



OFFICE OF COMMUNITY DEVELOPMENT

CITY HALL

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PLANNING COMMISSION STAFF REPORT

Meeting: March 27, 2018

SUBJECT

Consider the proposed replacement of an existing gasoline service station and an auto repair shop (1,221 s.f.,) with an updated gasoline service station and a convenience market (2,419 s.f.); and consider the proposed convenience market, concurrent sale of alcoholic beverages and gasoline, and proposed 24-hour operations at the site as conditional uses. (Application No(s): DP-2017-02, U-2017-03, ASA-2017-04; Applicant(s): Amir Khojasteh; Location: 10490 S. De Anza Blvd; APN: 369-39-041)

RECOMMENDED ACTIONS

That the Planning Commission adopt the draft resolutions to:

1. Find the project exempt from CEQA;
2. Approve the Development Permit (DP-2017-02);
3. Approve the Conditional Use Permit (U-2017-03) for:
 - a. A 2,419 s.f. convenience market;
 - b. Concurrent sale of alcoholic beverages and gasoline;
 - c. 24-hour operations for the gasoline service station and convenience market; and
4. Approve the Architectural and Site Approval Permit (ASA-2017-04).

DISCUSSION

Project Data:

General Plan Designation:	Commercial/Residential	
Special Area:	South De Anza Special Area	
Zoning Designation:	P (CG) Planned Development General Commercial	
	Existing	Proposed
Property Area:	16,097 s.f. / 0.36 acres	14,103 s.f. / 0.32 acres
Floor Area (s.f.):	1,221 s.f.	2,419 s.f.
Floor Area Ratio: (max. 25%)	8%	17%

	Proposed	Allowed/Required
Building Height:	18'-8"	30' max.
Building Setback (<i>from face of curb on S. De Anza Blvd.</i>):	73'	35'
Auto Parking (<i>Parking Study</i>):	8	7
Bicycle Parking:	2	2
Hours of Operation		
Sunday – Saturday:	24 hours	
Project Consistency with		
General Plan:	Yes	
Zoning:	Yes	
Environmental Assessment:	Categorically Exempt	

Background:

Site Description

The land uses surrounding the project site consist mainly of commercial and commercial office uses with the closest residential uses 300 feet to the east (on Silverado Avenue) and 450 feet to the west (across S. De Anza Boulevard) (see Figure 1).

The project site is located within the South De Anza Special Area at the southeast corner of S. De Anza Blvd and Pacifica Drive and design standards for development on the site are governed by the South De Anza Conceptual Plan.



Figure 1 - Existing Land Uses

The South De Anza Special Area is intended to continue as a predominantly commercial area with neighborhood centers, commercial office and residential uses and gathering spaces for the community with a focus on promoting active retail and service uses, improved bike and pedestrian connectivity to adjacent neighborhoods and an improved streetscape with landscaping and separated sidewalks. The South De Anza Conceptual Plan prescribes architectural and streetscape standards to ensure coordination of design elements along the portion of S. De Anza Blvd, north of Bollinger Road, including the project site.

The South De Anza Conceptual Plan was enacted in 1985 for the purpose of maintaining active commercial uses along the street by creating a landscape boulevard that would provide an active pedestrian corridor while also increasing the traffic capacity and safety of S. De Anza Blvd, a major thoroughfare within the City. The design standards are applied to new development, redevelopment, and use changes for the properties to the west of S. De Anza Blvd from Scofield Avenue to Pacifica Drive and on both sides of S. De Anza Blvd from Pacifica Drive to Bollinger Road.

Application Requests

The applicant and architect, Amir Khojasteh, representing the property owner is requesting permits to consider the proposed replacement of an existing 76 gasoline service station and an auto repair shop (1,221 s.f.) with an updated gasoline service station and a convenience market (2,419 s.f.) and associated site improvements, including paving for off-street parking and landscaping. The property owner has identified that they wish to sell alcoholic beverages at the convenience market and operate 24 hours a day at this location. The Municipal Code (CMC 19.60.030 and 19.132) requires review and approval of the convenience market, the 24-hour operation, and the concurrent sale of alcohol and gasoline, as conditional uses, by the Planning Commission.

