



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 5, 2010

Approved

Paul Kurtz

Date

10/14/10

COUNCIL DISTRICT: 9

SNI AREA: N/A

SUBJECT: CP09-042. Appeal of the Planning Commission's decision to approve a Conditional Use Permit to allow the demolition of an existing gas station and construction of a new gas station facility with a 2,400 square foot retail building with 24-hour uses and without the off-sale of alcohol located at the southeast corner of Branham Lane and Pearl Avenue on 1.28 gross acre site.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council approve the subject Conditional Use Permit to allow the demolition of an existing gas station and construction of a new gas station facility with a 2,400 square foot retail building, without 24-hour operation and without the off-sale of alcohol.

OUTCOME

The City Council's approval of this Conditional Use Permit per the Planning Director's recommendation would result in an improved gas station with retail sales that does not include the sale of alcohol or 24-hour operation.

BACKGROUND

On August 27, 2009, Fred Stern on behalf of the property owner/applicant, submitted a Conditional Use Permit application to allow the demolition of the existing gas station facility and construction of a new gas station facility with a retail building, and to allow a 24-hour operation and the off-sale of alcohol, on a 1.28 gross acre site located at the southwest corner of Branham Lane and Pearl Avenue. The Zoning Ordinance requires a Conditional Use Permit for the gas station use, 24-hour operation and off-sale of alcohol in the CP Commercial Pedestrian Zoning

District. This permit also functions as a Site Development Permit to address the construction of the new gas station structures and retail building.

The gas station is currently accessed from two driveways on Pearl Avenue to the west and two driveways on Branham Lane to the north. The subject site is surrounded by commercial uses to the north and south, and single-family residences to the east and across Pearl Avenue to the west.

The subject property is located in a census tract that currently has three (3) active off-sale of alcohol licenses. A fourth license would require the granting of a Determination of Public Convenience or Necessity (PCN). There has been no application for a license submitted to the Department of Alcohol Beverage Control. If an application came into the City for a Determination of Public Convenience or Necessity, the Planning Commission would be obligated to deny such request due to it being within 150 feet of a residence. The applicant would then have the opportunity to appeal such decision to the City Council.

Planning Commission Hearing

On June 23, 2010, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit. After public testimony the Commission voted 5-2-0, Commissioners Campos and Jensen opposed, to continue the hearing for two months to allow for the applicant to meet with the community again and discuss the project.

On August 25, 2010, the Planning Commission held a second public hearing to consider the proposed Conditional Use Permit. Staff summarized comments that were made at the community meeting held on August 5, 2010, noting that while many welcomed the site and building improvements, others expressed concerns about the off-sale of alcohol and to a lesser extent the 24-hour use proposal. Staff also noted that a subsequent Permit Adjustment is being recommended as a condition to address minor modifications to the canopy overhang, and grading and drainage plan to address the City's stormwater runoff standards.

The applicant's representative, Fred Stern, provided a brief presentation about the project. The property owner also spoke and indicated that with the current economic difficulties, the off-sale of alcohol and 24-hour operation are important to improve the viability of the project. Seven members for public spoke in opposition to the project including the two operators of the businesses next to the project site on Pearl Avenue that sell alcohol. The area residents who spoke in opposition were primarily opposed to the off-sale of alcohol and generally in favor of the facility improvements. Two adjacent residents, initially apprehensive about the proposal, expressed support of the project, indicating the applicant has cooperated with them by proposing to address some of the potential interface issues such as trash pick-up, lighting, landscaping, and security.

As part of his closing remarks, Mr. Stern indicated that ARCO is not willing to give-up its current 24-hour use. He indicated that the 24-hour use along with the off-sale of alcohol, limited to beer and wine, would help keep fuel prices down and would allow the development of a more attractive facility, thus improving the quality of the neighborhood.

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In response to questions from Commissioner Platten, Mr. Stern assured the Commission that the off-sale proposal was limited to beer and wine only and that off-sale would cease at 2:00 a.m. Commissioner Platten also questioned whether that was appropriate nexus to accept the applicant's contribution of \$10,000 for a traffic signal contribution at Pearl Avenue and Adamo Drive given that there was no traffic mitigation required as part of the project. The City Attorney indicated that there was no nexus for this as a requirement.

Commissioner Cahan expressed an interest in limiting the hours of the retail while still allowing for 24-hour fuel sales. Staff responded that if the Planning Commission was interested in pursuing such an option, a walk-up window for cashiering purposes could be added to the building to allow fuel sales activities while the retail store was closed.

The Commission then closed the public hearing and voted 6-0-1 (Kamkar, absent) to approve the proposed Conditional Use Permit for a new gas station and retail building without the off-sale of alcohol as recommended by staff, with the exception that the proposed use, including the retail, could operate 24-hours a day.

Appeal

On September 2, 2010 and September 3, 2010, appeals were filed regarding the Planning Commission's decision on this project by Fred Stern, the applicant's representative, and Boon Tan, the owner of an adjacent 7-11 business, respectively. Mr. Stern appealed the decision to preclude the off-sale of alcohol. Mr. Tan's appeal cited concerns related to another 24-hour use adjacent to his store, including traffic safety, noise, garbage, graffiti, and loitering (see attached appeal forms).

ANALYSIS

The analysis section of this report focuses on the specific elements noted in the two appeals. For a complete analysis of the project, please see original staff report for discussion of all project issues.

