

Hearing Date: April 3, 2012File Number: 2011-7502

SUBJECT: ARCO/Silicon Valley Fuels: Appeal of a Planning Commission decision to approve a project located at **1697 S. Wolfe Rd.** in a C-1/PD Zoning District (APN: 309-51-027):
Motion **2011-7502**- Special Development Permit to allow the sale of beer and wine at an existing Arco automobile service station convenience store.

REPORT IN BRIEF:

Existing Site Conditions Automobile service station

Surrounding Land Uses

North	Liquor store
South	Shopping center (Cupertino Square)
East	Restaurant and offices
West	Restaurant

Issues Public safety

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

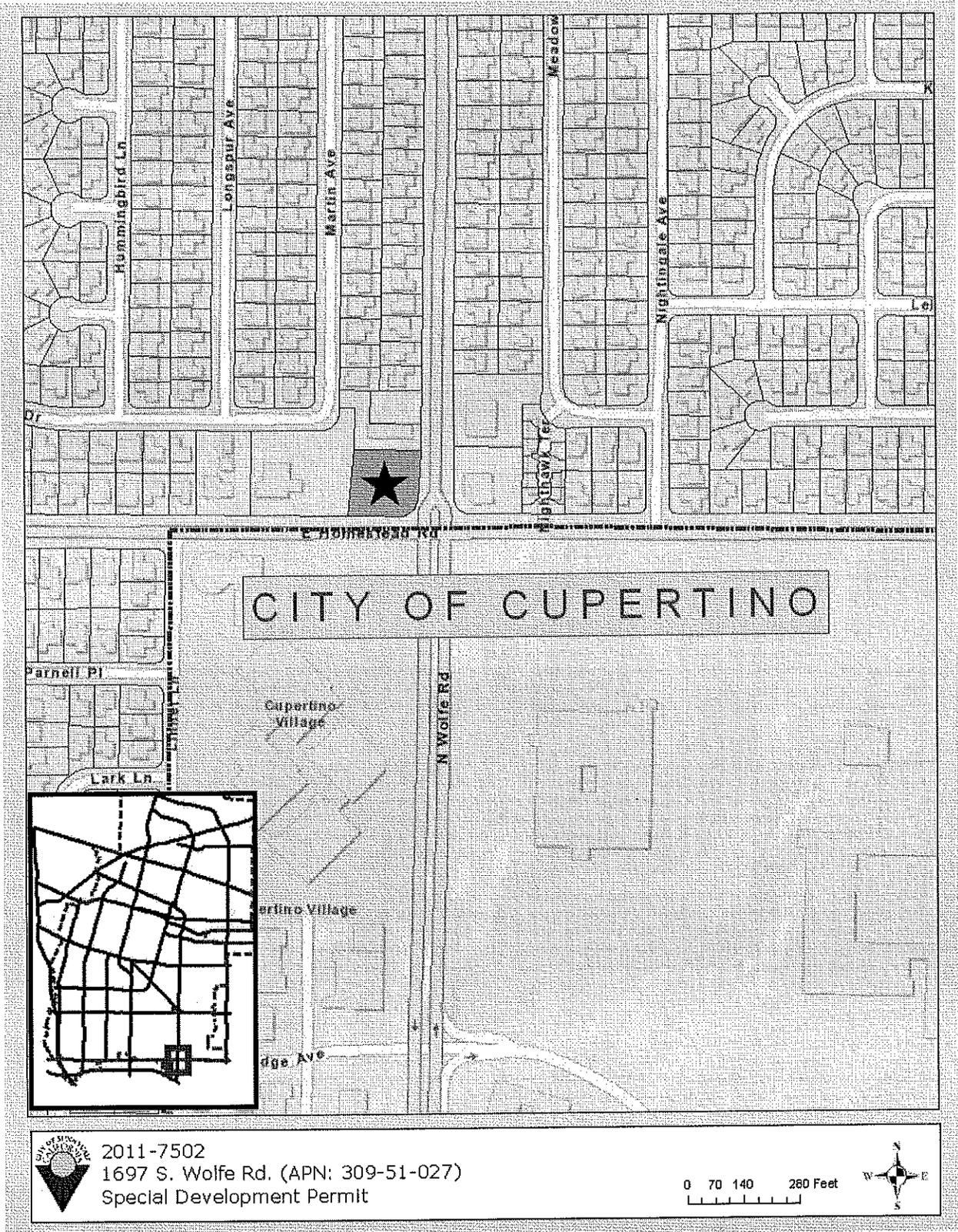
Zoning Approve with conditions

Administrator Action

Planning Commission Action Denied the appeal and approved the Special Development Permit upholding the decision of the Zoning Administrator

Staff Recommendation Deny the appeal and uphold the Planning Commission's decision to approve the Special Development Permit

VICINITY MAP



2011-7502
1697 S. Wolfe Rd. (APN: 309-51-027)
Special Development Permit

0 70 140 280 Feet



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Commercial Neighborhood Shopping	Same	Commercial Neighborhood Shopping
Zoning District	C-1/PD	Same	C-1/PD
Lot Size (s.f.)	23,400	Same	None
Gross Floor Area (s.f.)	1,672	Same	16,380 max.
Parking			
Total Spaces	23 (11 uncovered plus 12 under fuel canopies)	Same	19 min.

BACKGROUND:

The property owner proposes to offer the sale of beer and wine for off-site consumption within the service station's existing convenience store. A Zoning Administrator hearing was held for the proposed project on September 14, 2011. Several members of the public were present and voiced concerns regarding public safety and business competition with an adjacent liquor store. Based on staff's analysis and public testimony, the project was approved. An appeal request was submitted by the business owner of an adjacent liquor store (Wolfe Liquors).

A Planning Commission public hearing was subsequently held on November 14, 2011 to consider the appeal. The decision by the Zoning Administrator Hearing Officer was upheld with a 6-0 vote (one Commissioner absent). Wolfe Liquors submitted a second appeal request on November 23, 2011 (see Attachment E).

Previous Actions on the Site

Prior to consideration of the subject permit, a Miscellaneous Plan Permit was approved in 2008 to allow grocery sales at this service station (File Number 2008-0020). As part of the permit, the property owner was required to correct any violations, and install security measures, such as security cameras. These security measures were implemented and verified by the Department of Public Safety's Neighborhood Preservation Division in 2008 and are still in place.

DISCUSSION:**Special Development Permit**

The property owner proposes to offer the sale of beer and wine for off-site consumption within the service station's existing convenience store. Beer and

wine will be stored within existing coolers and shelves within the store. With the exception of additional security measures required by the Zoning Administrator, no additional physical changes are proposed to the building interior or exterior.

Hours of Operation

The applicant currently proposes to maintain the existing hours of operation for the convenience store, which are from 5:30 a.m. to midnight, seven days a week. Hours of operation for service stations with convenience stores are not generally restricted by the City in low-crime neighborhoods. In fact, it is not uncommon for service stations with convenience stores (with or without alcohol sales) to operate twenty-four hours a day. For example, at least two gas stations (Chevron stations at El Camino Real/Mary and Fair Oaks/Arques) have been approved for alcohol sales with no city-imposed restrictions on the hours of operation.

Staff has consulted with the California Department of Alcoholic Beverage Control (ABC), which is the state governing authority over alcohol sales. As part of their permitting process, there is a general restriction of alcohol sales between 2 a.m. and 6 a.m. Additional restrictions may be warranted if there is an "overconcentration" of off-sale of beer and wine (for consumption off-site), which is defined as four or more facilities within a census tract. ABC has indicated that this facility would be the third, which is not considered to be an "overconcentration".

Department of Public Safety Review

Planning staff has also consulted with the Sunnyvale Department of Public Safety (DPS) on this project. DPS does not believe the addition of off-sale beer and wine will be detrimental to surrounding persons or properties, nor will it be detrimental to the public health, safety, or welfare. DPS also commented that they do not have concerns with a twenty-four hour operation in this low-crime neighborhood, and finds that ABC's restrictions for alcohol sales are adequate to reduce potential public safety impacts.

To further 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:

- No beer or wine shall be displayed within 5 feet of the cash register or front door unless inside a permanently-affixed cooler,
- No advertisements for beer or wine shall be displayed at motor fuel islands,
- Employees on duty between the hours of 10 p.m. and 2 a.m. who sell beer and wine shall be at least 21 years old, and
- The sale of single servings of beer or wine is prohibited.

The applicant is in agreement with these conditions, which are contained in staff's recommended conditions of approval in Attachment B.

Zoning Administrator Hearing

On September 14, 2011, the Zoning Administrator approved the Special Development Permit to sell beer and wine at this site. Several members of the public were present and voiced concerns regarding public safety and business competition with an adjacent liquor store.