Analysis:

General Plan and Zoning Compliance

The existing automotive service station is a use consistent with the General Plan Land Use Designation of Commercial/Office/Residential and is permitted as a conditional use within the general commercial zoning district. The applicant is requesting a conditional use permit to allow a convenience market, 24-hour operations of the convenience market and the gasoline station and concurrent sales of alcohol and gasoline. These uses would be consistent with the General Plan Land Use designation and the zoning district, if the Planning Commission permits them. An analysis of the proposed conditional uses is presented later in this report.

Existing Use and Proposed Changes

The current site has four gasoline fuel dispensers sheltered by an overhead canopy, and a single-story 1,221 s.f. building that consists of a pay station office with a small area dedicated to retailing food and beverages, and an auto repair shop. There is currently no enclosure for the trash containers on the site. There are also three existing landscape planters on the site – one along the western property line, one along the southern property line and one close to the existing building on the site.

The applicant proposes to make the following improvements at the site as indicated in Attachment 4:

- Relocate the four existing fuel dispensers to accommodate wider drive aisles between dispensers;
- Replace the existing overhead canopy with a new 19 feet tall overhead canopy that utilizes materials and colors compatible with the proposed building
- Demolish the existing building and construct a new convenience market (net new 1,198 s.f.);
- Construct a new trash enclosure;
- Provide landscaping and tree shading consistent with the parking lot landscaping requirements listed in CMC 19.124;
- Provide landscaping and sidewalk consistent with the intent of the South De Anza Conceptual Plan; and
- Consolidate driveway openings along Pacifica Drive.

Planning Area Development Allocation

The project proposes to construct a new convenience market with an increase of 1,198 s.f. of net new commercial allocation. Currently, there is no available commercial development allocation within the South De Anza Planning Area. However, there is 819,327 s.f. available within the Heart of the City Special Area. The General Plan allows development allocations to be transferred between Special Areas if there are no further impacts than those already identified by the General Plan EIR prepared in 2014. The trip generation of the proposed project is under the threshold for necessitating the preparation of a Traffic Impact Analysis per Santa Clara Valley Transportation Authority's (VTA) Transportation Impact Analysis Guidelines. Furthermore, as discussed later, the project is categorically exempt from the California Environmental Quality Act. Therefore, the additional requested commercial square feet will be drawn from available allocations within the Heart of the City Planning Area.

Architectural Design and Site Planning

The applicant incorporated recommendations from the City's consulting architect by providing a façade that is visually cohesive through architectural style, material choice, and color schemes. The building is designed with a flat-roof contemporary style utilizing bold red and black painted aluminum panels for the roof edging, building awning and overhead canopy. The proposal also includes two-foot tall silver corrugated metal panels to complement the contemporary style while providing required screening of utilities and other rooftop equipment. Additionally, the new aluminum awnings will wrap around the building to give the facade more depth and enhance the modern appearance. The overhang of the roof of the building and the canopy are supported with columns that

are wrapped with brushed aluminum that further accentuates the clean lines of the contemporary style. The overall height of the building is 15 feet to the top of the flat roof and; 17 feet to the top of the aluminum roof screening. At the entry, the height is measured 18 feet 8 inches to the top of the parapet of the entry feature, which provides the building with additional dimension and added height only for the prominent entry way into the building.

In General Plan: Community Vision 2015-2040, the primary building bulk is required to fall under a 1:1 slope line and the South De Anza Conceptual Plan requires a 35-foot setback measured between the street curb line and building. These plans allow for varied setback to height standards where the encroachment does not affect privacy or contribute to excessive building mass as viewed by a resident. The proposed building and canopy is below the required 1:1 slope line requirement with the building at a setback of more than 70 feet and the canopy at a 23-foot setback. The primary building along S. De Anza Blvd is below a required 1:1 slope line measured from the boulevard curb line and therefore, is consistent with the required building plane standard. The overhead canopy is encroaching into the required building setback but does not contribute to the building mass, therefore, the proposed canopy complies with the applicable design and development regulations.

