



File #: 18-0475, Version: 1

**REPORT TO THE ZONING ADMINISTRATOR**

**File #:** 2017-7698

**Location:** 1040 Sunnyvale Saratoga Avenue (APN 211-22-013)

**Applicant / Owner:** PM Design Group, Inc. (applicant) / Patrick Lemon for BP (owner)

**Proposed Project:**

**SPECIAL DEVELOPMENT PERMIT:** To allow demolition of an existing 1,175 square foot convenience store and auto repair building and construction of a new 3,180 square feet convenience store and associated site improvements to an existing gas service station. The project includes proposed beer, wine and tobacco sales and a request to operate 24-hours seven days a week and a request to deviate from the front and side setback requirement.

**Reason for Permit:** The application is submitted pursuant to SMC: 19.20.030, (Permitted, Conditionally Permitted and Prohibited Uses in Commercial Zoning Districts), 19.26.030 (PD combining district), and 19.90 (Special Development Permit). The proposed beer and wine sales and new building is subject a Minor Special Development Permit and requires Zoning Administrator review and approval.

**Project Planner:** Cindy Hom, 408-730-7411, chom@sunnyvale.ca.gov

**Issues:** Setbacks and Noise

**Recommendation:** Approve with conditions subject to the findings and conditions of approval.

**BACKGROUND**

The subject site is located on an existing 0.63-acre commercial site located at the southeast corner of the intersection at Sunnyvale Saratoga Road and Remington Drive. Currently, the subject site is utilized as an ARCO gas station that is developed with a convenience store and auto repair shop and two fueling canopies with four fuel dispensers.

The Sunnyvale General Plan designates this site as Commercial and is zoned as Neighborhood Business (C-1) with the Planned Development (PD) Combining District. Surrounding land uses include a newly approved child care center to the north, multifamily residential homes to the east and south, and commercial retail and services to the west. The permit history for the subject site is summarized below:

<p><b>Previous Planning Projects related to Subject Application:</b></p> <ul style="list-style-type: none"> <li>• 2008-0043 - Miscellaneous Plan Permit to allow grocery sales to existing convenience store. Approved on 4/28/08.</li> </ul>	<p><b>Yes</b></p>
---	-------------------

<ul style="list-style-type: none"><li>• 1991-0180 - Special Development Permit to modify gas tanks, islands and landscaping. Approved on 6/26/91.</li><li>• 1983-0240 - Miscellaneous Plan Permit to add four fuel pumps. Approved on 2/14/83.</li><li>• 1975-0021 - Rezone from C-1 to C-1-PD. Approved on 9/16/75.</li><li>• 1965-0268 - Use Permit for gas service station. Approved on 4/13/65.</li><li>• 1964-0061 - Rezone from R-4 to C-1. Approved on 11/23/64.</li></ul>	
<b>Neighborhood Preservation Complaints:</b>	<b>None</b>

**PROJECT DESCRIPTION**

The project proposes to demolish the existing convenience store and auto repair building and construct a new 3,180-square foot convenience store and install various site improvements that includes a new trash enclosure, reconfiguration of surface parking spaces, and rehabilitation of landscaping. The proposed project also includes a request to allow for beer, wine and tobacco sales and to operate 24-hours, seven days a week. See Attachment 1 for a map of the vicinity and mailing area for notices.

**DISCUSSION**

**Special Development Permit**

The project is subject to a Special Development Permit (SDP) to consider the proposed alcohol beverage sales, as well as site and architectural review for site layout and design, building architecture, and landscaping. An SDP also allows for consideration for deviations from specific development standards in exchange for superior design, environmental preservation or public benefit. The applicant is requesting a deviation from the front and side yard setbacks, which are discussed further in the staff report.

**Site Layout, Site Circulation and Access**

The general layout, access and site circulation remains relatively the same as the existing conditions. Currently, the site is served by existing driveways off Remington Drive and Sunnyvale Saratoga Road. There are two driveways on each street frontage. The existing fueling canopies and fuel dispensers are proposed to remain in their currently location. The existing building is currently located in the center of the site with surface parking located along the south and east property lines. The existing trash enclosure is at located at the rear, near the southeast corner of the lot.

