

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION NO. XXXX

OF THE CITY COUNCIL OF THE CITY OF CUPERTINO DENYING AN
APPEAL AND UPHOLDING THE PLANNING COMMISSION'S MARCH
27, 2018 APPROVAL OF A USE PERMIT FOR A CONVENIENCE MARKET
(2,419 SQ. FT.) IN CONJUNCTION WITH UPDATES TO AN EXISTING
GASOLINE SERVICE STATION, CONCURRENT SALE OF ALCOHOLIC
BEVERAGES AND GASOLINE, AND 24-HOUR OPERATIONS AT
10490 S DE ANZA BLVD (APN 369-39-041)

SECTION I: PROJECT DESCRIPTION

Application No.: U-2017-03
Applicant: Amir Khojasteh
Appellants: Georgene Petri
Location: 10495 S De Anza Blvd

SECTION II: FINDINGS FOR USE PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Use Permit (the "Permit") as described in Section I. of this Resolution as well as for an Architectural and Site Approval Permit and a Development Permit (collectively, the "Project"); and

WHEREAS, the Project is determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to section 15303 of the CEQA Guidelines; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City Council, and the Planning Commission has held at least one public hearing in regard to the Project; and

WHEREAS, the Planning Commission, after considering all the evidence in the record, including public testimony, was able to make the necessary findings to approve the Project, and therefore approved the Project at its March 27, 2018 meeting; and

WHEREAS, the City Council of the City of Cupertino received an appeal of the Planning Commission's approval of the Project; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the City Council has held at least one public hearing in regard to the appeal; and

WHEREAS, as conditioned, the Project will comply with all Cupertino Municipal Code requirements for concurrent sales of alcoholic beverages and gasoline, including but not limited to section 19.132.060;

WHEREAS, the City Council can make the findings required to issue the Permit pursuant to sections 19.132 and 19.156 of the Municipal Code and desires to deny the appeal; and

WHEREAS, the City Council finds as follows with regard to this application:

1. The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

The proposed development is an update of an existing gasoline station with an increase of the net square footage by 1,198 square feet to accommodate for a convenience market and the relocation of the existing four fuel dispensers. The Project is consistent with the City's zoning ordinance, and the redevelopment and expansion of uses to accommodate for the convenience market will enhance the commercial activity along South De Anza Blvd by providing additional commercial square footage, improving sidewalks and driveways, contributing land through a dedication to support the De Anza Blvd/McClellan/Pacifica Signal Modification Project, and provide landscaping and tree canopy coverage in the newly striped parking lot and along the South De Anza Blvd frontage. A condition of approval for this Use Permit, which is incorporated into the conditions for the other permits associated with this Project, requires installation of security cameras and cooperation with the City and law enforcement. The Project is adjacent to other commercial uses, and the nearest residential uses are approximately 300 feet away. Therefore, the proposal will not be detrimental or injurious to property or improvements in the vicinity.

2. The proposed development and/or use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan, underlying zoning regulations, and the purpose of chapter 19.156 of the Cupertino Municipal Code and complies with the California Environmental Quality Act (CEQA).

The proposed development is in conformance with the Cupertino General Plan as part of the South De Anza Special Area. 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 proposal has met the development standards as defined by the South De Anza Conceptual Plan and the City Municipal Code such as heights, setbacks, and parking requirements. The site is within a Planned Development Zoning District that supports commercial uses. Therefore, the proposed development is consistent with the purpose of, and regulations within, the City's zoning ordinance.

The project is exempt from CEQA pursuant to CEQA Guidelines section 15303 (New Construction or Conversion of Small Structures).

3. An establishment subject to chapter 19.132 may be permitted where it is compatible with existing and planned uses in the particular zone or neighborhood.

The gasoline service station and convenience market use is compatible with the existing General Commercial zone uses and planned commercial uses in General Plan: Community Vision 2015-2040. As conditioned, the use will not impact surrounding uses. The proposed building's mass and bulk is consistent with the surrounding developments and proposes a contemporary streamlined architectural style that is consistent with the future character of the South De Anza Special Area as an active and vibrant commercial corridor that supports nearby residential uses. The height of the building is aligned with the existing structures and is within the one to two story height limitations as listed in the South De Anza Conceptual Plan. Additionally, a portion of the existing fencing along the eastern property line will be removed to improve visibility of the adjacent property, deter loitering, and enhance the pedestrian experience from Pacifica Drive to the proposed building.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the initial study, maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 4 thereof,;

