

June 17, 2021

**CHAIR AND PLANNING COMMISSIONERS**

City of Long Beach  
California

**RECOMMENDATION:**

Receive supporting documentation into the record, conclude the public hearing, consider two, third-party appeals filed by Tempestt Garland (APL21-002) and Long Beach Unified School District c/o Alan Reising (APL21-003); accept Categorical Exemption CE-20-045; and uphold the Zoning Administrator's decision to approve Administrative Use Permit AUP20-004 to allow the sale of diesel fuel at a future gas station located at 6090 Long Beach Boulevard in the Community Commercial Automobile-Oriented (CCA) Zoning District, (Application No. 2004-08). The diesel fuel sales would be in conjunction with a future gas station and convenience store, which are uses allowed by right in the CCA Zoning District (District 9).

**APPLICANT:** 7-Eleven, Inc.  
c/o Adan Madrid  
5932 Bolsa Ave., Suite 107  
Huntington Beach, CA 92649  
(Application No. 2004-08 [AUP20-004])

**APPELLANTS:** Tempestt Garland  
1901 Avenue of the Stars, Suite 575  
Los Angeles, CA 90067  
(Application No. 2103-29 [APL21-002])

Long Beach Unified School District  
c/o Alan Reising  
2426 Webster Ave.  
Long Beach, CA 90810  
(Application No. 2103-36 [APL21-003])

**DISCUSSION**

On February 8, 2021, the Zoning Administrator (ZA) held a public hearing on an Administrative Use Permit (AUP) (Application No. 2004-08) request to allow a gas station with the sale of diesel fuel for



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a future 7-Eleven convenience store located at 6090 Long Beach Boulevard in the Community Commercial Automobile-Oriented (CCA) Zoning District (Application No. 2004-08) (Attachment A – Zoning Administrator Minutes - February 8, 2021). Staff provided a detailed report regarding the project findings and California Environmental Quality Act (CEQA) analysis. The ZA heard public comments from residents, a nearby business owner, and the Long Beach Unified School District representative whom expressed concern about the project. The areas of concern, included whether alcohol sales were proposed, the possibility of increased traffic, noise, the level of environmental review, and the concern of the use being detrimental to the surrounding area. The ZA continued the matter to March 8, 2021 in order to allow public review of the technical reports and findings and to provide an opportunity for the applicant to conduct outreach with the public. On March 8, 2021, the ZA held a continued public hearing to consider the AUP request (Attachment B - Zoning Administrator Minutes - March 8, 2021). After considering the staff report and public comment, the ZA conditionally approved the AUP. Within the 10-day appeal period, the AUP was appealed by two parties. As required in Section 21.21.501 of the Long Beach Municipal Code (LBMC), the Planning Commission is the body to hear appeals from decisions where the ZA served as the initial decision-maker and the Commission's decision will be final.

### *Project Site*

The subject property is 22,530-square-feet in size and located on the east side of Long Beach Boulevard between Gordan Street and Victoria Street within the Community Commercial Automobile-Oriented (CCA) Zoning District. The parcel has approximately 205 linear feet of street frontage along Long Beach Boulevard, approximately 60 linear feet of street frontage along Cambridge Street to the north, and approximately 85 linear feet of street frontage along Gordon Street to the south. The property also borders a 20-foot-wide public alley to the east. The southern portion of the property is currently developed with a one-story, 1,547-square-foot auto repair garage, diesel fuel pumps, and underground storage tanks constructed circa 1966., A one-story, 679-square-foot fast-food restaurant is located towards the north end of the parcel (Attachment C - Site Photos). The business license for the diesel fuel sales and repair garage is active. The fast food restaurant is currently closed; the business license expired in January 2020.

The site has an underlying General Plan PlaceType designation of Neighborhood-Serving Center or Corridor-Low (NSC-L) which encourages low-rise, low-intensity mixed-use (housing and retail) commercial centers and corridors designed to meet consumers' daily needs for goods and services close to residential areas. The property is in the CCA Zoning District, which is intended to provide retail and service uses for an entire community including convenience and comparison shopping for goods and associated services. The CCA zoning district allows convenience stores (without alcohol sales) and gasoline fuel sales by right. The proposed diesel fuel sale use requires the approval of an Administrative Use Permit (AUP). Alcohol sales are not proposed as part of the project. The existing diesel fuel sale use was established in 1947 and is classified as a legal non-conforming use; the use started prior to the zoning requirement for an AUP. Because of the proposed modifications, the zoning code, now requires the property owner to attain approval of an AUP.