Based on staff's analysis and public testimony, the Zoning Administrator was able to make the findings to approve the permit and added a condition to require a security plan for the area behind the service bays and the lot periphery where it adjoins the adjacent lots to the north (area of concern for the residents), which may involve the installation of additional cameras, lighting and signs specifying the contact information for the property owner and on-site manager (see Attachment B, Condition of Approval AT-5). An appeal was subsequently submitted by the owner of the adjacent liquor store (Wolfe Liquors) on September 30, 2011.

Planning Commission Hearing

A Planning Commission public hearing to consider the appeal was held on November 14, 2011, and similar concerns were expressed by the appellant and a neighboring resident. The Commissioners concurred with staff's recommendation and found the recommended conditions of approval to be adequate in addressing the concerns from the public. The Planning Commission voted 6-0 to uphold the Zoning Administrator's decision and approve the Special Development Permit. A second appeal request was submitted by Wolfe Liquors on November 23, 2011.

Appeal

Wolfe Liquors is located adjacent to the project site to the north. The owner of Wolfe Liquors has appealed the decision to approve the Special Development Permit based on the following (see Attachment E):

1. Residents were not adequately informed of applicant's intention to convert the existing convenience store to an AM/PM brand mart.
2. Approval of alcohol sales at this site, along with a twenty-four hour operation, may increase crime and loitering within the neighborhood.
3. Additional security measures requested by the Zoning Administrator, such as lighting, may impact the property value of neighboring homes.

Staff's Response to Appeal

The following is staff's response to the appeal:

1. The name or affiliation of the convenience store (e.g. AM/PM or generic "convenience store") is not a land use issue; it is a private decision that a property owner makes. The use as a convenience store will be

maintained, regardless of the name or operator. The only issue that is discretionary is the off-sale license for beer and wine.

2. As discussed in other sections of the report, the Department of Public Safety does not find that safety is compromised by approval of this permit and does not find it necessary to restrict the hours of operation of either the convenience store or the sale of beer/wine beyond those restrictions that may be imposed by ABC. In addition, approval of off-sale beer and wine at this site is not considered by ABC to be an "overconcentration" within this census tract. There are restaurants within the vicinity (adjacent to the site and also at the Cupertino Village Shopping Center) which may also serve alcohol for on-site consumption, but are not included in ABC's definition of "overconcentration" of off-sale licenses. Much of the security issues cited in the letter are associated with the parking lot behind Wolfe Liquors, which is not readily visible from the street. The ARCO gas station is on an entirely different parcel and is reasonably visible from Homestead and Wolfe Road. This corner is generally active, which may discourage loitering.
3. Sunnyvale Municipal Code Section 19.42.050 requires that "lights be shielded or equipped with special lenses in such a manner as to prevent any glare or direct illumination on any public street or other property". As recommended, the additional security measures will be reviewed by staff to ensure that they meet the intent of the condition and codes, which is to create a well-lit, visible and secure environment around the entire perimeter of the gas station site.

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemptions include minor changes in use.

FISCAL IMPACT

No fiscal impacts other than normal fees and taxes are expected.

PUBLIC CONTACT

With the exception of the appellant's letter, staff has received one additional letter from an adjacent resident that currently lives in a two-story house behind Wolfe Liquors (Attachment F). The resident states that although the parking lot of ARCO is well lit, approval of the permit may increase the amount of loitering in the parking lot behind the Wolfe Liquors, which is not well-lit and has limited street visibility. The resident further states that when loitering occurs behind the liquor store, he currently contacts the liquor store owner to resolve the issue and does not contact the Department of Public Safety.

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> • Published in the <i>Sun</i> newspaper 	<ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Web 	<ul style="list-style-type: none"> • Posted on the City's official notice

<ul style="list-style-type: none"> • Posted on the site • 45 notices mailed to property owners and residents adjacent to the project site. 3 email notices were sent out to interested residents. 	<p>site</p> <ul style="list-style-type: none"> • Provided at the Reference Section of the City of Sunnyvale's Public Library 	<p>bulletin board</p> <ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Web site
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CONCLUSION

Discussion: With consultation with the Department of Public Safety and the California Alcoholic Beverage Control, staff finds that approval of the project, with or without a twenty-four hour operation, will result in minimal public safety impacts. In addition, the public safety concerns expressed by the appellant and neighbors do not appear to be associated with the ARCO gas station, which is located on a corner property with reasonable lighting and street visibility and is not directly adjacent to residential properties. Staff finds that public safety concerns will be reduced with implementation of the conditions of approval.

The Planning Commission asked staff to contact the adjacent property owner (Wolfe Liquors) and ask if he would consider consulting with Public Safety for recommended measures to reduce loitering. Public Safety staff reviewed the site and made specific recommendations for modified lighting to the rear parking area at Wolfe Liquors. Staff has provided these suggestions to the owner of Wolfe Liquors.

Findings and General Plan Goals: Staff was able to make the required Findings based on the justifications for the Special Development Permit. Recommended Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Recommended Conditions of Approval are located in Attachment B.

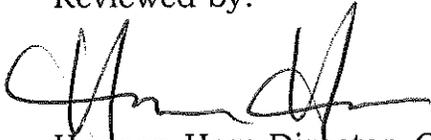
ALTERNATIVES

1. Deny the appeal and uphold the Planning Commission's decision to approve the Special Development Permit with attached conditions.
2. Deny the appeal and uphold the Planning Commission's decision to approve the Special Development Permit with modified conditions.
3. Grant the appeal and deny the Special Development Permit.

RECOMMENDATION

Alternative 1: Deny the appeal and uphold the Planning Commission's decision to approve the Special Development Permit.

Reviewed by:

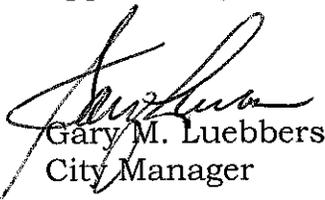


Hanson Hom Director, Community Development Department

Reviewed by: Trudi Ryan, Planning Officer

Prepared by: Noren Caliva, Associate Planner

Approved by:



Gary M. Luebbers
City Manager

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans
- D. Letter from the Applicant
- E. Appeal Letter
- F. Letter from a Neighbor
- G. Minutes from the Zoning Administrator Hearing of September 14, 2011
- H. Map of Nearby Properties with Off-Site Sale of Alcohol
- I. Minutes from the Planning Commission Hearing of November 14, 2011

RECOMMENDED FINDINGS

Special Development Permit

Goals and Policies that relate to this project are:

1. 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 off-site 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.

Staff is not able to make finding 1.a. as there are two businesses with off-sale alcohol sales within 500 feet of the property, Wolfe Liquors at 1689 S. Wolfe Road (Sunnyvale) and 99 Ranch Market at 10983 N. Wolfe Road (Cupertino). Although there are no public parks or schools within 500 feet of the property, it should also be noted that there is a privately-owned preschool approximately 150 feet away at Good Samaritan United Methodist Church across Homestead Road at 19624 Homestead Road (Cupertino).

Staff was not able to make the finding 1a.

2. 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.

A study issue (2007-0264) completed in 2007, which revised the Municipal Code to allow for grocery and alcohol sales with permits, found that crime is associated more with site-specific and operational issues, rather than the type of product sold on the premises. The Department of Public Safety still finds crime to be low within this neighborhood, and has no concerns with the off-sale beer and wine at this location, with or without a twenty-four hour operation. In addition, the property is located on a well-lit corner lot, with reasonable visibility along both street frontages. This corner is generally active, and may discourage loitering. As a result, the project will not be detrimental to surrounding persons or properties, will not adversely affect surrounding property values, nor will it be detrimental to the public health, safety, or welfare. Therefore, findings 2.a. – 2.c. can be made.

The project is expected to have minimal impacts on neighboring properties.

ATTACHMENT B
RECOMMENDED
CONDITIONS OF APPROVAL AND
STANDARD DEVELOPMENT REQUIREMENTS
APRIL 3, 2012

Planning Application 2011-7502
1697 S. Wolfe Road

Special Development Permit to allow the sale of beer and wine at an existing
Arco automobile service station convenient store.

