

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director
Prepared by Joseph Fiss, Principal Planner 

DATE: April 19, 2011 (CC Meeting of May 4, 2011)

SUBJECT: Consider a Resolution Approving Modification No. 1 to CPD 92-2, for Installation of a New Customer Order Display with Speaker and Relocation of an Existing Menu Board for McDonald's Restaurant at 501 Los Angeles Avenue

BACKGROUND

On February 24, 2011 Mel Cruz filed an application for a Modification to an existing Commercial Planned Development on behalf of McDonald's USA, LLC for installation of new customer order display with speaker and relocation of existing menu board located at an existing McDonald's Restaurant.

DISCUSSION

Project Setting

Existing Site Conditions:

The project site is in small shopping center that includes a mix of office, retail, service, and restaurant uses. The 3,265 square foot restaurant includes an existing drive-through service aisle without an ordering device. Orders are placed directly with an employee at one window, and fulfilled at the next window.

Previous Applications:

On March 7, 1984, the Planning Commission adopted Resolution PC-92-267 approving Commercial Planned Development Permit No. 92-2 for construction of a fast food restaurant with drive through service and patio seating. Minor Modification Nos. 1 through 4 allowed landscaping changes, addition of an indoor play area, and modifications to the drive-through signage. In 2003, the Zoning Code was amended to simplify the review process. "Minor Modifications" and "Major Modifications" were combined into a single "Modification" process. This application is the first modification since the code was

amended, and as such, is the first one for this project that follows the new numbering system.

General Plan and Zoning Consistency:

GENERAL PLAN/ZONING			
Direction	General Plan	Zoning	Land Use
Site	C-2 (General Commercial)	CPD (Commercial Planned Development)	Retail
North	C-2 (General Commercial)	CPD (Commercial Planned Development)	Retail
South	C-2 (General Commercial)	CPD (Commercial Planned Development)	Retail
East	C-2 (General Commercial)	CPD (Commercial Planned Development)	Retail
West	R-1 (Single Family Residential)	M (Medium Density Residential)	Single Family Residential

Fast food restaurants with drive-through ordering devices are consistent with the General Commercial General Plan land use designation and the Commercial Planned Development (CPD) zoning designation of the site. Under the current code, a new restaurant with drive-through service would require a Conditional Use Permit.

Proposed Project

The applicant is proposing a modification to the original Planned Development Permit to allow the addition of an “order confirmation system” that includes a microphone, speaker, and video display and to relocate the existing menu board to a location convenient to viewing from the ordering device. The applicant is not proposing to modify the drive-through lane itself or to remove the existing ordering windows. It is appropriate to leave the ordering windows in place to maintain the architectural integrity of that side of the building. Any proposed change that exceeds the criteria of a permit adjustment, but is not extensive enough to be considered a substantial or fundamental change in the approved entitlement or use relative to the permit, would not have a substantial adverse impact on surrounding properties and would not change any findings contained in the environmental documentation prepared for the permit, may be deemed a permit modification by the Community Development Director. Because the applicant is requesting an amendment to a condition of approval, the Director has determined this request requires consideration of a permit modification.

Action on the permit modification application is taken by the decision-making body that approved the original permit by the same type of public action process, in this case, a

public hearing with appropriate noticing. Although the Planning Commission approved the original Commercial Planned Development Permit under the procedures in effect at the time, the City Council currently has the decision-making authority for these permits, and is therefore the hearing body for the modification request.

Analysis

Staff analysis of the proposed project has identified the following issue area for City Council consideration:

- Noise:

On October 5, 1992, the Planning Commission adopted Resolution PC-92-267 approving a Negative Declaration and Mitigation Monitoring Program, Commercial Planned Development 92-2, and Land Division Map 92-1 for this project. These approvals were contingent upon City Council approval of Zone Change 92-4, which was subsequently approved.

Noise was evaluated in the Initial Study, but was not determined to be a significant impact, and there were no related mitigation measures adopted. However, at the time, the commercial buildings to the north of this restaurant had not yet been built, and there was concern that, given the technology at the time, there was a possibility of unexpected noise impacts on the neighboring condominiums which were built in 1978 and had direct “line of sight” to the restaurant. Given this concern, a condition of approval was added, as follows:

“56. The interior noise levels of the commercial development shall be attenuated in conformance with the noise insulation standards of Chapter 1, Article 4, Section 1092 of Title 25 of the California Administrative Code. Noise source levels shall be based upon the (ultimate) (1993) traffic volumes projected along New Los Angeles Avenue/Spring Road, and Moorpark Avenue in the environmental document for this project. Determination as to whether the architectural design for the commercial development complies with this condition shall be made by the Building Department and Director of Community Development prior to the issuance of building permits. Ordering within the drive-thru area shall be taken via attendants only; no microphones shall be used to take customers orders.”

