

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 AN ARCHITECTURAL AND SITE APPROVAL PERMIT
FOR AN UPDATED GASOLINE SERVICE STATION, CONVENIENCE
MARKET AND ASSOCIATED SITE IMPROVEMENTS, INCLUDING PAVING
FOR OFF-STREET PARKING AND LANDSCAPING, LOCATED AT 10490 S DE
ANZA BLVD (APN 369-39-041)

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2017-04
Applicant: Amir Khojasteh
Appellants: Georgene Petri
Location: 10495 S De Anza Blvd

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for an Architectural and Site Approval Permit (the "Permit") as described in Section I. of this Resolution as well as for a Development Permit and a Use 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 held at least one public hearing in regard to the Project application; 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, the City Council can make the findings required to issue the Permit pursuant to section 19.168 of the Municipal Code and therefore desires to deny the appeals; and WHEREAS, the City Council finds as follows with regard to this application:

1. The proposed development, 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 the Use Permit for the Project, which is incorporated into the conditions for this Permit as set forth in Condition of Approval #4 below, 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 Project will not be detrimental or injurious to property or improvements in the vicinity.

2. The proposal is consistent with the purposes of Chapter 19.168, the General Plan, any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements to use which regulate the subject property including, but not limited to, adherence to the following specific criteria:

- a) Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings.

The proposed convenience market building is in compliance with the primary building 1:1 slope line requirement listed in the General Plan: Community Vision 2015-2040, and the 35-foot setback in the South De Anza Conceptual Plan. Additionally, the surrounding

commercial uses are also one-story commercial buildings, therefore the height and bulk of the proposed building is compatible with the existing and future character of the architecture along the South De Anza corridor.

- b) In order to preserve design harmony between new and existing building and in order to preserve and enhance property values, the materials, textures and colors of new building should harmonize with adjacent development by being consistent or compatible with design and color schemes with the future character of the neighborhoods and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. Unsightly storage areas, utility installations and unsightly elements of parking lots should be concealed. The planting of ground cover or various types of pavements should be used to prevent dust and erosion, and the unnecessary destruction of existing healthy trees should be avoided. Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments, and provide shielding to prevent spill-over light to adjoining property owners.

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. Furthermore, the Project also includes a newly constructed trash enclosure which will conceal the trash receptacles on-site. The trash enclosure is visually integrated with the proposed building through the use of similar materials and colors and the physical connection of the roofing of the trash enclosure and the awnings of the building.

Final lighting for the Project will be reviewed and approved by the City with the construction documents to meet safety requirements while preventing spill-over light to adjacent properties.

- c) The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures have been designed to minimize traffic hazard, positively affect the general appearance of the neighborhood and harmonize with adjacent development.

Signage approval is not included in this Project.

- d) With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.

The Project is along a commercial corridor with frontage on South De Anza Blvd, adjacent to commercial and commercial office uses, and located more than 300 feet away from residential neighborhoods, therefore residents are protected from adverse impacts of the redevelopment of an existing gasoline service station.

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 Architectural and Site Approval, Application no. ASA-2017-04 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 U-2017-03 shall be applicable to this approval.

5. DRIVEWAY CONSOLIDATION

Prior to building permit issuance, the property owner will be required to provide plans indicating the consolidation of the two driveways along Pacifica Drive to the City's Public Works standards for commercial driveways.

6. EXTERIOR BUILDING MATERIALS/TREATMENTS

The final building exterior plan shall closely resemble the details shown on the original approved plans. Final building exterior treatment plan (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits to ensure quality and consistency. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

7. WINDOW DETAILS

The frontage windows shall be kept open and transparent to the greatest extent possible. The final storefront design and window display shall be reviewed and approved by the Director of Community Development prior to issuance of building permits for tenant improvements. No changes shall be made to the transparency of the windows without the express approval of the Director of Community Development.

8. SITE LIGHTING

All lighting must conform to the standards in the Parking Regulations Ordinance, and the final lighting plan (including a detailed photometric plan) shall be reviewed and approved by the Director of Community Development prior to building permit issuance. A report from a licensed lighting engineer may be required to confirm all exterior lighting throughout the site complies with the City's Ordinance.

9. LIGHTING INTENSITY ADJUSTMENT

The City reserves the right to require the applicant to utilize dimming technology to adjust the lighting intensity of all lighting fixtures when deemed necessary.

10. FENCING

The applicant will be required to remove all fencing along the eastern property line to the satisfaction of the Director of Community Development prior to issuance of building permits.

11. PROJECT AMENDMENTS

The Planning Commission shall review amendments to the project considered major by the Director of Community Development.

