

## REPORT TO CITY COUNCIL

**DATE:** MAY 13, 2009

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** GREG RAMIREZ, CITY MANAGER *GR*

**BY:** MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT *mk*

**SUBJECT:** INTRODUCTION AND FIRST READING OF ORDINANCE NO. 09-361, AMENDING ZONING ORDINANCE SECTION 9312.2 (COMMERCIAL USE TABLE) TO ALLOW DAYTIME DOG CARE, INCLUDING OVERNIGHT CARE, IN THE BUSINESS-PARK MANUFACTURING (BP-M) ZONE, SUBJECT TO THE ISSUANCE OF A CONDITIONAL USE PERMIT. (CASE NO. 09-ZOA-003 – PAUL BERKOVITZ, APPLICANT)

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At the April 2, 2009 meeting, the Planning Commission conducted a request for a Pre-Screen Review by Mr. Paul Berkovitz to amend the Zoning Ordinance to allow day and nighttime dog care businesses in the Business Park-Manufacturing (BP-M) zone. The Planning Commission supported the proposal in concept, allowing the applicant to apply for a Zoning Ordinance Amendment to incorporate the use in the Commercial Land Use table, subject to the issuance of a Conditional Use Permit (CUP).

The draft ordinance was considered by the Planning Commission at their April 16, 2009 meeting at a public hearing. The Commission recommended, on a 3-0 vote (Chair O'Meara and Commissioner Buckley Weber were absent), that the City Council adopt the ordinance to allow dog daycare facilities in the BP-M zone, south of the 101 Freeway, subject to the issuance of a Conditional Use Permit. A copy of the Planning Commission Resolution, Draft Ordinance, staff report, exhibits, and meeting minutes are attached.

The Zoning Ordinance currently regulates similar uses such as animal hospitals, veterinarians, pet stores and dog grooming businesses, but is silent regarding dog care. The Zoning Ordinance currently does not allow for the overnight care of dogs other than for medical reasons. The Zoning Ordinance does not allow kennels anywhere in the City.

The applicant desires to locate his dog care business in an existing retail/manufacturing building located on Roadside Drive, west of Kanan Road in the BP-M zone. The pet care industry is growing in a variety of ways, in the form of medical care, care products retailing, medical insurance, and day and nighttime pet sitting, and thus, it would be appropriate to review and adjust land use regulations to address them.

At the April 16, 2009 Planning Commission meeting, the Commission found it would be appropriate to permit daytime dog care businesses, including overnight care in the industrial zone and recommended that the Zoning Ordinance be amended to allow them in the BP-M zone, south of the 101 Freeway. The BP-M zoned areas located north of the freeway were excluded, given the overnight kenneling aspect and its proximity to single-family residential neighborhoods.

One Commissioner expressed concerns about including the BP-M zoned areas located west of Reyes Adobe Road, specifically the areas located immediately across from the Archstone Apartments and those adjacent to the Hampton Inn and Suites Hotel. The consensus of the Planning Commission, however, was that each request for this type of use would be reviewed on a case-by-case basis through the 'Conditional Use Permit process and that neighborhood compatibility would be considered at that time at a noticed public hearing. Through the CUP process, the Planning Commission can consider the merits of each application and neighborhood compatibility and apply appropriate conditions to address development and operational issues such as noise, parking, circulation, hours of operation, outdoor use, waste clean-up and signage.

Staff would also note that the City Council has the discretion, at this time, to modify the recommended boundaries of the use, if so desired.

In adopting the Resolution recommending approval of the proposed Zoning Ordinance Amendment, the Planning Commission also made the findings that the Amendment was exempt from the California Environmental Quality Act under Section 15061(B)(3).

## **RECOMMENDATION**

The Planning Commission recommends the City Council introduce, read by title only, and waive further reading of Ordinance No. 09-361, amending Zoning Ordinance section 9312.2 (Commercial Use Table), to allow daytime dog care, including overnight care, in the Business Park-Manufacturing (BP-M) zone, subject to the issuance of a Conditional Use Permit.

