



TOWN OF FAIRFAX

STAFF REPORT

January 15, 2014

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager
Jim Moore, Director of Planning and Building Services *GM*

SUBJECT: Adoption of a resolution of the Town Council of the Town of Fairfax denying Application No. 13-32 for development of 2001 Sir Francis Drake Boulevard (APN 002-116-04) as a gas station/convenience mart

RECOMMENDATION

Adopt a resolution denying Application No. 13-32 for development of 2001 Sir Francis Drake Boulevard (APN 002-116-04) as a gas station/convenience mart.

DISCUSSION

On January 15, 2014, the Council concluded a public hearing that was initially opened on December 4, 2013, to discuss the application for a gas station/convenience mart at 2001 Sir Francis Drake Blvd. The public hearing was to consider a Council directed referral of a set of approvals and recommendations issued by the Planning Commission. Specifically, on September 19, 2013, the Planning Commission approved a Conditional Use Permit (including a Formula Business Use Permit), Design Review, Sign Permit, and Traffic Impact Permit for the reuse of a vacant existing gas station facility at 2001 Sir Francis Drake Boulevard. The directed referral process allows the Town Council to conduct a *de novo* hearing on a pending development application.

After careful consideration of the materials, information, and comments submitted by the applicant and his representatives, public, and staff, the Council directed staff to return with a resolution incorporating the Council's findings denying the application. At the conclusion of the public hearing, the Council found that:

1. the findings required by § 17.032.060 of the Town Code to approve a use permit for a gas station and convenience mart at this location could not be made, given the details of the proposed Project; and
2. the proposed Project failed to conform to applicable portions of the General Plan; and
3. the proposed Project conflicted with the development regulations governing the location of driveways in relation to nearby intersections.

The attached resolution provides the detailed findings denying the application. Due to the volume of material, staff did not attach any documents/displays previously submitted at the public hearing. However, they are available upon request or on the Town's website under agendas.

FISCAL IMPACT

None at this time.

RESOLUTION 14-____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
DENYING APPLICATION NO. 13-32
FOR DEVELOPMENT OF 2001 SIR FRANCIS DRAKE BOULEVARD
(APN 002-116-04) AS A GAS STATION/CONVENIENCE MART

WHEREAS, on October 15, 2012, Arash Salkhi (“Applicant”) submitted an incomplete application, which was deemed complete on July 28, 2013, for a conditional use permit (including a formula business use permit), design review, sign permit, and traffic impact permit to the Town of Fairfax for the proposed use of 2001 Sir Francis Drake Boulevard (the “Site”) as a gas station/convenience mart (the “Project”);

WHEREAS, on September 19, 2013, the Town of Fairfax Planning Commission held a duly-noticed public hearing to consider approval of Applicant’s requested use permit (including a formula business use permit), design review, and sign permit, and consider recommending to the Town Council that the Council approve the requested traffic impact permit;

WHEREAS, at the conclusion of the September 19, 2013, Planning Commission meeting, that body did approve, by way of its adoption of Planning Commission Resolution 13-06, the requested conditional use permit (including a formula business use permit), design review, and sign permit for Applicant’s proposed development of the Project, and did recommend to the Town Council that it approve a traffic impact permit for the same; and

WHEREAS, on September 26, 2013, prior to the time the Town Council received the traffic impact permit for its consideration, Councilmember Goddard called the entire application to the jurisdiction of the Town Council by submitting a request for a directed referral, in accordance with Fairfax Town Code § 17.036.130(A); and

WHEREAS, the directed referral process, as defined by the Town Code, allows the Town Council to conduct a *de novo* hearing on a pending development application; and

WHEREAS, on December 4, 2013, the Town Council held a duly-noticed public hearing to consider anew Applicant’s request for a conditional use permit, design review, sign permit, and traffic impact permit; and

WHEREAS, at the December 4, 2013, public hearing, the Town Council considered a staff report and its exhibits, and heard from Applicant and his legal counsel, interested members of the public, and staff, and after so doing, requested further information from both Applicant and staff prior to reaching a final decision on the proposed Project; and