Off-sale of Alcohol

The Zoning Ordinance states that a Conditional Use Permit for the off-sale of alcohol may be approved if the subject property is within 500 feet of any other off-sale establishment and it would not result in a total of more than four off-sale establishments within 1,000 feet of the subject property. The proposed project would not result in more than four off-sale establishments within 1,000 feet of each other; however, the proposed project would result in three off-sale establishments within 150 feet of each other.

The two existing off-sale establishments within 150 feet of the subject site are a 7-11 convenience market and a liquor store. The 7-11 is an existing retail establishment that sells prepackaged food along with beer and wine for convenience purposes, and the liquor store has incidental prepackaged food sales. The proposed project is expected to provide similar products

as the other businesses. Therefore, Planning staff did not recommend approval of the off-sale of alcohol. The Planning Commission concurred with this recommendation and as part of their approval did not allow the off-sale of alcohol.

24-Hour Use

This proposal is subject to City Council Policy 6-27: Evaluation of 24-Hour Uses. The intent of the 24-Hour Use Policy is to balance the needs of business to respond to market trends while protecting the quality of life in nearby residential neighborhoods. For the purposes of this policy, 24-hour uses are defined as any commercial business that operates between the hours of 12:00 midnight and 6:00 a.m. While there is a general public need for some late night services, especially for shift workers, there are potentially significant problems with such uses including proximity to residential uses, crime, gang activity, drugs, litter, loitering, and noise.

Physical separation of incompatible uses is the best means to avoid potential problems associated with late night uses. Adequate separation is considered to be 300 feet. Given the proposed project is directly adjacent to single-family residences, the proposed project does not provide adequate separation. Therefore, staff does not recommend approval of late-night use at the subject property. Although the current use operates 24 hours a day, this is limited to gasoline fuel sales. The proposed project would add additional activity on the site associated with the retail use.

The Planning Commission approved the proposal with 24-hour operation but not the off-sale of alcohol. They recognized that the existing gas station use already operates 24 hours a day and based on the planned site design improvements, the new facility would represent a better alternative than the continued use of the existing facility.

Traffic Safety

The proposed site plan includes a reduction in the number of driveways that currently exist. The current configuration has four driveways, two along Branham Lane and two along Pearl Avenue. One existing driveway along Branham Lane closest to the intersection would be closed and access would be removed from the second driveway on Pearl Avenue furthest from the intersection and replaced with new landscaping to improve the streetscape. These above noted changes would improve traffic safety operations between the site and the streets. Access between the ARCO site and the adjoining 7/11 site would still be provided, so that customers of both sites would not need to circulate via the public right-of-way to patronize both commercial properties.

Although, not specifically noted in the appeal letter, there was discussion at the public hearing about the adjacent homeowners' association desire to secure a new traffic signal at the corner of Pearl Avenue and Adamo Drive. The Department of Transportation has identified this signal as warranted, and it is on the list for eventual installation, subject to funding. As previously noted, there was no traffic mitigation required as part of the project. Therefore, the City Attorney indicated that there was no nexus for signal improvements as a result of this project.

For the reasons noted above, staff feels that the project will not result in any increase of issues related to traffic safety.

Nuisance Issues

On the appeal form from Boon Tan, there were concerns raised about nuisance issues including noise, garbage, graffiti, and loitering. It is recognized that there would be some amount of noise that is inherent with commercial and gas station uses. The proposed building and site design would improve some of the relationships with adjacent uses as compared to the existing facility. The new project would re-orient the pump island area so that headlights would not shine towards adjacent residential properties. To the extent that the hours of operation do not go past midnight, noise related impacts would be further reduced.

The draft Resolution/Conditional Use Permit also includes standard conditions related to outside storage and graffiti. Staff recommends that a standard condition related to nuisance abatement, which was inadvertently left out of the original Resolution, be included in the City Council's final Resolution if the Council decides to approve the Conditional Use Permit. This condition should read as noted:

Nuisance. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

In the event that there are nuisance issues which are not abated or issues with respect to compliance with any other conditions of this permit, there are opportunities as provided in the Zoning Ordinance to issue a Notice of Noncompliance and/or bring the permit before the Planning Commission at a public hearing for "Order to Show Cause." Under these provisions the Planning Commission can modify, suspend, or revoke the permit as they deem appropriate. These provisions typically provide a good incentive for applicants to abide by the approved permit conditions and operate their use in a manner so that they are a good neighbor.

CONCLUSION

The proposed use is directly adjacent to the rear yards of three single-family houses. While the existing gas station use operates 24 hours and the proposed Conditional Use Permit includes conditions to facilitate a "good neighbor" operation, Planning staff is concerned that nuisance problems could occur if the use is allowed to operate past midnight. With respect to the off-sale of alcohol, there are two other off-sale establishments within 150 feet of the subject site, making this immediate area already well served by such uses. The proposed project would only provide more of what already exists in the neighborhood, without providing any variety in shopping experiences to the community.

For these reasons, Planning staff recommends that the City Council approve the subject Conditional Use Permit for the demolition of existing buildings and the construction of a new gasoline service facility and retail store, but without the off-sale of alcohol and without 24-hour

operation. The added nuisance condition as described above should be included in the final Permit.

ALTERNATIVES

The City Council in their review of the project can take one of the following actions:

- Deny both appeals and uphold the Planning Commission's decision to approve the proposal with 24-hour operation of both the gasoline fueling and retail hours, without the off-sale of alcohol.
- Uphold the appeal by Mr. Stern, and approve a Conditional Use Permit as proposed with off-sale of alcohol and 24-hour operation of both the gasoline fueling and retail.
- Uphold the appeal of Mr. Tan, and approve a Conditional Use Permit as proposed with off-sale of alcohol but without 24-hour operation.
- Approve the Conditional Use Permit as recommended by the Director of Planning for the demolition of the existing gas station facility and construction of a new gas station facility with a retail building, without off-sale of alcohol or 24-hour operation.
- Deny the proposed Conditional Use Permit which would allow the continued 24-hour operation of the existing gas station facility.

PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A community meeting was held on August 5, 2010 at Terrell School. Seven members of the public in addition to the applicant, Planning staff and representative from the City Council Office (District 9) were in attendance. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The original staff report and

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supplemental memorandums have been posted on the City's website. Staff has been available to respond to questions from the public. Staff has received comments from interested parties in opposition to the off-sale of alcohol and late-night use, as well as a petition signed by over 100 residents in opposition to the off-sale of alcohol.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

CEQA

Exempt

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Mike Enderby at 408-535-7843

Attachments:

- Draft City Council Resolution
- Planning Commission Staff Report & Attachments
- Appeal Applications
- Applicant Presentation

cc: Applicant/Appellants

DRAFT RESOLUTION NO. _____

Resolution of the City Council of the City of San José approving a request for a Conditional Use to allow the demolition of an existing gas station and the construction of a new gas station with a retail building and new pump canopy, and 24-hour operation for both the gas station and retail, on a 1.28 gross acre site, on the southeast corner of Pearl Avenue and Branham Lane (4610 Pearl Avenue), in San José.

FILE NO. CP09-042

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, a Conditional Use Permit, Permit Application (CP09-042) was filed on August 27, 2009 to allow the demolition of an existing gas station and the construction of a new gas station with a retail building and new pump canopy, and 24-hour operation for both the gas station and retail, and the off-sale of alcohol, on that certain real property (hereinafter referred to as "subject property"), situate in the CP Commercial Pedestrian Zoning District, located on the southeast corner of Pearl Avenue and Branham Lane at 4610 Pearl Avenue, San José, California; and

WHEREAS, the subject property is all that real property described in Exhibit "A", which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting this matter; and

WHEREAS, at said hearing, this City Council received and considered the reports and recommendation of the staff; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Arco AM/PM," dated June 23, 2010. Said plan is on file in the Department of Planning and is available for inspection by

anyone interested therein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is currently zoned CP Commercial Pedestrian.
3. The site is 1.28 gross acres in size.
4. The applicant is requesting a Conditional Use Permit (CUP) to allow the demolition of an existing gas station and the construction of a new gas station with a retail building and new pump canopy, with off-sale of alcohol and 24-hour use.
5. The subject site is surrounded by commercial uses on the north and south, and by single-family residential uses to the east and west.
6. Per Table 20-140 of the San José Municipal Code, a Conditional Use Permit is required for a gasoline service station use in the CP Commercial Pedestrian Zoning District, as well as for the off-sale of alcohol and late night use.
7. Section 20.80.900 of the San Jose Municipal Code states for any off-sale of alcohol establishment closer than one hundred fifty (150) feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.
8. The Evaluation of 24-Hour Uses Policy, 6-27, states:
 - a. Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area.
 - b. 24-hour uses should not be located within 300 feet from any property residentially zoned, planned, or used.
9. The proposed site plan orients the activity on the site to create more of a buffer from the adjacent residential uses.
10. The subject site is located within 500 feet of two existing off-sale of alcohol establishments.
11. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt

from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

12. Said proposal was considered and approved by the Planning Commission on August 25, 2010 to allow the 24 use of the facility, but without the off-sale of alcohol.
13. The project was subsequently appealed by the property owner on the matter of the restriction on the off-sale of alcohol and appealed by the adjacent business owner on the matter of the allowance of 24 hour operations.

FINDINGS

The City Council finds that with respect to the gas station use:

1. The interrelationship between the orientation, location and elevations of the proposed building and structure and other uses on-site are mutually compatible and aesthetically harmonious in that:
 - a. The architectural elements of the proposed structure are integrated into a harmonious whole.
 - b. The proposed structure is comparable in terms of mass, scale, and height.
 - c. Sufficient maneuvering room will be provided on site to allow smooth circulation and minimize interference with other uses.
 - d. Parking spaces are conveniently located in relation to the uses they support.
2. The orientation, location and elevation of the proposed building and structure and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
 - a. The structure proposed on site is comparable in terms of mass, scale, and height with existing adjacent or nearby structures.
 - b. The proposed structure does not unreasonably interfere with the light and air available to adjacent sites.
 - c. The use of the site will not interfere with the use of adjacent properties since sufficient buffering between uses will be provided.
3. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. Under the provisions of Section 15303(c) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
 - b. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California

Department of Fish and Game Code.

4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
 - a. Landscaping will be added to the site and an adequate automatic irrigation system will be provided to support this landscaping.
 - b. Outdoor activities, exterior heating, ventilating, plumbing, utility, and trash facilities will be screened by parapets, fences, walls or other devices compatible with the architectural treatment of the structure.
5. Traffic access, pedestrian access and parking are adequate in that:
 - a. Sufficient driveway curb cuts and driveways will be provided on site to provide access to the site without interfering with off-site circulation.
 - b. Pedestrian walkways will be provided to all major building entrances.
 - c. The proposed number and size of parking spaces complies with the requirements of the Zoning Ordinance.
6. This site has a designation of *General Commercial* on the adopted San José 2020 General Plan Land Use/Transportation Diagram and this application is consistent with this designation.
7. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
8. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and
9. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Further, the City Council finds that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project conforms to the San José Zoning Ordinance.