The Project is found to be exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15303. The appeal of the application for a Use Permit, Application no. U-2017-03 is hereby denied, and the Planning Commission's March 27, 2018 approval is hereby upheld. The conclusions upon which the findings and conditions specified in this resolution are based and contained in the Public Hearing record concerning Application nos. ASA-2017-04, DP-2017-02, and U-2017-03 as set forth in the Minutes of Planning Commission Meeting of March 27, 2018 and City Council Meeting of June 5, 2018, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set drawn by AGP Design Group entitled "76 Gas Stations 10490 S. De Anza Blvd." consisting of twenty-six (26) sheets labeled as A.0-0 – A.11.0, L.1.0 – L.2.0, T.0, C.1 – C.6, and PH.0 – PH.4 except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

3. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

4. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2017-02 and ASA-2017-04 shall be applicable to this approval.

5. PREVIOUS CONDITIONS OF APPROVAL

All previous conditions of approval from shall remain in effect unless superseded by or in conflict with subsequent conditions of approval, including the conditions contained herein in this resolution.

6. CONVENIENCE MARKET

A convenience market is approved at this site in conformance with the conditions of approval contained in this resolution and as specified in the Cupertino Municipal Code.

7. HOURS OF OPERATION

The convenience market and gasoline service station is approved for 24 hours per day operation, 7 days per week.

8. CONCURRENT SALE OF GASOLINE AND ALCOHOLIC BEVERAGES

The applicant is permitted to concurrently sell beer and wine and gasoline in accordance with the City's Municipal Code requirements for concurrent sales of gasoline and alcohol and the requirements of this Permit.

9. ABC APPROVAL

The applicant shall obtain all licenses/approvals as required by the State of California Department of Alcohol and Beverage control prior to sales of alcoholic beverages.

10. TRASH AND DELIVERY ACTIVITIES

A detailed refuse and truck delivery plan shall be prepared by the applicant. The plan shall specify locations of trash facilities, refuse pick up schedules and truck delivery schedules and routes. All trash facilities must be screened and enclosed to the satisfaction of the Public Works Department. The final plan shall be submitted to the City for review and approval prior to issuance of building permits.

11. MODIFICATION OF OPERATIONS

Changes to operations shall be reviewed and approved by the Director of Community Development, if determined by the Director to be minor. Changes not determined to be minor shall require modification of this Permit.

12. REVOCATION OF USE PERMIT

The Director of Community Development may initiate proceedings for revocation of the Use Permit in any case where, in the judgment of the Director, substantial evidence indicates that the conditions of the conditional use permit have not been implemented, or where the permitted operations are being conducted in a manner detrimental to the public health, safety, and welfare, in accord with the requirements of the Cupertino Municipal Code.

13. ON-SITE SURVEILLANCE

The property owner shall provide plans indicating the location of high resolution video surveillance cameras in strategic locations to cover the entire site prior to the issuance of building permits. Additionally, the property owner shall provide documentation of the installation and proper operation of the surveillance cameras prior to final occupancy.

14. LAW ENFORCEMENT SUPPORT

The property owner shall address security concerns in the event that they arise to the satisfaction of the City. The City reserves the right to require additional security

patrols and/or other measures as prescribed by the Sheriff's Office or Code Enforcement for reimbursement by the operator.

15. COVENANT DISCLOSURE

The property is under a Cupertino planned development zoning and property purchasers should check with the City to determine the specific restrictions under the Planned Development Zone and related permits.

16. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed Project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

17. EXPIRATION

If the use for which this conditional use permit is granted and utilized has ceased or has been suspended for one year or more, this permit shall be deemed expired and a new use permit application must be applied for and obtained.

18. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant to attack, set aside, or void this Resolution or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant shall pay such attorneys' fees and costs within 30 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to counsel not otherwise employed as City staff and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City.

19. NOTICE OF FEES, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and

other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

PASSED AND ADOPTED this 5th day of June, 2018, at the Regular Meeting of the City Council of the City of Cupertino, State of California, by the following roll call vote:

AYES: CITY COUNCIL MEMBERS:
NOES: CITY COUNCIL MEMBERS:
ABSTAIN: CITY COUNCIL MEMBERS:
ABSENT: CITY COUNCIL MEMBERS:

ATTEST:

APPROVED:

Grace Schmidt
City Clerk

Darcy Paul, Mayor
City of Cupertino