



SANDY CITY COMMUNITY DEVELOPMENT

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MEMORANDUM

March 21, 2019

To: Planning Commission

From: Community Development Department

Subject: 7-Eleven Convenience Store Conditional Use for
extended business hours to 24/7.
711 West 9000 South Street
[Civic Center--Community #2]

CUP-07-18-5462
CvC Zone
0.994 Acres

Public Notice: In addition to the posting of the meeting agenda, this project was noticed for this meeting to property owners within 500 feet of the subject property, by U.S. Mail delivery. Neighborhood meetings were held on this project on September 12, 2018 and again on February 27, 2019.

DESCRIPTION OF REQUEST

The applicant is requesting that the Planning Commission receive and review new technical information, submitted relative to the reasonably anticipated (potential) detrimental impacts involving noise and light trespass generated by the development. The applicant is requesting that the Planning Commission remove the approval condition from its decision on October 18, 2018, which limited the business hours to 6:00 A.M. to Midnight, and grant the conditional use request for full 24 hour a day, 7 days a week operation. The Planning Commission is the approval body for Conditional Uses.

BACKGROUND

The applicant is requesting that the Planning Commission review new technical information relative to the anticipated detrimental impacts to the neighboring residential properties, from site activity generated noise and vehicle produced light trespass. The applicant has also proposed two changes to the site plan from the plan presented at the October 18, 2018 Planning Commission meeting. The first change to the site plan includes raising the required 8-foot high masonry buffer wall to 10 feet, extending along the south property line to the west property line. The second change follows the requirement of the Planning Commission, revising the landscape plan for the 10 foot wide landscape buffer strip, along the south property line to a more densely planted evergreen tree buffer.

NEIGHBORHOOD MEETING

Because of the new information and the changes to the proposed site plan, Planning Staff held a second neighborhood meeting on February 27, 2019. Please see the attached notice, minutes

and attendance roll from that meeting. Only two neighbors attended that meeting. After the meeting, staff received one email from one of the abutting neighbors (attached).

CONDITIONAL USE ANALYSIS

Conditional Use consideration for extended operating hours to 24 hours/7 days a week.

Under the Sandy City Development Code, the Planning Commission, through the Conditional Use process, can: **approve** Conditional Uses if no mitigation of reasonably anticipated detrimental impacts is necessary; **approve** Conditional Uses, subject to reasonable conditions designed to mitigate or eliminate reasonably anticipated detrimental impacts; or **deny** Conditional Uses, if it is determined that reasonably anticipated detrimental impacts cannot be adequately mitigated. The burden of mitigating these impacts or effects is the responsibility of the applicant and not of the municipality or adjacent property owners (Section 15A-33-04).

Compliance with Section 15A-33-04 Conditional Use Permit

(The following text in black type is a repeat from the October 18, 2018 staff report. Text in red type represents revisions since the October 18, 2018 report, based upon new information or changes to the site plan.)

In order to achieve compliance with the standards set forth herein, the City may impose conditions that address these standards:

1. Size, configuration and location of the site and the proposed site plan layout.

The layout is properly designed and located. The site is adequately sized for the proposed new building. The proposed gasoline dispensing area includes a canopy roof and is located toward 9000 South Street, with the retail building placed between that street and the residential backyards.

2. Proposed site ingress and egress to existing and proposed roads and streets.

The ingress and egress to and from the site will be adequate for use by this facility, provided that UDOT allows the shared driveway on 9000 South Street.

3. The adequacy, provision, relocation or protection of public facilities and amenities, including roads and street, culinary water, secondary water, sanitary sewer, storm drainage, public safety and fire protections, and other utilities.

All of these public facilities presently exist at the site and are functioning, and will not be detrimentally impacted by the proposed Conditional Uses of the property.

4. Design, location and amount of off-street parking, loading areas and solid waste disposal and collection areas.

Adequate vehicle parking will be provided as per the Sandy City Development Code. Parking for the retail store will meet the five parking stalls per 1,000 square feet of gross building square footage standard. The proposed trash dumpster has been relocated from the south side of the building to the west side and is now farther away from the residences than before.