While the site has the NSC-L PlaceType designation per the 2019 General Plan Land Use Element (GLUE) which allows for mixed use development, it is zoned with a zoning district that exclusively allows commercial uses. While the City generally seeks to encourage residential and mixed-use development on properties with the NSC PlaceType designation that is not the only factor by which a use is determined to be appropriate and uses that are purely commercial may also be consistent. There are a number of factors unique to this project that informed the Zoning Administrator's decision to approve an AUP for diesel fuel sales on the subject site. They include:

- The proposed use currently exists on the site as a legal nonconforming use; and the AUP is solely triggered by the proposed modifications to the site; the Site Plan Review process and AUP requirement provide the City the opportunity to seek improvements to the site (reduced driveways, landscaping, buffering from adjacent residential uses) and to impose conditions on the project that enhance its compatibility with surrounding use and bring a legal, nonconforming use into greater compliance with the zoning Code.
- The uses and project (convenience store and gas station) proposed for the site are otherwise permitted by the zoning district by-right;
- The site has historically been used for commercial uses, diesel fuel sales and auto repair uses, which are longstanding uses, according to various data sources, as are the auto-oriented commercial uses and development patterns of properties that front Long Beach Boulevard;
- The current CCA zoning district does not allow residential uses and rezoning of the site would be required to allow residential development on the site;
- The site's proximity to the Interstate-710 interchange, combined with the existing and historic commercial use of the site and other sites in the vicinity fronting Long Beach Boulevard, make the site less ideally situated for residential development.

#### *Site Plan Review*

In addition, to the AUP, a committee level Site Plan Review (SPR) approval was required for the redevelopment of the site with a 2,960-square-foot convenience store with a 1,340- square-foot fueling canopy, two (2) new underground 20,000 gallon fuel storage tanks, six (6) fueling positions, and ancillary improvements including new landscaping, a surface parking lot with seventeen (17) parking spaces, new parking lot lighting standards, trash enclosure and signage (Attachment D - Plans). The existing site has a total of five (5) driveways; the proposed project reduces the number of driveways to two (2) driveways located along Long Beach Boulevard increasing the safety and comfort for pedestrians. The applicant worked with Staff to improve the architecture from the original project submittal; the building has a modern design that incorporates architectural features on all frontages and provides pedestrian access along the northwest corner and south elevations of the building. The design of the new gas station and convenience store was found to be compatible with the surrounding uses. The redevelopment of the site would improve the properties overall appearance and help to deter nuisance activities from occurring. The SPR was approved by the Site Plan Review Committee on November 11, 2020 with conditions (Attachment E - SPR Findings and Attachment F - SPR Conditions).

### *Administrative Use Permit (AUP)*

The purpose of the AUP process is to provide a streamline review process for projects which have an insignificant effect on its surroundings. Pursuant to the Chapter 21.32 an AUP is required for diesel fuel sales. The AUP process allows for review of certain uses so that it may be determined on individual basis if the type of use proposed, or the location of that use, is compatible with, or through the imposition of reasonable conditions, can be made compatible with surrounding uses. The approved project is consistent with the development standards set forth in Title 21 of the City's Zoning Code, Section 21.52.222 (Diesel Fuel Sales) of the LBMC regarding special conditions, and the General Plan. The required findings for the AUP include consideration of location along designated truck routes, walls abutting residential districts, vehicle queuing, site circulation, site access, idling restrictions, exterior telephone, and hours of operation. The proposed diesel fuel sales serve as an accessory use to the convenience and gas station uses. The ZA approved the diesel fuel sales finding that with the incorporation of additional conditions of approval related to trash, prohibition on outdoor speakers, perimeter walls, security cameras, temporary construction fencing, restrictions on hours of trash disposal (Attachment G - AUP Conditions of Approval), the project could operate in a manner compatible with the adjacent uses (Attachment H - AUP Findings).