3. The proposed project is in compliance with the California Environmental Quality Act.
4. The City Council has considered all of the following criteria in evaluating the proposed demolition.
 - a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight, or dangerous condition.
 - b. The failure to approve the permit would jeopardize public health, safety or welfare.
 - c. The approval of the permit should maintain the supply of commercial space in the City of San José
 - d. Rehabilitation or reuse of the existing building would not be feasible.
 - e. The approval of the demolition of the building should facilitate a project which is compatible with the surrounding neighborhood.
 - f. The demolition of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.
5. The benefits of permitting the demolition, removal or relocating of the subject structures outweigh the impacts of the demolition, removal or relocation.

Further, the City Council finds with respect to the off-sale of alcohol:

1. The proposed uses at the location requested will:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This City Council expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and

conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Permit Expiration.** This Conditional Use Permit shall automatically expire four years from and after the date of issuance, if within such time period, the construction of buildings has not commenced, pursuant to an in accordance with the provisions of this Conditional Use Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San Jose Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Uses Allowed.** This Conditional Use Permit allows the following:
 - a. Gasoline Station.
 - b. 24-hour operation of gas station and associated retail use on site.
 - c. No off-sale of alcohol is permitted.
4. **Major Permit Adjustment.** A Major Permit Adjustment is required as set forth in Condition #19.a.i., for Public Works Clearance.
5. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
6. **Allowed Uses.** This permit allows the conditional use of a gas station at the subject property. No other conditional uses are allowed as part of this permit, including off-sale of alcohol and late night use. Standard hours of operation are from 6:00 a.m. to 12:00 Midnight.
7. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

8. **Conformance with Plans.** The use development shall conform to approved plans entitled, "Arco AMPM," dated June 23, 2010, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
9. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
10. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
11. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
12. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
13. **Operations Plan.** Loitering is prohibited on or around the premises or the area under the control of the applicant licensee(s). The project developer/applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. Deliveries are limited to occur between the hours of 7:00 a.m. and 10:00 p.m.
14. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
15. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
16. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the

discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

17. **Construction Impact Measures.** The applicant shall ensure that the following construction impact mitigation measures are fully implemented throughout the duration of construction activities associated with this project. For the purposes of this Permit, "construction" shall mean all on-site activities including site clearing, grading, and construction. Failure to comply with these conditions by the applicant, project contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City.
- a. *Equipment:* Mitigation of construction phase noise at the site shall include the use of quiet or "new technology" equipment, particularly with improved exhaust mufflers. All internal combustion engines used at the project site shall be equipped with the type of muffler recommended by the equipment manufacturer. In addition, all equipment shall be maintained in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train and other components.
 - b. *Construction Hours:* Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite work within 500 feet of any residential unit so as to avoid the more sensitive evening, nighttime and weekend hours.
 - c. *Construction Deliveries:* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
 - d. *Plans:* The construction hours shall be printed on all plans for the project used to construct the project.
 - e. *Fencing:* The site shall be wholly enclosed by security fencing. The gates to the project site shall remain locked during all other times, except for a fifteen-minute period immediately preceding and following the above hours of construction.
 - f. *Construction Employees:* Construction workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
 - g. *Construction Activities:* Construction equipment, materials, and workers shall not be staged on any area of the site within 50 feet of an adjoining property used for residential purposes unless the Director of Planning approves a Permit Adjustment

authorizing such activity. The construction staging area shall not create a public or private nuisance.

- h. *Disturbance Coordinator:* A disturbance coordinator shall be identified by the developer for this project. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other construction-related conditions in this permit.
- i. *Daily Log:* The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinators visits to the project if the coordinator is not solely responsible for this project site. This log shall be available for inspection by City Staff upon request.
- j. *Telephone Contact:* A phone with answering machine for complaints or other communication during non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.
- k. *Signage:* The name and phone number of the disturbance coordinator, the hours of construction limitations, the project contact telephone number, City File Number CP09-015, city contact and phone number (department and phone number) shall be displayed on a weatherproof sign posted at each entrance to the project site.

18. Dust Control/Air Quality. Project construction shall implement the Bay Area Air Quality Management District's list of feasible construction dust control measures. The following construction practices shall be implemented during all phases of construction on the project site:

- a. Water all active construction areas at least twice daily or as often as needed to control dust emissions.
- b. Cover all trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- c. Apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas during construction of the site.
- d. Sweep daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust.
- e. Sweep public streets daily, or as often as needed, with water sweepers, to keep streets free of visible soil material.
- f. Hydro seed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust.

- h. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - i. Replant vegetation in disturbed areas as quickly as possible.
19. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
- a. *Stormwater Runoff Pollution Control Measures:* This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures shall meet the numeric sizing design criteria specified in City Policy 6-29.
 - i. A Major Permit Adjustment is required to be approved for the following.
 - 1) Demonstrate that the fueling area canopy or cover extends a minimum of ten feet in each direction of pump.
 - 2) Separate the fueling area from the rest of the site by a grade break that prevents run-on of stormwater to the maximum extent practicable.
 - 3) Grade the fueling area with the minimum slope necessary to prevent ponding.
 - 4) Connection to the back of existing hooded inlet on Pearl Avenue is not allowed. Provide a separate lateral connection with a manhole.
 - ii. The project's Stormwater Control Plan and numeric sizing calculations is required and shall be in conformance with City Policy 6-29.
 - iii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iv. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating the all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
 - b. *Street Improvements:*
 - i. Verify whether bus stop on Branham Lane is in operation. Remove bus stop furniture if bus stop is non-operational.
 - ii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.

