

REQUEST FOR Planning Commission Action



PLANNING COMMISSION MEETING DATE:

MAY 26, 2020

TITLE:

PUBLIC HEARING – CONDITIONAL USE PERMIT NO. 2019-41 AND VARIANCE NO. 2019-05 TO FACILITATE CONSTRUCTION OF A NEW SERVICE STATION AND CONVENIENCE STORE AT 2230 NORTH TUSTIN AVENUE – BEHROUZ BOZORGNIA, APPLICANT {STRATEGIC PLAN NO. 3, 2}

Prepared by Ivan Orozco

Executive Director

Planning Manager

PLANNING COMMISSION SECRETARY

APPROVED

- As Recommended
- As Amended
- Set Public Hearing For _____

DENIED

- Applicant's Request
- Staff Recommendation

CONTINUED TO _____

RECOMMENDED ACTION

1. Adopt a resolution approving Conditional Use Permit No. 2019-41 as conditioned to allow service station within the Arterial Commercial (C-5) zoning district.
2. Adopt a resolution approving Variance No. 2019-05 as conditioned to allow construction of a driveway within 150 feet of a street intersection within the C-5 zoning district.

Executive Summary

Behrouz Bozorgnia, representing Farzan Ghadooshahy, is requesting approval of a conditional use permit (CUP) and a variance to facilitate construction of a service station and convenience store at 2230 North Tustin Avenue. Specifically, the applicant is requesting a CUP pursuant to Section 41-424.5(f) to allow a service station in the C-5 zoning district and a variance from Section 41-428(a) of the Santa Ana Municipal Code (SAMC) to allow a driveway to be located within 150 feet of a street intersection. Staff is recommending approval of the entitlements as the proposed project will create a cohesive commercial development and provide additional services to residents, workers, and visitors in the area. The project will not negatively impact the surrounding community as it has been designed to minimize impacts to the nearby sensitive land uses.

Table 1: Project and Location Information

Item	Information
Project Address	2230 North Tustin Avenue
Nearest Intersection	North Tustin Avenue and East Santa Clara Avenue

Item	Information	
Surrounding Land Uses (Exhibit 1)	North	Commercial (retail)
	East	Commercial (retail)
	South	Commercial (retail)
	West	Commercial (childcare facility)
General Plan Designation	General Commercial (GC)	
Zoning Designation	Arterial Commercial (C-5)	
Property Size	22,240 SF (0.51 acres)	
Existing Conditions	Vacant Lot	
Development Standards	SAMC Sections 41-424 through 41-431 and 41-374	
Use Permissions/CUP/Variance	SAMC Section 41-424.5(f) and Section 41-428(a)	

Project Description

The applicant is proposing to construct a new two-story, 2,600-square-foot commercial building containing a convenience store on the ground floor and office area on the second floor, as well as a 2,160-square-foot fueling canopy with eight fueling stations. The site will provide 11 onsite parking stalls and two additional stalls located on the adjacent property to the south. The two parking stalls and access have been designed to allow vehicle circulation to and from the site, and an easement has been recorded to authorize reciprocal access and parking. A new driveway is proposed on the northern portion of the property, adjacent to the Santa Clara Avenue frontage. This driveway will be located within 150 feet from the intersection of Santa Clara and Tustin Avenues (Exhibit 4). Street frontage along Tustin Avenue has been designed in anticipation of a ten-foot dedication to the City for street improvements to Tustin Avenue. The landscaped area around both sides will meet the minimum 15-foot requirement. The convenience store will operate between the hours of 5:00 a.m. and 12:00 a.m. (midnight) seven days per week. Should the business owner propose to offer additional hours of service for the convenience store, approval of an afterhours conditional use permit will be required.

The architecture of the building has been designed to complement the adjacent shopping center to the south. The architecture, along with earth tone colors, cement plaster finishes, stone veneer, and the Spanish style roof, blends closely with other buildings seen along the Tustin Avenue corridor (Exhibit 6). Table 2 provides a detailed comparison of the project’s compliance with the applicable development standards.

Table 2: Development Standards

Standard	Required by General Commercial (C5) Zone	Provided
Front yard	15 feet minimum	Complies: 15 feet
Side yard (street)	15 feet minimum	Complies: 15 feet

Standard	Required by General Commercial (C5) Zone	Provided
Side yard (interior)	0 feet minimum	Complies; 0 feet
Rear yard	0 feet minimum	Complies; 5 feet to canopy overhang
Lot Size & Frontage	15,000 sq. ft. and 120 feet	Complies; approximately 22,240 sq. ft. and 290 feet
Building height	35 feet maximum	Complies; 25 feet
Parking	9 Spaces	Complies; 13 spaces (2 of the spaces provided through easement with southern adjacent property)
Floor Area Ratio (FAR)	0.50 FAR maximum	Complies; 0.21 FAR
Driveways	No entry way or exit way shall be located within 150 feet of any intersection corner radius	Does not comply; driveway within 115 feet of the intersection corner radius (variance required)

Project Background and Chronology

The property has been vacant for several decades. In 1962, a use variance was approved to build new canopies for a service station in the R-1 zone. By 1990, all on-site buildings were demolished. In 1996, a new service station proposal was submitted to the City, but nothing was constructed and the site remained vacant. A new multi-tenant commercial building was approved for construction in 2007, but the project was never constructed due to economic factors stemming from the Great Recession. The proposed tenant, Chevron, has submitted plans for early-start Building Division plan check and has indicated a desire to proceed with construction should the entitlements be approved.

Project Analysis

Conditional Use Permit for Service Station

CUP requests are governed by Section 41-638 of the SAMC. CUPs may be granted when it can be shown that the proposed project will not adversely impact the community. If these findings can be made, then it is appropriate to grant the CUP. Conversely, the inability to make these findings would result in a denial.

The applicant is requesting approval of a CUP to allow the operation of a service station. The C-5 zoning district allows for a range of commercial uses complementary to arterial roadways such as Tustin Avenue; service stations in the C-5 zoning district require approval of a CUP to ensure high-quality design and site planning that will not disrupt circulation and development patterns along such arterial roadways. The CUP also provides a means to ensure high-quality operations, site circulation, and to mitigate impacts on sensitive neighboring uses. Additionally, the SAMC requires specific standards for service stations, which are listed under Section 41-374. The City has

reviewed the proposal to develop the site with a service station and has determined the project meets all SAMC development standards and Citywide Design Guidelines.

