

Project: PROJ-2020-00158
Accessors Parcel Number: 0594391250000
July 17, 2022

Appeal of the Planning Commission action to Approve the project as submitted as well as the Mitigated Negative Declaration.

A. Requested Action:

APPROVE the Adoption of a Mitigated Negative Declaration and APPROVE the Project as Modified below:

1. Require the Mane Street facade to align with the prevailing Mane Street setbacks for both the porch/deck and front building line. Approve a Major Variance to allow a zero foot setback on Mane Street conditional on no parking being provided on the Mane Street frontage.
2. Reverse the Major Variance approved by the Planning Commission for reduction in side yard setback. Side yard setbacks to be per Development Code.
3. Reverse the Major Variance approved by the Planning Commission for the Pioneertown Road building and landscape setback which was reduced from 25' to 0 feet. Pioneertown Road building and landscape setback to be maintained at 25 feet per the Development Code.
4. Require the exteriors of all buildings, trailers, fences and other elements to be of non-reflective material and finish.
5. Require the project to screen parking to comply with requirements associated with Pioneertown Road's Scenic Highway Status and the Development Code. All site fencing shall be finished on the side facing adjacent properties, constructed of wood or adobe brick, solid in nature, and 6' high.
6. Require that no paving of Mane Street be included as a Condition of Approval
7. Signage visible from adjacent properties and streets shall be painted on a dimensional wood substrate. Illumination, if provided, shall comply with the San Bernardino County Light Trespass Ordinance.

OR

1. Reverse the decision of the Planning Commission. DISAPPROVE the Project. DISAPPROVE the Adoption of a Mitigated Negative Declaration.

The Appellants prefer approval as modified. We support the addition of professionally managed tourist accommodation on Mane Street, but this must be done in a manner which ensures the integrity of the Pioneertown Mane Street Historic District, and in appropriate scale and intensity based on its location immediately abutting single family residences and Residential zoning.

Commentary: The County Review process was flawed and failed to comply with the requirements of the San Bernardino Development Code, County Code and California Environmental Quality Act. A denial of this Appeal is likely to lead to litigation to correct these defects and result in a mandatory preparation of a costly and time consuming Environmental Impact Report (Farmland Protection Alliance v. County of Yolo).

B. Explanation of Rationale for Appeal:

This appeal is filed with regret and only after significant communication and Public Comment failed to correct errors in the process and application. Efforts to assist the Applicant and Staff in correcting these errors were exacerbated by the formality of the process and the Applicant having made no attempt at outreach to Pioneertown residents, business owners, and stakeholders, nor making project application materials available except through formal channels (FOIA/Public Records Requests, Stakeholder travel to the City of San Bernardino, mandatory noticing, etc).

The appeal is based on five primary complaints, further explained in the sections that follow:

Complaint 1 - Specific Errors in Application and Evaluation: California Environmental Quality Act

Complaint 2 - Specific Errors in Application and Evaluation: Compliance with Development Code Procedures

Complaint 3 - Specific Errors in Application and Evaluation: Compliance with the Countywide Plan

Complaint 4 - Planning Commissioners Approved the Project Based on Erroneous Information Provided in the Staff Report and by Staff During the Hearing.

Complaint 5 - Lack of Clarity in How the Project Configuration and Design Intent can Comply with other County Requirements without Major Redesign

C. Background

The Project Site is located on Mane Street, in Pioneertown, California. Pioneertown was established in 1946 as a development intended to combine a working town (with residents and businesses) and a filming location for “B” westerns. The combination was unique even at the time, and Pioneertown is the only “Movie Ranch” in California to have survived from the Golden Age of Westerns. Pioneertown is also remarkable in that even the “Commercial” portion of the community zoning only allows Single Family Residential development by right, parcels on Mane Street are frequently immediately adjacent to residences and all are adjacent to residentially zoned parcels.

Pioneertown has been largely unchanged since the 1960s due to a combination of property owner values and building moratoriums stemming from inadequate infrastructure. The resulting small scale, unique character, and history have made Pioneertown a major tourist destination within San Bernardino County - virtually all of Pioneertown’s business rely on the continued integrity of the historic setting, community scale, and uniqueness of environment, all of which is threatened by the Project as approved.