5. Site circulation patterns for vehicular, pedestrian and other traffic.

Site circulation will be sufficient for the use as designed on the site plan, provided that UDOT allows the shared driveway on 9000 South Street. (The latest site plan includes a deceleration lane added to the 9000 South Street access driveway, which suggests UDOT input, but staff has not to date received written confirmation of UDOT approval of the access on 9000 South Street.)

6. Mass, size, number, location, design, exterior features, materials, and colors of buildings, structures and other facilities.

The building design, materials, and colors meet the zoning requirements and the Sandy City Architectural Design regulations. The proposed building has been modified to increase the parapet height and to meet the unique Sandy City architectural regulations and to better screen the residential properties from light and noise activities generated by the gasoline dispensing area, located to the north of the building. The building entry is on the north side of the building, which is where the customer coming and going will take place.

7. The location and design of all site features, including proposed signage, lighting, and refuse collection.

This standard will be met. Signage is not included in this process and must be subsequently applied for and reviewed by City staff. Site lighting is required to be directed downward and to not spill directly onto adjoining residential properties. A site photometric plan has been developed for this site. Light spill was a general concern for the residents who attended the first neighborhood meeting. Refuse collection will need to be by a commercial contractor. Dumpster trash collection activities must be restricted to 7:00 A.M. or later and not after 10:00 P.M. due to residential proximity.

8. The provision of useable open space, public features, and recreational amenities.

This standard is not applicable.

9. Fencing, screening and landscape treatments, and other features designed to increase the attractiveness and safety of the site and protect adjoining owners from noise, visual and other impacts.

The site landscaping will be installed as part of this site plan approval as shown on the attached plans. A minimum 8-foot high, solid masonry wall is required by City Code, along the south property boundary to help screen the commercial activity from the residential uses. Since the October 18, 2018 Planning Commission meeting, the applicant has modified his plans

by proposing that the masonry buffer wall be increased in height to 10 feet, and to extend the masonry wall westward for the full extent of their ownership. The proposed landscape planting plan has also been modified, consistent with the approval condition requirement for the 10-foot wide landscape buffer to consist of all conifer tree species, densely planted to overlap to be more effective in screening the tall wall and help with light trespass above the wall.

10. Measures directed at minimizing or eliminating possible nuisance factors including, but not limited to noise, vibrations, smoke, dust, dirt, debris, plant materials, odors, gases, noxious matter, heat, glare, electromagnetic disturbances, and radiation.

*This facility will be subject to the noise limits imposed by the County Health Department. The building location and the gasoline dispensing area canopy will help buffer the noise and light. There will not be any unusual vibration, smoke, dust, and debris or plant materials nuisance factors after development of the building and site. **Odors from gasoline and car exhaust will be present and will negatively impact the residential properties during operating hours. Noise from vehicles coming and going, opening and closing doors, and people talking will be present during all operating hours and will be a detrimental impact to the residential properties during operating hours. Some measure of mitigation of these negative impacts can be achieved by the building and site-planning efforts put forth. However, these negative impacts cannot be eliminated, except by limiting the business hours during the deep nighttime period, Midnight to 6:00 A.M.***

At the October 18, 2018 Planning Commission meeting, the applicant's attorney, Mr. Justin Atwater, stated that "elimination" of detrimental or nuisance impacts is not the standard required under state law relative to conditional uses. The standard under state law is that the municipality must bring forward "substantial evidence in the record" of a detrimental impact (not merely the "reasonable anticipation" of a detrimental impact).

The attorney also states that once a detrimental impact is established in the record by substantial evidence, then the municipality must decide if there are "reasonable (mitigation) measures (possible) that would substantially mitigate any identified detrimental impacts." (Please see Mr. Atwater's letter to the Planning Commission dated October 16, 2018, attached)

Staff would acknowledge that under the requirements of the state enabling legislation and subsequent opinions of the Utah State Property Rights Ombudsman's Office, it is practically impossible for a municipality to deny a conditional use, once that conditional use is established in the zoning regulations for any given zone. Thus the staff analysis in the October, 18, 2018 staff report relative to Sandy City's Conditional Use Standard # 10 considering noise, light and odors is in error in that it did not meet the current standard of the state law.

