

RESOLUTION PC 13-4342

A RESOLUTION OF THE CITY OF SAN MARCOS PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE MODIFICATION OF AN EXISTING DRIVE-THRU RESTAURANT AND TO DIVIDE THE EXISTING BUILDING INTO TWO RESTAURANTS IN THE COMMERCIAL (C) ZONE IN THE BUSINESS AND INDUSTRIAL DISTRICT

CUP 13-001 (P13-0002)  
Weingarten Realty, Inc.

WHEREAS, on January 3, 2013, an application was received from GPA, Inc. on behalf of Weingarten Realty, Inc. (representing Starbucks) requesting a Conditional Use Permit to allow the modification of an existing drive-thru restaurant to divide the existing building into two restaurants with the creation of outdoor dining areas in the Rancho San Marcos Village Shopping Center at the northeast corner of S. Rancho Santa Fe Road and San Marcos Blvd. at 689 S. Rancho Santa Fe Road in the Commercial (C) zone, more particularly described as:

Parcel F of Parcel Map 11996, in the City of San Marcos, State of California, filed in the Office of the San Diego County Recorder  
Assessor Parcel Number: 221-031-43

WHEREAS, the Development Services Department did study said request and does recommend approval of requested use; and

WHEREAS, on September 9, 1981 the Planning Commission approved Conditional Use Permit (SMP) 81-28 to allow the construction and operation of a drive-thru restaurant; and

WHEREAS, the subject property (APN: 221-031-43) has already been annexed into Community Facility District (CFD) 98-01 and CFD 98-02; and

WHEREAS, the City of San Marcos did find the project Categorically Exempt pursuant to Section 15301 ("Class 1") of the California Environmental Quality Act (CEQA) in that all facilities are existing; and

WHEREAS, the required public hearing held on May 6, 2013 was duly advertised and held in the manner prescribed by law; and

WHEREAS, the Planning Commission's decision is based on the following findings and determinations:

1. Approval of the Conditional Use Permit will not result in detrimental impacts to adjacent properties or the character and function of the neighborhood in that all improvements will be installed in conformance with the California Building Code and sufficient facilities (i.e. parking) exist on site to service the project as conditioned.
2. The design, development and conditions associated with the Conditional Use Permit are consistent with the goals, policies and intent of the General Plan and Commercial Zone because the project will renovate and reuse an underutilized building/shopping center (GP Policy LU-6.4).

AGENDA ITEM  
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3. The land use allowed in conjunction with the Conditional Use Permit is compatible with the existing and future land uses of the applicable zone and the general area in which the proposed use is to be located.

NOW, THEREFORE, the Planning Commission resolves as follows:

- A. The foregoing recitals are true and correct.
- B. The Conditional Use Permit is approved per the submitted floor and site plans (3,220 square-foot building with two restaurants, one drive-thru ("Starbucks") and 575 square feet of outdoor dining) and architectural/color elevation plans dated April 1, 2013, except as modified herein.
- C. The [enlarged] site plan (sheet A2) shall be modified as follows:
  1. Adjust the property lines to correctly identify the property boundaries and identify property line dimensions.
  2. The site plan shall include the entire westerly driveway to San Marcos Blvd. and label it as "to be replaced with ADA accessible City of San Marcos radius type." Driveway design shall comply with City Standards and shall be approved by the City Engineer.
  3. Modify the notes identifying "(N) COVERED PATIO" to read as follows: (N) COVERED OUTDOOR DINING AREA TO BE CREATED FROM EXISTING BUILDING AREA."
  4. Modify the length of the ADA Accessible ramp to San Marcos Blvd. to accurately reflect Building Code Requirements. The proposed ADA access ramp shall be of sufficient length to accommodate an appropriate slope to negate the use of handrails. Should handrails be determined necessary, the handrail design, materials and color shall be subject to the approval of the Planning Division.
  5. Trash enclosure shall be identified as "painted to match" main building.
  6. Add a note to the site plan indicating that the parking lot will be restriped to comply with the minimum standards of the Off-Street Parking Ordinance.
  7. The drive-thru striping shall also be modified on the site plan to direct vehicle queuing to occur behind the building and to the west.
- D. Prior to the issuance of any Building Permit, the following conditions shall be complied with:
  1. All corrections outlined in condition C shall be incorporated into the plans and designed to the satisfaction of the City Engineer and the Building and Planning Division Directors.
  2. Within thirty (30) days of the approval of this Conditional Use Permit, two (2) printed sets of the site plan, elevations, floor plans, etc. shall be submitted as well as a digital file (including the resolution and a title page) to the Planning Division. This title page shall include the statement "I (we), the applicant/owner(s) or the applicant/owner's representative, have read, understand and agree to the conditions of Resolution PC 13-4342." Immediately following this statement shall appear a signature block for the owner

or the owner's representative which shall be signed. Signature blocks for the Project Planner and the Project Civil Engineer shall also appear on this title page. The digital file shall be approved by the City prior to the issuance of Building Permit.

3. To the extent feasible, existing landscaping shall be protected in place during construction. Any damaged landscaping shall be restored prior to the issuance of a Certificate of Occupancy ("C of O"). A separate permit for landscaping shall be required and submitted to the Planning Division for review and approval per the following requirements:
  - a. Final landscape and irrigation plans shall be prepared by a licensed landscape architect.
  - b. The landscape permit and inspection fee shall be four and one-half percent (4.5%) of the Landscape Architect's estimate for the completion of all landscaping shown on approved mylars. All submitted estimates shall be stamped and signed by the Landscape Architect, and estimate the cost of plant and irrigation materials only.
  - c. Landscape plans shall comply with all provisions of City Standards and contain a mixture of trees, shrubs, and ground cover, and be provided with an irrigation system. The irrigation system shall include an automatic rain sensor switch, master valve, stainless steel enclosure for the backflow device, and stainless steel controller cabinet. The landscape plan shall list the quantities of each plant type, including a legend indicating what each symbol represents; height and spread of trees (in accordance with City Minimum Tree Standards, City Council Resolution 2001-5747); and method of installation and irrigation.
  - d. If applicable, plant material and irrigation design shall comply with the City's landscape Water Efficiency Ordinance, Section 20.330 of the San Marcos Municipal Code.
  - e. Prior to installation, the proposed plants shall be inspected and approved by the Planning Division for plant quality and compliance with minimum size requirements. The placement of plants shall be installed in accordance with the approved landscape plans. Upon completion of installation, all landscaping/irrigation shall be inspected and approved by the Planning Division. The applicant/developer shall be responsible to contact the Planning Division for landscaping inspections.
4. Tenants are required to obtain written permission from the building owner, or owner's agent, prior to obtaining a building permit from the city. Per San Marcos Municipal Code Chapter 17.08.030 Section 105.10, the tenant must obtain written permission from the building or property owner that the applicant is authorized to proceed with the proposed construction.
5. Building Plans submitted for construction associated with this Conditional Use Permit shall include a sheet (or sheets) that contain each page of this Resolution (PC 13-4342).

6. Project plans submitted to the Building Division for exterior improvements shall include architectural details of the rafter tails that are subject to the approval of the Planning Division Director.
7. Utility/service doors on the north ("rear") and west ("side") elevations shall include a "faux panel" effect on each door. No utility/service door shall contain louvered vents unless required by the California Building Code. All service panels and/or other utility equipment (i.e. meters) shall be located within the building.
8. Buildings and any tenant improvements shall be designed to conform to the latest standards adopted by the State of California in the California Building Code, Part 2, Title 24, and California Code of Regulations.
9. Tenant Improvement Plans for restaurants shall be approved by the County of San Diego Department of Environmental Health.
10. Building plans and instruments of service shall be signed and sealed by a California licensed design professional as required by the State Business and Professions Code.
11. The City of San Marcos is located in Seismic Design Category "D." Buildings and structures shall be designed to adequately transmit the dynamic lateral forces in accordance with the requirements of the latest adopted California Building Code.
12. The storage, use, or handling of hazardous, toxic, or flammable materials shall be clearly indicated on all floor plans submitted for a building permit. Materials shall be identified in accordance with Health and Safety Code Section 25101.
13. The proposed development shall comply with Federal Law, American with Disabilities Act (ADA-90), and State Law, California Code of Regulations, Title 24, for accessibility standards for the disabled.
14. The ADA access ramp from San Marcos Blvd. shall be identified on any project plans submitted to the Building Division. Architectural details for the ramp shall also be provided for any materials proposed. ADA access ramp design and materials shall be approved by the Building and Planning Division Directors. The design and placement of the ADA access ramp shall not remove or damage any of the existing trees. If a tree is damaged or removed as a result of the installation of the ramp, it shall be replaced with a specimen of equal type and size.
15. The applicant shall comply with all rules, regulations and design requirements of the respective sewer and water agencies regarding services to the project.
16. Sewer and water utilities shall be located wholly on the lot that serves the building in accordance with the latest adopted edition of the California Plumbing Code.
17. The approval of this project does not guarantee that potable water and/or sewer capacity will be available for the project at the time of grading or building permit application.
18. The proposed development is subject to the approval of the Vallecitos Water District and all applicable fees and charges shall be paid to the District prior to permit issuance.

19. All rooftop mechanical units, vents, ducts, etc. shall be screened from street grade view and surrounding properties by the use of parapet walls and/or architectural enhanced enclosures as approved by the Planning Director. A roof plan and cross sections showing lines of sight shall be submitted with construction drawings illustrating that roof equipment will be screened. Cut sheets of actual units shall be included with plans. Screening plan shall be approved by the Planning Division prior to issuance of a Building Permit.
20. All exterior lighting shall comply with City standards for energy efficient lighting as approved by the City. An architectural lighting plan shall be included with the building plans that show the type, style, and location of all exterior building lights. Proposed exterior light fixtures shall match existing lighting of the Rancho San Marcos Village Shopping Center. Plans shall include photo of fixture and manufacturer specifications indicating dimensions, materials, colors, bulb type, etc.
21. Plans shall identify methods/measures to comply with latest adopted NPDES Permit.
22. Building address and suite numbers shall be clearly labeled for day and night-time emergency responses, this includes but is not limited to address/suite numbers affixed to front and rear facility doors. In addition, adequate lighting shall be provided to deter potential criminal activities (i.e. vehicle burglaries, prowlers, loitering, etc.).
23. The applicant shall obtain a right-of-way permit for any work within the public right-of-way (e.g. reinstallation of driveway, ADA Accessible path of travel, etc.).
24. Six (6) inch high Portland Cement Concrete (PCC) curbing shall be installed separating all paved areas from all landscaped areas.
25. For any work performed outside of the subject property (APN: 221-031-43), the applicant shall provide written documentation from the property owner that they have approved the proposed work and will allow this work to occur on their property.

E. During the construction phase, the following conditions shall be complied with:

1. Dust and dust producing materials shall be controlled within the maximum acceptable concentrations for silica and silicates in accordance with the California Code of Regulation, Title 8, Section 5155. Water and dust palliative shall be used to prevent excessive dust during blasting and grading operations.
2. The project shall comply with Regional Air Quality Standards.
3. During construction the owner/developer/contractor shall implement and maintain the storm water pollution prevention measures as required on the approved plans. Violations of the City's Storm Water Management Ordinance will result in Stop Work Orders, Notices of Violation and citations with fines. Work on the project may be delayed until the City determines that the project is in compliance with the storm water requirements.
4. During construction operations, the applicant shall maintain public and private driveway access to neighboring businesses/properties at all times unless previous arrangements

have been made with the private parties affected. Copies of said agreements shall be provided to the City Engineer.

5. The applicant shall provide a seventy-two (72) hour notification to adjoining property owners of any construction activities that may impact their business and/or traffic circulation (i.e. Pacific Trust Bank during the driveway replacement).
6. Exterior building colors and stone veneer materials are not approved. Paint colors and stone veneer shall be identical to the color, size and stack pattern of the VONS store. A test sample of the proposed exterior colors shall be applied to an area of the building large enough to be representative of the finished color scheme and a sample of the stone veneer shall be left at the project site. These samples shall be inspected and approved by the Planning Division in the field prior to utilization on the building. If determined necessary upon inspection, the color scheme and/or stone veneer materials may be required to be modified at the discretion of the Planning Division Director. The applicant/developer shall be responsible to contact the Planning Division for inspection.
7. Paving, excavation or other work authorized under a Right-of-Way permit (including preparation or “warm-up work”) shall be limited to the hours of 7:00 a.m. to 4:30 p.m., Monday through Friday. No work shall be allowed on Saturdays, Sundays and holidays.
8. All construction operations authorized by building permits, including the delivery, setup, and use of equipment shall be conducted on premises during the hours of 7:00 AM to 6:00 PM on Monday through Friday, and on Saturday between 8:00 AM and 5:00 PM. No work shall be conducted on Sundays or holidays observed by the City of San Marcos. Failure to comply with result in the issuance of citations. Citations required a mandatory court appearance in North County Superior Court and courts costs up to \$1,000 per offense. Repeat violations will result in suspension of all work on premises until the City determines that appropriate measures are in place to insure that hours of work violations will not occur.
9. The applicant/developer shall ensure that construction activities meet the provisions specified in the latest adopted Regional Water Quality Permit.
10. This project has been designated a SUSMP Standard project based on the submitted Stormwater Assessment form. This project shall be responsible for full compliance with the latest adopted Standard Urban Stormwater Management Plan (SUSMP), latest adopted stormwater quality permit, and conditions the conditions contained herein for your project's designation. Changes to the project that affect the SUSMP designation of Exempt shall require approval of the City Engineer and may be subject to further conditions.
11. The applicant/developer shall utilize sediment controls only as a supplement to erosion prevention for keeping sediment on-site during construction – NEVER as a single or primary method.