In 2005, the commercial building to the north of this site was constructed, blocking the “line of sight” between the McDonald’s and the residences to the north. The new building creates a sound buffer between the condominiums and the rest of the site (and from Los Angeles Avenue), mitigating the noise concerns from the drive-through. Additionally, advancements in speaker technology allow for clearer, crisper sound, thus not requiring as loud a volume to obtain the same results. The digital audio and video feedback and order confirmation used on modern ordering devices reduces the need for repeating orders over and over again, thus reducing the amount of audible communications between those placing and taking orders.

The current hours of operation of the McDonalds Restaurant drive-through are 5:00 a.m. to Midnight, weekdays, and 5:00 a.m. to 1:00 a.m. on Saturdays. The dining room closes at 11:00 p.m. every day. No specific hours of operation were required in the original entitlement approvals.

The operator of this restaurant also owns and operates the McDonald's at Campus Plaza, on Campus Drive, west of Collins Avenue. That restaurant maintains a customer order display with speaker that is across the street from single family residences. Staff has not received any noise complaints regarding that system, although complaints have been received regarding the television speakers at the adjacent service station. Staff has worked closely with the operator of the service station to have the volume adjusted on those speakers, and the complaints have been resolved.

A condition of approval has been included to allow for ongoing maintenance and review by the Community Development Director, in order to assure that noise levels are not above those allowed by the Moorpark Municipal Code.

Findings

1. The site design, including structure location, size, height, setbacks, massing, scale, architectural style and colors, and landscaping, is consistent with the provisions of the general plan, any applicable specific plans, zoning ordinance, and any other applicable regulations in that the physical change to the architecture of the building is minor and no other physical changes to the site are proposed;
2. The site design would not create negative impacts on or impair the utility of properties, structures or uses in the surrounding area in that conditions have changed that mitigate negative impacts that would have otherwise occurred; and
3. The proposed uses are compatible with existing and permitted uses in the surrounding area in that the general use of the site is not changing and has previously been found to be compatible.

PROCESSING TIME LIMITS

Time limits have been established for the processing of development projects under the Permit Streamlining Act (Government Code Title 7, Division 1, Chapter 4.5), the Subdivision Map Act (Government Code Title 7, Division 2), and the California Environmental Quality Act Statutes and Guidelines (Public Resources Code Division 13, and California Code of Regulations, Title 14, Chapter 3). Under the applicable provisions of these regulations, the following timelines have been established for action on this project:

Date Application Determined Complete: April 20, 2011

City Council Action Deadline: July 19, 2011

Upon agreement by the City and Applicant, one 90-day extension can be granted to the date action must be taken on the application.

