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Title: PUBLIC HEARING TO CONSIDER APPEAL OF PLANNING COMMISSION RESOLUTION NO. 22-2836 CONDITIONALLY APPROVING, IN PART, AND DISAPPROVING, IN PART, AN APPLICATION FOR TWO EXISTING MURALS AT 21126 S. AVALON BLVD. (CITY COUNCIL)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Exhibit-1_PC_SR_FAB_Mural_(9.6.22) (brj), 2. Exhibit-2_PC_RESO_FAB_Mural_(signed), 3. Exhibit-3_Appeal Application from Council Member Jim Dear 09-19-22, 4. Exhibit-4_Draft CC Resolution Upholding_FAB_Murals Appeal (brj), 5. Exhibit-5_Draft CC Resolution Modifying_FAB_Murals Appeal (brj)

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, October 18, 2022

Special Orders of the Day

SUBJECT:

PUBLIC HEARING TO CONSIDER APPEAL OF PLANNING COMMISSION RESOLUTION NO. 22-2836 CONDITIONALLY APPROVING, IN PART, AND DISAPPROVING, IN PART, AN APPLICATION FOR TWO EXISTING MURALS AT 21126 S. AVALON BLVD. (CITY COUNCIL)

I. SUMMARY

Following a duly noticed public hearing, on September 13, 2022, the Planning Commission by a 9-0 vote adopted Resolution No. 22-2836 conditionally approving, in part, and disapproving, in part, an application of Trophy VPC, LLC for approval of two existing murals located at 21126 S. Avalon Boulevard.

As set forth in its Resolution No. 22-2836, the Planning Commission voted to conditionally approve the application as to Mural No. 1 (described/depicted below), with the condition that the Fab Cars logo be removed (among other conditions), and to disapprove the application as to Mural No. 2 (described/depicted below), which the Planning Commission found constitutes graffiti, which is a public nuisance that is subject to abatement and removal as set forth in Chapter 4 of Article V of the CMC (Exhibit No. 2; the "Planning Commission Decision").

On September 19, 2022, Councilmember Jim Dear filed a complete application for appeal of the Planning Commission Decision to the City Council (Exhibit No. 3). Carson Municipal Code (CMC) Section 9173.4, "Appeals," states appeal applications by a member of City Council need not provide a statement of grounds for the appeal. CMC 9173.4(C)(1) provides that upon acceptance of the filing of an appeal, the City Clerk shall set the matter for public hearing before the appellate body, in the same manner as required for a Commission hearing of such matter. A public hearing has been duly noticed for the Council's consideration of this appeal.

CMC 9173.4 further provides that the City Council shall, within sixty (60) days of the filing of the appeal, act to either affirm, reverse, modify, continue or refer the matter back. The available types of decisions are discussed below. Per CMC 9173.4, unless the item is referred back to the Planning Commission, the City Council's decision shall be supported by written findings.

1. Affirm Planning Commission Decision. The City Council can make this affirmation and uphold the Planning Commission Decision based on the same findings the Planning Commission made. A proposed resolution to this effect is attached as Exhibit No. 4. The City Council could include additional conditions of approval or make other relatively minor changes to the approval, but this would constitute a modification (see item no. 3 below); or
2. Refer the Matter Back to the Planning Commission with Instructions. The City Council may see fit to elect this option if the City Council would like the Planning Commission to reconsider this project. It would be necessary for the City Council to provide specific direction to staff and the Planning Commission if this option is preferred by the City Council; or
3. Modify Planning Commission Decision. Since staff is not aware of the City Council's potential concerns regarding this project, it is difficult for staff to predict the nature of any potential modification and make the findings for a resolution that could be presented at tonight's appeal hearing to modify the Planning Commission Decision. Nonetheless, a suggested resolution to modify the Planning Commission Decision so as to approve Mural No. 2 is attached hereto as Exhibit No. 5 and is discussed in Section IV of this report. If the Council decides to otherwise modify the Planning Commission Decision, it would be necessary for staff to bring back a resolution, with appropriate findings and modifications based on the appeal hearing, for subsequent Council approval. The 60-day period to act on the appeal expires on November 18, 2022, so staff would need to bring back a resolution by the November 15, 2022 Council meeting; or
4. Reverse the Planning Commission Decision. Since staff is not aware of the City Council's potential concerns regarding this project, it would be very difficult for staff to predict the nature of the findings for a resolution to reverse the Planning Commission Decision. If directed by the Council following the hearing, staff would bring back a resolution by November 15, 2022, with the findings for reversal.