F. Prior to occupancy of any structure, the following conditions shall be complied with:

1. All rooftop mechanical units, vents, ducts, etc. shall be screened from view from street grade and adjacent properties. Said screening mechanism shall be inspected by the

Planning Division, and if determined necessary, additional screening may be required, subject to approval by the Planning Division Director.

2. New landscaping shall be installed with functioning irrigation systems and in accordance with any approved landscape plans. If landscape rehabilitation work was required, all work shall be completed.
3. Striping, driveway reinstallation and ADA Accessible ramp shall be installed to the satisfaction of the Public Works Department and Building and Planning Division Directors. The applicant shall pay any remaining balance of the Public Works Inspection fees prior to occupancy.
4. The style of all outdoor chairs, tables, umbrellas and/or any other outdoor furniture is subject to the approval of the Planning Division Director and shall compliment the architectural style of the building and shall be identical to all used at the building (at both tenant spaces). Applicant shall submit specification sheets and/or photos of proposed outdoor furniture for review and approval by the Planning Division Director.
5. The proposed development shall satisfy the conditions of approval prior to the first occupancy. The owner/developer/contractor shall obtain approval from all City departments and other agencies before requesting a Certificate of Occupancy ("C of O") from the Development Services Department. For phased developments, the conditions of approval shall be satisfied prior to requesting the first occupancy in the phase.

G. The ongoing operation of the facility shall be comply with the following:

1. The drive-thru facility shall be used for a restaurant use only.
2. The drive-thru facility shall be used by only one tenant of the building.
3. The approved architecture, paint colors and/or exterior building materials (including the outdoor dining area) shall not be modified by the owner(s) or subsequent owner(s) in the future without City approval.
4. The outdoor dining area shall comply with the following:
  - a. The outdoor dining area shall be limited to the 660 square-foot located at the entry to both suites.
  - b. Placement and arrangement of the outdoor dining area, tables, chairs, planters, and trash receptacles shall not obstruct pedestrian access to the facility and comply with the required accessibility standards for the disabled per Federal Law, Americans with Disabilities Act ("ADA-90"), and State Law, California Code of Regulations, Title 24.
  - c. The outdoor dining area shall be for customers of the restaurants only.
  - d. Chairs, tables, umbrellas or any other outdoor furniture are subject to the approval of the Planning Division Director. Applicant shall submit cut-sheets

and any other relevant specifications for proposed outdoor furniture for review and approval prior to placement in designated outdoor dining areas.

- e. Approved chairs, tables, umbrellas, and any other similar outdoor furniture shall be maintained in good condition and remain in designated outdoor dining areas. Any changes shall be subject to the approval of the Planning Division Director.
- f. Outdoor speakers for announcements is prohibited.
- g. Outdoor cooking or food preparation is prohibited.
- h. A covered trash receptacle, consistent with the style for the building shall be located within the outdoor dining area for customer disposal of trash. Said area shall be maintained free of litter and cleaned up by the applicant/operator on a routine basis during business hours.
- i. Any new light fixtures for the outdoor dining area shall be of a style consistent with those of the commercial center.

5. For water quality protection purposes, the operation of the business shall comply with the following standards:

- a. All Discharges to the City's MS4 (Municipal Separate Storm Sewer System, i.e. street, curb, gutter, onsite drainage, etc.) are prohibited. This prohibition includes the discharge of water used for external cleaning (i.e. "spray down water") into the City's MS4.
- b. All new employees shall receive training on Stormwater Quality Best Management Practices (BMP's). Employee training on Stormwater Quality BMP's shall be ongoing and "renewed" annually. Records of employee training shall be kept on site and available for review by City Inspectors or Code Enforcement Officers. Training resources for Stormwater Quality BMP's can be found at: <http://www.cabnphandbooks.com/>.
- c. Ongoing maintenance of the grease interceptor shall be conducted in conformance with the manufacturer's specifications and the requirements of the California Plumbing Code and/or direction from the Vallecitos Water District or City Stormwater Program Manager.
- d. The trash enclosure area shall be kept clean and clear of all debris and or grease. All trash containers shall be kept in the covered trash enclosure and all lids on said containers shall be kept closed at all times. Trash containers shall be emptied on a regular basis to prevent overfilling. The trash enclosure area shall be cleaned thoroughly using dry methods prior to October 1<sup>st</sup> (beginning of the rainy season) of every year.
- e. All spills shall be reported immediately to the City Storm Water Hotline 760-481-3878 or 911 for after hour emergencies. The hotline number shall be included in employee training and posted in a prominent location in the business.

