" in the specific plan area. Unnecessary hardship therefore occurs where the natural condition or topography of the land places the landowner at a disadvantage vis-à-vis other landowners in the area, such as peculiarities of the size, shape or grade of the parcel." (*Committee to Save the Hollywood Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1183, citations omitted.) The courts have also discerned in the hardship requirement an additional finding that the hardship be substantial, and that the exception sought must be in harmony with the intent of the zoning laws. (*Id*.)

Further, the special circumstances pertaining to the property must be such that the property is distinct in character from comparable nearby properties. In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, the landowner obtained a zoning variance to build a 93–space mobile home park on 28 acres in Topanga Canyon on property zoned for light agricultural and single-family residences. (*Id.* at 510.) Applying Government Code section 65906, *Topanga* found insufficient evidence supported the grant of the variance because there was no evidence concerning comparable neighborhood properties, and therefore concerning whether the variance was necessary to bring the landowner into parity with other parties holding property in the same area. (*Id.* at 521.)

LAMC Section 11.5.7 establishes specific plan procedures. Subsection F sets forth the findings required for approving exceptions to the specific plan. Among other things, that subsection requires a finding, like a variance, "[t]hat there are exceptional circumstances or conditions applicable to the subject property involved or to the intended use or development of the subject property that do not apply generally to other property in the specific plan area." (LAMC § 11.5.7 F (b).)

In this case, the Planning Commission's found that the "strict application of the specific plan creates an unnecessary hardship because it limits the improvement and expansion of an existing legal use to include a service on site which will mitigate total vehicle trips and be desirable to the public convenience." The staff report pointed out that the current use as a gas station and convenience store were established prior to the establishment of the Specific Plan in 1993. Staff then argued that allowing for customers to receive a car wash at this location further allows the applicant to develop a use which is typically accessory to such gas station uses. The fact the use preexisted the 1993 Specific Plan, which now does not permit the use, means that the

use is a "legal nonconforming use." It is well established that a legal nonconforming use may not be expanded. (*Hansen Brothers Enterprises, Inc. v. Board of Supervisors of Nevada County* (1996) 12 Cal.4th 533, 551.) The Planning Commission improperly approved the expansion of a legal nonconforming use.

The proposed findings that were adopted by the Planning Commission indicated that: "The unique location (subject to a Specific Plan which prohibits redevelopment or expansion of the legally existing, previously-established use) and existing development of the site are special circumstances applicable to the subject property that do not apply generally to other property in the same zone and vicinity." Staff stated that these circumstances include the large size of the site, history of automotive uses, location on a corner, and adjacency to the nearby Freeway. Staff argued that, in essence, the site is uniquely capable of accommodating the proposed car wash and providing needed access and parking for the proposed incidental use without impeding access to or interference with the existing refueling operation.

The analysis, which was approved or relied upon by the Planning Commission, was not focused on the actual characteristics of the subject site. The findings pointed out that the use is not allowed in the subject zone. The findings then indicate that, because the site already has an existing automotive use and is big enough and located near a freeway, it can handle the proposed use. This is not a proper variance or specific plan exemption analysis. These findings do not support the granting of a variance or a specific plan exemption.

Staff also referred to the adjacent gas station. The fact that the City may have previously allowed a car wash on another property, does not justify the failure by the Planning Commission in this case to properly consider the legal variance requirements. There was no evidence that relates to the other site that justified the Planning Commission's failure to properly analyze the proposed project in this case.

The approved use is not allowed by the City's zoning ordinances. If the applicant or the City desired to proceed with the use, they were required to seek a change in the zoning ordinance and comply with all of legal requirements necessary for such a change. Such requirements cannot be avoided by use of the variance procedure.

For all of the above reasons, the Planning Commission erred and/or abused its discretion by approving the project.