Attachments:     Draft Ordinance No. 09-361  
                      Map of Areas zoned BP-M  
                      Planning Commission Resolution  
                      Draft April 16, 2009 Planning Commission Meeting Minutes  
                      April 16, 2009, Planning Commission Meeting Staff Report

**ORDINANCE NO. 09-361**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING ZONING ORDINANCE SECTIONS 9312.2 AND 9312.3 (COMMERCIAL LAND USE TABLE) (CASE NO. 09-ZOA-003)**

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Sections 9312.2, and 9312.3, Part 2 of Chapter 3 of Article IX (Zoning Ordinance) of the Agoura Hills Municipal Code are hereby amended to read (new text underlined):

“9312.2. Commercial use table I.  
The following shall be commercial use table I.

	USE, SERVICE OR FACILITY	COMMERCIAL			BUSINESS PARK	
	Unless otherwise indicated, listings denote retail sales operations	<i>CS</i>	<i>CRS</i>	<i>CR</i>	<i>BP-OR</i>	<i>BP-M</i>
D.						
6.	Disinfecting/fumigating service					X
7.	<u>Daytime dog care, including overnight care</u>					<u>DD</u>
7. 8.	Drafting service including incidental white-printing	X	X	X	X	X
8. 9.	Dressmaker	X	X		G,U	G
9. 10.	Drive-in café	X	X			
10. 11.	Drive-in dairy, excluding creamery	X	X			
11. 12.	Drive-in food market	X	X			
12. 13.	Driving school	J	J		J,U	J
13. 14.	Drugstore	X	X		E,U	

9312.3 Special conditions.

DD: A permitted use in the BP-M zone for parcels located south of the 101 Freeway, subject to the issuance of a Conditional Use Permit by the Planning Commission”.

Section 2. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court or competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or applications, and to this end the provisions of this Ordinance are declared to be severable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof even if one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof is declared invalid or unconstitutional.

Section 3. The City Clerk shall certify to the passage of this Ordinance and shall cause same to be published pursuant to state law within fifteen (15) days after its passage, and said Ordinance shall become effective 30 days after its passage.

PASSED, APPROVED, and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote to wit:

AYES: (0)  
NOES: (0)  
ABSTAIN: (0)  
ABSENT: (0)

BY:

\_\_\_\_\_  
Denis Weber, Mayor

ATTEST:

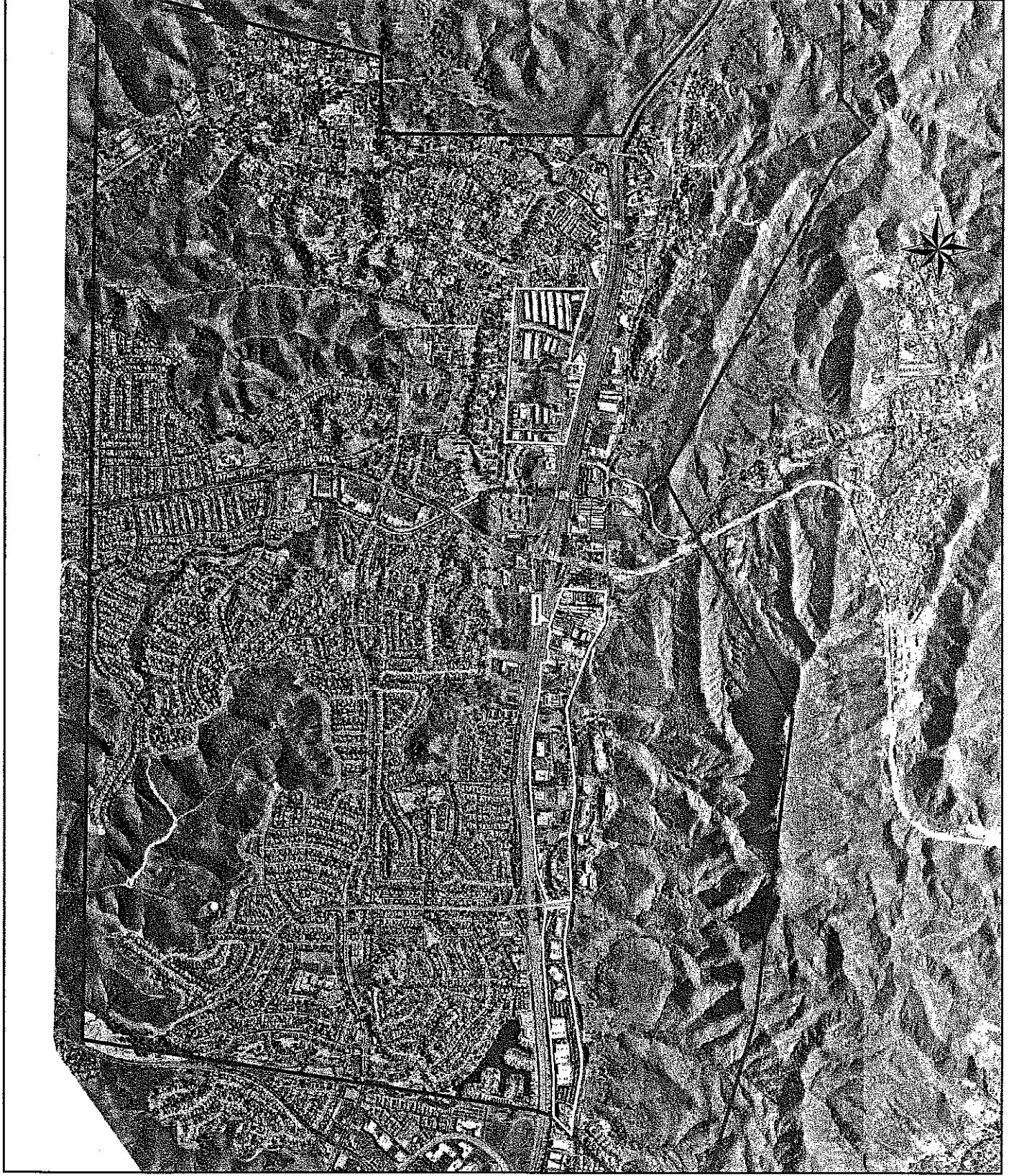
\_\_\_\_\_  
Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Craig A. Steele, City Attorney

ZONING ORDINANCE AMENDMENT - CASE NO. 09-ZOA-003

Existing BP-M  
Zones



BP-M Zone

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**RESOLUTION NO. 968**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF AGOURA HILLS  
RECOMMENDING APPROVAL OF A ZONING ORDINANCE AMENDMENT  
ALLOWING DAYTIME DOG CARE, INCLUDING OVERNIGHT CARE, IN THE BP-M  
ZONE SUBJECT TO THE ISSUANCE OF A CONDITIONAL USE PERMIT  
(CASE NO. 09-ZOA-003)**

**THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS DOES HEREBY  
RESOLVE, FIND, DETERMINE, AND ORDER AS FOLLOWS:**

**WHEREAS**, the Planning Commission has considered from Paul Berkovitz an amendment to the Zoning Ordinance Article IX, Chapter 3, Part 2, Section 9312.2, of the Agoura Hills Municipal Code to allow daytime dog care including overnight care, in the BP-M zone. A public hearing was duly held on April 16, 2009, in the Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of public hearing was duly given;

**WHEREAS**, the request complies with the General Plan Land Use Element by providing a mix of uses to the community, providing employment opportunities and encouraging non-residents to buy goods and services;

**WHEREAS**, the proposed Ordinance has no likelihood of causing a significant negative effect on the environment and the effects derivative from the adoption of the Ordinance are found to be exempt from the application of the California Environmental Quality Act of 1970, as amended, pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Title 14 CCR. 15061(b)(3).) This adoption of this Ordinance will maintain the current environmental conditions arising from the current land use regulatory structure as adopted by the City without change or alteration.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Agoura Hills recommends the City Council adopt the attached amendment (addition) to Article IX, Chapter 3, Part 2, Section 9312.2 of the Agoura Hills Municipal Code to allow daytime dog care, including overnight care, in the BP-M zone, subject to the issuance of a Conditional Use Permit.