The following Conditions of Approval [COA] and Standard Development Requirements [SDR] apply to the project referenced above. The COAs are specific conditions applicable to the proposed project. The SDRs are items which are codified or adopted by resolution and have been included for ease of reference, they may not be appealed or changed. The COAs and SDRs are grouped under specific headings that relate to the timing of required compliance. Additional language within a condition may further define the timing of required compliance. Applicable mitigation measures are noted with "Mitigation Measure" and placed in the applicable phase of the project.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following Conditions of Approval and Standard Development Requirements of this Permit:

**GC: THE FOLLOWING GENERAL CONDITIONS OF APPROVAL AND
STANDARD DEVELOPMENT REQUIREMENTS SHALL APPLY TO THE
APPROVED PROJECT.**

GC-1. CONFORMANCE WITH APPROVED PLANNING APPLICATION:

All building permit drawings and subsequent construction and operation shall substantially conform with the approved planning application, including: drawings/plans, materials samples, building colors, and other items submitted as part of the approved application. Any proposed amendments to the approved plans or Conditions of Approval are subject to review and approval by the City. The Director of Community Development shall determine whether revisions are considered major or minor. Minor changes are subject to review and approval by the Director of Community Development. Major changes are subject to review at a public hearing. [COA] [PLANNING]

GC-2. USE EXPIRATION:

The approved use Permit for the use shall expire if the use is discontinued for a period of one year or more. [SDR] (PLANNING)

GC-3. PERMIT EXPIRATION:

The permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date and is approved by the Director of Community Development. [SDR] (PLANNING)

GC-4. ALCOHOL BEVERAGE CONTROL (ABC):

The project applicant shall obtain all appropriate and/or licenses from the Department of Alcoholic Beverage Control prior to commencement of use approved as part of this permit. [COA] [PLANNING]

GC-5. USE AND ABC COMPLIANCE:

Non-compliance with the Conditions of Approval for this planning application or the requirements of the Department of Alcoholic Beverage Control at any time may trigger either reconsideration (discretionary review of new application) of the SDP and the imposition of additional Conditions of Approval or the initiation of the revocation process by the Director of Community Development. [COA] [PLANNING]

GC-6. NOTICE OF CONDITIONS OF APPROVAL:

A Notice of Conditions of Approval shall be filed in the official records of the County of Santa Clara and provide proof of such recordation to the City prior to issuance of any City permit, allowed use of the property, or Final Map, as applicable. The Notice of Conditions of Approval shall be prepared by the Planning Division and shall include a description of the subject property, the Planning Application number, attached conditions of approval and any accompanying subdivision or parcel map, including book and page and recorded document number, if any, and be signed and notarized by each property owner of record.

For purposes of determining the record owner of the property, the applicant shall provide the City with evidence in the form of a report from a title insurance company indicating that the record owner(s) are the person(s) who have signed the Notice of Conditions of Approval. [COA] [PLANNING]

AT: THE FOLLOWING SHALL BE COMPLIED WITH AT ALL TIMES THAT THE USE PERMITTED BY THIS PLANNING APPLICATION OCCUPIES THE PREMISES.

AT-1. DISPLAY NEAR FRONT DOOR (SERVICE STATIONS ONLY):

No beer or wine shall be displayed within 5 feet of the cash register or front door unless it is inside a permanently-affixed cooler. [SDR] [PLANNING]

AT-2. DISPLAY AT MOTOR FUEL ISLANDS (SERVICE STATIONS ONLY):
No advertisement of alcoholic beverages shall be displayed at motor fuel islands. [SDR] [PLANNING]

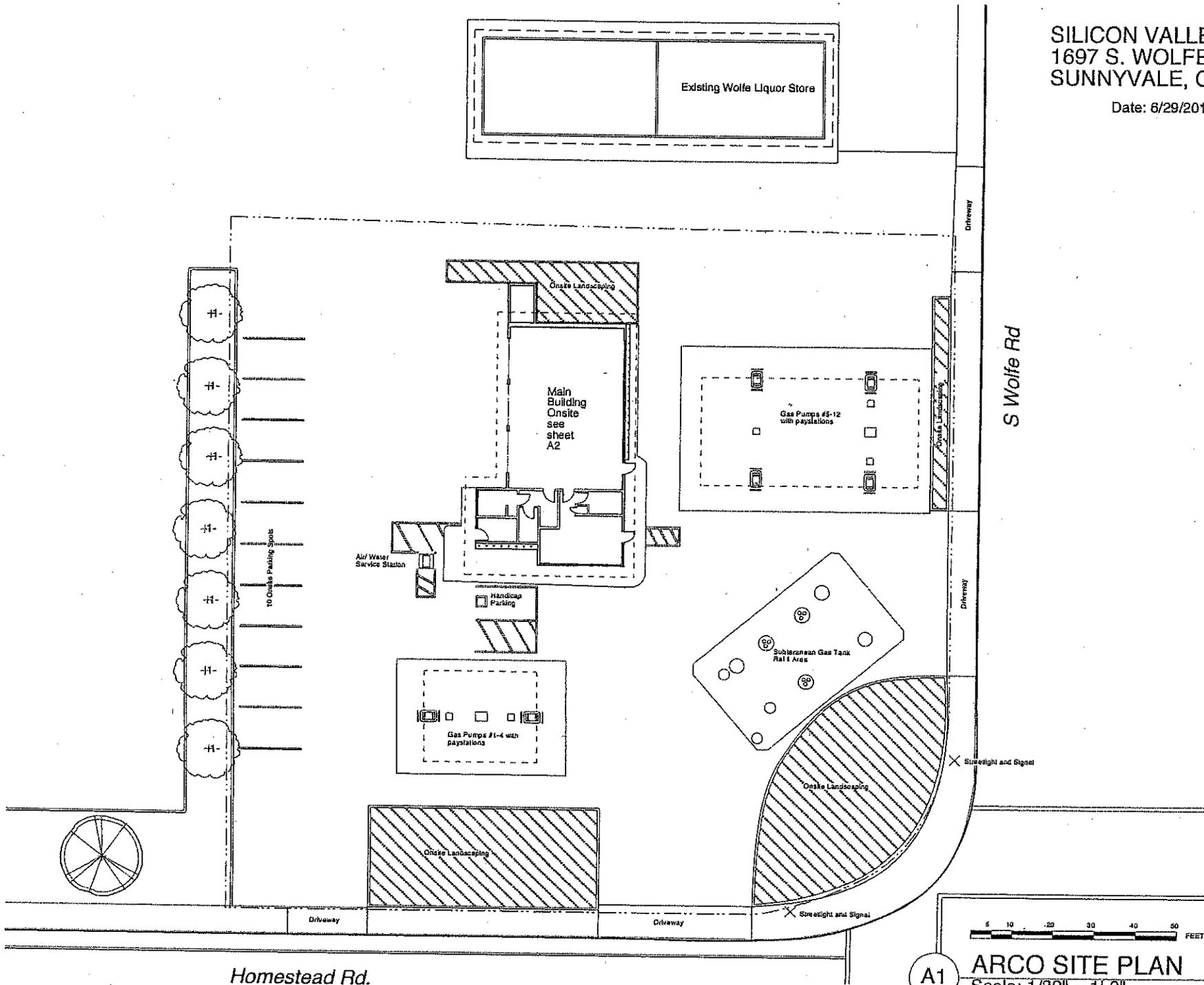
AT-3. EMPLOYEE AGE (SERVICE STATIONS ONLY):
Employees on duty between the hours of 10:00 p.m. and 2:00 a.m. who sell beer or wine shall be at least 21 years old. [SDR] [PLANNING]

AT-4. PROHIBITION OF SINGLE SERVINGS SALES (SERVICE STATIONS ONLY):
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." [SDR] [PLANNING]