The Project Application was heard by the Planning Commission on July 7, 2022, and despite overwhelming public comment in opposition at each step in the process and with no public support, was nonetheless unanimously approved. Public participation at that hearing was limited as the hearing notice mailed to Pioneertown residents did not indicate that the Joshua Tree Government Center would offer as a remote site, leading some members of the community to conclude that they would need to make an 146 mile round trip during a work day in order to participate in person. (Exhibit P)

Complaint 1 - Specific Errors in Application and Evaluation: California Environmental Quality Act

The California Environmental Quality Act (CEQA) applies to discretionary projects undertaken by private parties. A discretionary project is one that requires the exercise of judgement or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued. The Conditional Use Permit sought by the Applicant is a discretionary approval subject to the requirements of the Act.

1. The Project has failed to identify potentially impacted cultural resources.
 - a. The Initial Study/Mitigated Negative Declaration (IS/MND) incorrectly concludes that the Pioneertown Mane Street Historic District is not a Resource as defined by CEQA. The IS/MND was not revised when errors were noted in Public Comment (Exhibit A). Per 15064.5, a historic resource under CEQA is “(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4850 et seq.)”
 - b. Planning Staff and County Counsel incorrectly verbally advised Planning Commissioners in hearing that the IS/MND was correct, despite written comment provided to the Commissioners to the contrary. (Exhibit B).
 - c. Pioneertown is a National Register Historic District (SG100005220). National Register Historic Districts located within California are automatically entered into the California Register (PRC § 5024.1). The California Office of Historic Preservation mailed notice to the Applicant informing him that the property was within the Pioneertown Mane Street Historic District, and that the District had been entered into the California Register. (Exhibit C).
 - d. Prior to Federal recognition, Pioneertown’s Mane Street was registered in CHRIS as P-36-011293 (CA-SBR-011293H).
 - e. No Phase I Cultural Resource Study to identify potentially impacted historic resources has been made publicly available.
2. The Project has failed to study and evaluate potential impacts on the Pioneertown Mane Street Historic District.
 - a. Upon identification of a historic resource, CEQA requires the lead agency to disclose the potential impacts of a project, suggest methods to minimize those impacts, and discuss alternatives to the project so that decision makers will have full information upon which to base their decision. These are typically conducted

via a Phase II Cultural Resource Study. No Phase II Cultural Resource Study has been conducted.

- b. The Pioneertown Mane Street Historic District listing concludes that the District is a total environment and setting, not limited to a collection of buildings, and the simple absence of a Contributing Building within the Project boundary cannot lead one to determine that no resources will be impacted. The listing specifically notes the following Character Defining Features which are not related to specific buildings. No study has been conducted on the Project's potential for impact on these Features:
 - i. Consistent setbacks
 - ii. Buildings fronting on Mane Street
 - iii. Materials
 - iv. Mane Street as primarily for pedestrian and equestrian access
 - v. Unornate, orthogonal building elevations
 - vi. Fences
 - vii. Periodic open lots between buildings
 - viii. Mature Joshua Trees
 - ix. Dirt parking lots and roads
 - x. Parking located behind buildings.
- c. No study has been conducted on the Project's potential for impact on Contributing Buildings or Structures.
- d. The Project's Conditions of Approval include a condition that a Secondary Access Road be provided and "Paved or an all-weather surface". The only available secondary access road in this case is Mane Street, whose unpaved nature is a defining feature of the District. This impact has not been studied.
- e. Given that the Western property line is shown as having a 5 foot high "Hog Wire" fence which appears to be open in nature and trailers beyond vary from 11 feet to 16 feet in height, it is unclear how the Staff Report comment that the "Trailers would be screened from view" along Mane Street is supported. The property abuts an informal private road with no vegetation, and what vegetation lies on the parcel further West of the property is sparse. It is thus likely that the entire Western exposure of the trailers will be visible when viewed from the West portion of Mane Street. This impact on the historic resource has not been evaluated. No elevations of this facade were included in the IS/MND, nor in the final Staff Report.
- f. It is important to underline that the issue here is the absence of required study. Status as a resource does not mean that no change can happen within the district. Rather, if a resource exists, it simply requires that the Lead Agency and Applicant conduct or commission a Phase 2 study of the project's potential impact on the district, conduct evaluation of that impact, and suggest mitigation and alternatives. The failure of the Lead Agency to study these impacts invalidates the MND.