**PASSED, APPROVED, and ADOPTED** this 16<sup>th</sup> day of April, 2009 by the following vote to wit:

AYES: (3) Zacuto, Rishoff, & Nouzille  
NOES: (0)  
ABSENT: (2) O'Meara & Buckley Weber  
ABSTAIN: (0)

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Curtis Zacuto, Vice Chairperson

ATTEST:

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Doug Hooper, Secretary

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**DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT**

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**MINUTES OF THE REGULAR SCHEDULED MEETING OF  
THE PLANNING COMMISSION  
April 16, 2009**

**CALL TO ORDER:**

Vice Chair Zacuto called the meeting to order at 6:30 p.m.

**FLAG SALUTE:**

Commissioner Nouzille

**ROLL CALL:**

Vice Chair Curtis Zacuto, Commissioners Cyrena Nouzille and Steve Rishoff.

Also, present were Community Development Director Mike Kamino, Assistant Community Development Director Doug Hooper, Associate Planner Valerie Darbouze, Assistant Planner Renee Madrigal, Civil Engineer Jay Patel, Planning Consultant Dave Tabor, and Recording Secretary Sheila Keckhut.

Vice Chair Zacuto stated that the Commissioners had received notification of Chair O'Meara's and Commissioner Buckley Weber's requests for an excused absence from the meeting due to scheduling conflicts. There were no objections to excusing the absences.

**APPROVAL OF MINUTES**

1. Minutes -- April 2, 2009 Planning Commission Meeting

On a motion by Commissioner Rishoff, seconded by Commissioner Nouzille, the Planning Commission moved to approve the Minutes of the April 2, 2009 Planning Commission Meeting. Motion carried 2-0-1. Vice Chair Zacuto abstained. Chair O'Meara and Commissioner Buckley Weber were absent.

**PUBLIC COMMENTS:**

None

**CONTINUED PUBLIC HEARING**

2. REQUEST: Request for approval of a Conditional Use Permit to construct a new 2,002 square foot, retail mini-mart and an additional fuel dispenser for an existing Chevron gasoline station; and a request for a Variance from Zoning Ordinance Section 9393.11 to construct the building on the rear (west) and south side property lines instead of providing the minimum building setback require of 18 feet.
- APPLICANT: Parviz (David) Natanzi  
5134 Kanan Road  
Agoura Hills, CA 91301
- CASE NOS.: 08-CUP-006 and 08-VAR-005
- LOCATION: 5051 Kanan Road  
(A.P.N. 2061-004-040)
- ENVIRONMENTAL DETERMINATION: Categorically Exempt from CEQA per Section 15301.
- RECOMMENDATION: Staff recommended the Planning Commission adopt a motion to approve Conditional Use Permit Case No. 08-CUP-006 and Variance Case No. 08-VAR-005, subject to conditions, based on the findings of the draft Resolution.
- PUBLIC COMMENTS: Vice Chair Zacuto opened the Public Hearing.  
  
The following person spoke on this agenda item:  
  
Patrick Fiedler, Fiedler Group representing the applicant.  
  
Vice Chair Zacuto closed the Public Hearing.
- ACTION: On a motion by Commissioner Rishoff, seconded by Commissioner Nouzille, the Planning Commission moved to approve Conditional Use Permit Case No. 08-CUP-006, subject to conditions. Motion carried 3-0. Chair O'Meara and Commission Buckley Weber were absent.  
  