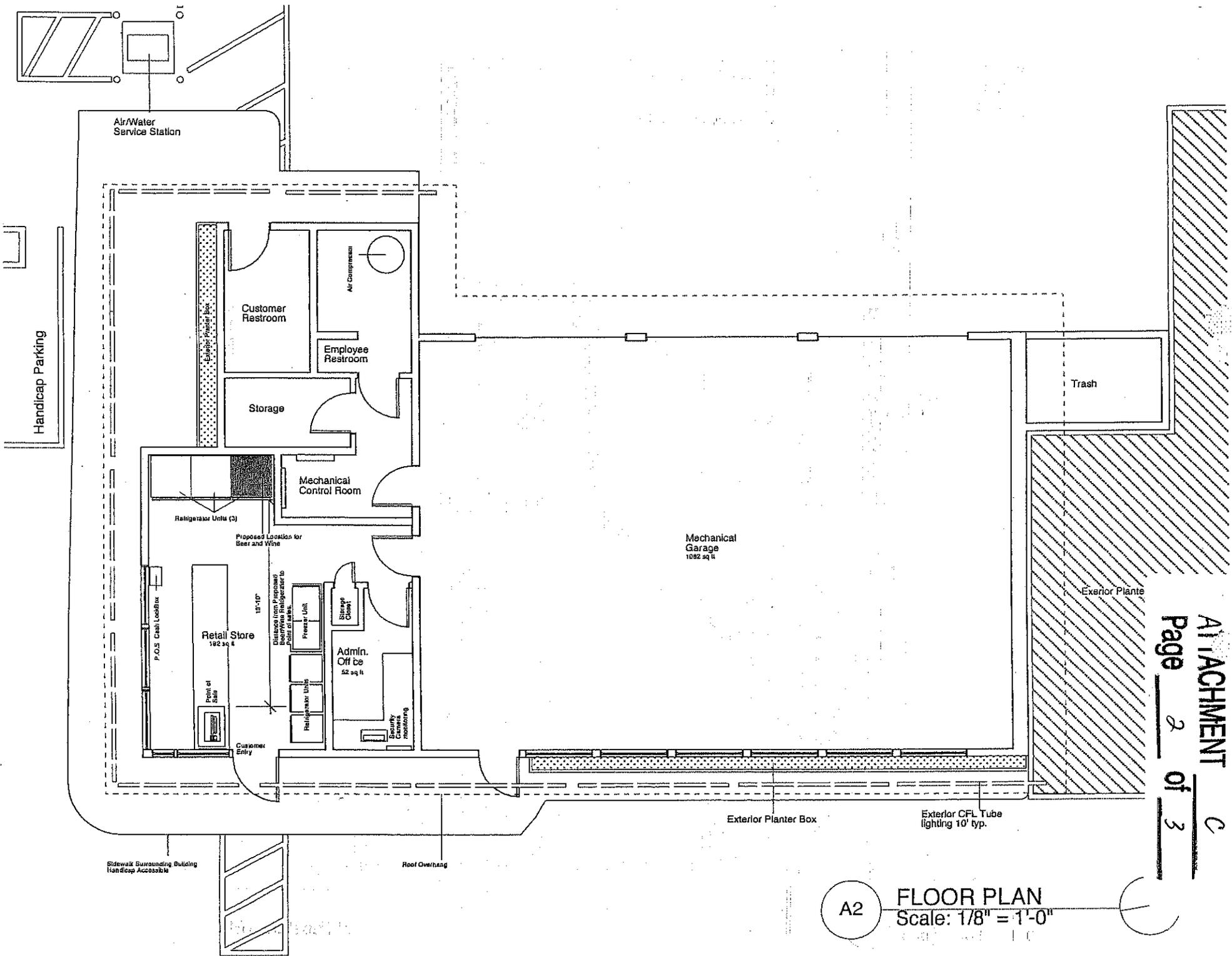
AT-5. SECURITY PLAN (*as approved by the Zoning Administrator*):
The applicant is required to submit and institute a security plan to be approved by the Director of Community Development for the area behind the service bays and the lot periphery where it adjoins the adjacent lots to the north. The plan may include but is not limited to cameras that provide visibility to cashiers and employees, additional lighting and signs to identify adjacent private property. Clearly identified contact information for the property owner and on-site manager shall be displayed. [COA] [PLANNING]

SILICON VALLEY FUELS
1697 S. WOLFE ROAD
SUNNYVALE, CA 94087

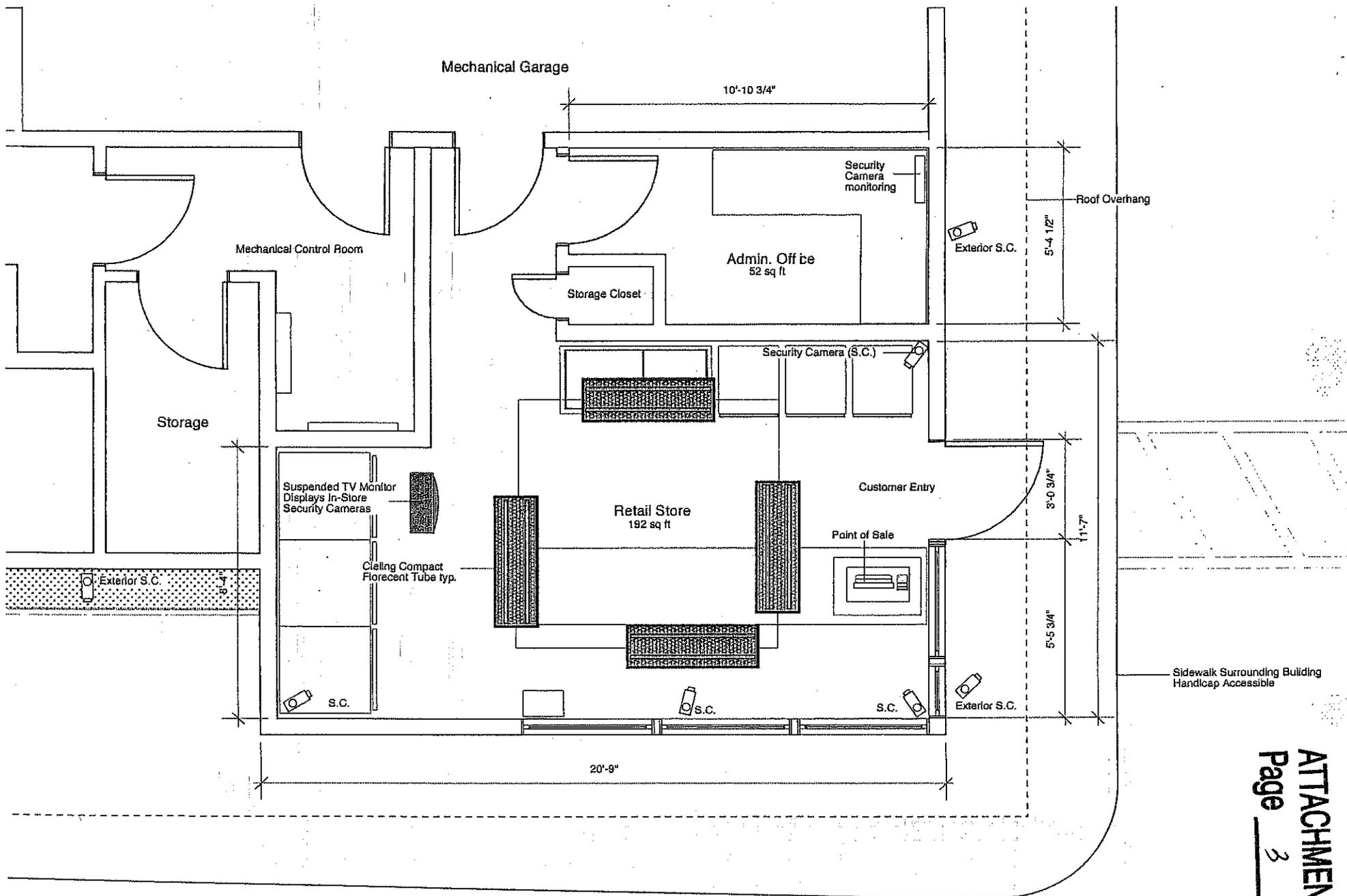
Date: 8/29/2011



A1 ARCO SITE PLAN
Scale: 1/32" = 1'-0"



A2 FLOOR PLAN
 Scale: 1/8" = 1'-0"



A3 REFLECTED CIELING PLAN
Scale: 1/4" = 1'-0"

ATTACHMENT D
Page 1 of 5

Silicon Valley Fuels
1697 S. Wolfe Road (at Homestead)
Sunnyvale, CA 94087

Special Development Permit – to allow the sale of beer and wine at an existing gas station and snack shop.

Description of Proposed Project

Offer the off-site sale of beer and wine at an automobile service station's existing snack shop. The purchase of beer and wine would occur at the proposed site, but the consumption would take place off-site. Beer and wine sales will occur from existing coolers and shelves within the store. No physical changes or expansion of area are proposed to the interior or exterior of the structure.

Site Layout

Subject site is located at the Northwest corner of Wolfe Road and Homestead Road, with double driveways on both streets. There are two canopies, one on the East side of the property (adjacent to Wolfe Road) covering eight pumps, and one on the South side of the property (adjacent to Homestead Road) covering four pumps. In the middle of the property is a steel commercial building comprised of a 1082 square foot Auto Repair Shop and a 192 square foot Snack Shop / Convenience Store. See Attachment A, pages 1 - 3.

Adjacent to the property on the North side is a Liquor Store (Wolfe Liquors). Adjacent to the property on the West side is a restaurant (Pho Little Saigon). Across Homestead Road to the South is a shopping center (99 Ranch Market and Starbucks). Across Wolfe Road to the East is an office building (Insurance Agency and Dental Offices). See Attachment A, page 4.

Compliance with Development Standards/Guidelines

Finding 1 can not be met because the proposed project is located within 500 feet of other uses with off-site alcohol sales. See Attachment B.

