



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 16-0271, Version: 1

REPORT TO COUNCIL

SUBJECT

Proposed Project: **APPEAL** by a member of the public of a decision by the Planning Commission to conditionally allow a:

SPECIAL DEVELOPMENT PERMIT to allow an approximately 11,600 square foot new commercial building (grocery store) on an existing commercial site. The project replaces a portion (approx. 7,599 s.f.) of the Orchard Supply Hardware building and storage area.

File #: 2015-7399

Location: 777 Sunnyvale-Saratoga Road (APN: 201-36-002)

Zoning: C-2/ECR

Appellant / Applicant / Owner: Michael Howland (appellant) / Ware Malcomb (applicant) / Mardit Properties, LP (owner)

Environmental Review: Mitigated Negative Declaration

Project Planner: Ryan Kuchenig, (408) 730-7431, rkuchenig@sunnyvale.ca.gov

REPORT IN BRIEF

General Plan: Commercial General Business

Existing Site Conditions: Commercial Retail Building - Orchard Supply Hardware

Surrounding Land Uses

North: Commercial Shopping Center & Multi Family Apartments

South: Multi-Family Apartments

East: Commercial Shopping Center

West: Cherry Orchard Apartments (PG&E easement and cherry trees)

Issues: Appeal letter noting concerns with air quality and landscaping

Staff Recommendation: Make the Findings required by CEQA and for the Special Development Permit, Deny the Appeal and affirm the decision of the Planning Commission in part to approve the Special Development Permit subject to Conditions of Approval in Attachment 4 and modify in part by adopting the revised Mitigated Negative Declaration in Attachment 7.

The approval of the project by the Planning Commission was appealed based on traffic impacts, air contaminant emissions, greenhouse gas emissions, and hazardous materials. The consideration by the Council of the appeal was postponed in order to make a thorough examination of the environmental issues through the revised Mitigated Negative Declaration.

BACKGROUND

A Special Development Permit application was filed requesting the demolition of a portion of an existing building occupied by Orchard Supply Hardware (OSH) and construction of a new commercial building to be occupied by a new internet-based retail business.

The subject application was previously reviewed by the Zoning Administrator at a hearing on July 15, 2015. The project was taken under advisement for one day and ultimately approved on July 16, 2015 with modified Conditions of Approval. Minutes of the Zoning Administrator public hearing are included in Attachment 8. The project was appealed by a Sunnyvale resident on July 29 within the 15-day appeal period. The appeal noted concerns with air quality and landscaping (see Attachment 9 pages 1-3).

On September 14, 2015, a hearing was held with the Planning Commission to consider the appeal. Prior to and at the hearing, the appellant noted concerns with the environmental determination made by staff and recommended that further study be conducted (see Attachment 9 pages 4-8). Prior to the hearing, staff modified its recommendation to grant a continuance of the hearing to conduct further environmental study. Planning Commission continued the hearing to a later date to allow time for environmental review.

Summary of Planning Commission Action

The Planning Commission ultimately considered the appeal of the Special Development Permit on February 22, 2016. An additional letter was submitted on behalf of the appellant (pages 9-12 of Attachment 9). Minutes of the Planning Commission hearing are included in Attachment 11. The project was approved unanimously 7-0 with the following modifications to the staff recommended Conditions of Approval:

1. A pedestrian walkway from the parking lot area to the entrance of the building shall be added. (Added as COA BP-9h)
2. Increase the landscape percentage, as much as possible, and maintain the minimum parking requirement by removing 18 spaces; (Added as COA BP-9i)
3. Add a third section to COA BP-21 for Historic and Prehistoric Resources consistent with the Initial study;
4. Remove "Planning Commission" from COA PS-2, so that only the Director or Community Development reviews final exterior building materials and color scheme.
5. Select Alternative B of COA PS-3; this alternative specified that two-way access be restored at the northeast corner between the project site and the adjacent shopping center property to the north.

The conditions of approval have been revised to reflect the Planning Commission action (Attachment 4).

Plan modifications after Planning Commission

Subsequent to the Planning Commission decision, the applicant revised the site layout to incorporate the modifications to the Conditions of Approval made by the Planning Commission. A pedestrian walkway has been added to the site to connect the parking area to the entrance of the building. Additionally the landscaping has been increased from 9% to 14.5% of the overall site. Tree shading is increased from 10% to 29%. The increased landscaping results in the loss of 18 additional spaces from the previous plan. The overall site meets the minimum 234 parking spaces.

Previous Actions on the Site

File Number	Description	Decision	Date
2015-7349	Miscellaneous Plan Permit for exterior tenant improvements (OSH) and restriping of parking lot.	Approved	5/4/2015

The above referenced Planning permit included interior and minor exterior tenant improvements to the Orchard Supply Hardware (OSH) building, including changes to the parking/landscaping reconfiguration of the site. Some of the previously approved landscaping changes will be modified again with this permit. The OSH remodeling project was recently completed.