ENVIRONMENTAL DETERMINATION

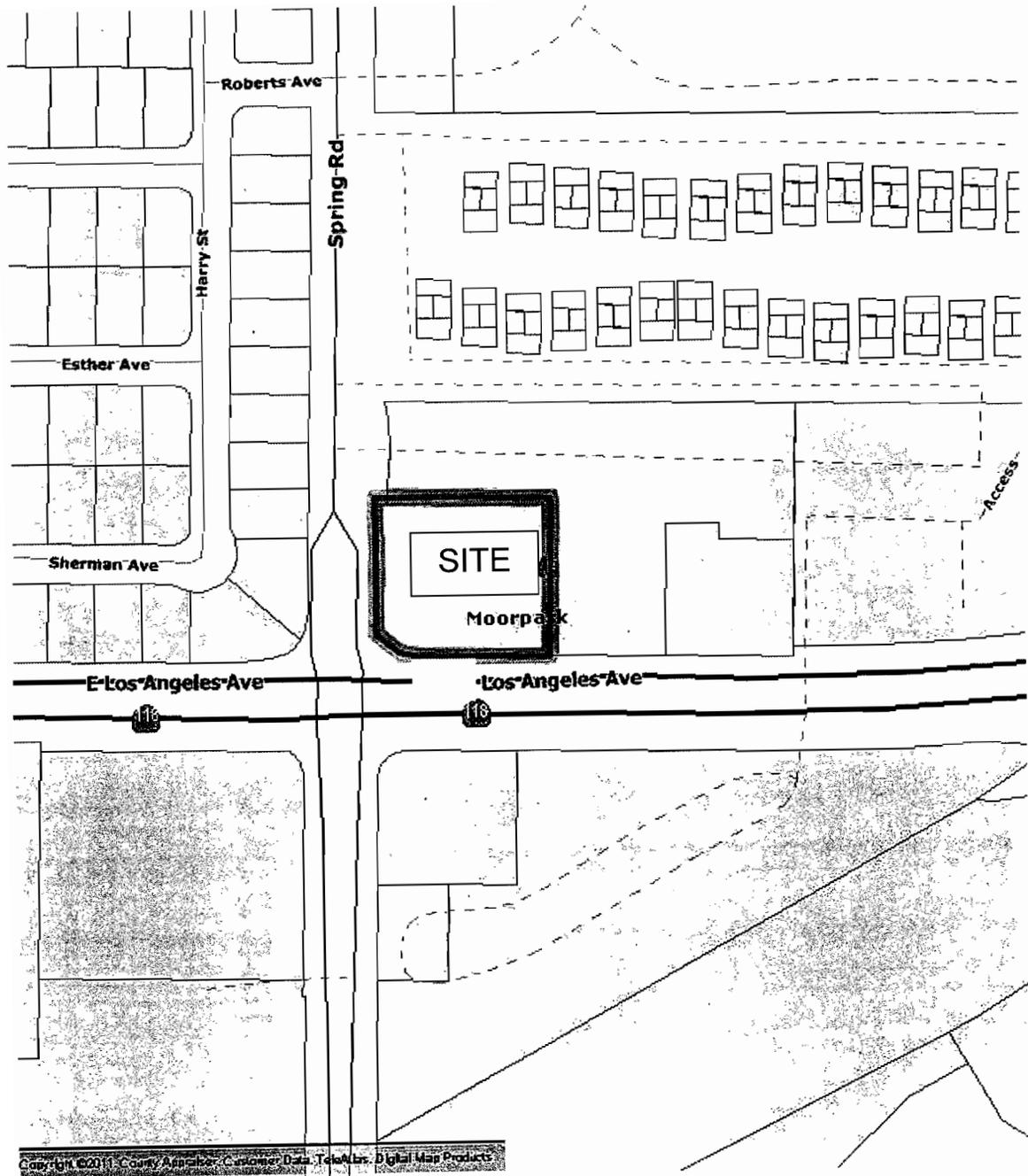
This project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with Section 15301 (Class 1: Existing Facilities) of the California Code of Regulations (CEQA Guidelines). No further environmental documentation is required.

STAFF RECOMMENDATION

1. Open the public hearing, accept public testimony and close the public hearing.
2. Adopt Resolution No. 2011-_____ approving Modification No. 1 to CPD 92-2 with conditions.

ATTACHMENTS:

1. Location Map
2. Aerial Photograph
3. Under Separate Cover - Project Exhibits
 - A. Site Plan
 - B. Order Confirmation System
4. Draft Resolution with Conditions of Approval



LOCATION MAP

CC ATTACHMENT 1



AERIAL PHOTOGRAPH

CC ATTACHMENT 2

PROJECT EXHIBITS

- A. Site Plan**
- B. Order Confirmation System**

(UNDER SEPARATE COVER)

**COPIES OF THE EXHIBITS ARE AVAILABLE
UPON REQUEST OF THE PROJECT PLANNER**

RESOLUTION NO. 2011-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING MODIFICATION NO. 1 TO CPD 92-2, FOR INSTALLATION OF A NEW CUSTOMER ORDER DISPLAY WITH SPEAKER AND RELOCATION OF AN EXISTING MENU BOARD FOR MCDONALD'S RESTAURANT AT 501 LOS ANGELES AVENUE, ON THE APPLICATION OF MEL CRUZ FOR MCDONALD'S USA, LLC

WHEREAS, at a duly noticed public hearing on May 5, 2011, the City Council considered Modification No. 1 TO CPD 92-2 on the application of Mel Cruz for McDonald's USA, LLC, for installation of a new customer order display with microphone and speaker and relocation of existing menu board located at McDonald's Restaurant at 501 Los Angeles Avenue; and