1. Off-Site alcohol sales within 500 feet
 - a) Wolfe Liquors (1689 S. Wolfe)
 - b) 99 Ranch Market (10983 N. Wolfe)
2. # of Businesses with Off-Site alcohol sales within 1000 feet
 - a) Wolfe Liquors (1689 S. Wolfe)
 - b) 99 Ranch Market (10983 N. Wolfe)
3. Public Parks and Schools within 500 feet
 - a) None.
4. Other notable sites within 500 feet
 - a) Good Samaritan United Methodist Church and Preschool (19624 Homestead)

Expected Impact on the Surroundings

1. Will not adversely affect persons residing or working in surrounding area
2. Will not adversely affect surrounding property values
3. Will not be detrimental to public health, safety, and welfare

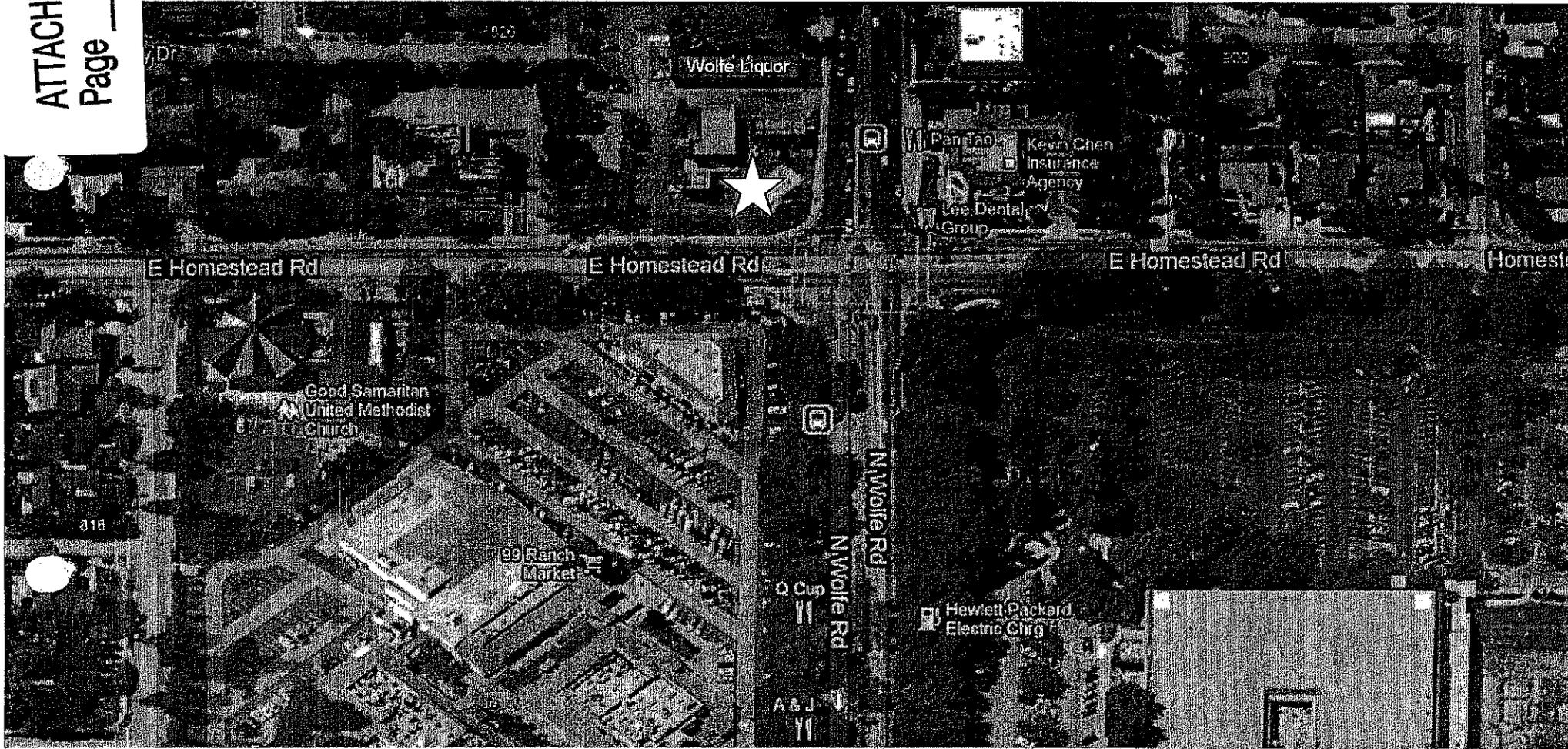
The sale of beer and wine at the automobile service station's existing convenience store is offered as a convenience to local residents and commuters working in the surrounding area. The proposed use is not expected to have a negative impact on surrounding residents, properties, or uses. The proposed sales would occur along with grocery sales in the existing convenience store. Adequate site security and video surveillance is in place to discourage loitering, theft, on-site consumption of alcoholic beverages, and other un-permitted activities.

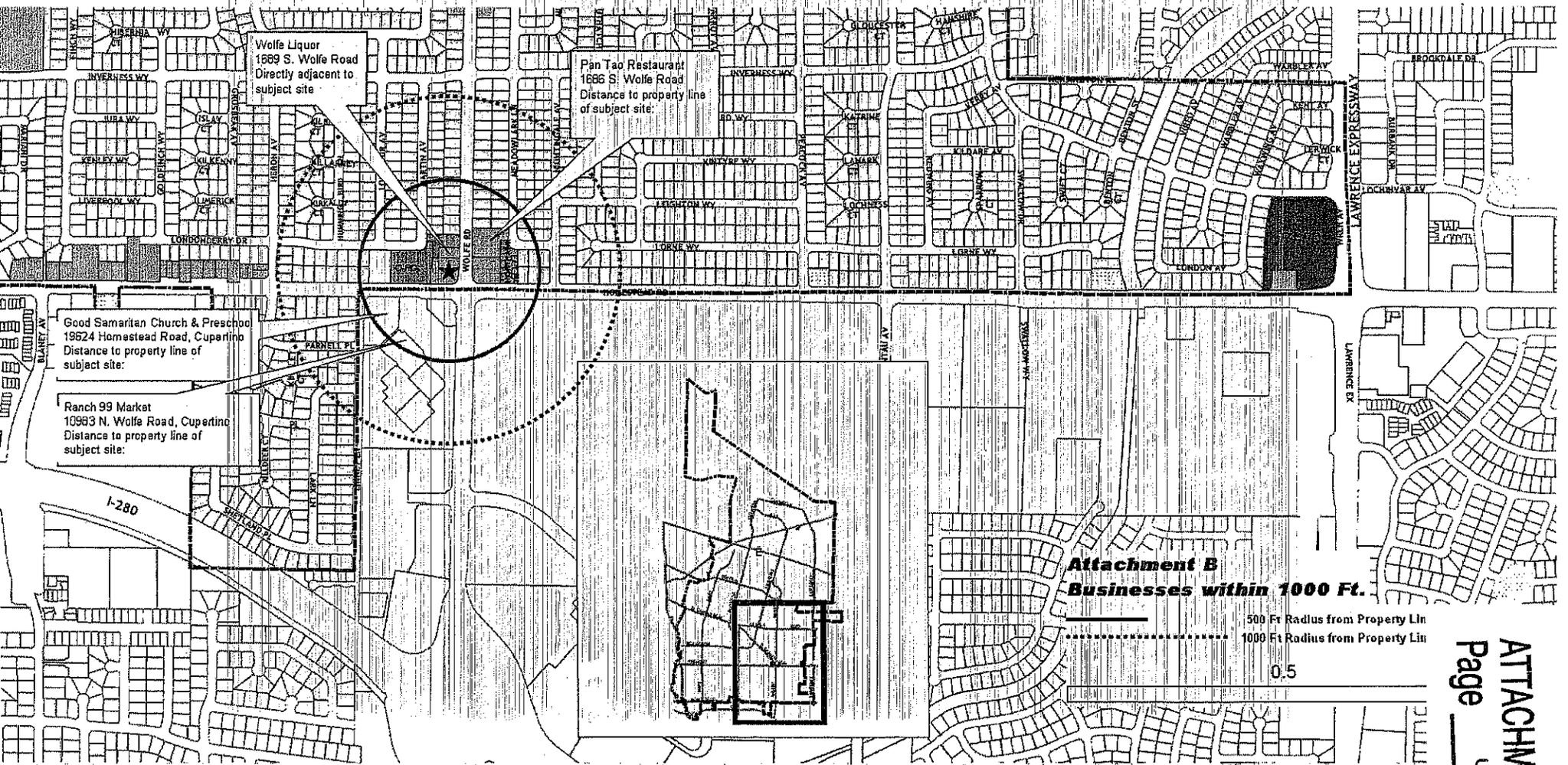
- a) No beer or wine will be displayed within 5 feet of the cash register.
- b) No advertisement of alcoholic beverages will be displayed at motor fuel islands.
- c) Employees on duty between the hours of 10pm and 2am who sell beer or wine will be at least 21 years old.
- d) There will be no sale of single servings of beer (less than 24 ounces).
- e) Existing security measures include adequate lighting inside and outside, clear visibility into and out of the store, and an 8 camera DVR based video surveillance system.
- f) The site will continue to be maintained in a clean manner free from debris and noise to avoid impacts on surrounding residential uses.

The incidence of drunk in public calls, robberies and aggravated assaults in the subject area is very low, and the addition of beer and wine sales at the service station is not expected to change that activity. [data from CrimeReports.com (via link from City of Sunnyvale Public Safety Statistics web site) for 1/15/11 thru 7/15/11]. See Attachment C.