Existing Deviations from Standard Zoning Requirements

The entire site (which includes OSH and the subject application) is legal non-conforming in regards to landscaping, providing 9% of landscaping where 20% is required. The overall site is also legal non-conforming for parking lot shading as it does not meet the minimum 50% shading in 15 years requirement. However, the portion of the site relating to the new building would comply with these standards, as proposed (See “Landscaping” section of this report for more details), and reductions to the landscaping and shading non-conformities are proposed.

Use

The applicant describes the proposed use as a grocery retail business where customers would utilize the Internet to pre-order their grocery and retail items. When placing an order, customers would have the option of scheduling a specific 15 minute to 2-hour pick-up window. Once an order is placed, customers either can drive into a designated pick-up area with nine parking stalls, where the purchased items will be delivered to their cars, or they can arrive on foot or bicycle and pick-up their items in the store. Hours of operation are proposed to be daily from 7 a.m. to 10 p.m. A total of 15 employees would work on-site at any given time. As proposed, employees on-site will direct customers into their assigned parking spaces. To avoid idling vehicles, customers that arrive outside of their assigned times will be directed to the main parking lot. Walk-up customers can use the service, and would wait in a lobby area, while an employee retrieves the merchandise. Pre-ordering, designated parking and delivery to customer vehicles are services that many restaurants and retailers offer.

Site Layout

OSH currently operates a hardware and plant nursery on the subject site. OSH previously used the outdoor storage and customer pick-up building on the west side of the site. The proposal is to demolish the former pick-up building and construct the proposed building in its location. The OSH store and nursery/garden center use would remain (See Site and Architectural Plans in Attachment 5).

The proposed 11,600 s.f. grocery retail building would be located adjacent to the main OSH building in roughly the same location as the former pick-up building. As a result of the demolition and new building, approximately 4,820 s.f. of net new building area would be added to the site. In addition to the new building, a carport covering nine spaces would be located between the new building and Sunnyvale-Saratoga Road. The carport is intended as a pick-up area for customers of the new retail

use. A new trash enclosure attached to the building is planned along the north side of the building, which can be accessed by a drive aisle that runs along the north perimeter of the site.

The entire property (OSH and subject application) maintains three vehicular driveways along Sunnyvale-Saratoga Road and two driveways off S. Mathilda Avenue. The parking and circulation at the eastern end of the site would be modified to accommodate the new grocery store pick-up area.

A one way drive-aisle loop would be created for customers planning to park in the designated pick-up areas under a carport. A 10'6" clearance bar would be installed between the building and carport that prevents large trucks from entering this area. This loop drive aisle is not required for fire access.

The property is within the Precise Plan for El Camino Real (ECR) and the zoning is C-2/ECR (Highway Commercial with ECR combining zoning district). The Precise Plan includes a design guideline for site layout that encourages shared access driveways with adjacent uses. There were two modifications to conditions of approval regarding maintaining vehicular access between the subject site and the property to the north. Attachment 4 shows the Conditions of Approval for two-way access as approved by the Planning Commission and as recommended by staff.

Parking

Parking for the portion of the site occupied by the new building would be reconfigured. Currently, parking for the entire site is legal non-conforming because it is over-parked per Municipal Code requirements where a maximum of 267 spaces are allowed. As approved by the Planning Commission, the project's overall parking spaces have been reduced to the minimum amount of 234 spaces for the combined OSH and new retail building. The proposal would upgrade bicycle parking to meet the required number of Class I and Class II spaces. A total of 15 bicycle spaces are required for the combined retail uses on site (75% of such spaces shall be secured Class I), as noted in the Conditions of Approval. The applicant has indicated that secured spaces will be provided inside the buildings and that three spaces will be in front of the new building.

Landscaping

The OSH site currently does not meet the 20% requirement for total landscaping or the 50% parking lot shading requirement. The proposal would primarily increase landscaping in front of the new building; however, three new landscape islands are also proposed within the parking area in front of the existing OSH building. Overall, landscaping for the site is increased from approximately 20,463 s.f. to 33,027 s.f., which is an increase from 9% to 14.5% of the entire site. Tree shading of the parking lot is increased from approximately 10% to 29%. In the area of the new building landscaping is increased to 17% and shading to 50%. No tree removals are proposed with this project.

A pedestrian walkway (combination sidewalk and striped paving) that lies in front of the buildings on the site and the main corner entrance of the building connects to the public sidewalk along Sunnyvale-Saratoga Road. The landscape buffer adjacent to Sunnyvale-Saratoga Road would be widened as it extends southward.

Architecture

The proposed commercial building utilizes modern architectural design with a combination of projecting walls composed of wood siding and recessed façades of grey plaster finish. Bright green panels, arranged in a random pattern, are interspersed within the siding to break up the façade. Green canvas awnings over the corner entrance are also provided. Storefront windows are located at

the corner of the building and at a portion of the east elevation. Some minor improvements have been added to the façade since earlier designs, including a location for a future display window along the south elevation and possible additional window locations. Condition of Approval PS-1 permits either the inclusion of additional windows along the recessed portions of the south and east elevations or the incorporation of alternative design elements through a combination of material variation or color. Proposed landscaping in front of the building along the south side also helps soften the view of the building.

Staff has worked with the applicant to provide more detail to the carport structure, due to its prominent location in front of the building facing the street. The carport which shelters the pick-up/loading spaces for patrons is designed with a steel “butterfly roof” structure that angles upward from the middle. The structure incorporates a combination of translucent yellow and green panels that are visible underneath the canopy. A roofed pedestrian walkway runs across the drive aisle from the carport to the new building. Coupled with increased landscaping along the street frontage, staff finds that this unique carport design adds unique and interesting visual features from the street.

Green Building

Green building standards require non-residential construction that exceeds 5,000 s.f. to attain LEED Silver level design, with verification by a LEED AP. The proposal indicates compliance by demonstrating that 50 LEED points will be achieved, where a minimum of 50 are required. The Conditions of Approval require the final building permit plans to demonstrate compliance.

Stormwater Management

The Municipal Regional Permit for stormwater discharge requires all treatment be achieved through Low Impact Development (LID) measures such as infiltration, harvesting/use, and bio-filtration and limits the use of mechanical treatment. A preliminary Stormwater Management Plan (SWMP) has been provided, which demonstrates compliance through site design, source controls and bio-retention. A third-party certification of a final SWMP is required prior to issuance of building permits.

Neighborhood Impacts / Compatibility

The project is expected to have minimal negative impact on the neighborhood. Short-term impacts related to noise are expected during demolition and construction. Based on a net increase of approximately 4,820 s.f. of retail space, additional vehicular traffic to the site is expected to be minimal. An existing outdoor storage building used for customers of OSH for pick-up of large material is being demolished. The proposed building would replace this use with a more aesthetically desirable and likely a less operationally disruptive use in terms of noise. The proposed customer pick-up area of the new business is located at the northeastern portion site, and situated away from the closest residential uses. The project also improves the visual aesthetics through increased landscaping and improved architectural design for the site.

Public Contact: For the each of the hearings, Zoning Administrator, Planning Commission and City Council, a total of 655 notices were sent to surrounding property owners and residents within 300 feet of the subject site in addition to standard noticing practices, including advertisement in the Sunnyvale Sun newspaper and on-site posting. Staff had previously received inquiries regarding the planned construction duration. The Sunnyvale Municipal Code limits construction hours to Monday through Friday between 7 a.m. and 6 p.m., and Saturdays from 8 a.m. to 5 p.m. No construction activity can occur on Sunday or federal holidays when city offices are closed. Other than

communications from the appellant and appellant's counsel, no letters were received regarding the project. The applicant has indicated that the updated construction timeline for completion is approximately six months from approval.

Environmental Determination

Kimley-Horn and Associates, a third party consultant under contract to the City, was retained to conduct an Initial Study for the project in accordance with the California Environmental Quality Act (CEQA). The consultant identified potentially significant impacts related to air quality, cultural resources, geology, and noise for the proposed project. Accordingly, a Mitigated Negative Declaration (MND) was prepared and circulated in accordance with the requirements of CEQA. The MND identified mitigation measures that would reduce the effects of the project such that no significant effects will occur. The mitigation identified in the MND includes measures designed to reduce dust and exhaust during demolition, to protect any prehistoric or historic subsurface cultural resources that may be found during construction, to reduce construction noise, and to prevent potential hazards due to unstable or expanding soils. The mitigation measures identified in the MND have been incorporated in the attached Conditions of Approval (Attachment 4), which have been revised since adoption by the Planning Commission as discussed in the Staff Comments on Appeal section below.

Although the project was not anticipated to generate 100 net peak hour trips, which is the threshold for a Traffic Impact Analysis (TIA), the Initial Study included a traffic study to examine potential impacts. Taking into consideration the trips from the existing use, the net peak hour trips increase by approximately 29 a.m. and 95 p.m. trips. Using the VTA Level of Service (LOS) thresholds, this impact is less than significant and no traffic mitigation is required.