WHEREAS, the matter was thus continued to a duly-noticed public hearing on January 15, 2014, at which hearing, the Town Council considered the additional information submitted by Applicant and researched by staff and again heard from Applicant, interested members of the public, and staff; and

WHEREAS, as set forth in the staff reports prepared for the Town Council, the Site bears a General Plan land use designation of 'Central Commercial' (per Figure LU-1 of the Fairfax 2010-2030 General Plan), and a zoning designation of 'Central Commercial' (per Figure LU-2 of the Fairfax 2010-2030 General Plan). However, the Town Zoning Ordinance (found at Title 17 of the Town Code of Fairfax) has not been amended to conform to the newly-adopted General Plan, and the Site is currently zoned as 'Commercial Highway;' and

WHEREAS, gas stations are a conditionally permitted use within the 'Commercial Highway' zoning district, per Town Code § 17.096.050. In order to approve any conditional use permit, the approving body must be able to find that the proposed development satisfies four criteria set forth in Town Code § 17.032.060; and

WHEREAS, as set forth in the staff report presented to and considered by the Town Council on January 15, 2014, the eastern property line of the Site runs through the area the Applicant proposed to use to provide parking and circulation for the Project. The real property immediately adjoining said eastern property line is actually public right of way (the "Public Right of Way Area") which had been used by a previous owner of the Site pursuant to an encroachment permit issued by the Town in favor of the former owner in 1970 for landscaping purposes; and

WHEREAS, at the conclusion of the January 15, 2014, public hearing, the Town Council found that:

1. the findings required by § 17.032.060 of the Town Code to approve a conditional use permit for a gas station and convenience mart at this location could not be made, given the details of the proposed Project;
2. the proposed Project failed to conform to applicable portions of the General Plan; and

3. the proposed Project conflicted with the development regulations governing the location of driveways in relation to nearby intersections; and

WHEREAS, on the basis of all of these findings, the Town Council, by a vote of 5-0, voted to direct staff to prepare a resolution documenting the same,

NOW, THEREFORE, BE IT HEREBY FOUND AND RESOLVED by the Town Council of the Town of Fairfax:

Section 1. The recitals set forth above are incorporated herein.

Section 2. Town Code § 17.032.060 sets forth four criteria that must be satisfied in order to grant a requested use permit. The Town Council has determined that the proposed Project does not meet the first of these (§ 17.032.060(A)), which states that “[t]he approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment,” inasmuch as Applicant’s use of the Public Right of Way Area for the provision of parking and circulation purposes would constitute a use of that Public Right of Way Area in a manner far in excess of the scope of the encroachment permit issued and by a user other than that to which the encroachment permit was issued. The prohibition on the use of the Public Right of Way Area for parking and circulation purposes would effectively render the Site incapable of providing all of its required parking, and inhibit free circulation across and through the Site in contravention of the Town Code’s parking and loading requirements.

Section 3. The Town Council likewise determined that it could not approve the proposed Project because of its failure to conform to the General Plan, Land Use Element Program LU-7.1.1.2 of which dictated the rezoning of this parcel from CH, in which gas stations are conditionally permitted and which was designed to cater to automobile uses, to CC, in which gas stations are not a conditionally permitted use and which was designed to cater to and invite pedestrian uses.

Section 4. The Town Council also determined that the proposed Project failed to comply with the development standards set forth in Town Code § 12.012.030, which provide that “any driveway entrance or approach leading from the street into any premises, structure or building to be used exclusively for residential purposes shall not be of greater width than 20 feet, measured over the sidewalk area, nor shall any such driveway entrance or approach be permitted within 30 feet of the corner of any intersecting street,” inasmuch as the southeastern driveway offering access to and from the Site onto Broadway is less than thirty feet from the intersection of Broadway and Bank Street.

Section 5. Based on the foregoing, the Town Council of the Town of Fairfax does deny Application No. 13-32 in its entirety.

The foregoing Resolution was adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 5th day of February 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

DAVID WEINSOFF, Mayor

Attest: _____
Michele Gardner, Town Clerk