Pursuant to Section 41-424.5 (f) of the Santa Ana Municipal Code (SAMC) service stations and automobile servicing are subject to a CUP. The applicant's request for a CUP to allow a service station and convenience store will provide an added amenity to the property, for the employees who work in the vicinity and for the residents who live in the general area. In addition, the new use will activate the street corner and generate property and sales tax revenue for the City.

The proposed use complies with the regulations and conditions in Chapter 41 including building heights, yards, parking and landscaping. Conditions of approval have been added to ensure the operations do not negatively affect any surrounding uses and to require a property maintenance agreement be recorded against the property, which will ensure that the property and all improvements are properly maintained. Additionally, the development will also meet sustainability measures pursuant to the California Green Code, such as providing solar photovoltaic panels on the roof and electric vehicle charging stations. Finally, the applicant is not proposing to operate past 12:00 a.m. (midnight) in order to prevent any noise impacts to the sensitive residential land uses.

Driveway Variance

The site is currently served by two driveways along Santa Clara Avenue. The applicant is proposing to maintain the furthest driveway from the intersection subject to changes to meet current City requirements. Another driveway along Tustin Avenue was considered and later removed in order to utilize an existing driveway that serves the property to the south. By utilizing the existing driveway of the adjacent property, the project will reduce the number of driveway aprons along the Tustin and Santa Clara Avenue street frontages. Having fewer driveways along major arterial roadways lessens opportunities for vehicle "weaving," a common cause of accidents, and enhances the pedestrian and bicycle experience.

In order to allow the use of the adjacent property's driveway, an easement was drafted, reviewed by the City, and recorded by the applicant to allow ingress and egress of all vehicles accessing the subject site. The easement is designed to minimize the number of driveways on the Tustin Avenue side of the property. Two parking spaces will be relocated in order to allow the alterations needed for the easement and access. This second driveway will also be reconstructed to meet current City standards. All proposed driveways, sidewalks, and street trees will meet City standards.

Pursuant to Section 41-428(a) of the SAMC, a driveway shall not be within 150 feet of a street corner radius. The purpose of the provision is to limit the number of driveways on arterial streets to reduce potential vehicular conflicts and facilitate traffic flow on arterial streets. The subject property has 112 feet of street frontage along Santa Clara Avenue. Therefore, any driveway that is proposed along Santa Clara would require a variance. The proposed driveway would provide an exit route for fueling vehicles that would need to service the site. The driveway will also increase the viability of the business by providing direct access to traffic traveling in an

eastbound direction. In addition, the design of the driveways, drive aisles, and parking area is practical and the driveway will improve on-site circulation. The Public Works Agency reviewed the proposed plans and did not identify any concerns regarding the location of the driveway (Exhibit 3).

Table 3: CEQA, Strategic Plan Alignment, and Public Notification & Community Outreach

Strategic Plan Alignment, and Public Notification & Community Outreach		
CEQA		
CEQA Type	Section 15303 – Class 3 – New Construction or Conversion of Small Structures	
Reason(s) Exempt or Analysis	<p>This exemption applies to the construction of small structures, which in an urbanized area is defined as up to four buildings not exceeding 10,000 square feet in floor area, on sites zoned for such use, not using significant amounts of hazardous substances, where public services are available and the surrounding area is not environmentally sensitive.</p> <p>The proposed commercial building and fueling canopy will consist of 4,760 square feet of floor area within the Arterial Commercial zoning district, which allows for a service station. There are public services available through the City of Santa Ana and the Orange County Fire Authority and the surrounding area is not environmentally sensitive. As a result, Categorical Exemption, Environmental Review No. 2017-83 will be filed for this project.</p>	
Strategic Plan Alignment		
Goal(s), Policy or Policies	3, 2 (create new opportunities for business/job growth and encourage private development through new General Plan and Zoning Ordinance policies).	
Public Notification & Community Outreach		
Public Hearing	Site posting	A public notice was posted on the project site on May 14, 2020.
	Notification by mail	Notices were mailed to all property owners and occupants within 500 feet of the project site on May 14, 2020.
	Newspaper posting	Newspaper posting was published in the Orange County Reporter on May 14, 2020.
Additional Measures	The Meredith Parkwood Neighborhood Association was contacted. At the time this report was printed, no issues of concern were raised regarding this application.	

Economic Development Benefits

The project will generate a combination of property tax revenue, sales tax revenue, temporary jobs, permanent jobs and services for the community. Property tax revenue will increase as the lot is currently vacant with a value of \$259,000. The total net value of the property will increase to approximately \$1,500,000 after the building and improvements for the project are made. The construction of the project will require that permit fees are paid to the City and there will be temporary construction jobs. According to the plan check submittal, a total of \$15,000 was collected for permit fees, with the improvements estimated at approximately \$500,000. The commercial tenant will provide additional sales tax revenue to the City, estimated to be \$4,500 annually.

Conclusion

Based on the analysis provided within this report, staff recommends that the Planning Commission approve Conditional Use Permit No. 2019-41 as conditioned and Variance No. 2019-05 as conditioned.



Ivan Orozco
Assistant Planner II

IO:sb

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- Exhibits:
1. Conditional Use Permit Resolution
 2. Variance Resolution
 3. Vicinity Zoning & Aerial View
 4. Site Plan
 5. Floor Plan
 6. Elevations

EXHIBIT 1

RESOLUTION NO. 2020-xx

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2019-41 AS CONDITIONED TO ALLOW CONSTRUCTION OF A SERVICE STATION IN THE ARTERIAL COMMERCIAL (C-5) ZONING DISTRICT FOR THE PROPERTY LOCATED AT 2230 NORTH TUSTIN AVENUE

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The Planning Commission of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Behrouz Bozorgnia, representing Farzan Ghadooshahy ("Applicant"), is requesting approval of Conditional Use Permit No. 2019-41 to allow construction of a service station in the Arterial Commercial (C-5) zoning district at 2230 North Tustin Avenue.
- B. Santa Ana Municipal Code (SAMC) Section 41-424.5(f) requires approval of a conditional use permit for service station uses in the Arterial Commercial (C-5) zoning district.
- C. Pursuant to SAMC Section 41-638, the Planning Commission is authorized to review and approve the conditional use permit for this project as set forth by the Santa Ana Municipal Code.
- D. On May 26, 2020, the Planning Commission held a duly noticed public hearing for Conditional Use Permit No. 2019-41.
- E. The Planning Commission of the City of Santa Ana has considered the information and determines that the following findings, which must be established in order to grant Conditional Use Permit No. 2019-41, for service station use, have been established as required by SAMC Section 41-638:
 1. That the proposed use will provide a service or facility which will contribute to the general well being of the neighborhood or community.