- iii. Remove and replace broken or uplifted curb and gutter along project frontage.
 - iv. Proposed driveway width to be 26'.
 - v. Remove and replace existing handicap ramp at the corner of Branham Lane and Pearl Avenue to meet current CSJ Standard Details.
 - vi. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- c. *Dedication:* The County Assessor's Parcel Map shows the applicant owns Branham Lane and Pearl Avenue to centerline along project frontages. Provide evidence (i.e. Title Report of street) that APN 458-29-038 (see attachment) has been dedicated to the City of San Jose. If this area has not been dedicated, a Separate Instrument Dedication for Roadway Purposes shall be required.
- d. *Storm:* A Major Permit Adjustment is required to be approved for a conceptive grading/drainage plan to show storm lateral connection(s).
- e. *Minor Improvement Permit:* The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- f. *Transportation:* The projected traffic for this project was reviewed and determined that no further traffic analysis is required.
- g. *Grading/Geology:*
- i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iii. If this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - iv. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit.
- h. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

i. *Undergrounding:*

- i. The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Pearl Avenue prior to issuance of a Public Works clearance. One hundred percent (100%) of the base fee in place at the time of payment will be due. Currently, the 2009 base fee is \$395 per linear foot of frontage and is subject to change every January 1st based on the Engineering News Record's 20 City Average Cost Index. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
- ii. The Director of Public Works may, at her discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Pearl Avenue. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.

j. *Electrical:*

- i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans
- ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.

k. *Street Trees:*

- i. The locations of the street trees will be determined at the street improvement stage.
- ii. Contact the City Arborist at (408) 277-2756 for the designated street tree.
- iii. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings.

20. **Demolition.** The structures to be removed will be surveyed for the presence of asbestos-containing materials at the demolition permit stage; and if any suspect ACM are present, they will be sampled prior to demolition in accordance with NESHAP guidelines, and all potentially friable ACM will be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with NESHAP, Cal-OSHA and BAAQMD requirements. The structures to be removed will be surveyed for the presence of lead based paint at the demolition permit stage; and if any suspect LBP is present, it will be sampled prior to demolition, and all potential LBP will be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with EPA and OSHA requirements.

21. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans:* This permit file number, CP09-042, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card:* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Americans With Disabilities Act:* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
 - d. *Street Number Visibility:* Street numbers of the buildings shall be easily visible at all times, day and night.
22. **Fire Clearance.** A Fire Clearance shall be obtained from Fire Chief (408) 535-3555) prior to the issuance of a building permit.
23. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
24. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City

In accordance with the findings set forth above, a Conditional Use permit to use the subject property for said purpose specified above is hereby approved.

Approved this 26th day of October, 2010 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

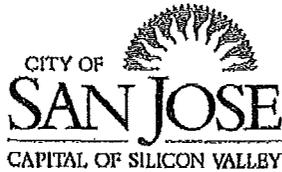
Mayor

ATTEST:

Joseph Horwedel, Secretary

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.



CITY OF SAN JOSE

Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER <i>CP09-042</i>	RECEIPT #
PROJECT LOCATION <i>4610 PEARL AVE.</i>	AMOUNT <i>2259.90</i>
	DATE <i>9/2/10</i>
	BY <i>[Signature]</i>

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

4610 PEARL AVENUE, (S.E. CORNER OF PEARL AND BRANHAM)

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

THE APPLICANT REQUESTS AN APPEAL OF THE PLANNING COMMISSION DECISION TO DENY THE OFF-SALE OF BEER AND WINE FOR LIMITED HOURS FOR THE PROPOSED 24 HOUR CONVENIENCE STORE THAT WAS RECOMMENDED.

PERSON FILING APPEAL

NAME FRED STERN (ARCHITECT FOR GURVINDER AUJLA)	DAYTIME TELEPHONE (602) 954-4061
ADDRESS <i>713 W COOLIDGE STREET</i>	CITY PHOENIX
	STATE AZ
	ZIP CODE 85013
SIGNATURE <i>[Signature]</i>	DATE <i>9/1/10</i>
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) APPLICANT	

**CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)**

NAME FRED STERN			
ADDRESS <i>713 W. COOLIDGE STREET</i>		CITY PHOENIX	STATE AZ
		ZIP CODE 85013	
DAYTIME TELEPHONE (602) 954-4061	FAX NUMBER (602) 954-3948	E-MAIL ADDRESS fstern@cox.net	

PROPERTY OWNER

NAME GURVINDER AUJLA	DATE <i>9/1/10</i>
ADDRESS <i>3159 W. BUCKEYE ROAD</i>	CITY PHOENIX
	STATE AZ
	ZIP CODE 85009

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

CP09-042.