The project proposes to demolish the existing building and trash enclosure and construct a new 3,180 square convenience store building, 225 square foot masonry trash enclosure, and reconfigure parking. Other associated site improvements include:

- Rehabilitating the existing landscaping and the addition of new landscaping along the perimeter of the proposed convenience store building.
- New 4-foot wide pedestrian striped walkway that connects the new building to the public sidewalk on Remington Road.
- Remodel existing fueling canopies with new roof cover and refurbished columns with stucco and paint.

- Replacement of all site signage with updated ARCO branding (to be reviewed under a separate permit).
- Relocation of the existing Clean Air Vapor Recovery System and vent pipes.

### **Parking**

The Zoning Ordinance requires that a gas station provide 2.5 parking space for every 1,000 square feet for floor area for retail and office. Based on the proposed 3,180 square foot convenience store building, a total of eight parking spaces is required. The project complies with parking requirements by providing the required eight parking spaces. A new bike rack that provides five bicycle parking spaces is proposed on the north side of the new convenience store. The new vehicle parking area will be located along the west side of the building, along the storefront of the proposed convenience store.

### **Stormwater Management**

The Municipal Permit for stormwater discharge requires all treatment utilize Low Impact Development (LID) measures such as infiltration, harvesting use and biofiltration and limits the use of mechanical treatment. A preliminary Stormwater Management Plan (SWMP) has been provided, which demonstrates compliance with LID requirements by incorporating infiltration basin into the landscaped area. A third-party certification of a final SWMP is required prior to issuance of building permits (Recommended Condition BP-15 and BP-17).

### **Landscaping**

The existing landscaping consist of (12) mature Pepper trees located along the west and south boundary of the project site. Three of the existing trees are proposed for removal to accommodate a new storm water treatment area. Based on the City's tree replacement standards, (2) 36-inch box trees and (8) 24-inch box trees are required to be replaced on-site. The applicant is proposing to install the required (10) replacement trees consisting of October Glory Maple, Arbutus Standard, Forest Pansy Rosebud, and Crape Myrtle trees as well as rehabilitate existing landscaping areas with new shrubs and groundcover to provide an updated and contemporary site design. The project provides approximately 5,487 square feet landscaping which meets the minimum 20% of the lot area requirement. As proposed, the project provides the required 10-foot landscape buffer along the edges that abut residential. The landscape buffer area consists of mature Pepper trees that range between 19 to 38-inches in diameter and approximately 20-25 feet in height. The project includes installation of a new 6-foot tall masonry wall that will be constructed on the west and south property lines that are adjacent to the residential uses.

### **Development Standards**

The proposed project complies with the applicable development standards as set forth in the Sunnyvale Municipal Code, such as lot coverage, parking, and height except for the requested deviations as discussed below. The Project Data Table is provided in Attachment 2.

### **Height, Floor Area Ratio and Lot Coverage**

The proposed convenience store will be single story and is approximately 3,180 square feet in size. The C-1 Zone allows a maximum height of two stories, maximum height of 40-feet, no limit on FAR

and a 35% maximum lot coverage. As proposed, the building is one-story with an overall height of 24 ½ feet, which is when the maximum height limit. The proposed 17% lot coverage is within the 35% maximum allowed in the C-1 zones. Therefore, the project is in conformance for height, lot coverage and FAR.

### **Building Setbacks**

The project site is a corner lot that has two street frontages. As such, Sunnyvale Saratoga Avenue and Remington Drive are considered front yards, which requires 70-foot setback. The applicant requests a deviation to allow for a reduced front setback of 61-feet along the Remington Road frontage to accommodate the proposed new building and to maintain trash enclosure in the same general location. The other requested deviation is to the side yard setback. The C-1 Zoning District requires a minimum setback of 15 feet. The applicant proposes a 10-foot, 8-inch setback to the trash enclosure and a 25-foot, 5-inch setback to the building. The deviation would not be considered as a substantial change from existing condition in that the current trash enclosure has an existing setback of 10-feet.

### **Architecture and Design**

The Citywide Guidelines recommend that all structures on the site be architecturally consistent with the main structure, and that they contribute to a positive street presence. All the building and structures on site, including the proposed convenience store, fueling canopy and trash enclosure are architecturally consistent and incorporate the same materials and design techniques. The building will include a prominent entrance with materials to include cement plaster, metal awnings, and stone veneer wainscot. The north and east elevations will include metal trellis features that will add visual interest. Staff recommends a condition of approval to extend the stone veneer wainscot to the full height of the entry tower to further accentuate the front entry. As conditioned, the project will be harmonious with surrounding architecture of the area

### **ABC Licensing Requirements for Beer and Wine Sales**

The sale of alcohol in the State of California is regulated by the Alcoholic Beverage Control Act (California Business and Profession Code Sections 23000-25762). The State of California Department of Alcoholic Beverage Control (ABC) regulates the type of spirits sold and ages allowed into an establishment. ABC may impose other restrictions based on the requested license and site history. There are numerous types of licenses issued by ABC. The applicant is requesting to a Type 20 license (Off-sale beer and wine) which authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.

