



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

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**CITY COUNCIL STAFF REPORT**

Meeting: June 5, 2018

Subject

Consider an appeal of the Planning Commission's decision to approve the 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 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: Amir Khojasteh; Location: 10490 S. De Anza Blvd; APN: 369-39-041)

Recommended Action

That the City Council deny the appeal and uphold the Planning Commission's decision to approve the project, in accordance with the draft resolutions (see Attachments A, B, and C).

Discussion

***Background***

On March 27, 2018, the Planning Commission approved the following permits (see Attachments D, E, and F):

- Development Permit (DP-2017-02) for additional net new commercial square footage;
- Conditional Use Permit (U-2017-03) for:
  - A 2,419 s.f. convenience market;
  - Concurrent sale of alcoholic beverages and gasoline;
  - 24-hour operations for the gasoline service station and convenience market; and
- Architectural and Site Approval Permit (ASA-2017-04) for review of site design which includes the design of buildings, structures, and landscaping.

The Planning Commission can approve the conditional uses where in its opinion the requested uses are compatible with existing and planned uses in the area. As part of the project review, the applicant installed two 4' x 6' posters notifying the public of the public hearing and 60 public hearing notices were mailed to property owners within 300 feet of the project site. No comments were received prior to the hearing. The appellant's representative, Julie Mercik, spoke during the public hearing and raised many of the same objections outlined in the formal appeal filed by the appellant, Georgene Petri, on April 10, 2018.

## *Contents of Appeal*

The appeal is focused on the removal of fencing, the 24-hour operations, and the on-site sales of alcohol. The appellant's specific basis of appeal of the Planning Commission's decision is summarized below in *italics*. Where appropriate, staff's response follows.

1. **Fencing:** *"The proposed partial removal of the fence separating the properties will encourage trespassers onto the appellant's property. The existing fencing should be maintained."*

As proposed, the fencing along the eastern property line will be partially removed – approximately 60 feet from the northern property line southwards to the northeastern corner of the proposed convenience mart. The length of the fence removed is equal to the length of the newly proposed accessible path of travel which runs parallel to the eastern property line and S De Anza Blvd.

The property is located within the Planned Development zoning which requires design review for landscaping, fencing, lighting, and signs through the Architectural and Site Approval permitting process. The location, height, and materials of fencing is evaluated to ensure the proposal harmonizes with adjacent development. Pursuant to Section 19.48.20 of the City's Municipal Code, fences on commercial properties are only required to be installed to provide privacy screening and acoustically isolate noise that affect adjacent *residential* properties – not adjacent commercial properties. Fencing that is not required to be installed are subject to discretionary design review and are typically discouraged as they are not required to provide privacy screening and acoustically isolate noise.

Furthermore, the location of the fence is highly visible from the public right of way and adjacent to the newly proposed driveway and accessible path of travel, therefore inconsistent with the design standards for commercial properties in Section 19.48.20(B)(2) which states that commercial zone "fences and walls shall be designed in a manner to provide for sight visibility at private and public street intersections." In this case, the appellant's concern that fence removal will cause loitering and/or safety impacts is misplaced – the Municipal Code specifically provides for commercial zone fences to be designed to allow sightlines to the street to discourage loitering and promote the safety of pedestrians and property. The proposed removal of fencing is therefore consistent with the Municipal Code design standards for commercial zones.

The appellant's property is located to the east of the subject site and is comprised of a single-story office building with two surface parking lots, with approximately 24 stalls each, flanking the office building. The occupants include a dental office, financial services and insurance office, chiropractic clinic, and other professional offices with standard commercial hours of operation. Although the adjacent property is not residentially zoned, the appellant's concern for safety was considered in approval of the proposed plans. Currently, there are mature shrubs to the east of the existing fence on the appellant's property which provide a physical barrier between the two properties. Furthermore, the building on the appellant's property is

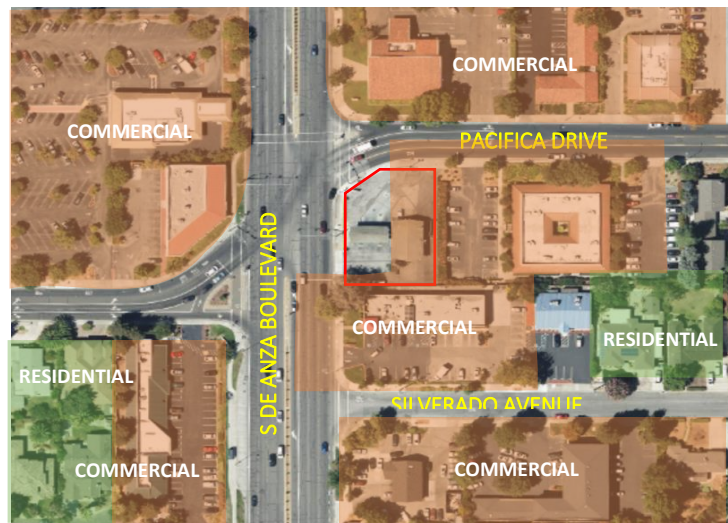
located more than 70 feet from the shared property line. Additionally, the removal of a portion of the fence will improve visibility of the adjacent property and deter loitering while enhancing the pedestrian experience from Pacifica Drive to the proposed new building.