On a motion by Commissioner Rishoff, seconded by Commissioner Nouzille, the Planning Commission moved to approve Variance Case No. 08-VAR-005, subject to conditions. Motion carried 3-0. Chair O'Meara and Commission Buckley Weber were absent.

**NEW PUBLIC HEARING**

3. REQUEST: Request for the Planning Commission to conduct a public hearing and provide a recommendation to the City Council regarding a proposed ordinance to require a Conditional Use Permit for the commercial on-sale and off-sale of alcoholic beverages by amending Zoning Ordinance Sections 9120.1 and 9120.15 (Definitions), Sections 9312.2 and 9312.3 (Commercial Use Table), Sections 9396.1, 9396.2, and 9396.3 (Standards for Specific Uses), and Section 9542.1 (Freeway Corridor Overlay District), and Section 9710 (Nonconforming Alcoholic Beverage Establishments); and amending Chapter 4 (Permitted Uses and Prohibited Uses) of the Agoura Hills Specific Plan.

APPLICANT: City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, CA 91301

CASE NO.: 09-ZOA-002

LOCATION: Citywide

ENVIRONMENTAL DETERMINATION: Exempt from CEQA per Section 15061.B.3

RECOMMENDATION: Staff recommended that the Planning Commission adopt the draft Resolution, recommending that the City Council adopt draft Ordinance Case No. 09-ZOA-002.

PUBLIC COMMENTS: Vice Chair Zacuto opened the Public Hearing.

There were no speakers on this item.

Vice Chair Zacuto closed the Public Hearing.

**COMMISSIONER NOUZILLE STATED THE 21<sup>ST</sup> AMENDMENT OF THE UNITED STATES CONSTITUTION HAS A PERSONAL SIGNIFICANCE TO HER AND SHE ABSTAINED FROM PARTICIPATING IN THE PUBLIC HEARING FOR THIS ITEM.**

ACTION: On a motion by Commissioner Rishoff, seconded by Vice Chair Zacuto, the Planning Commission moved to adopt the Resolution, recommending that the City Council adopt draft Ordinance Case No. 09-ZOA-002. Motion carried 2-0-1. Commissioner Nouzille abstained. Chair O'Meara and Commission Buckley Weber were absent.

4. REQUEST: Request for the Planning Commission to conduct a public hearing for a recommendation to the City Council to amend Zoning Ordinance Section 9312.2 (Commercial Use Table) to allow daytime dog care, including overnight care in the Business Park Manufacturing zone (BP-M), subject to the issuance of a Conditional Use Permit.
- APPLICANT: Paul Berkovitz  
24400 Highlander Road  
West Hills, CA 91307
- CASE NO.: 09-ZOA-003
- LOCATION: Citywide
- ENVIRONMENTAL DETERMINATION: Exempt from CEQA per Section 15061.B.3
- RECOMMENDATION: Staff recommended that the Planning Commission adopt a motion to approve a Resolution recommending that the City Council adopt draft Ordinance Case No. 09-ZOA-003.
- PUBLIC COMMENTS: Vice Chair Zacuto opened the Public Hearing.
- The following persons spoke on this agenda item:
- Paul Berkovitz, applicant
- Gary Klein, representing the applicant
- Eleanor Ramirez, resident
- Nina Lopez, resident
- Moe Sherif, business owner
- Rafael Herrera
- Orlando Ortiz
- Kassie McMenamin-Torres, Agoura Self Storage
- Roger Ebrahimi

REBUTTAL: Paul Berkovitz, applicant, gave rebuttal regarding the project and answered additional questions of the Planning Commission.

Vice Chair Zacuto closed the Public Hearing.

ACTION: On a motion by Commissioner Rishoff, seconded by Commissioner Nouzille, the Planning Commission moved to approve the Resolution, recommending that the City Council adopt draft Ordinance Case No. 09-ZOA-003. Motion carried 3-0. Chair O'Meara and Commission Buckley Weber were absent.

