

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 DEVELOPMENT PERMIT FOR THE
REPLACEMENT OF AN EXISTING 76 GASOLINE SERVICE STATION
AND AN AUTO REPAIR SHOP (1,221SQ. FT.,) WITH AN UPDATED
GASOLINE SERVICE STATION AND A CONVENIENCE MARKET (2,419
SQ. FT.) LOCATED AT 10490 S DE ANZA BLVD (APN 369-39-041)

SECTION I: PROJECT DESCRIPTION

Application No.: DP-2017-02
Applicant: Amir Khojasteh
Appellants: Georgene Petri
Location: 10495 S De Anza Blvd

SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Development Permit (the "Permit") as described in Section I. of this Resolution as well as for an Architectural and Site Approval 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 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, the City Council can make the findings required to issue the Permit pursuant to sections 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 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 proposal will not be detrimental or injurious to property or improvements in the vicinity.

2. The proposed development will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan 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 (Exemption for New Construction or Conversion of Small Structures).

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 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 Development Permit, Application no. DP-2017-02 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. U-2017-03 and ASA-2017-04 shall be applicable to this approval.

5. GENERAL PLAN DEVELOPMENT ALLOCATION

The applicant shall receive an allocation of 1,198 s. f. of the available 819, 327 s. f. commercial allocations for Heart of the City Special Area.

6. HOUSING MITIGATION FEES

The applicant shall participate in the City's Below Market Rate (BMR) Housing Program by paying housing mitigation fees prior to issuance of building permits as per the Housing Mitigation Manual.

7. PRE-CONSTRUCTION MEETING AND CONSTRUCTION MANAGEMENT PLAN

A demolition and construction management plan shall be submitted and reviewed by the City prior to building permit issuance. Prior to commencement of construction activities, the applicant shall arrange for a pre-construction meeting with the pertinent departments (Building, Planning, and Public Works) to review the prepared construction management plan, to ensure that construction complies with the conditions of approval, staging of construction equipment is appropriate, tree protection measures are in place, public access routes are identified and defined, and noise and dust control measures are established.

8. CONSTRUCTION HOURS

Construction activities shall be limited to Monday through Friday, 7 am to 8 pm and Saturday and Sunday, 9 am to 6 pm. Construction activities are not allowed on holidays. Construction noise levels must comply with the City's Community Noise Control Ordinance.

The developer shall be responsible for educating all contractors and subcontractors of construction restrictions. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of a developer appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

9. NOISE LEVELS AND ABATEMENT

Project construction and use shall comply with the City's Community Noise Control Ordinance at all times. Should the Project exceed any of the stipulated maximum noise levels outlined in the City's Community Noise Control Ordinance, the City may require the applicant to hire an acoustical engineer to submit noise attenuation measures to the satisfaction of the Director of Community Development at the applicant's expense.

10. DUST CONTROL

The following construction practices shall be implemented during all phases of construction for the proposed Project to prevent visible dust emissions from leaving the site:

- a) Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
- c) Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d) Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- e) The applicant shall incorporate the City's construction best management practices into the building permit plan set.

11. 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.

12. 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.

13. 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

14. STREET WIDENING AND INTERSECTION IMPROVEMENTS

Public street widening and dedications shall be provided in accordance with City Standards and specifications and as required by the City Engineer. Prior to issuance of a building permit the Developer 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 Developer shall also provide the City, prior to issuance of a building permit, with 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. The temporary construction easement shall remain in effect until the intersection improvements are completed and accepted by the City.

The dedication will be utilized by the Public Works Department to construct intersection and signal improvements at the intersection of De Anza Blvd and Pacifica Drive to address inefficiencies in traffic operations.

The Developer will be responsible for installing all required frontage improvements, to the satisfaction of the City Engineer. Applicant shall not be responsible for those improvements directly associated with the intersection modifications.

15. FAIR-SHARE CONTRIBUTION

The Developer shall provide the City with a fair-share contribution of 25% of the total cost towards the intersection improvements, of an amount not to exceed \$50,000.