II. RECOMMENDATION

TAKE the following actions:

1. **OPEN** the Public Hearing, **TAKE** public testimony, and **CLOSE** the Public Hearing;
AND
2. **TAKE** one of the following actions:
 - A. **ADOPT** RESOLUTION NO. 22-212, “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AFFIRMING, PURSUANT TO CARSON MUNICIPAL CODE SECTION 9173.4(C)(2)(a), THE DECISION OF THE CARSON PLANNING COMMISSION TO ADOPT PLANNING COMMISSION RESOLUTION NO. 22-2836, APPROVING, IN PART, AND DISAPPROVING, IN PART, AN APPLICATION FOR APPROVAL OF TWO EXISTING MURALS LOCATED AT 21126 S. AVALON BLVD.” (the “Planning Commission Decision”) (Exhibit 4); OR
 - B. **ADOPT** RESOLUTION NO. 22-213, “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, MODIFYING, PURSUANT TO CARSON MUNICIPAL CODE SECTION 9173.4(C)(2)(b), THE DECISION OF THE CARSON PLANNING COMMISSION TO ADOPT PLANNING COMMISSION RESOLUTION NO. 22-2836, APPROVING, IN PART, AND DISAPPROVING, IN PART, AN APPLICATION FOR APPROVAL OF TWO EXISTING MURALS LOCATED AT 21126 S. AVALON BLVD.” (Exhibit 5); OR
 - C. **DIRECT** staff to bring back another proposed resolution modifying the Planning Commission Decision pursuant to CMC 9173.4(C)(2)(b) in accordance with Council direction provided at or upon the conclusion of the appeal hearing, and based on appropriate supporting written findings as discussed or considered at the appeal hearing, for subsequent Council approval; OR
 - D. **REFER** the matter back to the Planning Commission for further consideration with instructions; OR
 - E. **DIRECT** staff to bring back a proposed resolution reversing the Planning Commission Decision, based on appropriate supporting written findings as discussed or considered at the appeal hearing, for subsequent Council approval.

III. ALTERNATIVES

Take another action the City Council deems appropriate.

IV. BACKGROUND

Trophy VPC, LLC, the business owner/operator of Fab Cars, a used car dealership, submitted an application to the City for the approval of two existing “murals” located on walls at 21126 S. Avalon Boulevard, the business premises of the FAB Cars used car dealership.

On May 25, 2022, the Planning Division approved two internally illuminated signs at 21126 S. Avalon Blvd. Permits were issued for the installation of a northerly sign that reads, “Fab The Used Card Hub” and a southerly sign that reads, “Trophy VPC” both on the eastern

elevation of the 21126 S. Avalon Boulevard.

On July 12, 2022, and continued on August 9, 2022, the Planning Commission conducted a duly noticed public hearing to consider the application. In addition to issuing notice of the public hearing to the subject property and otherwise as stated in the July 12 and August 9 Planning Commission staff reports (linked in Exhibit 1), the applicant was specifically notified via email in advance of, and was present and provided comment at, the July 12 public hearing as well as the August 9 continued public hearing.

Following the conclusion of public hearing on August 9, 2022, the Planning Commission voted to conditionally approve the application as to Mural No. 1 (described/depicted below) with the condition that the FAB Cars logo be removed (among other conditions), and to disapprove the application as to Mural No. 2 (described/depicted below), which the Planning Commission found to constitute graffiti, which is a public nuisance that is subject to abatement and removal as set forth in Chapter 4 of Article V of the CMC. On September 13, 2022, the Planning Commission, on consent, adopted Resolution No. 22-2836 to finalize/effectuate the Planning Commission Decision (Exhibit No's. 1-2). The applicant was also notified of and was present at this Planning Commission meeting. The Planning Commission meeting videos are available at:

<https://ci.carson.ca.us/government/videoarchive.aspx>.

Site: Commercial Automotive District

The subject property is located on Avalon Boulevard on the northeast corner of Avalon Boulevard and E. 213th Street. Mural No. 1 (as described below) is visible to pedestrian and vehicular traffic on Avalon Boulevard. Mural No. 2 (as described below) is only visible to vehicular traffic on the on-ramp and on southbound I-405 Freeway.

The subject property is located within the boundaries of the City's Commercial, Automotive zoning district (CAD). The CAD is intended to maximize retail sales of new automobiles at dealerships located within the City of Carson and promote the development of a commercial automotive district consisting of automobile and light truck sales facilities with consistent and appealing landscaping, lighting, signage and compatible architectural elements.

CMC 9138.15 sets forth development standards applicable in the CAD. Subsection (E) states that "each business will be responsible for the construction, installation and maintenance of its signage, and must submit for design review approval to the City of Carson pursuant to this Section," and subparagraph (E)(8)(e) provides that "Special displays such as murals or other similar types, not specified herein, shall be approved by the Planning Commission."