5. REQUEST: Request for a Site Plan/Architectural review to replace a self-serve car wash and lube/smog-check facility with a new 4,169 square-foot car wash, lube and smog check facility; a Tentative Parcel Map to adjust lot lines of three parcels for the proposed construction; a Sign Permit for the facility signage; and a Variance from Zoning Ordinance Sections 9383.4, 9606.2.E and 9383.1 to provide a 7.5-foot rear (south) yard building setback instead of a least 20 feet, to construct a 13-foot high retaining wall instead of a maximum height of 6 feet, and to provide for a parcel smaller than the minimum requirement of three acres.

APPLICANT: Mohammed Sherif for Mr. Gu  
29338 Roadside Drive  
Agoura Hills, CA 91301

CASE NOS.: 07-SPR-012, 07-VAR-003, 07-SP-024 &  
TPM 70808

LOCATION: 29338 Roadside Drive  
(A.P.N. 2061-004-038, 039 and 027)

ENVIRONMENTAL  
DETERMINATION: Exempt from CEQA per Section 15301

RECOMMENDATION: Staff recommended the Planning Commission adopt a motion to approve Site Plan/Architectural Review Case No. 07-SPR-012, Sign Permit Case No. 07-SP-024, Variance Case No. 07-VAR-003, and Tentative Parcel Map Case No. TPM 70808, subject to conditions, based on the findings of the draft Resolutions.

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**DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT**

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**ACTION DATE:** April 16, 2009

**TO:** Planning Commission

**APPLICANT:** Paul Berkovitz  
24400 Highlander Road  
West Hills, CA 91307

**CASE NO.:** 09-ZOA-003

**LOCATION:** Citywide

**REQUEST:** Request for the Planning Commission to conduct a public hearing for a recommendation to the City Council to amend Zoning Ordinance Section 9312.2 (Commercial Use Table) to allow daytime dog care, including overnight care, in the Business-Park -Manufacturing zone (BP-M), subject to the issuance of a Conditional Use Permit.

**ENVIRONMENTAL DETERMINATION:** Exempt from CEQA under Section 15061.B.3

**RECOMMENDATION:** Staff recommends that the Planning Commission adopt a motion to approve a Resolution, recommending that the City Council adopt the Draft Ordinance

## **I. BACKGROUND**

Mr. Paul Berkovitz is requesting a Zoning Ordinance Amendment to allow a commercial daytime (Monday through Friday) and overnight dog care (Monday through Sunday) business in the Business Park–Manufacturing (BP-M) zone. The Planning Commission initiated the Zoning Ordinance Amendment at its meeting on April 2, 2009. The applicant is interested in opening the business in a tenant space within an existing building located at 28348 Roadside Drive. The site is occupied by a recently constructed, 11,600 square-foot, single-story industrial/retail building divided amongst three tenant spaces. The lot is located between a car-wash/lube services facility and the Fence Factory, and is within the Business Park-Manufacturing (BP-M) and the Freeway Corridor Overlay (FC) zones. The proposed dog care business would allow dog owners to bring their dogs to the facility for care and indoor recreation during daytime hours and overnight stay while the owners are away. The attached exhibit shows the location of the BP-M-zoned parcels.

As currently written, the Zoning Ordinance regulates similar uses such as animal hospitals, veterinarians, pet stores and dog grooming businesses but is silent regarding daytime dog care. The zoning ordinance currently does not allow for the overnight care of dogs other than for medical reasons, grooming or sales of pets. Two veterinary and grooming businesses currently operate in the City. These uses are located in the Commercial Retail Service (CRS) zone and allowed by right. The Zoning Ordinance does not allow kennels anywhere in the City. The closest use to the request would be the animal shelter use, on Agoura Road, which is owned and operated by the County of Los Angeles.