4610 Pearl Ave. 95136



CITY OF SAN JOSE

Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER	CP09-042	RECEIPT #	587203
PROJECT LOCATION	4610 Pearl Ave.	AMOUNT	\$100
		DATE	9-3-10
		BY	P. Rappin
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):			
Two 24 hr stores Right Next to One another. Concern of:			
- traffic safety; noise, garbage, graffiti, loitering			
- 6 schools & parks within 1 mile			
PERSON FILING APPEAL			
NAME	BOON TAN	DAYTIME TELEPHONE	(408) 375 6765
ADDRESS	4630 Pearl Ave	CITY	San Jose
		STATE	CA
		ZIP CODE	95136
SIGNATURE		DATE	09/03/10
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet)			
34 yrd			
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
ADDRESS			
CITY			
STATE			
ZIP CODE			
DAYTIME TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
()	()		
PROPERTY OWNER			
NAME			DATE
ADDRESS			
CITY			
STATE			
ZIP CODE			

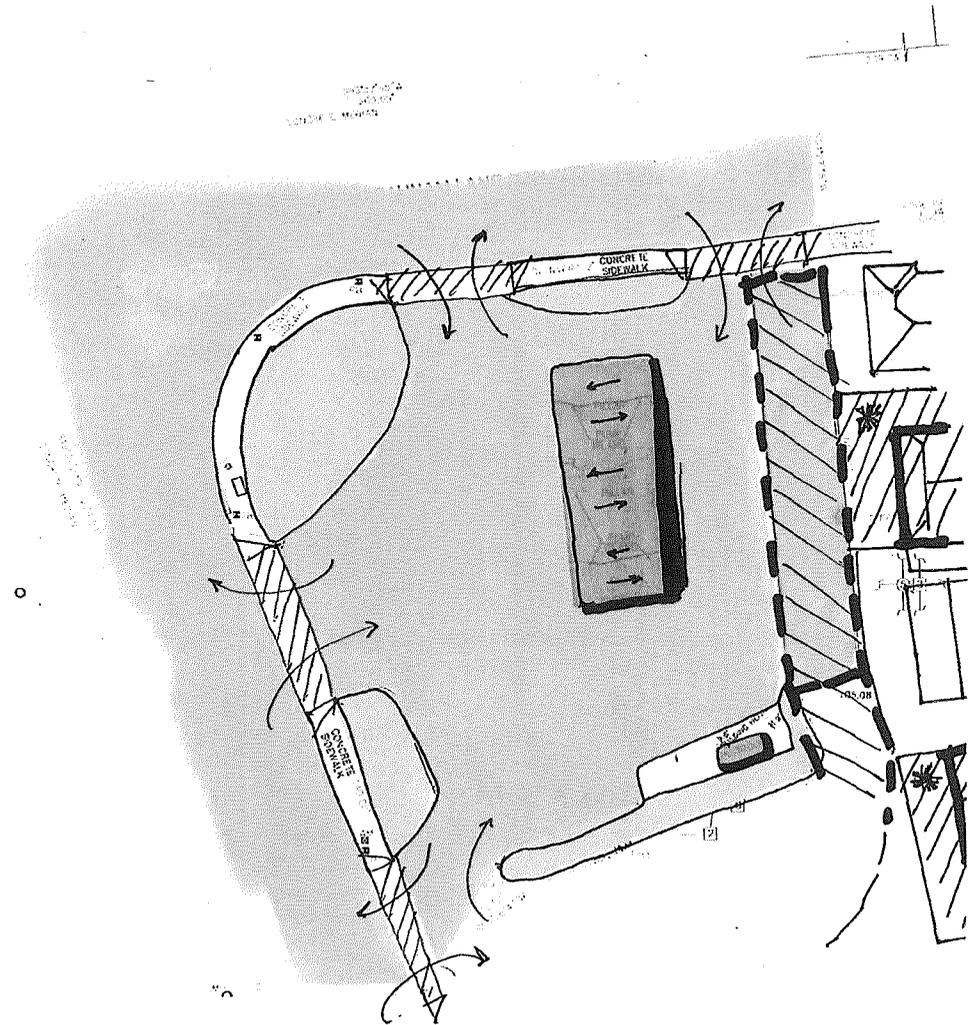
PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

THE EXISTING STATION HAS 5 DISPENSERS AND A CASHIER KIOSK LOCATED UNDER THE EXISTING CANOPY WITH DISPENSERS ORIENTED TO WHERE VEHICLES MAY FACE TOWARDS THE RESIDENCES THAT ADJOINS THE FACILITY DIRECTLY TO THE EAST. THERE IS ALSO AN ISOLATED RESTROOM THAT IS IN THE SOUTHEAST CORNER OF THE LOT.

THE EAST SIDE OF THE PROPERTY IS OWNED BY SOUTHLAND CORPORATION AND IS A TRACT THAT IS RESERVED FOR ACCESS TO THE 7-ELEVEN PROPERTY TO THE SOUTH.

ACCESS ON AND OFF THE PROPERTY IS ACCOMPLISHED WITH TWO DRIVEWAYS ON PEARL AND TWO ON BRANHAM ALONG WITH THE EASEMENT FOR ACCESS TO THE 7-ELEVEN.

THERE ARE CURRENTLY TWO OFF-SALE LIQUOR LICENSES IN THIS TRACT AND ADDING ONE MORE WOULD NOT MAKE THE TRACT OVERCONCENTRATED. THIS WOULD STILL ALLOW FOR 2 MORE LICENSES, INCLUDING FOR A GROCERY IF THERE WAS A STORE THAT WANTED TO BUILD IN THE NEIGHBORHOOD.



THE IMPROVEMENTS WE ARE SUGGESTING WOULD:

RE-ORIENT THE CANOPY SO THAT CARS FUELING AT THE CANOPY ARE NOT FACING TOWARD THE YARDS...

INSTALL MULTIPLE SECURITY CAMERAS IN ORDER TO INCREASE SURVEILLANCE ON SITE AND INCREASE THE SECURITY FOR THE ENTIRE NEIGHBORHOOD...

CLOSE THE WEST DRIVEWAY ALONG BRANHAM AND ACCESS FROM THE SOUTH DRIVEWAY ALONG PEARL IN ORDER TO IMPROVE SAFE CIRCULATION ON AND OFF THE SITE...