Complaint 2 - Specific Errors in Application and Evaluation: Compliance with Development Code Procedures

County Code requires that regulations and procedures of the Development Code be adhered to in consideration of Project Applications.

1. County Staff failed to comply with the requirements of the Development Code with respect to evaluating and recommending Variances. 85.17.060 specifies that Staff must make all of the four Findings below:
 - a. The granting of the Variance will not be materially detrimental to other properties or land uses in the area and will not substantially interfere with the present or future ability to use solar energy systems;
 - b. There are exceptional or extraordinary circumstances or conditions applicable to the subject property or to the intended use that do not apply to other properties in the same vicinity and land use zoning district;
 - c. The strict application of the land use zoning district deprives the subject property of privileges enjoyed by other properties in the vicinity or in the same land use zoning district; and
 - d. The granting of the Variance is compatible with the maps, objectives, policies, programs, and general land uses specified in the General Plan and any applicable specific plan.
2. County Staff's Findings are in error and do not satisfy all four criteria required by 85.17.060. Notably:
 - a. There are no exceptional or extraordinary circumstances impacting the Project. The space constraints on the project are entirely due to the excess intensity and density, both of which are within the sole control of the Applicant. The project was originally submitted as twelve units in 2019 with no request for Variance. The Variances were only necessitated when the Applicant increased the project intensity from 12 units to 14 units, and increased trailer accommodation area from 2,990 SF to 4,036 SF (Exhibit D). Inability to comply with Setbacks due to the intensity and scale of a project is not a justification for Variance. Planning Staff and Commissioners have made repeated comparisons of this project to the recently completed AutoCamp project in Joshua Tree. They are not similar: AutoCamp consists of 26.1 Acres/55 units at .475 acres/unit. This Project proposed a density of 0.77 Acre/14 units or .055 acres/unit. This Project has a unit density of more than ten times the density of the AutoCamp project.
 - b. The Historic District requirement that parking be located behind buildings does not deprive the Project of privileges enjoyed by other nearby properties. Virtually all Mane Street properties have parking behind the building. Every other building on Mane Street was constructed in compliance with the Development Code requirements in place at the time; no other Variance from development code requirements has been granted to a Mane Street property since at least 2001.
 - c. The Project's parking is across from a residentially zoned parcel (RL) which was recently purchased and in the process of development as a Single Family Home. Elimination of the setback and screening requirements on this side of the property will expose that residence to the entirety of the project's parking and

trash storage areas, as well as headlights from exiting cars. The Project also lies within 200 feet of a County designated Scenic Highway further requires this screening. (§ 82.19.040).

- d. Parking at the nearby Red Dog Saloon is screened from Pioneertown Road via a 6' high railroad tie fence. There is nothing infeasible or deprivatory about requiring similar screening for this Project.

Complaint 3 - Specific Errors in Application and Evaluation: Compliance with the Countywide Plan

During Consideration of a discretionary approval, the County is required to evaluate the Project against the goals and objectives of the Countywide Plan. As proposed, the Project is in direct conflict with multiple aspects of that Plan.

1. The Project is of a scale and intensity unprecedented within Pioneertown and inconsistent with community intentions. Policy LU-4.5 advises (Exhibit E):
Community identity. We require that new development be consistent with and reinforce the physical and historical character and identity of our unincorporated communities, as described in Table LU-3 and in the values section of Community Action Guides. In addition, we consider the aspirations section of Community Action Guides in our review of new development.

The failure of the Applicant to align with the Prevailing Mane Street Setbacks, or to adequately study the historical character of the community is inconsistent with this Policy.