In order for the daytime and overnight dog care request to move forward, a zoning ordinance amendment would be necessary to allow such use in a specific zone. This action would allow staff to amend the Commercial Land Use Table to add “Dog day care, including overnight care” to the list of commercial uses.

## **II. STAFF ANALYSIS**

The BP-M zone is the most intensive land use zone in the City in that it allows for industrial-type uses such as wholesale distribution facilities, light manufacturing and assembly, and auto repair. The structures found in that zone are typically larger with ample interior space. The amount of traffic that would be generated from the dog day care facility would be minimal and surrounding uses would not be as noise sensitive. Compatibility of uses would be most successfully accomplished by locating these types of use in an industrial zone.

Staff proposes that the use be allowed in the Business Park-Manufacturing zone south of the 101 Freeway, and be excluded from the BP-M zoned parcels located north of the freeway, given the overnight kenneling aspect and its proximity to the residentially zoned neighborhood. If the Planning Commission finds it necessary to further restrict the boundaries of this type of use, their recommendation will be forwarded to the City Council for consideration.



Staff proposes that the Commercial Land Use table Section 9312.2. and Special conditions Section 9312.3 be amended as follows:

“

	USE, SERVICE OR FACILITY	COMMERCIAL			BUSINESS PARK	
		CS	CRS	CR	BP-OR	BP-M
	Unless otherwise indicated, listings denote retail sales operations					
D.						
6.	Disinfecting/fumigating service					X
7.	<u>Dog day care, including overnight care</u>					<u>DD</u>
7. 8.	Drafting service including incidental white-printing	X	X	X	X	X
8. 9.	Dressmaker	X	X		G,U	G
9. 10.	Drive-in café	X	X			
10. 11.	Drive-in dairy, excluding creamery	X	X			
11. 12.	Drive-in food market	X	X			
12. 13.	Driving school	J	J		J,U	J
13. 14.	Drugstore	X	X		E,U	

DD: A permitted use in the BP-M zone for parcels located south of the 101 Freeway, subject to the issuance of a Conditional Use Permit by the Planning Commission.”

A Conditional Use Permit would allow the Planning Commission to review the requests on a case-by-case basis to ensure compatibility with neighboring uses and to impose reasonable conditions. As such, the request would be compatible with the General Plan Land Use Element Goal No. 1 by providing a mix of land uses which meets the diverse needs of the Agoura Hills residents, offers a variety of employment opportunities, and allows for capture of regional growth. Staff also recommends that the use be defined as “dog day care including overnight care.” The number of dogs allowed for each daytime and overnight care would be at the discretion of the Planning Commission as part of each Conditional Use Permit application.

Staff reviewed the draft Ordinance and determined that it has no likelihood of causing a significant effect on the environment, nor would its effects from adoption. Staff concludes that the proposed Ordinance is exempt from the application of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the State CEQA Guidelines, which

state as follows: "A project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." This finding is premised on the fact that the adoption of the Ordinance will maintain the current environmental conditions arising from the current land use regulatory structure as adopted by the City without change or alteration.

The Planning Commission is asked to make a recommendation of approval to the City Council on the draft Ordinance. Final action on the Ordinance will be taken by the City Council at a public hearing. If the Ordinance is approved by the City Council, the applicant may then apply for a Conditional Use Permit for his proposed use which would be considered by the Planning Commission at a public hearing

### **III. RECOMMENDATION**

Based on the foregoing review and analysis, it is recommended that the Planning Commission adopt the attached Resolution, recommending the City Council approve Zoning Ordinance Amendment Case No. 09-ZOA-003

### **IV. ATTACHMENTS**

- Draft Resolution
- Draft Ordinance
- Notice of CEQA Exemption
- Exhibit A: Applicant's Description of the Business
- Exhibit B: Notice of Exemption
- Exhibit C: Map of Parcels currently zoned BP-M
- Exhibit D: Map of Parcels zoned BP-M where dog care would be allowed

**Case Planner:** Valerie Darbouze, Associate Planner