DIRECT ACCESS AND ACTIVITY TOWARD THE CORNER OF PEARL AND BRANHAM – AWAY FROM THE RESIDENTIAL AREA...

ENCLOSE THE DUMPSTER AREA AND INSTALL A "ROOF" OVER THE DUMPSTER AREA...

IN ADDITION WE WILL PROVIDE A CARDBOARD COMPACTOR IN ORDER TO REDUCE THE TRASH TRUCK TRIPS...

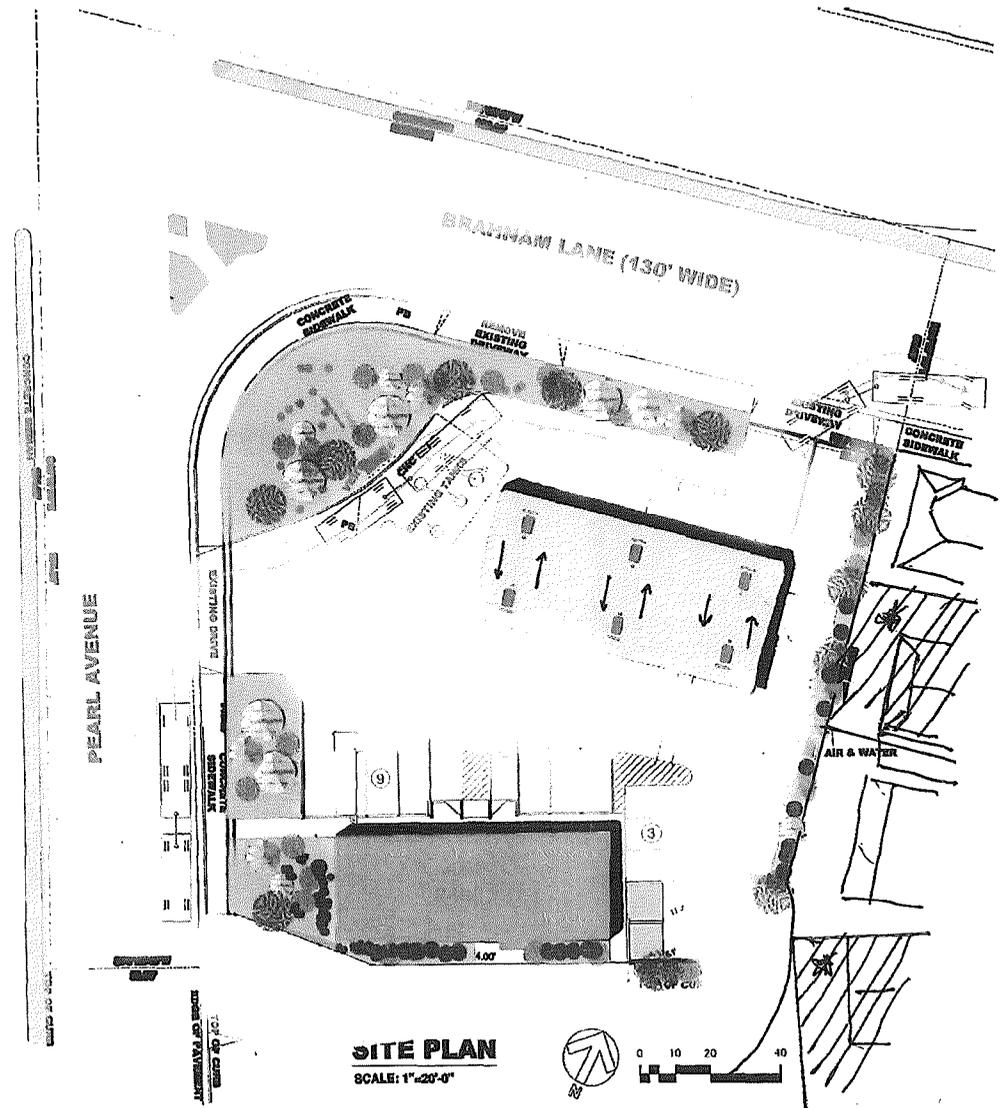
MINIMIZE DELIVERIES AND MAKE THEM FROM THE FRONT OF THE STORE...

HAVE PERSONNEL PICK UP LOOSE TRASH IN THE NEIGHBORHOOD...

DESIGN THE LIGHTING TO BE CUT-OFF TYPE LIGHTING AND RECESSED CANOPY LIGHTS SO THAT THE SITE IS SECURELY LIT, AND REDUCE THE LIGHTING IMPACT...

ADD ADDITIONAL STORE PERSONNEL ON SITE TO DEAL WITH ANY PROBLEMS. (MIN 2)...

APPROVAL OF THE 24 HOUR OPERATION AND THE OFF-SALE OF BEER AND WINE WOULD "SIGNIFICANTLY" REDUCE THE NUMBER OF TRIPS BEHIND THE RESIDENCES TO THE EAST.



ARCO WILL NOT RELINQUISH THE 24 HOUR FUEL SALES THAT IS CURRENTLY IN PLACE.

WHY LOSE THE INCOME FROM THE ALREADY OPERATING 24 HOUR FUEL SALES? DOES THIS MAKE ANY SENSE?, AND TO HAVE 24 HOUR FUEL SALES AND NOT HAVE THE CONVENIENCE STORE OPERATE 24 HOURS DOES NOT WORK. THE STORE DESIGN IS DESIGNED IN ORDER TO PROVIDE THE MAXIMUM VISIBILITY AND SECURITY FOR THE ATTENDANTS AND PEOPLE PAYING BY CASH SHOULD BE ABLE TO ACCESS THE STORE IN ORDER TO PAY.