The proposed service station and convenience store will provide a service to persons that are working or residing in the area. The project will redevelop a vacant lot with a new

building and enhanced landscaping which will contribute to the aesthetics of the area. This will benefit the community by allowing the construction of an additional service use and retail building on a vacant lot that will provide additional conveniences for residents, visitors, and employees in the vicinity.

2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The proposed service station is located on a corner lot surrounded by commercial developments and will not be detrimental to the health, safety or welfare of those residing or working in the vicinity. The closest residential land use is approximately 120 feet to the west of the site. The service station will utilize the latest technology related to the use to ensure safe operations of the service station. The service station will meet all emissions and air-quality requirements. Finally, the Applicant is not proposing to operate past 12:00 a.m. (midnight) in order to prevent any noise impacts on the sensitive residential land uses.

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The service station will not adversely affect the economic stability or future economic development of properties in the surrounding area. The site is currently vacant and the new building will establish a commercial use of the property. A service station and convenience store will provide an additional service and retail opportunity for the area and will provide a commercial business that generates sales tax revenue for the City.

4. That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.

The proposed use complies with the regulations and conditions in Chapter 41 including building heights, yards, parking and landscaping. A condition of approval has been added to the conditional use permit for a property maintenance agreement to be recorded against the property which will ensure that the property and all improvements are properly maintained. Additionally, the development will also meet sustainability measures pursuant to the California Green

Code, such as providing solar photovoltaic panels on the roof and electric vehicle charging stations.

5. That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

The proposed service station and convenience store will not adversely affect the General Plan. The project is located in a General Commercial (GC) General Plan land use designation, which allows for commercial uses such as retail, service and eating establishments. The project is consistent with several goals and policies of the General Plan, including the Economic Development Element, Land Use Element, and Urban Design Element. Land Use Element Goal 1 promotes a balance of land uses to address basic community needs. Policy 1.10 encourages the location of commercial centers at arterial roadway intersections in commercial districts. The project will provide for a new commercial building on two arterial streets. Land Use Element Goal 2 promotes land uses that enhance the City's economic and fiscal viability. Policy 2.8, promotes rehabilitation of commercial properties, and encourages increased levels of capital investment. The service use and convenience store will contribute to the viability of the adjacent commercial development to the south and other similar uses nearby. Policy 2.9, supports developments that create a business environment that is safe and attractive. The Condition of Approval for property maintenance will maintain a safe and attractive environment in the community. Economic Development Element Goal 2 maintains and enhances the diversity of the City's economic base. Policy 2.3 encourages the development of mutually beneficial and supportive business clusters within the community. Urban Design Element Goal 1 improves the physical appearance of the City through development of districts that project a sense of place, positive community image and quality environment. Specifically, Policy 1.5 enhances architectural forms, textures, colors, and materials for all projects.

Section 2. In accordance with the California Environmental Quality Act, the project is exempt from further review per Section 15303 of the Guidelines for the California Environmental Quality Act. The Class 3 exemption applies to the construction of small structures, which in an urbanized area is defined as up to four buildings not exceeding 10,000 square feet in floor area, on sites zoned for such use, not using significant amounts of hazardous substances, where public services are available and the surrounding area is not environmentally sensitive.

The proposed service station development is comprised of a 2,600-square foot convenience store and 2,160-square foot fueling canopy within the Arterial Commercial zone which allows for service, retail and commercial uses. There are public services available through the City of Santa Ana and the Orange County Fire Authority, and the surrounding area is not environmentally sensitive. As a result, Categorical Exemption, Environmental Review No. 2017-83 will be filed for this project.

Section 3. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 4. The Planning Commission of the City of Santa Ana after conducting the public hearing hereby approves Conditional Use Permit No. 2019-41, as conditioned in Exhibit A, attached hereto and incorporated herein for the project located at 2230 North Tustin Avenue. This decision is based upon the evidence submitted at the abovesaid hearing, which includes, but is not limited to: the Request for Planning Commission Action dated May 26, 2020, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 26th day of May, 2020.

AYES: Commissioners:
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:

Mark McLoughlin
Chairperson

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: _____
Lisa Storck
Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, SARAH BERNAL, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2020-xx to be the original resolution adopted by the Planning Commission of the City of Santa Ana on May 26, 2020.

Date: _____

Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2019-41

Conditional Use Permit No. 2019-41 for a service station is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code, and all other applicable regulations. In addition, the following conditions of approval must be met:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by this conditional use permit.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. All proposed site improvements must conform to the Site Plan Review (DP No. 2017-26) and the staff report exhibits.
2. Any amendment to this conditional use permit must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or the conditional use permit must be amended.
3. Prior to the issuance of a building permit, a landscape and irrigation plan is to be submitted for review and approval. The landscape plan shall conform to the commercial landscape standards, Citywide Design Guidelines and the City's Water Efficient Landscape Ordinance. The landscape plans shall note construction of a minimum seven (7) foot tall perimeter wall along the west and southern property lines, except where prohibited by driveways and required landscape setbacks, and shall be coated with anti-graffiti coating.
4. Prior to the issuance of a certificate of occupancy, signs must be installed at both driveway exits to indicate "Right Turn Only".
5. The hours of operation for the convenience store and service station, including fuel pumps, shall be limited to between 5:00 a.m. and 12:00 a.m. (midnight), seven days per week.
6. The air/water machine must provide an automatic shut-off component to cease operation between the hours of 10:00 p.m. and 7:00 a.m.
7. The Applicant shall be responsible for maintaining the premises free of graffiti. All graffiti shall be removed within 24 hours of occurrence.
8. The cash register must be visible from the street at all times and shall not be obstructed at any time by temporary or permanent signage.