ABC is generally required to deny an application for a license if its issuance would result in or add to an 'undue concentration' of licenses in a particular area, unless a finding of 'public convenience or necessity' can be made. An 'undue concentration' is defined as an area where:

- (a) The project site is in a crime reporting district that has a 20% greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the Sunnyvale Police Department.
- (b) The ratio of on-sale (on site consumption) retail licenses to population in the census tract or

census division in which the project site is located exceeds the ratio of on-sale retail licenses to population in Santa Clara County (for on-sale retail licenses).

- (c) The ratio of off-sale (off site consumption) retail licenses to population in the census tract or census division in which the project site is located exceeds the ratio of off-sale retail licenses to population in Santa Clara County (for off-sale retail licenses).

According to ABC, the project site falls within in an area of undue concentration, given that the relevant area is only authorized to host two (8) on-sale permits and one (3) off-sale permit. Currently, there are ten (10) on-sale permits and three (3) off-sale permits in the area. Below are current establishments within the Census Tract 5085.03:

Store	Address	License type
Liquor & Food Mart	163 E. Fremont Ave.	Type 21 (all types of liquor)
Safeway	150 E. El Camino Real	Type 21 (all types of liquor)
CVS Pharmacy	576 E. Camino Real	Type 21 (all types of liquor)

As such, a finding of public convenience is required to allow for the ABC license. Based on staff’s analysis, the following findings can be made.

- The project is consistent with the General Plan in that it provides retail and services to residents and businesses of the city that is conveniently located on a major north-south connector arterial.
- The project is consistent the purpose and intent of the C-1 neighborhood business zoning district which provides for neighborhood serving retail and services to the adjacent residents and businesses. The sale of beer and wine in conjunction with a gas service station is permitted with a Special Development Permit.

The City’s Municipal Code also requires that alcohol sales in C-1 zones obtain a Special Development Permit. To issue a Special Development Permit, the project must meet required findings which are provided in the Findings section of the staff report. Generally, staff notes that the proposed hours of operations would not cause disruption or the quiet and peaceful enjoyment of the neighborhood and the project located in an area where these types of uses would be encouraged.

### Department of Public Safety Review

Staff consulted with the Sunnyvale Department of Public Safety (DPS) regarding this proposal. DPS is neutral to the issuance of the Special Development Permit, as the project is not located within a high crime rate area. DPS recommends as a condition of approval to require the Permittee to implement a silent or audible alarm system to increase security at this location and utilize digital security cameras with instant viewing capabilities that cover the store entrance and exit, parking lot areas and store interior (Recommended Condition No. AT-7).

To ensure negative impacts do not result, Sunnyvale Municipal Code section 19.98.020 requires that off-site sales of beer and wine at an automobile service station must comply with the following requirements which are also included as conditions of approval:

- No beer or wine shall be displayed within five feet of the cash register or front door unless it is in a permanently-fixed cooler;
- No advertisement of alcoholic beverages shall be displayed at motor fuel islands; and
- Employees on duty between the hours of 9:00 p.m. and closing who sell beer or wine shall be at least twenty-one years old.

Staff also recommends the following conditions to further minimize possible negative impacts associated with the impact of the sale of beer and wine sales (Recommended Condition of Approval No. AT-7 through 13):

- The Permittee shall ensure all employees receive "Responsible Alcoholic Beverage Service" training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request.
- The sale of single servings of beer or wine is prohibited. For the purpose of this condition of approval, a single serving shall be defined as "less than 24 fluid ounces of beer or wine."
- The display of alcoholic beverages shall be limited to be no more than 40% of the total floor area.
- The Permittee shall install "No loitering" signs to discourage customers from loitering and drinking of alcohol on the property.
- The Permittee shall be responsible in pick up litter and abate graffiti twice each day.
- The Permittee shall implement a silent or audible alarm system to increase security at this location and utilize digital security cameras with instant viewing capabilities that cover the store entrance and exit, parking lot areas and store interior.