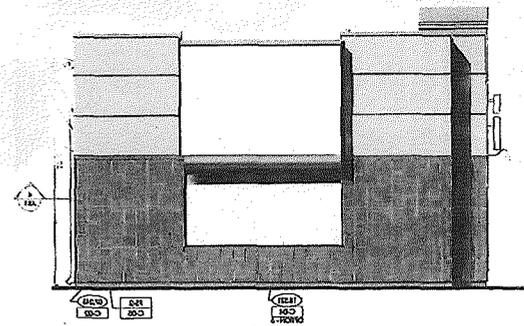
IF THIS WERE AN EMPTY BLOCK AND YOU WERE TO CHOOSE THE LOCATION FOR A GAS STATION/CONVENIENCE STORE I WOULD VENTURE TO SAY THE PLANNING DEPARTMENT AND THIS COUNCIL WOULD RECOMMEND LOCATING AT THE CORNER, AS OUR PROJECT IS LOCATED, NOT, MIDBLOCK WHERE IT MORE IMPACTS THE NEIGHBORHOOD.

THERE IS NO WAY WE CAN CONVINCE THE 7-ELEVEN OWNER OR THE OWNER OF THE WINE STORE THAT OUR REQUEST IS GOOD FOR THEM, EVEN THOUGH WE WOULD REPRESENT NO MORE COMPETITION WITH THE WINE STORE THAN PRESENTLY EXISTS WITH THE 7-ELEVEN.. THE REALITY IS THAT WE ARE COMPETITION AND COMPETITION IS GOOD FOR THE COMMUNITY. THE INCREASED GAS SALES WILL ALLOW US TO GIVE THE NEIGHBORHOOD REDUCED PRICING ON CONVENIENCE ITEMS AND THE CONVENIENCE STORE, INCLUDING THE SALE OF BEER AND WINE, WILL ALLOW THE ARCO TO REDUCE THE PRICE OF FUEL TO MORE AGGRESSIVELY COMPETE WITH OTHER GAS STATIONS IN THE AREA.

THIS PROJECT REPRESENTS A \$3,000,000.00 INVESTMENT FOR THE LOCAL ECONOMY, IT WILL PROVIDE ENHANCED SECURITY ALONG WITH THE MULTIPLE ENHANCEMENTS THAT WE HAVE PROPOSED.



① **FRONT ELEVATION - WOR**
1/4"=1'-0"



② **LEFT ELEVATION - WOR**
1/4"=1'-0"

ONLY 2 DAYS BEFORE WE FIRST APPEARED BEFORE THE PLANNING COMMISSION, WE WERE INFORMED THAT THERE WAS PROTEST AND THAT A PETITION WAS SUBMITTED TO THE PLANNING DEPARTMENT. WHEN WE DISCOVERED THIS WE REQUESTED THAT THE ITEM BE DEFERRED SO THAT WE HAD AN OPPORTUNITY TO REACH OUT TO THE NEIGHBORHOOD AND DISCUSS THEIR CONCERNS. THESE PETITIONS WERE SIGNED BEFORE WE WERE ABLE TO MEET WITH THE NEIGHBORS AND RESPOND. WE WERE INVITED TO THE ERIKSON NEIGHBORHOOD ASSOCIATION AT THEIR JUNE 28 MEETING, BUT WERE THEN TOLD WE WOULD NOT BE ABLE BE PLACED ON THE AGENDA. WE ATTENDED THE TANGLEWOOD TOWN MEETING TO HEAR THEIR CONCERNS AND PROPOSED SOLUTIONS TO RESOLVE THOSE ISSUES. WE THEN NOTIFIED THE LANDOWNERS AND RESIDENTS WITHIN A 600' RADIUS OF OUR OWN MEETING THAT WAS HELD AT THE TERRELL ELEMENTARY SCHOOL WHERE WE OUTLINED OUR IMPROVEMENT PLAN, INCLUDING A DONATION OF UP TO \$10,000.00 FOR A TRAFFIC LIGHT AT ADAMO AND PEARL.

WE FEEL WE HAVE PROPOSED SOLUTIONS THAT CAN PROVIDE AN IMPROVED, UPGRADED, VISUALLY PLEASING, MORE SECURE CORNER THAN CURRENTLY EXISTS, IN FACT WE HAVE THE APPROVAL OF TWO OF THE MOST IMMEDIATE AFFECTED NEIGHBORS WHO BACK UP TO THE PROJECT AND WILL SPEAK ON OUR BEHALF.

A LETTER FROM A REPRESENTATIVE OF THE ERIKSON NEIGHBORHOOD ASSOCIATION COMMENDS US FOR ATTEMPTING TO IMPROVE THE PROPERTY AND THE IMPROVEMENTS WE PROPOSE. THEY ARE CONCERNED ABOUT POTENTIAL INCREASE IN FAST FOOD LITTER. THAT IS NOT EXPECTED IN THAT THERE WOULD BE NO MORE LITTER THAN ALREADY IS PRODUCED BY THE 7 ELEVEN AND OUR ATTENDANTS ARE BETTER ORIENTED TO POLICE THE CORNER FROM LITTER, LOITERING, LATE NIGHT NOISE, AND INCREASED GRAFFITI. THIS PROPOSAL WOULD NOT NEGATIVELY AFFECT ANY OF THESE EXISTING PROBLEMS, BUT WOULD HELP RESOLVE THEM.