2. The Project's use of trailers, buses and mobile homes and trailers of unspecified color, material or character has no relation to the desert environment. Policy LU-4.1 advises (Exhibit E):
Context-sensitive design in the Mountain/Desert regions. We require new development to employ site and building design techniques and use building materials that reflect the natural mountain or desert environment and preserve scenic resources.

3. The project's failure to adequately identify and study impact on the Pioneertown Mane Street Historic District is in conflict with Policy CR-2.1 and Policy CR-2.2 (Exhibit F):
National and state historic resources. We encourage the preservation of archaeological sites and structures of state or national significance in accordance with the Secretary of Interior's standards.

Local historic resources. We encourage property owners to maintain the historic integrity of resources on their property by (listed in order of preference): preservation, adaptive reuse, or memorialization.

4. Approving Variances to allow increased project scale and intensity is in direct conflict with the following aspects of the Community Action Guide:

Values: Managed Growth. The Pioneertown Communities residents value limited, sustainable growth and development that increase business opportunities for independent operators while striking a balance between the rights of property owners and the community's desire to maintain the small town character of Pioneertown Communities.

Complaint 4 - Planning Commissioners Approved the Project Based on Erroneous Information Provided in the Staff Report and by Staff During the Hearing.

There were several instances where the errors in the Staff Report, as well as in answers provided to Commissioners may have led to incorrect conclusions about the project, as well as causing confusion in the interpretation of Public Comment.

1. When considering the Project's setback to Mane Street, Commissioners asked staff to advise on the "Prevailing Setback" noted in Public Comments. Staff incorrectly stated that that they weren't aware that there was a prevailing setback and stated that per the Planner's recollection buildings don't align but "meander down the road". This is not true, review of aerial photos, topographic surveys, direct observation or simply the National Register documents provided to the Applicant and Planning staff note that there is a relatively consistent 50' building setback setback from the centerline of Mane Street, which is Character Defining Feature of the Historic District. (Exhibit G)
2. In response to Public Comment noting that the Pioneertown Mane Street Historic District was a CEQA resource, Planning Commissioners queried County Counsel. Consulting only the IS/MND (which the Comment in question had noted was incorrect), Counsel incorrectly advised the Commission that the District was not considered a resource under CEQA.
3. The Staff presentation included a misleading note from a National Park Service website that claimed "*Under federal law, the listing of a property in the National Register places no restrictions on what a non-federal owner may do with their property*". While correct under federal law, this has no bearing on the application of California law, which specifically requires identification and evaluation of impact on National Register listed historic resources as part of any discretionary action.
4. The Staff Report incorrectly lists the parcel size as 0.33 acres. The correct parcel size is 0.77 acres.
5. The Staff Report (page 8) incorrectly indicates North 180 degrees off of the actual orientation.
6. The Staff report (Page 32) notes that the proposed project would "remove a minimal amount of landscaping and retain several Joshua Trees". Per the Biological Study, two Joshua Trees exist on the site (Exhibit H), one in the SE corner of the site, and one more or less in the middle. The Site Plan depicts a single Joshua Tree and notes it as protected, however it occurs within the confines of a new boardwalk and within 2-3 feet of new construction. The second Joshua Tree is not depicted. It is impossible to conclude that any Joshua Trees will be retained based on the current design. (Exhibit J)

Complaint 5 - Planning Commissioners Approved the Project Despite Significant Errors in the Submitted Plans

The submitted plans appear not to have been professionally prepared and have significant errors which make it impossible to understand the true nature of Project:

1. The Site Plan (Exhibit N) notes there will be no grading associated with the project. Spot elevations indicate topography on the property varies from 4019.19 feet in elevation at the SE corner and 4049.48 feet in elevation at the SW corner - a 30 foot elevation difference within only 100 feet. Available topography from the adjacent site suggests

that these annotations are in error and the site in actuality varies about 13' feet, nonetheless necessitating significant grading to establish the trailer pads, the "ruins", parking, and a compliant ADA path of travel.