Since the adjacent property is not residential, and since the existing fence is highly visible in this location and directly next to a proposed pedestrian pathway, the proposed fence removal is consistent with the Municipal Code.

2. **Late evening activities:** *"The planned hours of operation of 24 hours per day 7 days per week is excessive and will encourage late night loitering, suggest hours to be limited to 6:00 a.m. to 11:00 p.m."*

Businesses in the General Commercial zoning district are permitted to operate between the hours of 7:00 a.m. and 11:00 p.m. Requests to operate businesses beyond the permitted hours of operation must be evaluated by the Planning Commission for compatibility with the existing and planned uses in the area.

The subject site is located within the South De Anza Special Area which is intended to continue as a predominantly commercial area with neighborhood centers, commercial office and residential uses with a focus on promoting active retail and service uses. Furthermore, the property is located along De Anza Boulevard, a major thoroughfare, and adjacent to other commercial shopping centers to the west and south. The land uses surrounding the project site consist mainly of commercial and



**Figure 1 - Existing Land Uses**

commercial office uses with the closest residential uses approximately 300 feet to the east (on Silverado Avenue) and approximately 450 feet to the west (across S. De Anza Boulevard) (see Figure 1).

Since the property is located in an area that is designated for active retail and services and the existing uses in proximity to the subject property are commercial, office, and commercial office in nature, the extended hours and use are consistent with the underlying development patterns and compatible with the surrounding neighborhood.

There does not appear to be any significant adverse impacts related to noise, lighting, or odors that will affect the existing residential uses. Furthermore, the Santa Clara County Sheriff's Office did not identify any public safety concerns associated with the new proposal, and recommended the installation of high resolution video surveillance cameras located strategically around the site as additional enhanced security measures. Camera installation

and documentation of proper operation prior to occupancy are conditions of approval for the Use Permit.

Additionally, 24-hour operations at gasoline service stations are typical within the City. Please refer to Table 1 below for a survey of other Cupertino gas stations that have been approved for 24-hour operations.

**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 24-hour convenience market, propose concurrent sales of alcoholic beverages and gasoline (U-2011-09)
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 (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)

3. **Alcohol Sales:** *“Sales of alcohol, especially hard liquor is excessive and should be limited to 10% of store sales area.”*

The Municipal Code regulates the concurrent sales of gasoline and alcoholic beverages, which includes the location of sales, displays, and advertisements, but does not regulate the alcohol content of beverages sold on-site nor the percentage of floor area that alcoholic beverages may occupy. The applicant is required by state law to obtain a license from the California Department of Alcoholic Beverage Control (ABC) which will specify the type of alcohol permitted to be sold at this location based on the applicant’s request. In addition, ABC also imposes other conditions as permitted by state law; such as, a limitation on the time up until alcohol may be sold (2:00 a.m., pursuant to state law).

Use permit condition of approval #8 requires the applicant to comply with the following requirements per Municipal Code Section 19.132.060:

- A. No beer or wine shall be displayed within five feet of the cash register or the front door unless it is in a permanently affixed cooler.
- B. No advertisement of alcoholic beverages shall be displayed at motor fuel islands.
- C. No sale of alcoholic beverages shall be made from a drive-in window.
- D. No display or sale of beer or wine shall be made from an ice tub.
- E. No beer or wine advertising shall be located on motor fuel islands and no self-illuminated advertising for beer or wine shall be located on buildings or windows.

F. Employees on duty between the hours of ten p.m. and two a.m. who sell beer or wine shall be at least twenty-one years of age.

Further, the proposed use permit only allows the convenience store use described above. If the convenience store use is modified such that the applicant requires a Type 41 “off-sale general license” (sale for off-site consumption of wine, beer and/or hard liquor) and has fifty percent or more of the total dollar sales accounted for by beverage covered under the off-sale general license, the property owner will be required to seek a new use permit to allow for a liquor store use as defined in Municipal Code Chapter 19.08, at which time additional conditions of approval could be added.

### ***Noticing and Public Outreach***

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

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

### ***CEQA***

The project is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15303 (New construction or conversion of small structures) of the CEQA Guidelines.

### ***Modifications to Resolutions***

The previously approved resolutions for permit no. DP-2017-02, U-2017-03, and ASA-2017-04 were modified to address Council’s review of an appealed project and clarifying changes were incorporated into the attached resolutions. No substantive changes were made.

### **Next Steps**

Based on the analysis above, the staff reports prepared for this appeal and the previous Planning Commission meeting, and the findings set forth in the attached draft resolutions, staff recommends that the City Council deny the appeal and approve the Project as proposed.

### **Sustainability Impact**

None.

### **Fiscal Impact**

None.

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Prepared by: Ellen Yau, Assistant Planner

Reviewed by: Benjamin Fu, Assistant Director of Community Development  
Aarti Shrivastava, Assistant City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

- A. Draft Resolution approving DP-2017-02
- B. Draft Resolution approving U-2017-03
- C. Draft Resolution approving ASA-2017-04
- D. Planning Commission Resolution No. 6851 for DP-2017-02
- E. Planning Commission Resolution No. 6853 for U-2017-03
- F. Planning Commission Resolution No. 6852 for ASA-2017-04
- G. Approved Plan Set
- H. Appeal Filed by Georgene Petri
- I. Planning Commission Staff Report
- J. Planning Commission Meeting Minutes