At the continued hearing, three (3) written comments and four (4) verbal comments were included in the record of proceedings (Attachment I - ZA Public Comments). With the added conditions based on public outreach, the ZA conditionally approved the AUP at the March 8, 2021 hearing. Within the 10-day appeal period, the AUP was appealed by two parties (Attachment J - Applications for Appeal).

### *Appeal*

Two, third-party, appeals were filed, one by Tempestt Garland (APL21-001) and the second by Long Beach Unified School District c/o Alan Reising (APL21-002). The basis of the appeals includes diesel fuel sales and corresponding CEQA determination. The cited concerns include the accuracy of the project description and the adequacy of the environmental analysis conducted as part of the Categorical Exemption. The following is a summary of the assertions made in the appeals, followed by a brief response:

- ***The project description did not include the entire project.***

For the purposes of CEQA, the whole project was considered as part of the Class 32 Categorical Exemption. The project considered for the purposes of CEQA review included the redevelopment of the site consisting of the following activities: demolition of existing structures and necessary excavation to remove and replace existing underground storage tanks, restaurant building, and construction of a convenience store, service garage, and six gasoline and diesel fueling pumps. Per the Zoning Code, the ZA has review authority for the AUP for diesel fuel sales while the Site Plan Review Committee has authority over the SPR. While the development review process for the project was conducted by separate decision makers, the CEQA analysis was conducted from the whole of the project, in accordance with CEQA. CEQA does not preclude a city from reviewing permits separately so long as there is one CEQA analysis.

- ***The City must consult the Long Beach Unified School District (“District”) regarding hazardous air emitters.***

The proposed project is replacing existing diesel fuel sales and auto repair garage. The proposed project qualifies under a Class 32 exemption which does not mandate consultation with the District as no impacts would exceed established thresholds requiring the preparation of a Negative Declaration or Environmental Impact Report. Nonetheless, the nearby school was notified of the proposed project, and staff has subsequently met and coordinated with the District, and conditions of approval have been incorporated, as feasible, in response to stated concerns.

- ***The City Must Conduct a Health Risk Assessment due to the proximity of the project to Colin Powell Elementary school.***

The Air Quality and Green House Gas Impact Analysis prepared by Vista Environmental dated October 26, 2020, finds that the project is below the maximum daily thresholds for all criteria pollutants. The study also concluded that the proposed project would result in cancer risk of 3.417 persons per 1 million which is below the Air Quality Management District’s threshold of 10 persons per 1 million. The proposed project would not expose sensitive receptors pollutant concentrations in excess of the threshold. Furthermore, the school site is located approximately 620 feet to west of the project site, which exceeds minimum recommended separation criteria from the Air Resources Board.

For reference, the guidance for siting of sensitive land uses established by the California Air Resource Board in the “Air Quality and Land Use Handbook: A Community Health Perspective” recommends distance of not less 300 feet when siting a new large gas station (defined as a facility with a throughput of 3.6 million gallons per year or greater) by a sensitive receptor, such as a school. A 50-foot separation is recommended for smaller gas stations. Although the project does not involve the siting of a new school it illustrates the minimum recommended separation deemed acceptable. The distance of the project site from the school exceeds the minimum established criteria and is a replacement of an existing service station for trucks.

- ***The traffic analysis did not address existing congestion, pass through trips through the adjacent residential streets, the entrances and exits that at Collin Powell Elementary School and did not account for existing traffic congestion.***

Per CEQA, a proposed project is not responsible for mitigating existing impacts, in this case existing traffic congestion conditions, but rather is only required to mitigate the impacts created by the project. Based on the transportation analysis completed for the project, the net trip generation of the project (when compared to the trip generation of existing uses on the site) is projected to be 16 trips in the a.m. peak hours and a reduction of 6 trips in the p.m. peak hours, and, as the project generates less than 50 net new trips in the peak hours, it is considered to not have a traffic impact, and therefore does not require additional traffic analysis nor does it require any mitigation measures or transportation improvements to minimize traffic congestion. Furthermore, pursuant to Public Resources Code Section 21099(b)(2) and consistent with the City’s updated Traffic Impact Assessment Guidelines (TIA Guidelines, June 2020) an assessment of level of service or similar measures of vehicular capacity or traffic congestion is no longer required under CEQA. Based on the

recently adopted vehicle miles traveled (VMT) metric for transportation analysis, the project is automatically screened out from further environmental review based on its size and the proposed use. Local serving commercial uses under 50,000 square feet are assumed to have a less than significant impact, consistent with the City adopted Traffic Impact Analysis (TIA) Guidelines and state guidance. The Traffic Impact Analysis (TIA) technical report prepared by Linscott & Green Span, was revised to clarify the distance of the proposed diesel fuel sale use from Colin Powell Elementary School. The analysis and results of the study remain unchanged with the incorporation of the corrected distance (Attachment K – Revised TIA).