Mural No. 1

Mural No. 1 (Figure A) measures approximately 12' feet high by 56' feet wide. The mural consists of a collage of brilliant flowers (yellow, red, orange, green) on a blue background. A notable trait of Mural No. 1 is that it includes a prominent "FAB Cars" logo/insignia in the middle, which is advertising the subject property business.



Figure A

Per CMC Section 9138.15(E)(2)(a)(5), wall painted signs are prohibited in the CAD. “Sign” is defined in CMC 9191.558 as “any name, figure, painting, character, outline, spectacle, display, delineation, announcement, advertising, billboard, signboard, device, appliance or any other thing of similar nature to attract attention outdoors or on the face, wall or window of any building, and shall include all parts, portions, units and materials composing of the same, together with the frame, background, support and anchorage therefor.” “Wall Sign” is defined as “any sign posted, painted on, suspended from or otherwise affixed to the wall of any building or structure in an essentially flat position or with the exposed face of the sign in a plane approximately parallel to the plane of such wall.”

Staff’s interpretation is that Mural No. 1 constitutes a wall-painted sign within the meaning of CMC 9138.15(E)(2)(a)(5) due to the inclusion of the “FAB Cars” logo in the middle of Mural No. 1. In staff’s view, the logo constitutes an advertisement of the subject business and attracts attention outdoors on the wall of a building, rendering Mural No. 1 a “sign” under the above-referenced definition. As a “sign,” it would also constitute a “wall sign” as defined in the CMC because it is painted on a wall in an essentially flat position or with the exposed face of the sign in a plane approximately parallel to the plane of the wall. As a “wall sign,” it also constitutes a wall-painted sign within the meaning of 9138.15(E)(2)(a)(5) because it is painted on the wall.

The Planning Commission Decision found accordingly, and therefore approved Mural No. 1 subject to a condition of approval requiring removal of the FAB Cars logo from Mural No. 1. This condition is included as Condition No. 1 in the conditions of approval attached to Planning Commission Resolution No. 22-2836 as Exhibit “B.”

In staff’s view, an amendment to the CMC removing the prohibition against wall-painted signs in the CAD would be required for Mural No. 1 to be allowed/approved in its current

form.

Mural number 2

Mural number 2 (Figure B) measures approximately 13' feet high by 11' feet wide. The mural consists of an image of a telephone cord that spell out the word "help" and at the end a male figure is both holding on to the telephone cord and appears to be falling down in a prone position.



Figure B

The Planning Commission voted to disapprove the application as to Mural No. 2, which the Planning Commission found constitutes graffiti, which is a public nuisance that is subject to abatement and removal as set forth in Chapter 4 of Article V of the CMC.

“Graffiti” is defined in CMC 5401(d) to mean “any writing, printing, symbol, figure, design, painting, marking, inscription, or other defacement that is written, sprayed, painted, scratched, etched, engraved, drawn, marked, or otherwise applied, with any paint, aerosol paint, indelible marker, engraver, chalk, ink, dye, graffiti implement or other substance capable of defacing property, to any exterior surface of a building, wall, window, fence, tree, sidewalk, curb, or other structure without the prior consent of the owner or person in possession thereof.”

The Planning Commission found that Mural No. 2 is within public view, as it is visible to vehicular traffic travelling southbound on the I-405 Freeway in the City, and that during the July 12, 2022 Planning Commission hearing, the applicant admitted that Mural number 2 was painted on the wall in its current location by a third party without the prior knowledge or consent of the applicant, although the applicant indicated it now wishes to keep Mural No. 2 in place as it was painted by a renowned graffiti artist. Accordingly, the Planning

Commission found that Mural No. 2 constitutes graffiti.

However, Mural No. 2 does not advertise the subject business and does not constitute a “wall-painted sign” within the meaning of the CMC provisions discussed above. The City Council has discretion to find that Mural No. 2 constitutes a “mural” pursuant to CMC 9138.15(E)(8)(e), and to approve Mural No. 2 as such. A proposed resolution to do so, while affirming the Planning Commission Decision as to Mural No. 1, is attached hereto as Exhibit No. 5.

Notice of public hearing was posted to the project site on October 6, 2022. Notices were mailed to property owners and occupants within a 750’ radius on October 5, 2021. The agenda was posted at City Hall no less than 72 hours prior to the Planning Commission meeting.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Planning Commission Staff Report from September 13, 2022 (pgs. 8-9)
2. Planning Commission Resolution No. 22-2836 (pgs. 10-14)
3. Appeal Application from Councilmember Jim Dear (pg. 15)
4. Draft City Council Resolution No. 22-212 Affirming PC Decision (pgs. 16-24)
5. Draft City Council Resolution No. 22-213 Modifying PC Decision (pgs. 25-28)

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