### **Neighborhood Impacts / Compatibility**

Staff does not anticipate any negative impact with the neighboring uses in that it will not generate more traffic in the area or create an unsafe site circulation condition. With implementation of the conditions of approval, the sale of alcohol shall not be detrimental or injurious to property, improvements, public health, safety and general welfare.

### **Environmental Determination**

A Categorical Exemption Class 1, Section 15301 (Existing Facilities) and Class 3, Section 15303 (New Construction or Conversion of Small Structures) relieves this project from CEQA provisions.

**Public Contact:** 287 notices were sent to surrounding property owners and residents adjacent to the subject site in addition to standard noticing practices, including advertisement in the Sunnyvale Sun Newspaper and on-site posting. No letters or calls were received from the public by staff.

### **FINDINGS**

In order to approve the Special Development Permit the following findings must be made:

1. The proposed use attains the objectives and purposes of the General Plan of the City of

Sunnyvale. [Finding Met]

The proposed addition of beer and wine sales allows for an expansion an existing commercial business at the site and enables an additional retail service to the nearby community. The proposed use is not anticipated to have a negative impact on surrounding properties or uses and consistent with the following General Plan Goals and Policies:

*Goal 1: Supportive Economic Development Environment* - Facilitate an economic development environment that supports a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal, and land use constraints.

- POLICY 82: Attract and retain a diversity of commercial enterprises and industrial uses to sustain and bolster the local economy and provide a range of job opportunities.
  - Action 1: Promote a variety of commercial, retail, and industrial uses, including neighborhood shopping, general business, office, clean technology, and industrial/research and development.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair the orderly development of, or the existing uses being made of, adjacent properties. [Finding Met]

As conditioned, measures would be taken to protect against sale of beer and wine to, or theft of beer and wine by, persons under the age of 21. The site will maintain security measures that include adequate lighting, clear visibility into and out of the store, and security cameras to discourage loitering, on-site consumption of alcoholic beverages, and other unpermitted activities. The proposed use will provide additional services and goods to the community by reducing the automotive uses on the site and providing retail sales of goods through the replacement of an existing auto repair facility within the service station with a convenience store.

3. For Automobile Service Stations: Off-site sales of beer and wine may be allowed provided three findings can be made:
- a. The service station may not be located within 500 feet of another use with off-site alcohol sales;
  - b. The service station may not result in a concentration of more than four businesses with offsite sales of alcohol within a 1000-foot radius; and
  - c. The service station may not be located within 500 feet of a public park or public school.

The project does meets all the above provisions except for provision (c). The project is located within 500 feet of the Bright Horizons Child Care Center that is currently under construction across the street, to the north. If any of the above three findings in Finding #3 are not met, the permit can only be granted if three additional findings are also met:

- a. The project will not adversely affect persons residing or working in surrounding areas;

- b. The project will not adversely affect surrounding property values; and
- c. The project will not be detrimental to public health, safety, and welfare.

Based on staff's review of the project, the required findings can be met to allow for the beer and wine sales based on the following:

- The project will not likely result in an adverse impact on persons residing or working in the surrounding area or the peaceful and quiet enjoyment of property and improvements. The project provides a 10-foot landscaped buffer consisting of mature trees that provides a natural screen and privacy as well as a 6-foot tall decorative masonry wall to for additional separation and security. The primary use is still the gas station service and serves the surrounding neighborhood. The expanded convenience store will also sell food and other convenience items that can be neighborhood serving.
- The project will not negatively affect property values. The project includes remodeling of the building and improvements to the existing property, which benefit the appearance of the site and surrounding area.
- The project will be required to implement measures as noted above to minimize potential impacts and to ensure public health, safety and general welfare are appropriately maintained.

### **ALTERNATIVES**

1. Approve the Special Development Permit with recommended Conditions in Attachment 3.
2. Approve the Special Development Permit with modifications.
3. Deny the Special Development Permit.

### **RECOMMENDATION**

Alternative 1 - Approve the Special Development Permit with recommended Conditions in Attachment 3.

Prepared by: Cindy Hom, Associate Planner  
Approved by: Ryan Kuchenig, Senior Planner

### **ATTACHMENTS**

1. Vicinity and Noticing Map
2. Project Data Table
3. Standard Requirements and Recommended Conditions of Approval
4. Site and Architectural Plans
5. Project Description Letter