Hours of Operation:
5:30am - 12am (Midnight)

AA





Wolfe Liquor
1869 S. Wolfe Road
Directly adjacent to
subject site

Pan Tao Restaurant
1886 S. Wolfe Road
Distance to property line
of subject site:

Good Samaritan Church & Preschool
19524 Homestead Road, Cupertino
Distance to property line of
subject site:

Ranch 99 Market
10983 N. Wolfe Road, Cupertino
Distance to property line of
subject site:

Attachment B
Businesses within 1000 Ft.

500 Ft Radius from Property Lin
1000 Ft Radius from Property Lin

0.5

Current view data provided by: Santa Clara City Police Department [more...](#)

295 Incidents shown

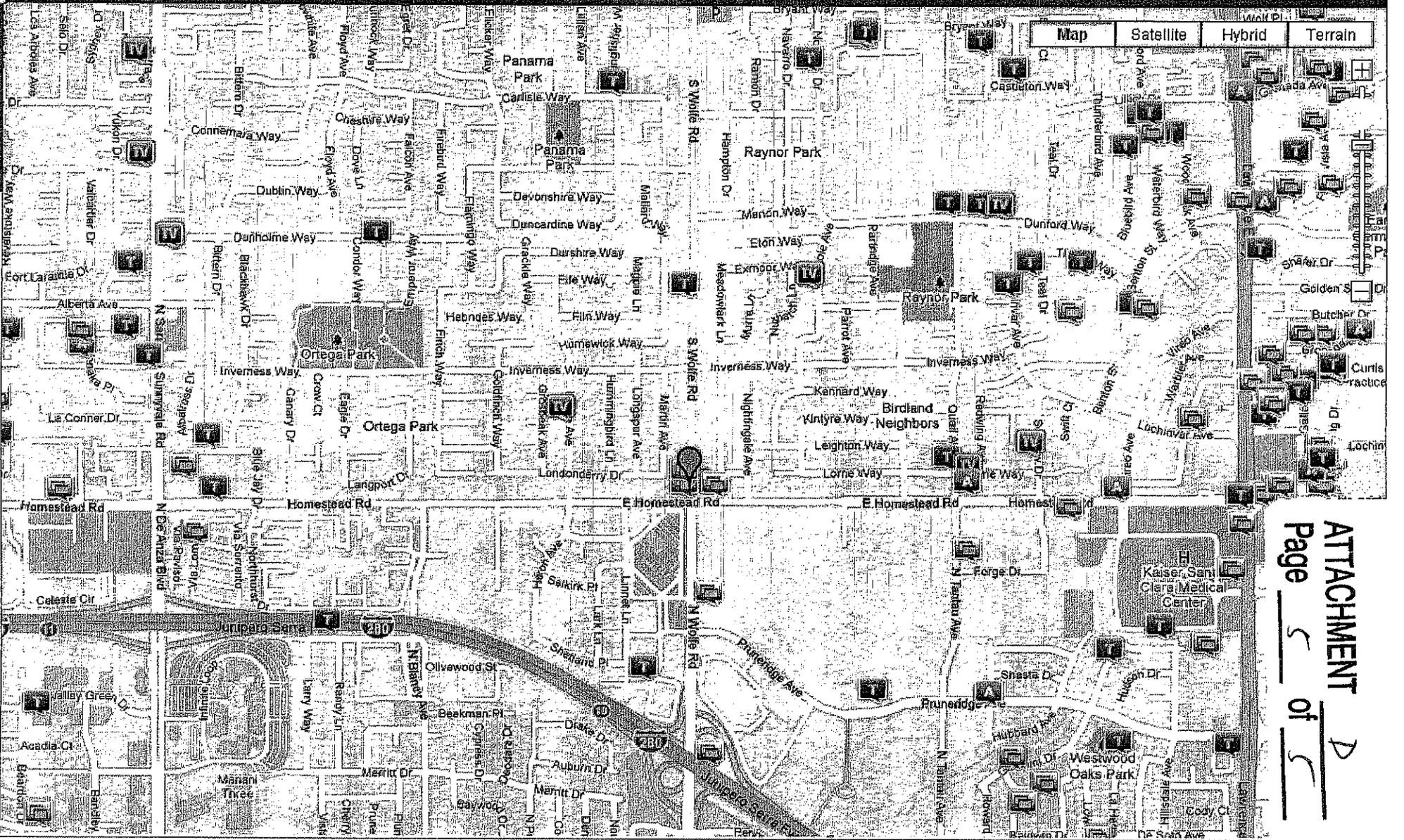
[Create a new map](#)

[Submit a tip about a crime](#)

1697 s. wolfe road, sunnyvale, ca

Search **MAP TOOLS** [Data Layers](#) [Incident Layers](#) [Map Layers](#)

Map Satellite Hybrid Terrain



This letter is to appeal the Zoning Administrator's decision to approve the Special Development Permit (2011-7502) on September 20, 2011. I personally don't believe that the surrounding residences were adequately informed and notified of the true intentions of ARCO/Silicon Valley Fuels. The letter sent out to a select group of the people residing in the area does not state the plan to gradually become an AM/PM. The applicant himself admitted during the previous hearing that those were his true intentions. As receiving the Special Development Permit for the sale of beer and wine, the applicant will not need to notify any of the surrounding areas of the gradual transformation of their current business in the near future. This decision allowing ARCO to become an AM/PM will set precedence over every other gas station in Sunnyvale to convert as well. In addition, the study specified by the City regarding grocery and alcohol sales (2007-0264) states that crime is associated more with site specific and operational issues rather than the product sold on the premises. However, an AM/PM that is open twenty four hours a day creates an opportunity for an increase in crime and loitering. I am not sure if the city spent an adequate and sufficient amount of time to make a finding on the loitering and crime issue. My inquiry is how the decision came about even though surrounding residents that did attend the initial hearing mentioned loitering and crimes do occur at multiple times throughout the day. I do not understand how the City can make a finding based on one person going out to the applicant's site for a few hours during a single visit. The surrounding neighbors that have lived there for over a decade each state that there are numerous issues. As mentioned by the resident residing directly behind both properties, crime and loitering problems do arise behind the lot of ARCO towards the adjacent property of Wolfe Liquors. Even though reported crimes are low, many crimes that do

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PLANNING DIVISION

arise from the back of the parking lot of ARCO are never reported. Numerous times throughout the day people loiter for hours, sometimes vandalizing all three adjacent properties, yet they are not reported. The crime study by the City was made in 2007 yet times have changed drastically the last four years. The economy is in a much more unstable state than it was in 2007. In addition, the data used to determine that study must have come before 2007 as well. Using data from a different period of time to justify the present day crime issue is irresponsible. I believe we all can agree that the economy and the public are suffering a greater deal compared to 2007 and the years before this study was conducted. The current residing resident behind both properties has mentioned witnessing multiple acts of crime throughout the day. Currently he is coordinating with our current business of Wolfe Liquors to prevent any issues that might arise. The Zoning Administrator has made recommendations to create a well lit visible secure environment, yet the current residents behind both businesses have also stated their wish that no additional lights or light poles be added. As mentioned in the email, the property is separated by a wall, yet it fails to mention how the resident's home is very large and a two story property. The resident's windows face the back of the ARCO and adjacent businesses, where he can make observations that others cannot make. Also, the residents stated that they are strongly opposed to additional lighting from the ARCO by devaluing their home values and interrupting their well being.

During the second hearing, the senior commission stated that the current businesses and the local police would work with one another in order to deal with the crime and loitering. Even though this is possible, it is not enough to deter the issue that is at hand. The current property is located right off the highway creating an easy way for

people to commit crimes and leave the area easily. This area is a hotspot for gangs and other various people to deface property. This causes numerous problems for the neighborhood property values and well being of its residents. These problems not only affect the immediate surrounding properties, but the entire area as well. Additional lighting and cameras will only do so much to deter all the issues presented. The additional provisions associated with the permit such as cameras and lighting will have very little deterrence. In order to keep it from getting any worse in the future, denying the special permit is the only way to go.

*Submitted by Trung Hieu Nguyen,
Wolfe Liquors at
1689 S. Wolfe Rd.*

Mariya Hodge - Fw: Fwd: File Number: 2011-7502 Permit Type: Spec

From: [Received from a neighboring resident]
To: <mhodge@ci.sunnyvale.ca.us>
Date: 9/14/2011 3:15 PM
Subject: Fw: Fwd: File Number: 2011-7502 Permit Type: Special Development Permit
Attachments: Arco Station Wolfe Liquor parking.jpg; San Jose-20110908-00083.jpg

Sent via BlackBerry by AT&T

From: m>
Date: Wed, 14 Sep 2011 11:18:53 -0700
To: Cotton, James Z
Subject: Fwd: File Number: 2011-7502 Permit Type: Special Development Permit

----- Forwarded message -----

From: Jim Cotton
Date: Mon, Sep 12, 2011 at 11:17 AM
Subject: File Number: 2011-7502 Permit Type: Special Development Permit
To: ncaliva@ci.sunnyvale.ca.us

File Number:

2011-7502 **Permit Type:** Special Development Permit

Location:

1697 S. Wolfe Rd. (near Homestead Ave.) APN: APN: 309-51-027

Applicant/Owner:

ARCO / Silicon Valley Fuels

Staff Contact:

Noren Caliva, Associate Planner, (408) 730-7637

Noren: I am a Sunnyvale resident and have lived at 1678 Martin Ave for almost 14 years. Our residence is adjacent to the Wolfe Liquor rear parking lot that is next to the ARCO gas station. I have a "birds eye view" of the parking lot behind Wolfe Liquor from our 2nd story windows. I have some concerns about the sale of beer and wine by the ARCO gas station mini-market.