APPEAL

On March 4, 2016, the Planning Commission decision was appealed by a Sunnyvale resident. The letter of appeal is included as Attachment 12. The appellant states that he is protesting the adoption of the mitigated negative declaration adopted by the Planning Commission based on: traffic impacts, air contaminant emissions, greenhouse gas emissions, and hazardous materials.

Pursuant to Sunnyvale Municipal Code Section 19.98.070 (f)(2) and (3), the City Council hearing is a de novo hearing and the City Council is not bound by the decision that has been appealed or limited to the issues raised in the appeal by the appellant. The City Council shall affirm, modify, or reverse the original decision based on the evidence and findings.

STAFF COMMENTS ON APPEAL

The Initial Study has been revised in response to the issues raised in the appeal and to clarify the environmental determination. Subsequent to the Planning Commission hearing, further study was conducted related to air quality, biological resources, and hazardous materials. Additional studies including a revised air quality and a bird nesting impact study have been incorporated into the environmental document.

Subsequently, a new Mitigated Negative Declaration was re-circulated which includes additional recommended mitigation measures related to air quality, biological resources, cultural resources, and hazardous materials. As a point of clarification, this use is not a drive-through facility; vehicles will not be idling waiting to pick up their order, the requirement is to park and shut off the engine while waiting.

Staff has also revised the transportation/traffic section study document to provide further clarification. The appellant has stated that it is inappropriate for the City to use Institute of Transportation Engineers (ITE) data for a conventional supermarket to analyze the traffic impact of this project as it is not a conventional supermarket.

The overview of the project in the site and architectural plans (Attachment 5) states that the operation is “a blended customer shopping experience, as it leverages both an online shopping platform and the traditional brick and mortar retail experience.” Customers can go into the store to pick up merchandise, similar to a traditional store. There is little difference between having the customer browse the store shelves versus placing an order and having an employee gather the merchandise. Time spent on site will be similar and the same number of trips would be generated. Therefore, staff finds that although the use is unique in its operation, the grocery store category most closely describes the operation of the proposed use.

The Appellant also raises the issue of trip credit given for the OSH customer pick-up area in the traffic analysis, specifically because they feel there is not the equivalent use with respect to grocery floor sales. In practice, the use of the OSH customer pick-up area was similar to the proposed store in that customers used that building to pick up materials ordered elsewhere. The method of order may vary, but the nature of the order and pick is similar.

Consistent with the Mitigated Negative Declaration adopted by the Planning Commission, the revised Mitigated Negative Declaration identifies no traffic impacts that require mitigation. The updated Mitigated Negative Declaration is provided in Attachment 7. The mitigation has been incorporated into the Conditions of Approval.

ALTERNATIVES

1. Make the Findings Required by CEQA and for the Special Development Permit in Attachment 3.
2. Deny the appeal, affirm the decision of the Planning Commission in part to approve the Special Development Permit subject to the conditions of approval in Attachment 4 and modify in part by adopting the revised Mitigated Negative Declaration in Attachment 7.
3. Deny the appeal, affirm the decision of the Planning Commission in part to approve the Special Development Permit subject to the conditions of approval in Attachment 4 and modify in part by adopting the Mitigated Negative Declaration, with modifications to the conditions of approval or the Mitigated Negative Declaration.
4. Grant the appeal and reverse the decision of the Planning Commission: do not adopt a Mitigated Negative Declaration and deny the Special Development Permit.
5. Continue the public hearing to a date certain if Council finds that more information is needed before making a decision.

RECOMMENDATION

Alternatives 1 and 2: 1) Make the Findings Required by CEQA and for the Special Development Permit in Attachment 3 to the report, and 2) Deny the appeal, affirm the decision of the Planning Commission in part to approve the Special Development Permit subject to the conditions of approval in Attachment 4 to the report and modify in part by adopting the revised Mitigated Negative Declaration in Attachment 7 to the report.

Prepared by: Ryan Kuchenig, Senior Planner
Reviewed by: Andrew Miner, Planning Officer
Reviewed by: Trudi Ryan, Director of Community Development
Reviewed by: Kent Steffens, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Site, Vicinity and Public Notice Mailing Map
2. Project Data Table
3. Recommended CEQA & Special Development Permit Findings
4. Recommended Conditions of Approval (**as approved by Planning Commission**)
5. Proposed Site and Architectural Plans (**Revised to conform to approved COA by the Planning Commission**)
6. Project Rendering
7. Revised Mitigated Negative Declaration (**Revised since adoption by Planning Commission**)
8. Zoning Administrator Hearing Minutes July 15, 2015
9. Appeal of Zoning Administrator decision and other letters from Appellant and Appellant's Counsel

Additional Attachments for Report to Council

10. **Planning Commission Report of February 22, 2016 (without attachments)**
11. **Planning Commission Minutes of February 22, 2016**
12. **Appeal of the Planning Commission Decision Letter**