WHEREAS, at its meeting of April 20, 2011 the City Council considered the agenda report and any supplements thereto and written public comments, opened the public hearing and took and considered public testimony both for and against the proposal and reached a decision on this matter; and

WHEREAS, the City Council concurs with the Community Development Director's determination that this project is Categorically Exempt from the provisions of CEQA pursuant to Section 15301 as a Class 1 exemption for existing facilities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. PLANNED DEVELOPMENT FINDINGS: Based upon the information set forth in the staff report(s), accompanying studies, and oral and written public testimony, the City Council makes the following findings in accordance with City of Moorpark, Municipal Code Section 17.44.040:

- A. The site design, including structure location, size, height, setbacks, massing, scale, architectural style and colors, and landscaping, is consistent with the provisions of the general plan, any applicable specific plans, zoning ordinance, and any other applicable regulations in that the physical change to the site is minor and no other physical changes to the site are proposed;
- B. The site design would not create negative impacts on or impair the utility of properties, structures or uses in the surrounding area in that conditions have changed that mitigate negative impacts that would have otherwise occurred; and
- C. The proposed uses are compatible with existing and permitted uses in the surrounding area in that the general use of the site is not changing and has previously been found to be compatible.

SECTION 2. City Council Approval: The City Council hereby approves Modification No. 1 TO CPD 92-2 subject to the special Conditions of Approval included in Exhibit A (Special Conditions of Approval), attached hereto and incorporated herein by reference.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this ____ day of _____, 2011.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Exhibit A – Special Conditions of Approval

EXHIBIT A

SPECIAL CONDITIONS OF APPROVAL FOR MODIFICATION NO. 1 TO CPD 92-2

1. The applicant's acceptance of this permit and/or commencement of construction and/or operations under this permit is deemed to be acceptance of all conditions of this permit.
2. All other conditions of approval of Planning Commission Resolution No. 1992-267 shall continue to apply, except as revised herein.
3. The development must be in substantial conformance with the plans presented in conjunction with the application for Modification No. 1 to CPD 92-2, except any modifications as may be required to meet specific Code standards or other conditions stipulated herein.
4. All necessary permits must be obtained from the Building and Safety Department and all construction shall be in compliance with the Moorpark Building Code and all other applicable regulations. Approval of a Zoning Clearance is required prior to the issuance of building permits. All other permit and fee requirements must be met.
5. A plan showing the ordering device location, menu board location, and vehicle stacking in compliance with Moorpark Municipal Code parking ordinance must be provided to the Community Development Director prior to the issuance of permits.
6. This permit is granted or approved with the City's designated approving body retaining and reserving the right and jurisdiction to review and to modify the permit—including the conditions of approval—based on changed circumstances. Changed circumstances include, but are not limited to, major modification of the business; a change in scope, emphasis, size, or nature of the business; the expansion, alteration, reconfiguration, or change of use; or the fact that the use is negatively impacting surrounding uses by virtue of impacts not identified at the time of application for the conditional use permit or impacts that are much greater than anticipated or disclosed at the time of application for the conditional use permit. The reservation of right to review any permit granted or approved under this chapter by the City's designated approving body is in addition to, and not in lieu of, the right of the City, its Planning Commission, City Council and designated approving body to review and revoke or modify any permit granted or approved under this chapter for any violations of the conditions imposed on such permit.
7. All exterior areas of the site, including parking areas under use by the facility, shall be maintained free of litter and debris at all times.

8. A sign permit application must be submitted for all proposed signs, for the review and approval of the Community Development Director prior to issuance of a building permit for a sign. No signs other than those allowed by code are permitted.
9. Prior to issuance of a zoning clearance for construction, all unpermitted signs and menu board riders must be removed.
10. The applicant shall be responsible for maintenance of the ordering device in order to keep noise volumes to the minimum required for efficient use. The ordering device shall be made available for review by the Community Development Director, in order to assure that noise levels are not above those allowed by the Moorpark Municipal Code. The Community Development Director has the right to further condition the operation of the ordering device as needed to avoid nuisance noise.
11. Additional shrubs and trees shall be planted within the landscaped area on east side of drive through prior to issuance of permits, subject to review and approval of Community Development Director.
12. Landscaping and irrigation within the area of the removed menu board must be restored prior to issuance of final building inspection, subject to review and approval of Community Development Director.