16. CURB AND GUTTER IMPROVEMENTS

Sidewalks, driveway approaches, curb and gutters and related structures shall be installed by applicant in accordance with grades and standards as specified by the City Engineer.

17. PEDESTRIAN AND BICYCLE IMPROVEMENTS

Developer shall provide pedestrian and bicycle related improvements consistent with the Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Guidelines, and as approved by the City Engineer.

18. BICYCLE PARKING

Developer shall provide bicycle parking consistent with the City's requirements to the satisfaction of the City Engineer.

19. EARTHWORK

Earthwork shall be as approved and required by the City Engineer in accordance with Chapter 16.08 of the Cupertino Municipal Code. 401 Certifications and 404 permits maybe required. Applicant is responsible for contacting the County Health Department, Army Corp of Engineers and/or Regional Water Quality Control Board as appropriate.

20. DRAINAGE

Drainage shall be provided to the satisfaction of the City Engineer. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

Any onsite drainage inlets shall be equipped with an approved trash capture and filtering device, and the property owner will be responsible for ensuring the proper cleaning and maintenance of these facilities.

21. C.3 REQUIREMENTS

Per the NPDES permit, this Project would be a C.3 regulated Project should it create and/or replace 5,000 S.F. or more of impervious surface (collectively over the entire Project site). Stormwater treatment improvements would be required if this threshold is reached, and the developer would be required to reserve a minimum of 4% of developable surface area for the placement of low impact development measures, for storm water treatment, unless an alternative storm water treatment plan, that satisfies C.3 requirements, is approved by the City Engineer.

The developer must include the use and maintenance of site design, source control and storm water treatment Best Management Practices (BMPs), which must be designed per approved numeric sizing criteria. A Storm Water Management Plan, Storm Water Facilities Easement Agreement, Storm Water Facilities Operation and Maintenance Agreement, and certification of ongoing operation and maintenance of treatment BMPs are each required.

All storm water management plans are required to obtain certification from a City approved third party reviewer.

22. UNDERGROUND UTILITIES

Developer shall comply with the requirements of the Underground Utilities Ordinance No. 331 and other related Ordinances and regulations of the City of Cupertino, and shall coordinate with affected utility providers for installation of underground utility devices. Developer shall submit detailed plans showing utility underground provisions. Said plans shall be subject to prior approval of the affected Utility provider and the City Engineer.

23. 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.

24. WATER BACKFLOW PREVENTERS

Domestic and Fire Water Backflow preventers and similar above ground equipment shall be placed away from the public right of way and site driveways to a location approved by the Cupertino Planning Department, Santa Clara County Fire Department and the water company.

25. BEST MANAGEMENT PRACTICES

Utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity which disturbs soil. BMP plans shall be included in grading and street improvement plans.

26. NPDES CONSTRUCTION GENERAL PERMIT

When and where it is required by the State Water Resources Control Board (SWRCB), the developer must obtain a Notice of Intent (NOI) from the SWRCB, which encompasses preparation of a Storm Water Pollution Prevention Plan (SWPPP), use of construction Best Management Practices (BMPs) to control storm water runoff quality, and BMP inspection and maintenance.

27. EROSION CONTROL PLAN

Developer must provide an approved erosion control plan by a Registered Civil Engineer. This plan should include all erosion control measures used to retain materials on site. Erosion control notes shall be stated on the plans.

28. WORK SCHEDULE

Every 6 months, the developer shall submit a work schedule to the City to show the timetable for all grading/erosion control work in conjunction with this Project.

29. TRAFFIC CONTROL PLAN

The developer must submit a traffic control plan by a Registered Traffic Engineer to be approved by the City. The plan shall include a temporary traffic control plan for work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs must be reviewed and approved by the City prior to commencement of work. The City has adopted Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City.

30. STREET TREES

Street trees shall be planted within the Public Right of Way to the satisfaction of the City Engineer and shall be of a type approved by the City in accordance with Ordinance No. 125.

