

(R-2006-131)
(COR. COPY)

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RESOLUTION NUMBER R- 301294
DATE OF FINAL PASSAGE MAR 20 2006

WHEREAS, San Diego Municipal Code section 132.0310 allows an applicant to file a petition to the Council of the City of San Diego to override the City Manager's determination of non-compliance with the land use recommendations of the adopted Comprehensive Land Use Plan [CLUP]; and

WHEREAS, the existing structure is located in the IL-2-1 zone at 5440 Morehouse Drive in the Mira Mesa Community Plan and the structure was first permitted as an open "gazebo" in or around 2003; and

WHEREAS, in March, 2003, the applicant applied for a conditional use permit to use the structure as an auto service station; the applicant's representatives were informed that the project was in the Airport Environs Overlay Zone and that the proposed auto service station use would adversely affect the community plan land use goals; and

WHEREAS, the applicant then applied for and received subsequent permits for electric service in August of 2003 to the open gazebo; and

WHEREAS, in December, 2003, the applicant requested a language revision to the community plan to remove the section that identifies auto service uses as inconsistent with this location in the community, and after finding out that this request would not be supported by staff, the community plan amendment was not pursued; and

WHEREAS, building permits for a connected restroom to the gazebo and site retaining walls were subsequently applied for and approved in April and May, 2004 respectively; and in

November, 2004, a building permit was applied for to enclose this open gazebo for the purpose of a type M Occupancy for miscellaneous use; and

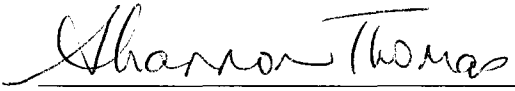
WHEREAS, on January 26, 2005, the applicant then applied for a building permit to change the use of this structure to a type E Occupancy for a day care use for seventy five children, and on April 4, 2005, the applicant was informed that the use was incompatible with the Accident Potential Zone 2 [APZ 2] of the Comprehensive Land Use Plan for Marine Corps Air Station Miramar per the Airport Environs Overlay Zone under Municipal Code Chapter 13, Article 2, Division 3; and as a result, no building permit was issued for this structure to be used as a day care use;

WHEREAS, on July 7, 2005, the Airport Land Use Commission determined that the use was not consistent with the Comprehensive Land Use Plan; and on July 8, the applicant filed a petition to the City Council to override the City Manager's determination of non-compliance with the Comprehensive Land Use Plan for Marine Corps Air Station Miramar; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, that the applicant's request that the Council override the City Manager's determination of non-compliance with the CLUP for Marine Corps Air Station Miramar is denied.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Shannon M. Thomas
Deputy City Attorney

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09/01/05
03/09/06 COR.COPY
Or.Dept:Dev.Svcs.
R-2006-131
MMS#2033

MAR 20 2006

Passed by the Council of The City of San Diego on _____, by the following vote:

| Council Members | Yeas | Nays | Not Present | Ineligible |
|-------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Scott Peters | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Kevin Faulconer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Toni Atkins | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Anthony Young | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Brian Maienschein | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Donna Frye | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Jim Madaffer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ben Hueso | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage MAR 20 2006

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Mary Cepeda*, Deputy

Office of the City Clerk, San Diego, California

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