9. Window displays and racks must be kept at a maximum height of three (3) feet including merchandise and cannot obstruct the cashier's view to the outside.
10. A timed-access cash controller or a money drop safe capable of easily providing the cashier the ability to quickly deposit money into it must be installed.
11. A silent armed robbery alarm shall be installed prior to issuance of a certificate of occupancy.
12. There shall be no coin-operated games maintained on the premises at any time.
13. No pay telephones shall be located on the premises.
14. "No Loitering/Trespass" signs/placards shall be posted in the parking lot area. The posted signs must conform to Penal Code Section 602.
15. The Applicant shall provide a Closed Circuit Television System approved by the Police Department and capable of viewing and recording events inside the premises with a resolution which will clearly identify individuals for later identification.
16. Clearly distinguishable height markers shall be installed on the inside door jamb of all doors used by the public to access the store. Horizontal marks, one-inch wide by three-inches long, in different colors, and in a contrasting color to the background, shall be placed every six inches beginning at five feet and ending at six feet six inches.
17. Exterior lighting shall be shielded and/or directed away from residential areas.
18. Goods and fuel deliveries shall not occur between 10:00 p.m. and 7:00 a.m.
19. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The Applicant and/or business owner shall institute appropriate security and operational measures necessary to comply with this requirement.
20. A copy of the conditions of approval shall be kept on premises and presented to any authorized City official upon request.
21. The sale of alcoholic beverages shall be prohibited.
22. The outdoor storage or display of boxes, equipment, materials, merchandise, and other similar items shall be prohibited.
23. A Property Maintenance Agreement must be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon

are properly maintained, Developer (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:

(a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);

(b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses,

(c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;

(d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);

(e) If Developer and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms.

(f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement.

(g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to

enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City.

(h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of final approval for any construction permit related to this entitlement.

EXHIBIT 2

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING VARIANCE NO. 2019-05 AS CONDITIONED TO ALLOW CONSTRUCTION OF A DRIVEWAY WITHIN 150 FEET OF AN INTERSECTION IN THE ARTERIAL COMMERCIAL (C-5) ZONING DISTRICT FOR THE PROPERTY LOCATED AT 2230 NORTH TUSTIN AVENUE

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The Planning Commission of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Behrouz Bozorgnia, representing Farzan Ghadooshahy ("Applicant"), is requesting approval of Variance No. 2019-05 as conditioned, to allow for a driveway within 150 feet of an intersection in the Arterial Commercial (C-5) zoning district at 2230 North Tustin Avenue.
- B. Santa Ana Municipal Code ("SAMC") Section 41-428(a) states no entry way or exit way shall be located within one hundred fifty (150) feet of any street intersection corner radius. The Applicant is proposing a driveway approximately 115 feet from the street intersection corner radius.
- C. Pursuant to SAMC Section 41-638, the Planning Commission is authorized to review and approve the variance for this project as set forth by the Santa Ana Municipal Code.
- D. On May 26, 2020, the Planning Commission held a duly noticed public hearing for Variance No. 2019-05.
- E. The Planning Commission of the City of Santa Ana has considered the information and determines that the following findings, which must be established in order to grant Variance No. 2019-05, for vehicle access within 150 feet of an intersection as required by SAMC Section 41-638:
 1. That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges not otherwise at variance with the intent and purpose of the provisions of this Chapter.

There are special circumstances related to the existing dimensions of the property. The property is located at the southwest corner of Tustin and Santa Clara Avenue and is currently 112 feet by 150 feet in dimension. In order to provide safe and direct vehicular access that is needed for

any commercial business, approval of a variance from the development standards of the Arterial Commercial zoning district is required. In addition, the proposed project will improve the existing conditions by eliminating one (1) additional driveway to the site along Tustin Avenue, replacing the driveway in question, and constructing new curb and sidewalks built to City standards.

2. That the granting of a variance is necessary for the preservation and enjoyment of one (1) or more substantial property rights.

Granting this variance is necessary for the preservation and enjoyment of substantial property rights. Vehicular access is required for the viability of any commercial business, including service stations that require safe and efficient movements for fueling trucks, small delivery trucks, and passenger vehicles. In addition, the proposed tenant (Chevron) is requesting a driveway along Santa Clara Avenue to provide direct access for customers traveling east. The driveway in question would allow for commercial delivery vehicles and fueling vehicles to exit the site safely. Santa Clara Avenue is an east-west arterial street which connects directly to Tustin Avenue. Tustin Avenue connects directly to the Garden Grove (SR-22) Freeway and provides local access to east-west arterials. Providing vehicular access from both Tustin and Santa Clara Avenues will increase opportunities for sales, and provide safe and practical on-site circulation.

3. That the granting of a variance will not be materially detrimental to the public welfare or injurious to surrounding property.

Granting this variance will not be detrimental to the public or surrounding properties. The Public Works Agency and Planning and Building Agency reviewed the proposed plans and did not identify concerns regarding the location of the driveway. The design of the driveways, drive aisles and parking areas are safe and practical. Additionally, the property owner to the south has agreed to grant an easement which will limit the number of driveways along Tustin Avenue.

4. That the granting of a variance will not adversely affect the General Plan of the city.

The variance for vehicle access will not adversely affect the General Plan. The project is located in a General Commercial (GC) General Plan land use designation which allows for commercial uses such as retail, service and eating

establishments. The project is consistent with several goals and policies of the General Plan, including the Economic Development Element, Land Use Element, and Urban Design Element. Land Use Element Goal 1 promotes a balance of land uses to address basic community needs. Policy 1.10, encourages the location of commercial centers at arterial roadway intersections in commercial districts. The project will provide for a new commercial building on two arterial streets. Land Use Element Goal 2 promotes land uses that enhance the City's economic and fiscal viability. Policy 2.8, promotes rehabilitation of commercial properties, and encourages increased levels of capital investment. The driveway will contribute to the viability of the project site and the adjacent commercial center, and redevelop a vacant lot. Policy 2.9, supports developments that create a business environment that is safe and attractive. The Condition of Approval for property maintenance will maintain a safe and attractive environment in the community. Economic Development Element Goal 2 maintains and enhances the diversity of the City's economic base. Policy 2.3 encourages the development of mutually beneficial and supportive business clusters within the community. Urban Design Element Goal 1 improves the physical appearance of the City through development of districts that project a sense of place, positive community image and quality environment. Specifically, Policy 1.5 enhances architectural forms, textures, colors, and materials for all projects.