In sum, the supplemental studies for Air Quality/Green House Gas, Traffic, and Hazards demonstrates that the proposed project would not result in an effect on the environment and would be consistent with all required findings for a Class 32 Categorical Exemption (Attachment L - Categorical Exemption). The project will be subject to compliance with the noise ordinance through construction and operations. The applicant, as part of the plan check review process, will be required to implement Best Management Practices with regards to stormwater run-off in compliance with the National Pollutant Discharge Elimination Systems permit and implement a Water Quality Management Plan for the site's long-term operation.

In April 2021, Staff met with the District regarding the project. In response to the appeals and discussion with the District Staff additional conditions of approval are recommended the following additional conditions; 1) a requirement that retail sales of "healthy foods" is provided as part of the convenience store operations; 2) limitation that the diesel fuel sales is not intended for semi-truck stop; 3) posting of signs aimed at discouraging loitering; 4) requirement for applicant to coordinate with District on reporting of minors for truanancies; and 5) clarifying that diesel fuel sales may only be permitted in combination with gasoline fuel sales.

In response to the filed appeals, the Traffic Impact Analysis (TIA) technical report was revised to clarify the distance of the proposed diesel fuel sale use from Colin Powell Elementary School. The analysis and results of the study remain unchanged with the incorporation of the corrected distance (Attachment M - Response to Appeals).

In addition, the applicant prepared a response to appellant comments related to the topics of air quality, traffic, greenhouse gas (GHG), water quality, and noise (Attachment M- Response to Appeal). This supplemental study demonstrates that the proposed project would not result in an effect on the environment and would be consistent with all required findings for a Class 32 Categorical Exemption (Attachment L - Categorical Exemption CE-20-045).

### **PUBLIC HEARING NOTICE**

A total of 65 notices of public hearing were distributed within a 300-foot radius from the project site on June 1, 2021 in accordance with the requirements of Chapter 21.21 of the Zoning Regulations. All interested parties that commented on the previous public hearings were also noticed. As of the preparation of this report, no public comments have.

## **ENVIRONMENTAL REVIEW**

This project has been reviewed for compliance with the California Environmental Quality Act (CEQA). Pursuant to CEQA Section 15332, Class 32, this project is eligible for a Categorical Exemption for "In-Fill Development" as it consists of a new use within an in-fill development project (gas station and convenience store). Technical reports were prepared for the project to document compliance with the conditions described in Section 15332 for this class of exemption (Attachment J - Categorical Exemption CE-20-045 ). The technical reports included topics such as air quality, greenhouse gas, traffic/transportation, hazardous waste and materials, and noise. The completed reports and supporting documentation indicated that the project would not result in a significant or cumulative impact on the environment.

The supplemental TIA (Attachment K - Revised TIA) prepared in response to the appeals included minor clarifications and did not substantively change the content or results of the analysis.

Staff has analyzed the project in accordance with the required findings for an AUP entitlement and finds that positive findings can be made. As such, staff recommends the Planning Commission deny the appeals and uphold the decision of the ZA to approve the project, subject to conditions.

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Respectfully submitted,



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PROJECT PLANNER



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Attachments:

- Attachment A - Zoning Administrator Minutes – 2.8.21
- Attachment B - Zoning Administrator Minutes – 3.8.21
- Attachment C - Site Photos
- Attachment D - Plans
- Attachment E - SPR Findings
- Attachment F - SPR Conditions
- Attachment G - AUP Conditions of Approval
- Attachment H - AUP Findings
- Attachment I - ZA Public Comments
- Attachment J - Applications for Appeal
- Attachment K - Revised TIA
- Attachment L - Categorical Exemption
- Attachment M - Response to Appeals