31. FIRE PROTECTION

Fire sprinklers shall be installed in any new construction to the approval of the City. A letter of clearance for the Project shall be obtained from the Santa Clara County Fire Department prior to issuance of building permits. Clearance should include written approval of the location of any proposed Fire Backflow Preventers, Fire Department Connections and Fire Hydrants (typically Backflow Preventers should be located on private property adjacent to the public right of way, and fire department connections must be located within 100' of a Fire Hydrant).

32. FIRE HYDRANT

Fire hydrants shall be located as required by the City and Santa Clara County Fire Department as needed.

33. SAN JOSE WATER COMPANY CLEARANCE

Provide San Jose Water Company approval for water connection, service capability and location and layout of water lines and backflow preventers before issuance of a building permit approval.

34. DEDICATION OF UNDERGROUND WATER RIGHTS

Developer shall "quit claim" to the City all rights to pump, take or otherwise extract water from the underground basin or any underground strata in the Santa Clara Valley.

35. SANITARY DISTRICT

A letter of clearance for the Project shall be obtained from the Cupertino Sanitary District prior to issuance of building permits.

36. UTILITY EASEMENTS

Clearance approvals from the agencies with easements on the property (including PG&E, AT&T, and California Water Company, and/or equivalent agencies) will be required prior to issuance of building permits.

SECTION V: CONDITIONS ADMINISTERED BY THE ENVIRONMENTAL PROGRAMS DIVISION OF THE CITY OF CUPERTINO

37. FULL TRASH CAPTURE STORM DRAIN CATCH BASIN INSERTS

For projects located in medium and high trash management areas as defined by the City of Cupertino Trash Management Area Map or are adjacent to a creek, full trash capture storm drain catch basin inserts may be required. A Maintenance Agreement and certification of ongoing operation and maintenance of the devices in accordance with the manufacturers recommended specifications is required.

38. STORM DRAIN INLET MARKERS

All exterior storm drain inlets on the property shall be clearly marked with “No Dumping Flows to Creek” or “No Dumping Flows to Bay”.

39. EXTERIOR COPPER

The exterior use of copper for roofing materials, rain gutters, downspouts, or any ornamental enhancement is prohibited. Small copper adornments such as door handles or fence post caps are exempted.

40. CONSTRUCTION AND DEMOLITION WASTE RECYCLING

Construction, demolition, and renovation projects which are 3000 square feet or more are required to submit a completed Waste Management Plan demonstrating that a minimum of 60% of the material generated is recycled consistent with the provisions of Cupertino Municipal Code Section 16.72.

SECTION VI: CONDITIONS ADMINISTERED BY THE SANTA CLARA COUNTY
FIRE DEPARTMENT

41. FIRE SPRINKLERS REQUIRED

Approved automatic sprinkler systems in new and existing buildings and structures shall be provided the locations described in this Section or in Sections 903.2.1 through 903.2.19 whichever is the more restrictive. For the purposes of this section, firewalls and fire barriers used to separate building areas shall be constructed in accordance with the California Building Code and shall be without opening or penetrations.

42. WATER SUPPLY REQUIREMENTS

Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/ or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record as documented by that purveyor as having been met by the applicant(s). 2010 CFC Sec. 903.3.5 and Health and Safety Code 13114.7.

43. CONSTRUCTION SITE FIRE SAFETY

All construction sites must comply with applicable provisions of the CFC Chapter 33 and our Standard Detail and Specification SI-7. Provide appropriate notations on subsequent plan submittals as appropriate to the project. CFC Chapter 33.

44. HAZMAT REVIEW

A separate review by our HAZMAT Division is required. Detailed plans for the proposed system must be submitted separately and directly to our office located at 14700 Winchester Blvd., Los Gatos, CA. All permits required by the HAZMAT Division must be obtained prior to commencing work, or as indicated by the HAZMAT review.

45. ADDRESS IDENTIFICATION

New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in, a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic number or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be maintained. CFC Sec. 505.1

SECTION VII: CONDITIONS ADMINISTERED BY CUPERTINO SANITARY DISTRICT

46. PERMIT FEES

Permit fees shall be required for the subject application based on the proposed area and use modifications

47. IMPROVEMENT PLANS

Improvement plans for the subject project shall be reviewed by the District.

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