2. The Lot Coverage calculations on the Site Plan indicate only 12 trailers, while the Site Plan and Application indicate 14. Area calculations shown in the plan cannot be correlated with the noted trailer dimensions and quantities, nor actual measurements from the plans. The measured trailer area exceeds the area shown on the area tabulation by 25%. (Exhibit D)
3. The Site Plan incorrectly indicates the zoning of the lot to the South of the property as SD-RES. The correct Zoning is RL, a more restrictive zone.
4. No required trash/recycling area is shown on the plans, nor is there any depiction of screening for said elements as stated in the IS/MND.

Complaint 6 - Lack of Clarity in How the Project Configuration and Design Intent can Comply with other State and County Requirements without Major Redesign

As submitted, the project has essential features which appear to be incompatible with other San Bernardino County requirements which will become apparent prior to issuance of Construction Permits. The Commission in their review dismissed these concerns on the basis that County Departments will address these through plan check, but it is unlikely this can be done without without the project significantly deviating from the Approved scheme. A wholesale redesign and de-densification of the Project is likely, the details of which will be of a magnitude that should not be permitted under only Director level review.

1. Wastewater in San Bernardino is under the purview of The Department of Environmental Health Services which administers the County's Local Area Management Plan (LAMP). The LAMP limits on-site wastewater discharge for new developments to less than 600 gallons/1 acre/day. As designed, the project has not been designed in a manner which can comply with the LAMP. Per California Plumbing Code TABLE H201.1(4), the estimated wastewater discharge for this project will exceed 700 gallons per day Based on site area of 0.77 acres and the LAMP, the maximum wastewater discharge for this site using a conventional septic system will be 462 gallons/day, necessitating either reduction in the quantity of accommodation or the use of an Alternative Treatment System (also known as a "Package Plant". As proposed, the project fails to provide adequate area and related setbacks for either a conventional septic system or an Alternative Treatment System, and significant redesign will be required to obtain approval of the project within the requirements of the LAMP.
2. The Project is in a very high fire zone / wildland urban interface and as a result San Bernardino County has designated the area as within a Fire Safety Overlay. Based on the Project's significant amount of wood fencing, architectural features, cladding, and vegetation, it is unclear on how the Project will comply with the Overlay's requirements for Fuel Modification, Building Construction, Sprinklers, and Setbacks.
3. The State of California regulates aggregations of trailers, mobile homes, recreational vehicles, used for accommodation under the provisions of 25 CCR § 2000 as "Special Occupancy Parks". These regulations differ significantly from the California Building Code and appear incompatible with the current design.

4. No information appears within the Application or Staff Report as to how the trailers and buses will comply with Building Code requirements for occupied structures, including:
 - a. Permanent versus temporary foundations and seismic restraint
 - b. Title 24 energy compliance (nearly impossible for uninsulated structures)
 - c. Fire Sprinkler installation

K. Conclusion

The Planning Commission’s Approval of the Project was based on incorrect information, defective application documents, and failures of procedure which call into question the accuracy of the conclusions which lead to the Commission’s Action, and risk correction through litigation if not rectified through Appeal. The Appellants do not wish to undertake this approach if an acceptable alternative can be approved. We ask that the Supervisors take the Requested Action so that the Applicants may proceed with permitting and construction of a project which is of appropriate scale, harmonious with the surrounding community, and which does not negatively impact the Pioneertown Mane Street Historic District.

J. Reference Exhibits

Exhibit A	IS/MND Public Comment
Exhibit B	Planning Commission Public Comment
Exhibit C	Notice of California Register Listing to Rick Schwartz
Exhibit D	Trailer Area Tabulation
Exhibit E	Countywide Plan Community Element
Exhibit F	Countywide Plan Cultural Resources Element
Exhibit G	Prevailing Setback
Exhibit H	Bio Study Joshua Tree Locations
Exhibit I	(Not Used)
Exhibit J	Joshua Tree Locations
Exhibit K	Pioneertown Mane Street Historic District as Approved
Exhibit L	Planning Staff Report
Exhibit M	Initial Project Site Plan
Exhibit N	Planning Commission Site Plan
Exhibit O	(Not Used)
Exhibit P	Notice of Hearing