My main concern is with the potential of patrons who purchase beer or wine at the ARCO, moving/walking/driving into the adjacent Wolfe Liquor parking and consuming their alcohol. The parking lot is completely dark by 9pm when the parking lot lights go off. I would encourage you to visit this location after 9pm and make a judgement for yourself. I've attached a picture from my cell phone taken at 9:15pm tonight just to give you an idea of what I am talking about. This is the view from one of our upstairs windows. The parking lot of the ARCO station is lit. But just a few short steps away is a

completely dark parking lot with little to no visibility from the street. This makes it a convenient place to consume the alcohol purchased at the ARCO.

Your report makes mention of a video surveillance system at the ARCO. It is comforting to me that there is this level of safety at the gas station. But to my knowledge there is no video surveillance behind Wolfe Liquor.

I am especially concerned about what could happen at night after the liquor store closes. The report says that the ARCO will be able to sell beer and wine until Midnight.

I have reviewed your crime report included in the report for the hearing. When there is alcohol consumption going on in the parking lot, I contact the liquor store owner and ask him to deal with it rather than calling the police. This might not be the "official" method of resolution, but it gives the store owner the opportunity to take care of the problem and maintain a reputable business. He has taken care of all situations that I have brought to his attention. He is at a disadvantage since his store has no rear facing windows to the parking lot.

I've included a second picture for your reference. I took this one just last week on September 8th at 5:25pm. It's a man drinking a beer in the parking lot. He positioned himself in a secluded corner of the parking lot (very close to my home) and behind a parked motorhome that blocked all view from the street or the ARCO parking lot. I didn't contact the store owner, since the person came and went in about 10 minutes or less. I am not sure where the person purchased his beer. Had he stayed longer and decided to drink more than one beer, I would have done something about it and contacted the store owner.

Your report also makes reference to the convenience it would be for ARCO customers to be able to purchase beer and wine at the gas station. On the same piece of property, adjacent to the gas station, within about 60 feet of two islands of gas pumps is a full service liquor store entrance. Why do we need to add an additional location to sell beer and wine on the same busy corner? I am having difficulty understanding this justification.

In conclusion, I would like you to take my concerns into consideration and not grant a permit for the ARCO station to sell alcohol. While there has been a comprehensive report assembled, I think it has not taken into account the late night issues that are generated by selling alcohol at this location until midnight. Please reconsider your recommendation.

Feel free to contact me if you would like to discuss this further.

Thank you,
Jim Cotton



ATTACHMENT F
Page 3 of 4





CITY OF SUNNYVALE
ZONING ADMINISTRATOR HEARING

ATTACHMENT 9
Page 1 of 3

MINUTES
Wednesday, September 14, 2011

FILE #: 2011-7502
Location: 1697 S. Wolfe Rd. (APN: 309-51-027)
Proposed Project: Special Development Permit to allow the sale of beer and wine at an existing Arco automobile service station convenient store.
Applicant / Owner: ARCO / Silicon Valley Fuels
Environmental Review: Categorically Exempt Class 1
Staff Contact: Noren Caliva, 408-730-7637, ncaliva@ci.sunnyvale.ca.us

In attendance: Jeff Honda, Applicant; Gil Tarabanovic, Neighbor; Tam Nguyen, Neighbor; James Cotton, Neighbor; Hieu Nguyen, Neighbor; Gerri Caruso, Zoning Administrator; Mariya Hodge, Project Planner; Luis Uribe, Staff Office Assistant.

Ms. Gerri Caruso, Zoning Administrator, on behalf of the Director of Community Development, explained the format that would be observed during the public hearing.

Ms. Caruso announced the subject application.

Mariya Hodge, Project Planner, presented the item. Staff did talk to the owner of an adjacent business who had concerns in regards to parking. They also had concerns regarding expansion of the building in the future if this application was to be approved. Staff told them it is possible but another application would be needed.

Ms. Caruso opened the public hearing.

Jeff Honda, Applicant, received and reviewed a copy of the staff report. Mr. Honda had no questions or comments and is in agreement with the conditions of approval.

Gil Tarabanovic, Neighbor, stated that he feels that adding another store that sells the same products as a store that already exists in the same shopping center is not needed. Mr. Tarabanovic wanted to know the benefit of opening another store that sells alcohol. Ms. Caruso stated that there are two sets of findings and if they cannot be met there is another set that can be used to justify the use. She also stated that if the findings and conditions are met they may be allowed to proceed. Mr. Tarabanovic stated that this is something that the city does not need.

Tam Nguyen, Neighbor, stated that he feels that the neighborhood was not informed that this business will be open 24 hours a day and feels that this information should have been given.

James Cotton, Neighbor, stated that their residence borders the Wolfe liquor store. Mr. Cotton stated that he is concerned with another beer and wine establishment opening at this location. He mentioned that there is an alleyway located behind the retail building that gets very dark and is not visible from the street and feels that it will attract people and eventually create a nuisance. Mr. Cotton mentioned that he emailed a picture to staff showing someone loitering in that spot, consuming alcohol. He also stated that there is a lot of garbage building up due to people loitering in that area.

Hieu Nguyen, Neighbor, stated that he is not against big business but feels that this business has the monetary assets to take this building to a bigger level and has the possibility of driving down his business. Mr. Nguyen mentioned that he installed security cameras and that Public Safety does occasionally drive through the area but feels that allowing this business to go past midnight and sell alcohol will exasperate loitering and crime. He also stated that this business will affect his business a lot and doesn't see the cost effectiveness of having two similar businesses in the same area.

Jeff Honda, Applicant, stated that the company is trying to sell beer and wine for two reasons, first, as a convenience to the customer. They are a convenience store trying to offer additional convenience. Second, for financial reasons, they would be able to offer competitive prices for their customers. Mr. Honda also mentioned that they are applying right now to sell beer and wine in the existing facility if approved. They would work with Arco to convert the existing building into an AM/PM convenience store. He also stated that they are currently not open 24 hours a day but plan to. Mr. Honda stated that he understands the concerns about crime in the area but feels that the loitering issue is a current problem and was not brought in by his business. Ms. Caruso asked that if the application would the applicant be willing to add additional security cameras. The applicant stated that if they do move forward to change to an Arco AM/PM, they would install security lighting and cameras.

Ms. Hodge stated that Mr. Cotton mentioned that he sent an e-mail containing a photo and stated that staff has not received any e-mail containing a photograph. It was discovered that Mr. Cotton sent the e-mail to a Planner that has been out of the office this week. She also stated that Public Safety did review this and didn't think there was a lot of crime in this area but as the public mentioned there is a lot of crime that they take care of instead of reporting it to the authorities.

Ms. Caruso closed the public hearing.

Ms. Caruso took this application under advisement until September 20, 2011. The Zoning Administrator approved the Special Development Permit as recommended by staff with modified conditions of approval. Condition of Approval AT-5 shall read:

The applicant is required to submit and institute a security plan to be approved by the Director of Community Development for the area behind the service bays and the lot periphery where it adjoins the adjacent lots to the north. The plan may include but is not

limited to cameras that provide visibility to cashiers and employees, additional lighting and signs to identify adjacent private property. Clearly identified contact information for the property owner and on-site manager shall be displayed.

Therefore, the Zoning Administrator was able to make the findings that although there would be two adjacent businesses selling liquor within 500 feet of each other;

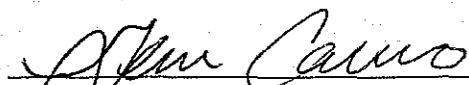
- a) The project will not adversely affect persons residing or working in the surrounding areas;
- b) The project will not adversely affect surrounding property values;
- c) The project will not be detrimental to public health, safety, and welfare.