- f. A spill kit with adequate equipment to isolate, remove and properly dispose of spill materials shall be kept onsite at all times. The location of the spill kit and proper use of the equipment shall also be included in the employee training.
- 6. Operation of the "loud speaker" for order intake purposes of the drive-thru shall be monitored by the Applicant/Operator and noise levels shall be maintained at a level compliant with the City's Noise Ordinance to be least impactive to surrounding residences and businesses.
- 7. All landscaping and planting areas shall be continually maintained in good living condition and kept watered, clean and weeded. Dead or dying plant material shall be replaced with equal or greater quality (i.e. height, branch/leaf density, maturity, etc.) plant materials. Landscape and hardscape areas shall be kept in good condition and clear of any trash and/or debris.
- 8. Tenants of the building shall obtain and maintain a City Business License.
- 9. All banners and temporary signs require the approval of a temporary sign permit and shall comply with the standards outlined in the City's Temporary Sign Ordinance. The use of unpermitted signage (e.g. "feather signs," A-frames, etc.) on or off-site are prohibited.
- 10. Any change in occupancy shall be approved by the City Building Official as required by the latest adopted California Building Code. A new Certificate of Occupancy will be issued after the City has inspected and approves the new use. Buildings or structures shall not be used or occupied until the appropriate City Departments/Divisions and agencies have accepted or approved the buildings for occupancy. A Certificate of Occupancy ("C of O") shall not be issued until the conditions of approval for the proposed development have been satisfied.

H. A separate permit shall be required for any new permanent signage. Signage shall comply with all provisions of the approved Comprehensive Sign Program for the site and the City of San Marcos Sign Ordinance. Portable signs (e.g. A-frame, T-frame, feather-signs, branded vehicles, etc.) are prohibited. Temporary signage (i.e. banners) requires a permit and is subject to the approval of the Planning Division. Any window signage shall not exceed 25% coverage of the window area.

I. The Planning Division may inspect the premises annually to ensure compliance with all conditions of the use permit approval. If the Planning Division determines that compliance is not being achieved, then a public hearing shall be scheduled for possible use permit modification or revocation.

J. Any future expansion and/or modification of the drive thru restaurant shall require a modification to CUP 13-001. The Conditional Use Permit application must be submitted for review and approval by the City of San Marcos prior to issuance of any Building Permits.

K. The applicant shall be responsible for compliance with all relevant portions of the City of San Marcos Municipal Code.

- L. Use of the site shall be conducted so as not to become obnoxious by reason of noise, odor, refuse or maintenance of grounds and in such a manner as will not detrimentally affect adjoining properties and uses.
- M. To the extent feasible and as permitted by law, developers and contractors are requested to first consider the use of San Marcos businesses for any supplies, materials, services, and equipment needed, and the hiring of local residents in order to stimulate the San Marcos economy to the greatest extent possible.
- N. This Conditional Use Permit shall expire on May 6, 2014 unless a building permit is obtained by this date and construction has begun in accordance with the submitted plans.
- O. To the extent permitted by law, the Applicant shall defend and hold the City of San Marcos ("City"), its agents and employees harmless from liability from: (i) any and all actions, claims, damages, injuries, challenges and/or costs of liabilities arising from the City's approval of any and all entitlements or permits arising from the project as defined in the conditions of approval, or issuance of grading or building permits; (ii) any damages, liability and/or claim of any kind for any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operations of the Applicant or its contractors, subcontractors, agents, employees or other persons acting on Applicant's behalf which relate to the project; and (iii) any and all damages, liability and/or claims of any kind arising from operation of the project. Applicant further agrees that such indemnification and hold harmless shall include all defense related fees and costs associated with the defense of City by counsel selected by the City. This indemnification shall not terminate upon expiration of the conditions of approval or completion of the project, but shall survive in perpetuity.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, State of California, at a regular meeting thereof, this 6th day of May, 2013, by the following electronic vote:

AYES: COMMISSIONER:

NOES: COMMISSIONER:

ABSENT: COMMISSIONER:

APPROVED:

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Dean Nelson, Chairman  
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

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Lisa Kiss, Office Specialist III  
SAN MARCOS CITY PLANNING COMMISSION