Section 2. In accordance with the California Environmental Quality Act and the CEQA Guidelines, the project is exempt from further review per Section 15303 of the Guidelines for the California Environmental Quality Act. The Class 3 exemption applies to the construction of small structures, which in an urbanized area is defined as up to four buildings not exceeding 10,000 square feet in floor area, on sites zoned for such use, not using significant amounts of hazardous substances, where public services are available and the surrounding area is not environmentally sensitive.

The proposed service station development is comprised of a 2,600-square foot convenience store and 2,160-square foot fueling canopy within the Arterial Commercial zone which allows for service, retail and commercial uses. There are public services available through the City of Santa Ana and the Orange County Fire Authority and the surrounding area is not environmentally sensitive. As a result, Categorical Exemption, Environmental Review No. 2017-83 will be filed for this project.

Section 3. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative

dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 4. The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby approves Variance No. 2019-05 as conditioned in Exhibit A, attached hereto and incorporated as though fully set forth herein for the project located at 2230 North Tustin Avenue. This decision is based upon the evidence submitted at the above said hearing, which includes, but is not limited to: the Request for Planning Commission Action dated May 26, 2020, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 26th day of May, 2020.

AYES: Commissioners:
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:

Mark McLoughlin
Chairperson

APPROVED AS TO FORM:

#41597v3

Resolution No. 2020-xx
Page 4 of 8

Sonia R. Carvalho, City Attorney

By: _____
Lisa E. Storck
Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, SARAH BERNAL, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2020-xx to be the original resolution adopted by the Planning Commission of the City of Santa Ana on May 26, 2020.

Date: _____

Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Variance No. 2019-05

Variance No. 2019-05 is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code, and all other applicable regulations. In addition, the following conditions of approval shall be met:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by this variance.

1. All proposed site improvements must conform to the Site Plan Review (DP No. 2017-26) and the staff report exhibits.
2. Any amendment to this variance must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or the variance must be amended.
3. Prior to the issuance of a building permit, a landscape and irrigation plan shall be submitted for review and approval. The landscape plan shall conform to the commercial landscape standards, Citywide Design Guidelines and the City's Water Efficient Landscape Ordinance. The landscape plans shall note construction of a minimum seven (7) foot tall perimeter wall along the west and southern property lines, except where prohibited by driveways and required landscape setbacks, and shall be coated with anti-graffiti coating.
4. Prior to the issuance of a certificate of occupancy, signs must be installed at both driveway exits to indicate "Right Turn Only".
5. The hours of operation for the convenience store and service station, including fuel pumps, shall be limited to between 5:00 a.m. and 12:00 a.m. (midnight), seven days per week.
6. The air/water machine must provide an automatic shut-off component to cease operation between the hours of 10:00 p.m. and 7:00 a.m.
7. The Applicant shall be responsible for maintaining the premises free of graffiti. All graffiti shall be removed within 24 hours of occurrence.
8. The cash register must be visible from the street at all times and shall not be obstructed at any time by temporary or permanent signage.
9. Window displays and racks must be kept at a maximum height of three (3) feet including merchandise and cannot obstruct the cashier's view to the outside.
10. A timed-access cash controller or a money drop safe capable of easily providing the cashier the ability to quickly deposit money into it must be installed.

11. A silent armed robbery alarm shall be installed prior to issuance of a certificate of occupancy.
12. There shall be no coin-operated games maintained on the premises at any time.
13. No pay telephones shall be located on the premises.
14. "No Loitering/Trespass" signs/placards shall be posted in the parking lot area. The posted signs must conform to Penal Code Section 602.
15. The Applicant shall provide a Closed Circuit Television System approved by the Police Department and capable of viewing and recording events inside the premises with a resolution which will clearly identify individuals for later identification.
16. Clearly distinguishable height markers shall be installed on the inside door jamb of all doors used by the public to access the store. Horizontal marks, one-inch wide by three-inches long, in different colors, and in a contrasting color to the background, shall be placed every six inches beginning at five feet and ending at six feet six inches.
17. Exterior lighting shall be shielded and/or directed away from residential areas.
18. Goods and fuel deliveries shall not occur between 10:00 p.m. and 7:00 a.m.
19. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The Applicant and/or business owner shall institute appropriate security and operational measures necessary to comply with this requirement.
20. A copy of the conditions of approval shall be kept on premises and presented to any authorized City official upon request.
21. The sale of alcoholic beverages shall be prohibited.
22. The outdoor storage or display of boxes, equipment, materials, merchandise, and other similar items shall be prohibited.
23. A Property Maintenance Agreement must be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained, Developer (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:

(a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);

(b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses,

(c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;

(d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);

(e) If Developer and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms.

(f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement.

(g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City.

(h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of final approval for any construction permit related to this entitlement.

EXHIBIT 3

**CUP 2019-41, VAR 2019-05, TUSTIN AVENUE SERVICE STATION
2230 NORTH TUSTIN AVENUE**

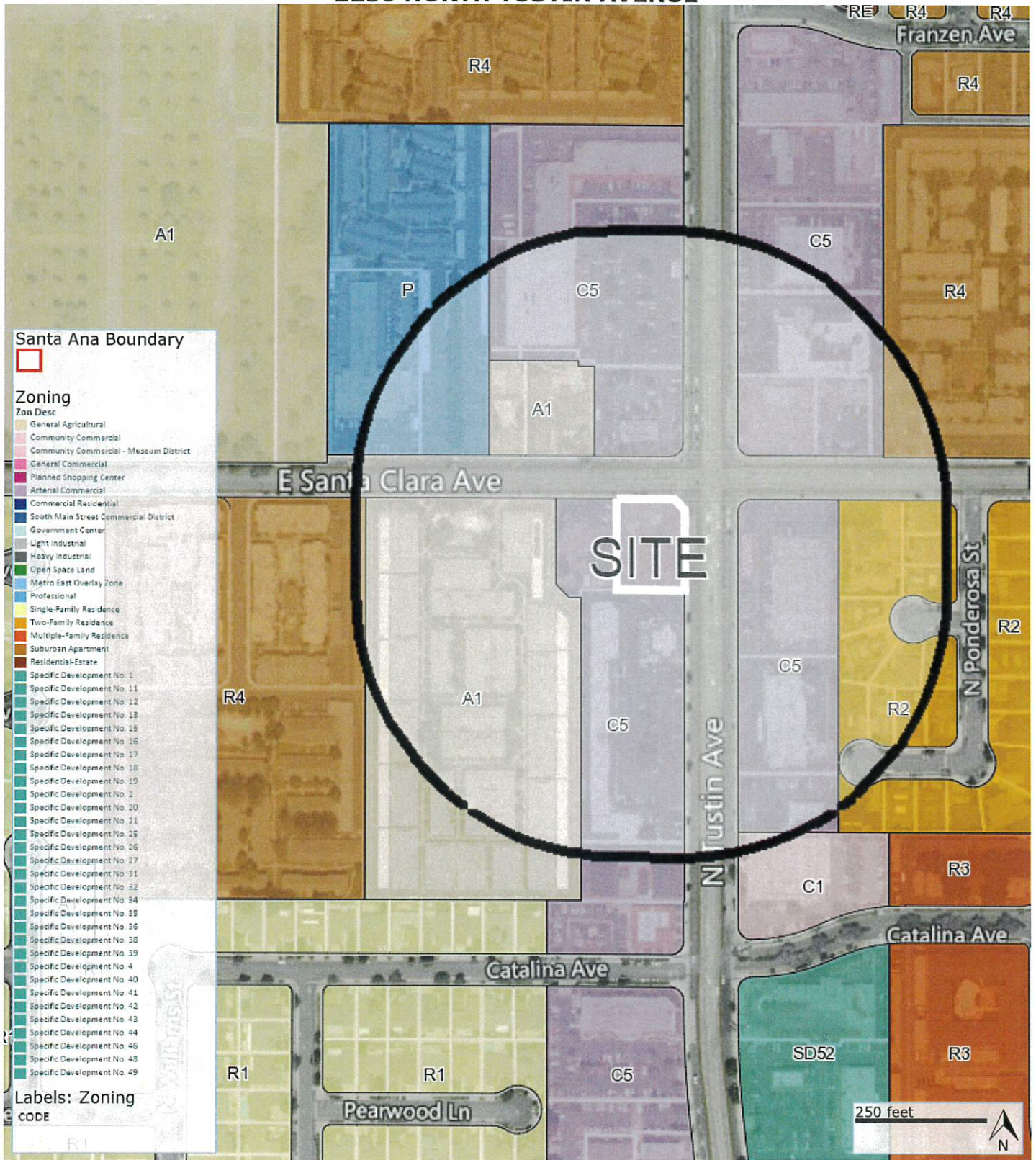


EXHIBIT 3 - VICINITY ZONING AND AERIAL VIEW



EXHIBIT 4

SANTA CLARA AVENUE



TUSTIN AVENUE

EXHIBIT 5

SECOND FLOOR PLAN

SCALE 3/8" = 1'-0"

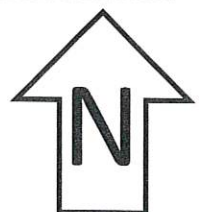
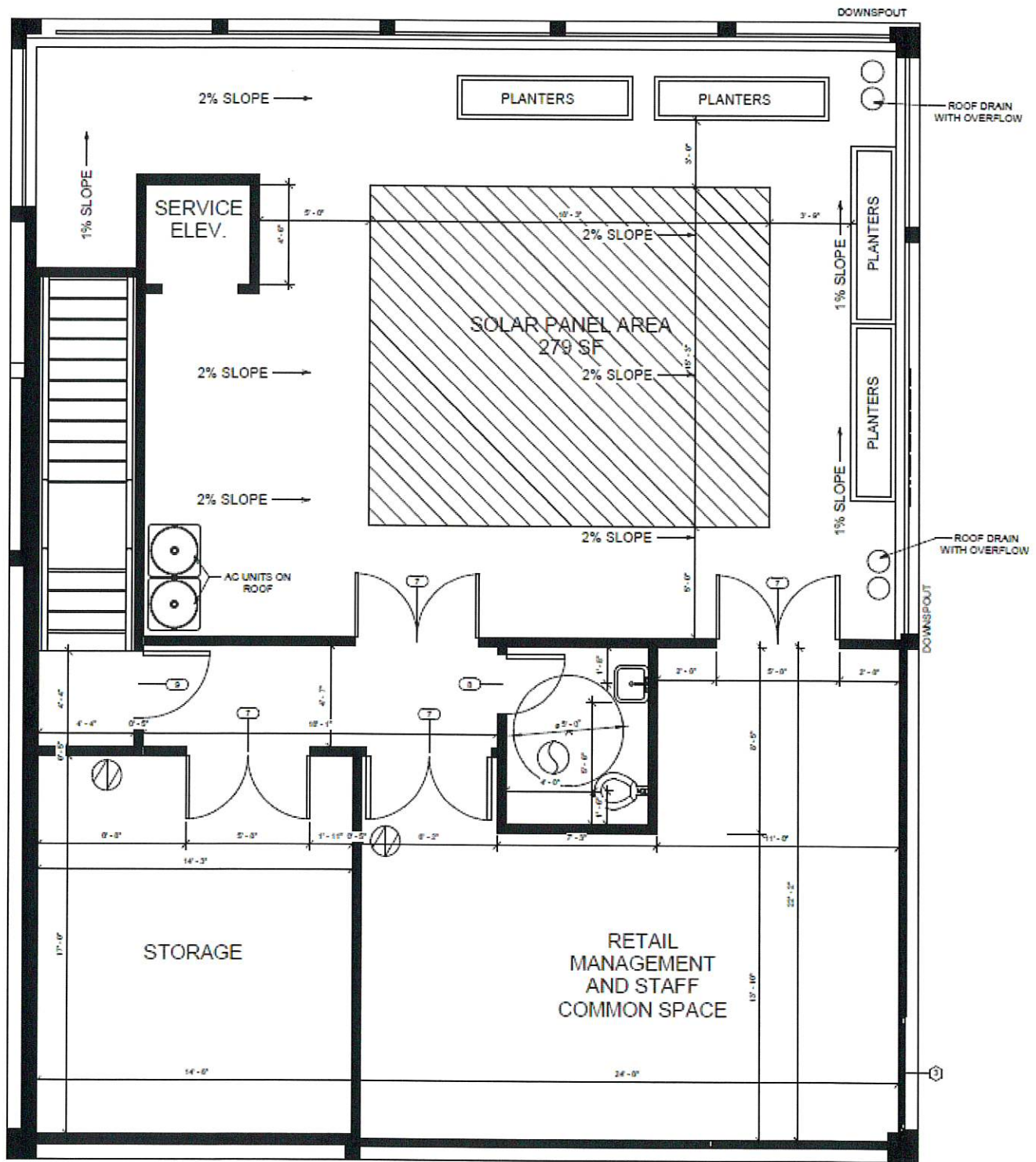
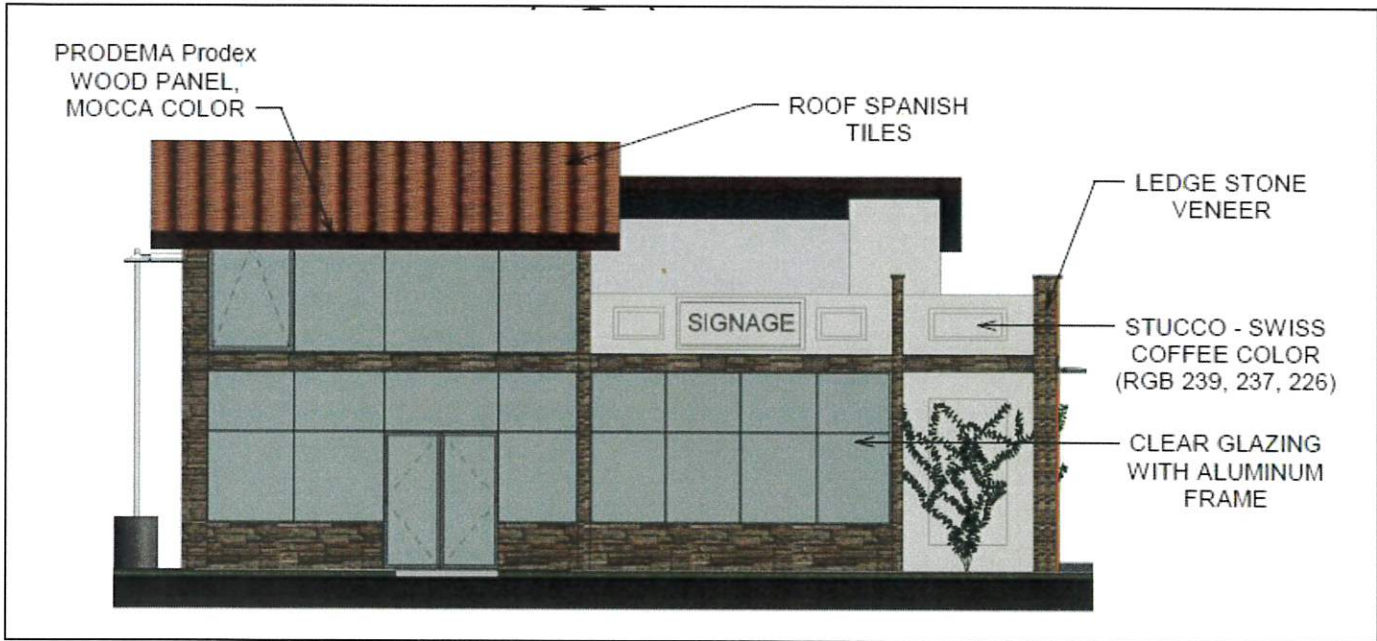
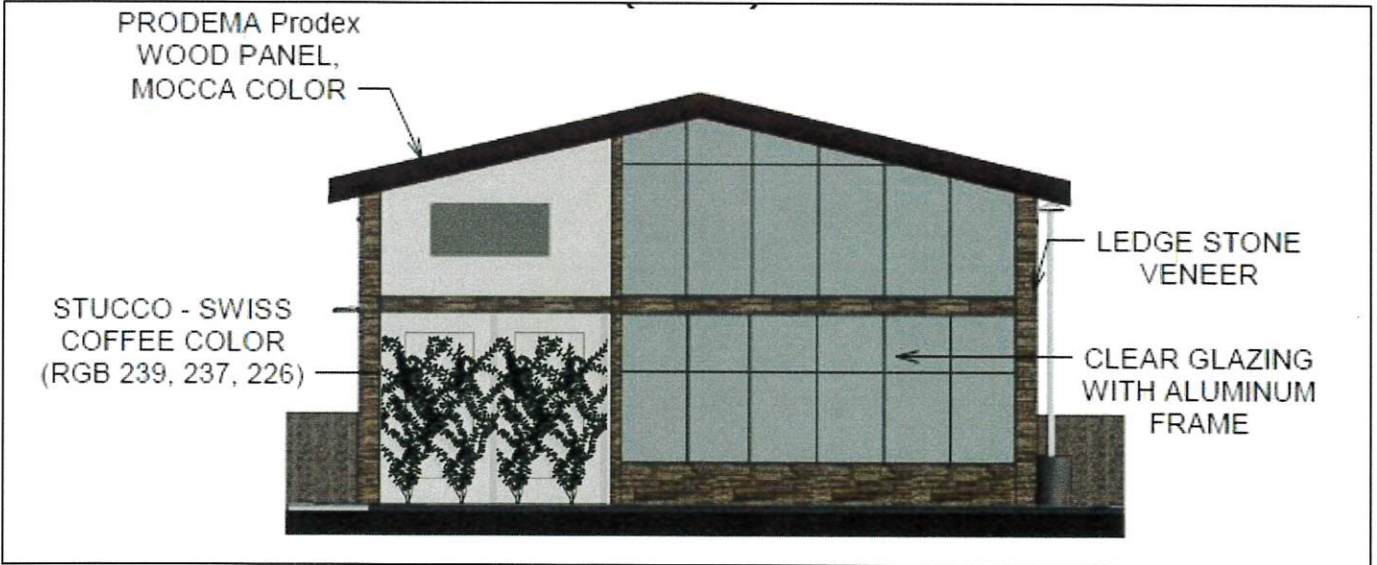


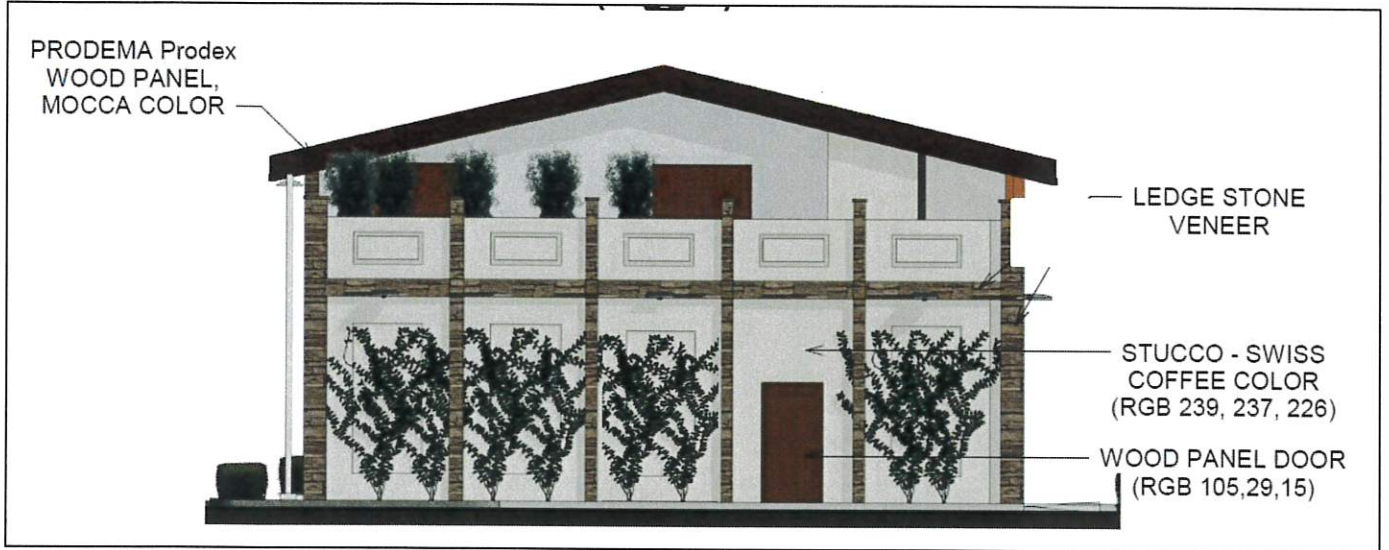
EXHIBIT 6



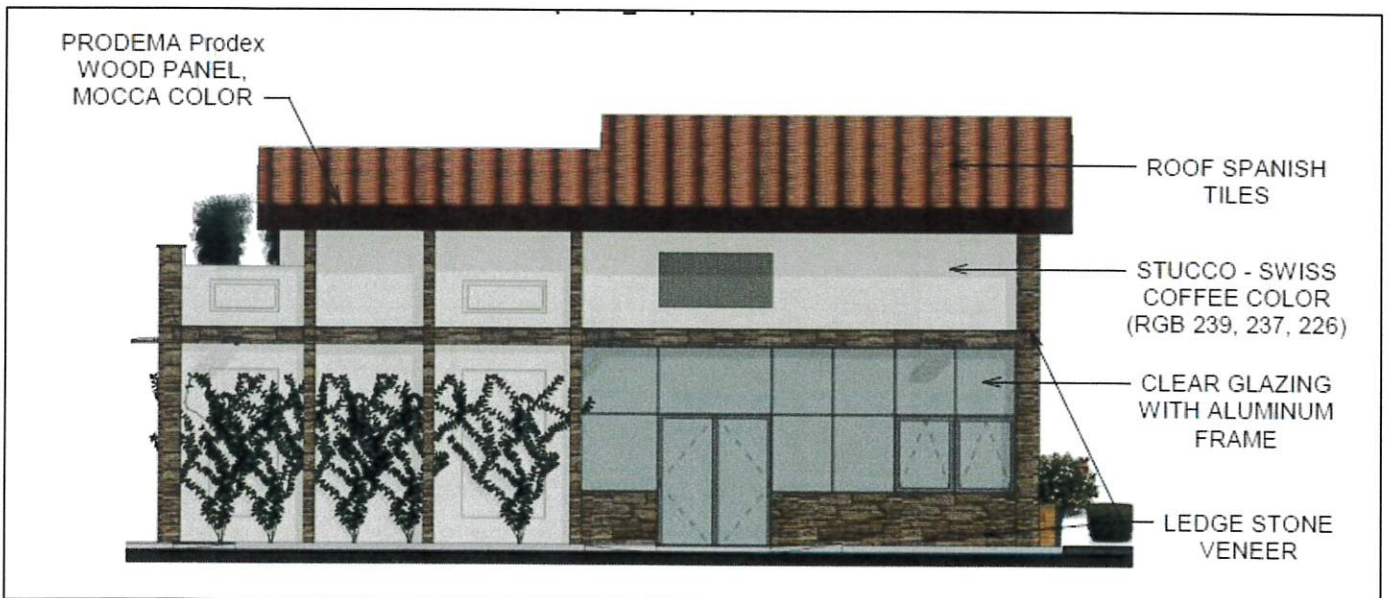
NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION



SOUTH ELEVATION