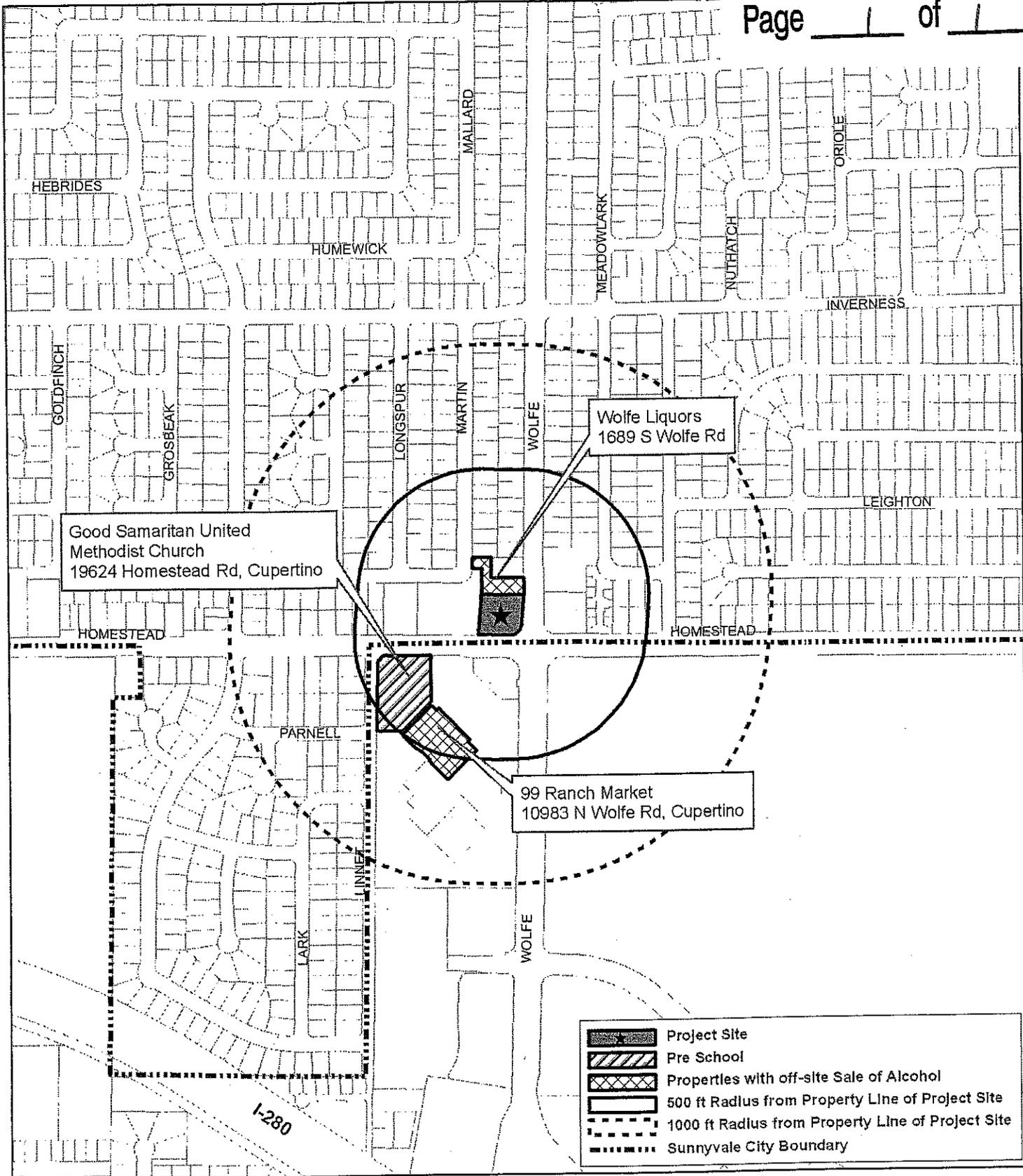
The project site is zoned for commercial use. The commercial area is separated from adjacent residences by a wall and is located on a completely separate street. The study conducted by the City regarding grocery and alcohol sales (2007-0264) found that crime is associated more with site specific and operational issues, rather than the type of product sold on the premises. The project has not been found to cause the loitering problems on the minimally visible parking lot of the adjacent liquor store business as identified by the neighbors. This is an operational issue associated with an adjacent business. Reported crimes in the neighborhood are low. The rear parking lot of the proposed project site is reasonably visible to Homestead Road. Due to the gas station use, the project site is reasonably active on the exterior to discourage loitering, and as conditioned by the Zoning Administrator, the applicant will be required to institute a plan to create a well-lit, visible and secure environment around the entire perimeter of the site.

Ms. Caruso stated that the decision is final unless appealed to the Planning Commission with payment of the appeal fee within the 15-day appeal period.

The meeting was adjourned at 2:42 p.m.

Minutes approved by:

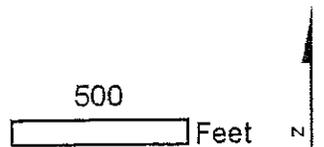
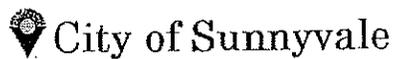

Gerri Caruso, Principal Planner



1697 S Wolfe Rd

Nearby Properties With Off-Site Sale of Alcohol

This map is created by the City of Sunnyvale Planning Division.
 Data Sources: City of Sunnyvale Planning Division
 10/27/2011, 13:00



PUBLIC HEARINGS/GENERAL BUSINESS

2. **FILE #:** 2011-7502
Location: 1697 S. Wolfe Rd. (APN: 309-51-027)
Proposed Project: Appeal of a Zoning Administrator decision to approve a Special Development Permit to allow the sale of beer and wine at an existing Arco automobile service station convenience store.
Applicant / Owner: ARCO / Silicon Valley Fuels
Environmental Review: Categorically Exempt Class 1
Staff Contact: Noren Caliva, 408-730-7637, caliva@ci.sunnyvale.ca.us

Trudi Ryan, Planning Officer, presented the staff report.

Chair Hendricks clarified with staff that the gas station owner applied and was approved to sell alcohol and the decision is being appealed by an adjacent business owner.

Chair Hendricks opened the public hearing.

Hieu Nguyen, appellant with Wolfe Liquors, said his main concern is about the potential for increased crime if beer and wine sales are allowed at the gas station. He said the area behind his business and other nearby businesses is dark at night and that his property is the only business with a security camera.

Jeff Honda, applicant owner of the ARCO station, commented that the Department of Public Safety (DPS) determined that the rate of crime in this area is pretty low and that the sale of beer and wine at his station would not negatively impact that. He said he would conform to the constraints required in the report.

Jim Cotton, a nearby resident, expressed his concerns about the potential problems that could result in allowing the sale of beer and wine at the ARCO. He said he has witnessed a number of activities in the parking lot over the years including loitering, and hanging out while consuming alcohol. He said the area behind these businesses is not visible from the street and is not well lit. He said he realizes that currently there are no problems associated with the ARCO gas station, however his concern is about introducing an additional variable of alcohol sales to this area and the future impacts.

Vice Chair Larsson asked Mr. Cotton if he had suggestions for making the area safer. Mr. Cotton recommend better lighting, shielded to not affect residents, video surveillance of the parking lot, durable signage about no loitering or alcohol consumption, and said it would be nice to see DPS in the area more often. Staff discussed possible actions to improve the rear property area to the neighboring businesses.

Comm. Kolchak discussed with Mr. Cotton some of the prior issues he has seen over the years in this area and discussed that the Wolfe Liquor storeowner has been responsive to his concerns. Mr. Cotton said he sees people drinking behind the businesses each week and as long as they behave, he does not complain.

Chair Hendricks thanked Mr. Cotton for coming.

Mr. Honda said he understands Mr. Cotton's concerns. He said from his ARCO property he can only address the lighting and security cameras for his property. He said possibly the other business owners can work together to make the area more secure.

Comm. Travis confirmed with Mr. Honda that he has no problems with the conditions of approval.

Chair Hendricks closed the public hearing.

Chair Hendricks further discussed with staff the zoning versus the possible future behavior. Ms. Ryan said the types of findings allow the Commission to look at whether the use could adversely affect persons or surrounding property.

Vice Chair Larsson moved for **Alternative 1, to deny the appeal and uphold the Zoning Administrator's decision to approve the Special Development Permit with attached conditions. Comm. Travis seconded the motion.**

Vice Chair Larsson said he could make the findings. He said he thinks the conditions of approval address what the ARCO owner can do to make the area safer. He said it appears more is needed and he hopes the owner of Wolfe Liquors would work with the neighboring businesses to improve the area.

Comm. Travis said he would be supporting the motion as he can make the findings. He said he understands the neighbor's concerns and the City is asking ARCO to do all they can.

Chair Hendricks said he would be supporting the motion and is making his decision from a zoning perspective. He said he appreciates the neighbor for being here tonight and it is difficult to know how to deal with the possibility of what might happen. He said one suggestion might be to add some kind of fence.

ACTION: Vice Chair Larsson made a motion on 2011-7502 to deny the appeal and uphold the Zoning Administrator's decision to approve the Special Development Permit with attached conditions. Comm. Travis seconded. Motion carried 6-0, with Comm. Dohadwala absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than November 29, 2011.