12. LANDSCAPE PROJECT SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a full Landscape Documentation Package, per sections 14.15.050 A, B, C, and D of the Landscape Ordinance, **for projects with landscape area 500 square feet or more** or elect to submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C **for projects with landscape area between 500 square feet and 2,500 square feet**. The Landscape Documentation Package or Prescriptive Compliance Application shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits, and additional requirements per sections 14.15.040 D, E, F, and G or 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

13. LANDSCAPE INSTALLATION REPORT

The project is subject to all provisions delineated in the Landscape Ordinance (CMC, Chapter 14.15). A landscape installation audit shall be conducted by a certified landscape professional after the landscaping and irrigation system have been installed. The findings of the assessment shall be consolidated into a landscape installation report.

The landscape installation report shall include, but is not limited to: inspection to confirm that the landscaping and irrigation system are installed as specified in the landscape and irrigation design plan, system tune-up, system test with distribution uniformity, reporting overspray or run-off that causes overland flow, and preparation of an irrigation schedule.

The landscape installation report shall include the following statement: "The landscape and irrigation system have been installed as specified in the landscape and irrigation design plan and complies with the criteria of the ordinance and the permit."

14. LANDSCAPE AND IRRIGATION MAINTENANCE

Per the Landscape Ordinance (CMC, Chapter 14.15), a maintenance schedule shall be established and submitted to the Director of Community Development or his/her

designee, either with the landscape application package, with the landscape installation report, or any time before the landscape installation report is submitted.

a) Schedules should take into account water requirements for the plant establishment period and water requirements for established landscapes.

b) Maintenance shall include, but not be limited to the following: routine inspection; pressure testing, adjustment and repair of the irrigation system; aerating and de-thatching turf areas; replenishing mulch; fertilizing; pruning; replanting of failed plants; weeding; pest control; and removing obstructions to emission devices.

c) Failed plants shall be replaced with the same or functionally equivalent plants that may be size-adjusted as appropriate for the stage of growth of the overall installation. Failing plants shall either be replaced or be revived through appropriate adjustments in water, nutrients, pest control or other factors as recommended by a landscaping professional.

15. SCREENING

All mechanical and other equipment on the building or on the site shall be screened so they are not visible from public street areas or adjoining developments. Screening materials/colors shall match building features and materials. The height of the screening shall be taller than the height of the mechanical equipment that it is designed to screen. The location of equipment and necessary screening shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

16. TRANSFORMERS

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults. The developer must receive written approval from both the Public Works Department and the Community Development Department prior to installation of any above ground equipment. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or side building setback area.

17. TREE REMOVAL PERMIT

The applicant understands that any existing trees on-site that are removed will require a Tree Removal Permit. The proposal will be reviewed and the final species of replacement trees shall be reviewed and approved by the City in consultation with the City's Consulting Arborist prior to issuance of demolition permits.

18. ARBORIST REVIEW

Prior to building permit issuance, the number, location and species of trees shall be reviewed and approved by the City in consultation with the City's Consulting Arborist.

Any replacement trees required by a Tree Removal Permit shall be planted prior to building permit final. The Applicant shall provide the Department of Community Development adequate documentation, including, but not limited to, photographs, receipts or invoices, to verify that replacements have been planted. The City's consulting arborist shall inspect the trees after planting and a report ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy.

19. PROTECTED TREES

The applicant understands that the replacement trees may not be removed without a Tree Removal Permit and that they shall be responsible for ensuring the proper maintenance and care of the trees. The applicant shall also disclose the location and species of all replacements trees on site upon sale of the property.

20. TREE REPLACEMENT

The applicant shall provide adequate tree replacements for trees proposed to be removed in conjunction with the proposed project. The number, location and type of trees shall be incorporated into the detailed landscape plan to be reviewed and approved by the Director of Community Development.

21. SIGNAGE

Signage is not approved with this use permit application. Signage shall conform to the City Sign Code.

22. LIGHTING

On-site lighting must be in conformance with Cupertino Municipal Code Chapter 19.60 and automatic teller machine lighting, specifically, shall meet minimum standards required by the State of California Business and Professions Code.

23. DEMOLITION REQUIREMENTS

All demolished building and site materials shall be recycled to the maximum extent feasible, in accordance with the City's Recycling and Diversion of Construction and Demolition Waste under Chapter 16.72 of the Cupertino Municipal Code. The applicant shall provide evidence that materials were recycled prior to issuance of final demolition permits.

24. 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.

25. 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.

26. 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.

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

27. DEDICATION OF LAND

Prior to issuance of a building permit, the applicant shall provide the City, to the satisfaction of the City Engineer, a dedication in fee of a strip of land along the north and northwest portions of the property, to the line labeled "Property Line" as depicted on sheet C-4 of the proposed plan set.. The applicant agrees to provide the City, prior to issuance of a building permit, a temporary construction easement along the property frontage to facilitate the construction of improvements to the intersection of

De Anza Boulevard and Pacifica Avenue, and to conform the public right of way improvements to surface facilities within the property. Modifications to onsite facilities may be necessary to facilitate these improvements, and the owner shall agree to provide the City access to private property and improvements to aid in this effort. The temporary construction easement shall remain in effect until the intersection improvements are completed and accepted by the City.

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
