



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

File #: 17-0618, Version: 1

### REPORT TO THE ZONING ADMINISTRATOR

**File #:** 2017-7091

**Location:** 1296 Sunnyvale Saratoga Road (APN: 211-34-013)

**Applicant / Owner:** David Elliott (applicant) / Deanza Family, L.P. (owner)

**Proposed Project:**

**SPECIAL DEVELOPMENT PERMIT:** to allow the sale of beer and wine at an existing gas station on a 0.47-acre lot.

**Reason for Permit:** A Special Development Permit is required for retail sale of beer and wine at a gas service station.

**Project Planner:** Cindy Hom, (408) 730-7411, [chom@sunnyvale.ca.gov](mailto:chom@sunnyvale.ca.gov)

**Issues:** Proximity to sensitive receptors

**Recommendation:** Approve with conditions

### BACKGROUND

	Existing/Approved	Proposed
General Plan Designation	Village Mixed Use	Same
Zoning	C-1/PD (Neighborhood Business/Planned Development)	Same
Combining District	Planned Development	Same
Lot Size	20,576	Same
Lot Coverage	9%	Same
FAR	10%	Same
Building Square footage	2,400	Same
Parking	10	10
Total % of Landscaping	17%	Same

Previous Planning Projects related to Subject Application:	Yes
Neighborhood Preservation Complaint	No
Deviations from Standard Zoning Requirements	No

### Site Layout and Access

The subject site is located at the northeast corner of the intersection at Sunnyvale - Saratoga Road and Fremont Avenue, and is surrounded by commercial uses on three sides and Fremont High

School to the west. The project site is served by a two-way driveway on Sunnyvale - Saratoga Road and another two-way driveway on Fremont Avenue that provides vehicle access onto the site. The site is also served by public transit through an existing VTA bus duck out and bus stop located along the Sunnyvale - Saratoga Road frontage. Public sidewalks are provided along each of the street frontages.

The site is developed with a 2,400-square foot single story building that currently provides space for a 750-square foot snack shop and three auto service bays. A single 2,000-square foot fuel canopy with eight fuel pumps is located along the Fremont Avenue frontage. The existing trash enclosure is located adjacent to the west side of the building. Based on previously approved plans, parking is provided along the east property line; however, current parking conditions include spaces in front of the building along the south edge of the fueling canopy.

### Permit History

The gas service station has existed since 1961. Previous permits related to the gas services station include multiple Special Development Permits for building modifications in 1989 and to re-establish the gas service station and auto repair in 1997. Other permits include Miscellaneous Plan Permits for the installation of accessory structures, such as fencing, additional parking stalls, awnings and to add grocery sales in 2008. Sign permits have also been issued for site signage and rebranding over time.

## **PROJECT DESCRIPTION**

### **Proposed Use**

The applicant proposes retail sales of beer and wine in conjunction with an existing convenience store and gas service station. There is an associated permit (2017-7090) for the site and building modifications to expand the existing convenience store, which will be reviewed as a separate application. However, a description of the proposed modifications is included in the staff report for information purposes only. The proposed convenience store currently operates from 6:00 AM to 10:00 PM daily. No change is proposed to the hours of operation.

### **Site and Building Modifications**

As mentioned, the proposed exterior and interior modifications are not part of the Special Development Permit request. The exterior modifications are subject to a Miscellaneous Plan Permit and will be reviewed separately. The applicant intends to demolish the existing auto bays and expand the convenience store to occupy the entire building. The service bay doors are proposed to be removed and replaced with storefront doors and windows, as well as the brick wainscoting to match the existing architectural treatment of the building facade. The existing trash enclosure is proposed to be relocated approximately 28-feet from the north property line.

Proposed site modifications include a revise parking layout and re-striping. The revised parking layout will allow parking to occur along the building frontage and along the south edge of the fueling canopy. The project provides a total 10 parking spaces when 6 are required by Sunnyvale Municipal Code. There is existing landscaping along the perimeter of the site. Landscape modifications associated with the convenience store expansion will be reviewed and permitted separately from the

Special Development Permit application. The Special Development Permit is only for the beer and wine sales only.

### Floor Plan Modifications

The floor plan proposes the cashier area to remain on the western portion of the store and the remainder of the building to be remodeled with a new backroom, hot and cold drink stations, bakery case, shelving and walk-in coolers.

### ABC Licensing

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 seven (9) on-sale permits and one (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, efficient and attractive.
- The project is consistency the purpose and intent of the C-1 neighborhood business zoning district which provides for retail commercial shopping and service facilities to the adjacent neighborhood residential areas. The sale of beer and wine in conjunction with a gas service station is permitted with a Special Development Permit.

Apart from the ABC licensing process, the City's Municipal Code requires that full alcohol sales in C-1 zones obtain a Special Development Permit. In order 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 that 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-8 through 14):

- 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**

45 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 I: 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.

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 not meet provisions a) and c) above in that it is within 500-feet from another liquor outlet located at 163 E. Fremont Avenue as well as Fremont High School located across Sunnyvale - Saratoga Road and Tulip Academy (after school facility) located in the adjacent commercial center to the east. If any of the above three findings in Finding #1 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 closest residential building is approximately 130-feet to the north and 230-feet to the east. The gas station and proposed expanded convenience store is buffered by another commercial property and 6-8-foot tall perimeter walls. The primary use is still the gas station service and serves the surrounding neighborhood. Although there is another gas station across the street to the south, it is currently closed. The next available gas station is located on Sunnyvale - Saratoga and Homestead Rd. 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.

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. The project also includes site enhancements such as additional roofing for trash enclosure, reduced curb cut and increased landscaping area.

### **ALTERNATIVES**

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

Prepared by: Cindy Hom, Assistant Planner

Approved by: Ryan Kuchenig, Senior Planner

### **ATTACHMENTS**

1. Vicinity and Noticing Map
2. Standard Requirements and Recommended Conditions of Approval
3. Site and Architectural Plans