As a solution to ensure visual and physical connectivity between the building and the street, the building's façade is about 40% glass and will be kept clear of spandrels, ads, and posters, unless permitted through review by the Planning Division and as permitted by the Sign Ordinance.

Additionally, as part of the proposal, the property owner will remove the fence along the eastern property line to integrate the pedestrian access walkway proposed off Pacifica and along the eastern property line. A condition of approval has been added to ensure that the applicant complies with this requirement prior to final occupancy.

There currently is no physical structure to contain the trash receptacles that are generally stored to the south or west of the existing auto body shop. As part of the redevelopment, the applicant proposes to construct a trash enclosure designed in compliance with the City's "Guidelines for Non-Residential Building Trash and Recycling Enclosures." This will be reviewed and approved by the City's Environmental Services Division prior to issuance of building permits.

Landscaping and Trees

The South De Anza Conceptual Plan requires that development, redevelopment, or use changes that require a Conditional Use Permit provide sidewalk and landscape improvements consistent with the "Long-Term Sidewalk" design which has provisions for a landscape boulevard that spans 20 feet. Measured from the face-of-curb, a ten-foot

landscape area and utility easement, bisected evenly by the property line, is followed by a standard five-foot sidewalk and a second row of trees.

The applicant has proposed site improvements to satisfy these requirements to the extent possible, given the lot configuration. Currently, the existing property line along S. De Anza is ten feet from the face-of-curb and allows for a five-foot wide landscape planter and a five-foot wide sidewalk to be located within the existing public right-of-way. The applicant has proposed to provide six on-site trees, located adjacent to proposed parking stalls, to comply with the required tree planting ratio per every five parking stalls.

There appears to be a tree in the landscape planter closest to the existing building on site. However, the applicant has not requested for a tree removal permit. Therefore, it is assumed that the applicant intends to retain the tree. Should removal of the tree be desired, a tree removal permit to ensure that the proposal is reviewed appropriately and that the final species of replacement trees be reviewed and approved by the City in consultation with the City's Consulting Arborist prior to issuance of demolition permits.

Site Improvements

During the review process, the applicant worked with the Public Works Department to secure a land dedication of about 2,000 s.f. with the maximum depth about 20 feet (See sheet A2.0 for Attachment 4.) This dedication was determined to be the appropriate developer contribution to the De Anza Blvd/McClellan/Pacifica Signal Modification Project. The project is intended to better align the currently off-set intersection (Figure 1 above) to increase efficiency of the traffic flow through this major corridor.

The Public Works Department has included this project as part of the Capital Improvement Program, and the start date of this project is contingent on accumulating sufficient developer contributions and supplementary funds. The project is anticipated to include relocating two street signal poles, concrete and striping work, and the consolidation of the Pacifica driveways to this site. This applicant, however, will only be responsible for the land dedication and driveway consolidation.

Ingress/Egress

The site has three existing driveways for ingress/egress: a 39-foot wide driveway off of S. De Anza Blvd (western driveway); a 77-foot wide driveway at the apex of the curve at the intersection of S. De Anza Blvd and Pacifica Drive (middle driveway); and a 21-foot wide driveway off Pacifica Drive (eastern driveway). As part of the street improvements to enhance the pedestrian experience by reducing the number of driveway cuts, in compliance with the General Plan Goal for Walkability and Bikeability under Policy M-3.5 Curb Cuts, and to improve vehicular safety, the applicant proposes to reduce the western driveway from 39 feet to 30 feet; and to consolidate the middle driveway and the

eastern driveway into one 29-foot driveway in the location of where the current eastern driveway is located to conform to the City's Public Works standards for commercial driveway widths (minimum 24 feet, maximum 32 feet). A condition of approval has been added to ensure that this is completed prior to final occupancy.

Parking

General commercial uses are required to comply with the ratios listed in the zoning code (CMC 19.124) by providing 1 parking stall per 250 s.f. of floor area (4.0 stalls per thousand s.f.). The new 2,419 s.f. convenience market would require the property owner to provide ten total auto parking stalls as off-street parking. However, due to the site constraints as a result of dedication to the City, expansion of the footprint of the building and relocation of the gas dispensers, the property owner requested that a parking study be prepared to consider an alternate parking ratio for the proposed uses on the site.

The property is located within a Planned Development zoning district which is specifically intended to encourage a variety in development pattern and allows for flexibility in land use and design regulations, such as parking standards. A parking study provides data upon which a decision regarding an alternate parking ratio can be made, therefore, on behalf of the City, Fehr & Peers, Transportation Consultants, conducted a parking study based on a survey of three existing gasoline service stations in the City. The parking study (Attachment 5) concluded that seven parking spaces would be sufficient to meet the off-site parking demand for the proposed uses. The property owner has provided eight spaces which have been indicated on the project plans. The applicant will comply with the City's bike parking requirements.

Signage

Signage details are not complete and are considered excluded from this permit application. Staff will review the signage proposal with the property owner at the time the applicant applies for a sign permit through the Building Division.

Conditional Uses

The applicant has prepared a business plan to address the need for the three conditional uses that are being requested (see Attachment 6.) The Cupertino Municipal Code Section 19.08 defines a "convenience market as a use or activity that includes the retail sale of food, beverages, and small personal convenience items, including sale of food in disposable containers primarily for off-premises consumption, and typically found in establishments with long or late hours of operation and in relatively small buildings, but excluding delicatessens and other specialty food shops and establishments which have a sizable assortment of fresh fruits, vegetables, and fresh-cut meats." However, since the proposed use is at an automotive service station, per Municipal Code Section 19.08, "the

sale of food or grocery items on the same site is prohibited except for soft drinks and snack foods, either from automatic vending machines or from shelves.” The proposed use meets this definition and therefore, conforms to the requirements of the Municipal Code.

The applicant is seeking approval for 24-hour operations for both the convenience market and the gasoline service station. In accordance with the General Commercial Ordinance Section 19.60.030, commercial businesses are allowed to remain open outside of regular business hours (7:00 a.m. to 11:00 p.m.) with a Conditional Use Permit. Over the years, the Planning Commission has approved extended hours use permits for businesses that include restaurants, coffeshops and breakfast shops, and gasoline service stations and convenience markets with appropriate conditions of approval and if found to be a compatible use. It is fairly common for gasoline stations and convenience markets to operate 24 hours a day.

Finally, the applicant is also requesting to sell beer and wine in the proposed convenience market. A Use Permit is required for the concurrent sale of gasoline and alcoholic beverages in a General Commercial (CG) zone per Chapter 19.132 of the Municipal Code, and may be permitted, by the Planning Commission, if the use is compatible with existing and planned uses in the area.

This property is located along a major thoroughfare adjacent to commercial shopping centers to the west and south. The proposal complies with the restrictions contained in Chapter 19.132 for the concurrent sale of gasoline and alcoholic beverages. The alcohol will be stored and displayed in the permanently affixed coolers located against the eastern wall of the proposed convenience market. The applicant has also indicated the five-foot clearance area from the cash register and the front door which must be kept clear of beer or wine displays on the project plans (see Sheet A.3.0 of Attachment 4)

Please see Table 1 below for a survey of other Cupertino gas stations that were approved for conditional use permits that permitted convenience markets, concurrent sales of alcoholic beverages, and/or 24-hour operations of on-site uses.

Table 1: Existing gas stations and approved uses

Gas Station & Address	Approved Uses
76 Gas and 7-Eleven 21530 Stevens Creek Blvd	Convert existing gasoline service bays to a convenience market, propose concurrent sales of alcoholic beverages and gasoline (U-2011-09)

Gas Station & Address	Approved Uses
Chevron 10023 S. De Anza Blvd	Demolish existing gasoline service station and auto repair shop and replace with new 24-hour gasoline service station with convenience market (U-1997-10)
Valero 10002 N. De Anza Blvd	Demolish existing gasoline service station and replace with new gasoline service station with drive-through car wash (U-1998-05) Concurrent sales of alcoholic beverages and gasoline (M-2006-02)
Valero (previously Chevron) 1699 S. De Anza Blvd	24-hour operation at a gasoline service station (U-1987-19) Car wash service at existing gasoline service station (U-2009-02) Concurrent sales of alcoholic beverages and gasoline (U-2012-02)

The proposed convenience market is located at least 300 feet from the closest residence at a visible intersection in the City. The layout of the convenience market orients it to S. De Anza Blvd with approximately 40% of the wall facing S. De Anza Blvd having fenestrations leaving much of the interior visible from the street. The Santa Clara County Sheriff's Office did not identify any public safety concerns associated with the new proposal, but recommended the installation of high resolution video surveillance cameras strategically located to visually cover the entire site. This is included as a condition of approval. A condition of approval to require the property owner to address security concerns in the event that they may arise is also included.

Finally, a condition of approval has been added to ensure reimbursement of the costs of supplemental public safety services, should the need arise. The City contracts its law enforcement services with the Santa Clara County Sheriff. This contract covers basic services, such as, crime prevention patrols, investigative services. The contract also allows the City and the Sheriff's Department to mutually agree upon supplemental services, such as, crime prevention patrols beyond those acceptable of being scheduled and within the capability of the Sheriff to provide. Should the need arise for such supplemental services due to this operation, the City and/or Sheriff Department may agree upon these services, for reimbursement by the applicant. Since the City has a cost-recovery policy for services provided, the costs associated with supplemental services related to the proposed operation, must be reimbursed by the applicant. The applicant is aware of this condition of approval.

Environmental Assessment:

This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA, Section 15303 New Construction or Conversion of Small Structures) because the proposed use would occur within City limits and would be surrounded by existing urban uses.

Other Department/Agency Review:

The City's Building Division, Public Works Department, Environmental Services Division, the Santa Clara County Fire Department, and the Santa Clara County Sheriff's Office reviewed the project and have no objections.

PUBLIC NOTICING & OUTREACH

The following table is a brief summary of the noticing done for this project:

Notice of Public Hearing and Intent, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none">▪ Site Signage (<i>14 days prior to the hearing</i>)▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)▪ 60 public hearing notices mailed to property owners within 300 feet of the project site (<i>10 days prior to the hearing</i>)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)

No public comments have been received as of the date of production of this staff report (March 21, 2018).

PERMIT STREAMLINING ACT

This project is subject to the Permit Streamlining Act (Government Code Section 65920 – 65964). The City has complied with the deadlines found in the Permit Streamlining Act.

Project Received: January 23, 2017; ***Deemed Incomplete:*** February 22, 2017

Project Resubmission: May 22, 2017; ***Deemed Incomplete:*** June 20, 2017

Project Resubmission: November 20, 2017; ***Deemed Incomplete:*** December 20, 2017

Project Resubmission: January 19, 2018; ***Deemed Incomplete:*** February 19, 2018

Project Resubmission: March 12, 2018; ***Deemed Complete:*** March 14, 2018

Since this project is Categorically Exempt, the City has 60 days (until May 14, 2018) to make a decision on the project.

CONCLUSION

Staff recommends approval of the project since the project and conditions of approval address all concerns related to the proposed development and all of the findings for approval of the proposed project, consistent with Chapters 19.156 and 19.168 of the Cupertino Municipal Code, may be made.

NEXT STEPS

Should the project be approved, the Planning Commission's decision on this project is final unless an appeal is filed within 14 calendar days of the date of the mailing of the decision, on April 13, 2018.

This approval expires on March 27, 2020, at which time the applicant may apply for a one-year extension.

Prepared by: Ellen Yau, Assistant Planner

Reviewed by: Piu Ghosh, Principal Planner

Approved by: Benjamin Fu, Assistant Director of Community Development

ATTACHMENTS:

- 1 – Draft Resolution for DP-2017-02
- 2 – Draft Resolution for U-2017-03
- 3 – Draft Resolution for ASA-2017-04
- 4 – Plan Set
- 5 – Parking Study
- 6 – Business Plan