Additionally, the applicant has brought forth new evidence based upon engineering reports and studies that purport that light and noise impacts are negligible. Staff has no engineering evidence to the contrary, only a supposition that there will be negative impacts from the 24-hour operation.

11. Measures designed to protect the natural features of the site, including wetlands and drainage ways, ground water protection, soils, wildlife and plant life.

This standard is not generally applicable. The gasoline storage tanks will be underground and installed with the required double wall construction with spill monitoring, and inspected by the State of Utah.

12. The regulation of operating hours for activities affecting normal schedules and functions;

*The applicants are requesting that the normal business hours of operation, 6:00 A.M. to 10:00 P.M., seven days a week, be extended to 24 hours a day, seven days a week. **Staff has identified negative impacts that cannot be fully mitigated during business operating hours (see#10 above). Therefore, staff recommends that the requested extended business hours be limited to 6:00 A.M. to Midnight, in order to reduce the impact of the new development on the existing residential community abutting the site to the south.***

Because “extended business hours when located with 250 feet of residential zoning” is listed as a Conditional Use in the CvC zoning district, the City cannot under existing state law and Property Rights Ombudsman’s Office Advisory opinions, deny the 24 hours a day request with impunity.

13. Identifying a time for regular review and monitoring, as determined necessary, to ensure the use continues to operate in compliance with all conditions and requirements of approval.

The conditional use will be reviewable upon legitimate complaint, and any new impacts arising can then be addressed through the imposition of additional mitigating measures, by the Planning Commission.

14. Measures to ensure compliance with all conditions and requirements of approval including but not limited to bonds, letters of credit, improvement agreements, agreements to conditions, road maintenance funds, and restrictive covenants.

Measures to ensure compliance will be enforced by the Sandy City staff upon citizen complaint or staff observance and will be adequate to mitigate potential violations of approval conditions.

15. Such other conditions determined reasonable and necessary by the City to allow the operation of the proposed conditional use, at the proposed location in compliance with the requirements of this Code.

Staff suggest the conditions listed at the bottom of this report, 1 to 5.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission **grant** the Conditional Use requests to allow extended business hours to 24 hours a day, 7 days a week, based on the staff report, the **staff findings 1 to 15** in the above analysis of the Conditional Use Standards and the three **additional findings listed below and subject to the following five conditions:**

FINDINGS:

- A. That the various City Departments and Divisions, including the City Engineer and the Transportation Engineer, have preliminarily approved the proposed related site plan.
- B. That the proposed site planning, building design, densified landscaping and 10-foot high buffer wall will provide substantial mitigation of reasonably anticipated detrimental impacts of the development upon the abutting residential properties.
- C. That the proposed extended business hours request has been reviewed by staff considering the 15 standards contained in the Sandy City Development Code, 15A-33-04, Conditional Use Process, and appropriate and adequate mitigation measures will be implemented or will be imposed as deemed necessary to minimize impacts to the abutting residential community, subject to the following conditions.

CONDITIONS OF APPROVAL:

1. That the applicant proceed through final site plan approval with staff as required by the Sandy City Development Code.
2. That the Conditional Use Permit for extended business hours to 24/7 be reviewed upon future legitimate citizen complaint or staff observation of non-compliance with conditions.
3. That the applicant be responsible to meet all provisions of the Sandy City Development Code and all conditions of approval that are included in this report and as may be imposed by the Planning Commission to mitigate the reasonably anticipated detrimental effects of the proposed use.
4. That UDOT must allow the right-in-right-out shared driveway on 9000 South Street.
5. That fuel deliveries and the dumping of the trash by commercial trash removal service be limited to 7:00 A.M. to 10:00 P.M.

Planner:



Douglas L. Wheelwright
Development Services Manager

Reviewed by:

