



REPORT TO THE HEARING EXAMINER
From the DEVELOPMENT SERVICES DEPARTMENT

Project: Convenience Store and Fuel Station

Project Number: CUP-2022-0002

Applicant: Donald Casad 9318-8 Veterans Drive SW, Apt A, Lakewood WA 98498.

Project Address: 15012 Main Street E. Project takes place at the South East corner of Main Street and Valley Avenue. Parcels 0520193800, 0520193100 and 0520193022.

Project Components: Conditional Use Permit, SEPA, Design Review, Lot Line Adjustment, Demo, Civil and Building permits.

Date of Hearing: **Tuesday April 18, 2023 at 1:00pm**
The city is conducting this public meeting using a hybrid model. The public is welcome to attend this meeting in-person at City Hall Council Chambers or virtually by using the meeting access link below. <https://sumnerwa-gov.zoom.us/j/83219837579>
Or call in 253-215-8782

Staff Representative: Scott Waller, Associate Planner.

Description: Proposal to construct a 3,616 square foot convenience store and 8 fueling stations. Project will include frontage improvements, cross access corridor, landscaping, seating areas, site lighting and stormwater management.

Recommendation: **CONDITIONALLY APPROVE**

Exhibits:

- A. Staff report
- B. CUP Application
- C. CUP Criteria Cover Letter
- D. Site Plans and Elevations
- E. Floor Plan
- F. Proof of Ownership
- G. Good Neighbor Plan
- H. ALTA Survey Valley Sq
- I. Environmental Clean up
 - 1 Summary Letter
 - 2 Farralon Report 7-18-22
 - 3 ECY Letter 1-9-2023
- J. Traffic Impact Analysis
- K. SEPA Checklist
- L. SEPA MDNS
- M. Design Review Director's Decision
- N. CUP Notice of Application and Hearing
- O. Zoning Maps
 - 1. Zoning Map 1995
 - 2. Zoning Map 2005
 - 3. Zoning Map 2021
- P. Public Comments (includes SEPA and CUP Comments)
 - 1 SEPA Comments
 - 2 CUP Comments
- Q. Ordinance 2824

1. BACKGROUND**a. Site Location**

The project is located at the south east corner of Valley Ave and Main Street in Sumner. The site is made up of two vacant parcels and one parcel currently operating as a single family dwelling. All three parcels are in the General Commercial zone.

b. Proposal Description

The project involves construction of a new approximately 3,616 square foot convenience store along with a gas station providing 8 fueling stations and associated parking,

landscaping, cross access corridor, stormwater, frontage improvements, seating areas and pedestrian areas.

c. Vicinity Description

The site is located in the General Commercial (GC) zone and is within the East Main Street plan area. The proposed use of a convenience store and gas station is a conditionally allowed use in the GC zone. The East Main Street area has specific requirements that are described in the Design Guidelines and in SMC 18.16 and 18.43, these requirements include pulling buildings up to the street, pedestrian oriented facades, pedestrian features, limiting driveways and constructing cross access corridors.



The proposal is in the vicinity of the following land uses:

- * **North:** Zoned General Commercial (GC) and Neighborhood Commercial at North West of intersection both zones include a variety of commercial establishments including restaurants, coffee shop, retail grocery store and gas station
- * **East:** Zoned General Commercial (GC) with business establishments including a bank and funeral service
- * **South:** Zoned Low Density Residential 8,500 (LDR - 85) and General Commercial (GC) with single family homes and commercial establishments such as fast-food restaurant with drive through and a smoke shop.
- * **West:** Zoned General Commercial (GC) and Low Density Residential 6,000 (LDR 6) with single family homes and a phone store and fast-food restaurant with drive through.

2. ENVIRONMENTAL REVIEW

State Environmental Policy Act (SEPA) Review

A Mitigated Determination of Nonsignificance (MDNS) was issued on May 25, 2022 for the proposal. With a modified MDNS issued April 10, 2023. See Exhibit L. MDNS was modified to update ownership information and project name.

3. PHYSICAL FEATURES

a. Topography and Hydrology

The site is predominantly flat and includes remnants of previous development. There are no designated shorelines as defined by the Sumner Shoreline Master Program within 200 feet of the boundaries of the site per Sumner's Shorelines Map. Additionally, there are no wetlands on the site as defined by the National Wetlands Inventory or the 2007 City of Sumner Wetland Inventory Map.

b. Public Access and Utility Features

The proposed development will be accessed through three driveway approaches, one on Valley Ave, one on Main Street and one on Bock Ave. The Main Street approach will be right in right out and is included to allow fuel tanker trucks to access the site. The access from Valley Ave is existing and part of the Jack in the Box site and will connect through to Bock Ave to create a cross access corridor as designated in Sumner's East Sumner Neighborhood plan. The City of Sumner provides water, sewer and storm services to the site with PSE providing power.

4. NOTICE

The proposed conditional use permit is classified as a Type V decision in accordance with Sumner Municipal Code (SMC) 18.56.030(H).

a. Notice of Application

The Notice of Application was posted on site, posted at Sumner City Hall, mailed to all property owners within 500 feet, posted on Sumner's website and published in the official city newspaper, the *Courier Harold* on March 30th, 2023 in accordance with SMC 18.56.

b. Notice of Public Hearing

The Notice of Public Hearing was posted on site, posted at Sumner City Hall, mailed to property owners within 500 feet, posted on Sumner's website and

published in the official city newspaper, the *Courier Harold* on March 30th, 2023 in accordance with SMC 18.56.

5. COMPREHENSIVE PLAN

The subject site is zoned General Commercial. This designation is applied to areas outside of the downtown area and urban villages where retailing, commercial, and office uses serving a larger market are promoted. While the uses accommodate automobiles to a greater degree, buildings with a street orientation, screened parking, and ample landscaping ensure more attractive centers. Primary uses include retail businesses, automotive sales, professional offices, hospitals, medical clinics, hotels, theaters, restaurants, personal service shops. Secondary uses include automotive service stations, convenience stores, utilities subject to compatibility criteria, and light manufacturing, assembling, and repairing. General commercial uses may occur in different forms to encourage specific uses. For example, areas around hospitals may have provisions encouraging medical service and pedestrian access; or retail or commercial uses near large employment centers may be limited to commercial uses to support workers. Limited multi-family residential uses may be incorporated (e.g. on second floors above retail) where it can be integrated into the proposed development and is compatible with the surrounding neighborhood. Existing general commercial areas will be encouraged to incorporate pedestrian-oriented elements and positive design features such as additional landscaping, reduced front setbacks, screened parking, and pedestrian scale lighting and signage. New development in general commercial areas will require design review to ensure these goals are met and a balance in the accommodation of all transportation modes including transit and pedestrians is achieved

The Sumner Comprehensive Plan includes numerous policy statements related to this proposal.

a. Land Use Sub-Element

- Policy 1.1 Ensure that appropriate transitions so that more intensive uses do not adversely impact adjacent uses.
 - 1.1.1 Maintain the design guidelines and ordinances to achieve compatible and attractive new residential, commercial, and industrial uses.
 - 1.1.2 Maintain zoning and subdivision regulations to ensure adequate setbacks, landscaping, and buffering are required where land use conflicts and impacts may occur.

- Policy 1.3 Through the Land Use Plan and Community Character Element, strive to balance residential, commercial, industrial and public land uses.
- Policy 1.7 Ensure new development is consistent with the policies of this Plan through implementation of regulations, programs, and project specific review.

b. Economic Development Element

- Policy 1.1 Provide adequate land for different kinds of businesses and development to support this element.
- Policy 1.2 Implement this Element in order to provide jobs for local residents, build and sustain broad long-term tax base, drive redevelopment, create short-term tax base and improve infrastructure as a means of achieving other goals and policies within this plan. The provisions of this Element shall be used solely to drive the other elements of this Plan.
- Policy 1.3 Work with the Sumner Downtown Association, Chamber of Commerce, Tacoma Regional Convention & Visitor Bureau, Port of Tacoma, and the Economic Development Board to promote and market the economic development potential and amenities of the City and recruit new businesses
- Policy 1.34.5 Use land use and other regulatory controls to allow for a mix of small businesses, chain and franchises operations, light manufacturing, artisan shops, and other innovative and emerging trends.

c. Community Character Element

- Policy 1.1 Encourage development which enhances the human, pedestrian scale, creating a sense of community and place.
- Policy 1.2: Endeavor to maintain a complete community, consistent and compatible in character and design, containing housing, shops, work places, schools, parks, civic facilities, and community services essential to the daily life of residents.

- Policy 5.1 In reviewing plans and development proposals, consider both long and short term environmental impacts and encourage design which complements the area's natural and cultural features. Natural and significant cultural features should be integrated into the design of the community.
- Policy 5.3 Provide appropriate infrastructure to ensure environmental quality.
- Policy 5.4 Promote the efficient use of renewable resources, water and energy through the use of natural drainage, indigenous landscaping, energy efficient siting and building construction, and recycling.

d. Transportation Element

- Policy 3.6 Provide a highly interconnected network of streets, sidewalks, bicycle lanes, and trails for ease and variety of travel.

To achieve an interconnected street network, the City should:

- Require new development to provide full or partial street improvements, where such streets will expand, complement or improve access to the larger street network, consistent with existing development patterns and environmental constraints;

- Goal 4 Promote use of alternative transportation modes by providing an interconnected system of pedestrian and bicycle facilities.

- Policy 4.3 Sidewalks will be provided on both sides of all City streets unless special circumstances, such as topography or environmental constraints, make it cost prohibitive as determined by the Public Works Director.

6. ZONING

The site is within the General Commercial Zone (GC).

SMC 18.16.101 states: *The GC district is intended to provide for retailing and other commercial services that serve the large market area surrounding the Sumner community. In this respect, GC district regulations are intended to accommodate conventional commercial development that is typical to urban areas such as shopping*

centers, commercial malls and office complexes. Such commercial developments usually rely upon the automobile as their principal source of access.

7-11 initially began the permitting process for this site and sought to construct a convenience store and gas station, completing Design Review and SEPA. The project has since shifted from a proposed 7-11 as the end user to a more speculative convenience store and gas station proposal. The current proposal is operating within the scope and design shown and reviewed through Design Review and SEPA. The Design Review Decision and SEPA MDNS are included as exhibits.

Sumner' City Council amended allowed uses in the General Commercial zone and removed gas stations from being conditionally allowed as shown in exhibit Q – Ordinance 2824; however, ordinance 2824 was adopted July 18, 2022 and effective July 26, 2022 while the complete application for this project was submitted July 8th 2022, thus vesting this current proposal to the land use regulations at time of complete application. This proposal is therefore vested to Sumner's code regulating allowed uses regarding gas stations. Per SMC 18.16.020 (18) in place at time of this complete application, Gasoline service stations and convenience stores with gasoline sales are permitted in the GC zone subject to approval of a Conditional Use Permit (CUP). This proposal is allowed subject to approval of a conditional use permit and if constructed, the gas station component would then be regulated by SMC 18.46.040(G)(5) as a non-conforming use. Convenience stores are outright permitted in the General Commercial zone.

7. DEPARTMENTAL COMMENTS

Comments have been solicited from the applicable City departments and integrated into this staff report.

8. PUBLIC COMMENTS

Comments have been received by interested parties; below is a summary of comments and how/whether they are addressed in the report. The below comments include comments received during SEPA and during CUP noticing.

A. Public Comments received during SEPA – public comments received during SEPA have been included in Exhibit 0 and included comments, concerns, and questions around the below common themes:

a. Residents

- i. Traffic**
- ii. Crime, Safety and Loitering**
- iii. Community Character**
- iv. Walkability**

- v. **Opposition to Gas Station and Convenience Store Use at this Location**
- vi. **Garbage and Litter**
- vii. **24hr Operations**
- viii. **Air Quality**
- b. **Department of Ecology - Environmental**
- c. **Puyallup Tribe - Cultural resources survey**

B. Public Comments received during CUP NOA/NOH

C. City Response to comments received. Staff has worked with the applicant throughout the various stages of this project to address the comments received. The project has been designed and laid out in a way that not only meets Sumner's codes relating to the GC zone and East Sumner Design Area as well as Sumner's Design Guidelines, but also to limit impacts to the greatest extent possible. Below are responses to how the project addresses the below concerns:

- i. **Traffic** – while any development at this site would increase traffic above the current vacant lot, a convenience store and gas station typically draw on customers who are already traveling by the site or in the vicinity. The site plan includes three proposed curb cuts with one of those already existing offsite (1 Valley (existing offsite at Jack in the Box), 1 Main and 1 Bock) which reduces the current sites curb cuts down from 6 (1 Valley, 3 Main, 2 Bock). The driveway located at Main Street will be designed and signed as a right in, right out driveway to keep cars from crossing over Main street at that location.
- ii. **Crime, Safety and Loitering** – in response to comments received, the proposal prepared a Good Neighbor Plan (exhibit G), which addresses these concerns. Furthermore, the project also modified the benches on the site to include a center arm rest to deter persons from sleeping on the benches. The building is located along Main and Valley and includes large storefront windows along with site lighting. This design creates a highly visible building and site.
- iii. **Community Character** – the site and building completed Design Review and was found to meet Sumner's Commercial Design Guidelines. The site proposes a classic storefront design utilizing large windows, canopies, brick siding and landscaped and seating areas. The design and layout fits into the surrounding commercial developments in town.
- iv. **Walkability** – the site currently has some sidewalk around Valley and Main. The proposal would update the frontage to comply with current codes, this would include sidewalks around all frontages, street trees and street lights. The site also includes safe and accessible contrasting paved walkways to the building and throughout the site.

- v. **Opposition to Gas Station and Convenience Store Use at this Location** – while staff understands that some parties would wish this site to be a different use, Sumner’s Code at time of this application allows gas stations along with a variety of other commercial uses. Landowner and or developers may choose from allowed and conditional allowed uses that a zone lists in the code.
- vi. **Garbage and Litter** – SMC 8.12 addresses Sumner’s litter control regulations that the site along with other must comply with. This proposal includes locked trash enclosure with trash receptacles throughout the site. Also, responding to comments received, the site also includes perimeter fencing and landscaping along much of the site which would assist in keeping any litter from leaving the site.
- vii. **24hr Operations** – Sumner’s code doesn’t limit or prohibit a businesses operating hour in this situation and a commercial establishment at this site would choose what hours they are open. Around this site are a variety of commercial uses with a wide range of house, including some that are open 24 hours a day, including Jack in the Box directly south of this site. Sumner’s noise ordinance does require sites generate less noise between 10pm – 7am. The site has been designed to buffer the nearby residential uses to the greatest extent feasible, including 6’ fencing along the south side of the site and along the south side of Bock Avenue, a significant landscape buffer along the area adjacent to residential uses and locating the truck loading space, tire compressor and more active areas of the site further north and west.
- viii. **Air Quality** - Sumner’s zoning code under SMC 18.16.080(z) does require that gas stations need to ensure that they don’t generate odors readily detectible beyond the sites boundaries. The operations will also need to meet State and Federal requirements for gas stations, including Puget Sound Clean Air Agency permitting. Concerns have been raised about emissions from the fuel vent. Previous plans showed the fuel vent along Bock Avenue and has since been relocated further north to increase its distance from residential uses. A condition of approval looks at alternate locations that would further increase the distance between residential uses and the fuel vent. As currently show, there is approximately 150’ from the fuel vent to the nearest property line of a residentially zoned property. The truck loading location has been moved to a location as far from residential zones as possible, additionally conditions

9. REVIEW CRITERIA AND DISCUSSION

In accordance with SMC 18.56, a Conditional Use Permit requires a public hearing before the Hearing Examiner followed by written findings and a decision appealable through the judicial system. The Hearing Examiner shall be guided by the following criteria in granting a conditional use permit:

A. SMC 18.48.050. (Conditional Use – Zoning)

- A. *The proposed use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated;*

Discussion: The project has, using consultants, architects, studies, and reports shown that the project will mitigate those impacts that would be materially detrimental to the public welfare or injurious to properties or improvements in the vicinity of the proposed use in the LDR-6, LDR-85 and General Commercial zones. This has been demonstrated and summarized as follows:

1. Landscaping throughout the project site totaling approximately 5,500 sf of onsite landscaping, with additional planting occurring in the ROW. This exceeds the code required minimum landscaping of approximately 3,000sf for a this site. Fencing is also strategically used throughout to provide screening elements in conjunction with perimeter landscaping where appropriate.
2. Attentiveness to site layout had been looked at and modifications have been made to the projects design and layout, to remove or reduce impacts through the design. Design features include:
 - a. Providing extensive landscaping, low brick walls and trellising to screen the fuel canopy from Main Street
 - b. Locating the fuel vent away from residentially zoned properties.
 - c. Locating the loading stall up against the building at the south west side. This will reduce truck noises and back up alarms from impacting residences. Signage will also be present on the building requiring delivery trucks to turn engines off.
 - d. An approximately 15' – 20' landscape buffer along with 6' high fencing will separate this site from neighboring residential to the south and south east.
3. Noise impacts –
 - a. Short term noise associated with construction is anticipated and will comply with construction hours and BMP's.
 - b. The site layout has been contemplated and designed in a way to reduce the projects noise impact such as the loading stall mentioned above, fencing and landscaping. A condition of

approval requires information on the air compressor' noise generation prior to permit approval and applicable measures implemented to ensure its operations meet Sumner's noise ordinance.

4. All new exterior lighting will be required to include down shields and a photo metric plan will be required prior to development permit issuance showing that this development will not create offsite lighting impacts.
5. Transportation –
 - a. Traffic Impact Analysis shows minimal impacts on traffic due to a majority of the sites visitors driving through or living in the area. This type of use is a service that people will use when they are in the vicinity, unlike other commercial uses such as retail or restaurants that may have more of a regional draw.
 - b. Signage will be used to limit vehicle ingress and egress of the site, including a right in right out driveway on Main Street.
6. Neighborhood Concern Impacts –
 - a. The building will include no loitering signs around the site
 - b. The site includes benches with middle arm rests to deter persons from sleeping.
 - c. Site includes an open line of sight into the site and visual access for employees.
 - d. The project has provided a good neighborhood plan to outline their commitment and response to concerns such as crime, loitering and underage sales.
7. Environmental –
 - a. This project will be required to be built and operate in compliance with Puget Sound Clean Air Agency (PSCAA) regulations for gas stations.
 - b. Environmental clean up and or testing will occur alongside this project.
 - c. Underground fuel tanks are double walled and monitored for leaks.
8. The proposed convenience store has met Sumner's Design Guidelines for a commercial project. This ensures that the site includes visual aesthetics that match its surroundings, provide adequate separation from residential zones

B. The proposed use shall meet or exceed the performance standards that are required in the district it will occupy;

Discussion: The proposal complies with criteria set forth in SMC 18.16.080 for performance standards in the General Commercial zone.

A. Exterior Mechanical Devices. Air conditioners, heating, cooling, ventilating equipment, pumps and heaters and all other mechanical devices shall be screened from surrounding properties and streets and shall be so operated that they do not disturb the peace, quiet and comfort of neighboring residents. Apparatus needed for the operation of active or passive solar energy systems need not be screened pursuant to this subsection.

No building mechanical equipment is shown; however, the use does include some equipment for Electric Vehicle charging, tire air compressor and Co2 and Nitrogen sales. These are located interior on the site and design in a way to screen them. Rooftop equipment should be screened from view due to the buildings highly functional and tall parapet.

B. Required Open Space and Landscaping. For each development in the NC, IC and GC districts a landscape plan shall be prepared in accordance with chapter [18.41](#) SMC to address landscaping of yards and screening of parking, and shall be submitted for approval by the development services director. Landscaping shall be provided along blank building facades and property boundaries. Landscaping shall be provided in accordance with the city of Sumner design and development guidelines. Whenever landscaping is required by this title and/or conditions of approval of discretionary applications required by this title, such landscaping shall be permanently maintained in a neat and orderly manner. In no event shall such landscape areas be used for the storage of materials or parking of automobiles.

Landscape plans have been included during Design Review and included in this CUP application (see exhibit D). The proposed landscaping shown throughout the projects permitting appears to meet the above requirements and a condition of approval requires plans designed in compliance with SMC 18.41 submitted with development permits that also comply with the projects Design Review, SEPA and CUP plans.

C. Outdoor Storage of Materials. Outdoor storage is not permitted in the GC and NC zones, except that outdoor storage of materials is permitted in the IC zone as accessory to a contractor business and in conformance with subsection (T) of this section. The storage of vehicles, such as motorcycles, automobiles, boats and farm equipment for retail sale, shall not be subject to the provisions of this subsection.

Not applicable.

D. Outdoor Lighting. Outdoor lighting and aerial-mounted floodlighting shall be shielded from above in such a manner that the bottom edge of the shield shall be below the light source. The lighting shall be shielded so that the direct illumination shall be confined to the property boundaries of the light source. Ground-mounted floodlighting or light projection above the horizontal plane is prohibited between midnight and sunrise, except governmental flags.

The proposed project does include outdoor lighting. At time of development permit approval, the plans will need to show that all direct light is down shielded and confined to the site.

E. Commercially Zoned Properties Adjacent to Residential Properties. Whenever commercially zoned or mixed-use development abuts any residential district, there shall be:

1. A 10-foot landscaped yard setback and six-foot masonry wall or wood fence established and maintained along the property line that abuts the residential zones, except that fences and walls located within the required front or street side yard shall not exceed a height of three feet.

The proposed project provides a landscaped setback that exceeds the required 10' and includes a 6' solid wood fence as shown in the Design Review plans and SEPA plans. A condition of approval requires compliance with the projects design review and SEPA plans and specifically requires a fence at this location.

F. Swimming Pools. All swimming pools or outdoor bodies of water having a depth of 24 or more inches shall maintain a protective fence, wall or enclosure not less than five feet in height, with no opening greater than four inches wide and equipped with a self-closing gate surrounding the pool or body of water. The provisions of this subsection shall not apply where a swimming pool is accessory to a motel or hotel use where the owner or any employee thereof is on duty on the premises 24 hours each day.

Not applicable.

G. Trash Receptacles. Trash receptacles enclosed within gated, solid walls or fences shall be provided for each property in commercial use. The receptacle shall be set back a minimum of 15 feet from any residentially zoned property boundary and shall be maintained in a neat and sanitary condition.

The proposed trash enclosure will be constructed of a matching brick material as the building with a gate per the design review plans. This enclosure meets the required 15' setback from residential zones and is designed to not interfere with the cross-access corridor. The enclosure will be secured to deter rummaging through the bins and keep trash from leaving the enclosure.

H. Accessory antennas, including satellite dish antennas which are less than or equal to three feet in diameter, shall not be located between the front or street side property lines and a building, and shall be limited to a height of 10 feet in excess of the maximum height required for each zone. Antennas shall be set up so that in case an antenna falls it will fall within the confines of the owner's property. Satellite dish antennas greater than three feet in diameter are regulated below...

Not applicable.

I. Any on-site treatment and storage facilities must meet the Washington State siting criteria as set forth in the location standards found in WAC [173-303-285](#).

Not applicable, no onsite treatment or storage is proposed.

J. Parking areas and pedestrian walkways shall conform to the city of Sumner design and development guidelines.

This project has completed Design Review and all the walkways have been designed in compliance with Sumner's code and design guidelines. This includes providing safe and separated walkways utilizing a contrasting paved material (i.e. walkways are concrete and drive aisles and parking are asphalt). Additionally the driveway approach along East Main will be a stamped and stained concrete to provide a distinguished and safe crossing point.

K. Businesses selling firearms are prohibited from locating within 500 feet of public or private schools including preschools, elementary, junior high, and high school facilities.

Not applicable.

L. Expansion of Specified Existing Uses. Existing residential dwellings lawfully constructed as of the effective date of the ordinance codified in this title may be maintained as follows...

Not applicable.

M. Fences – Intent. The intent of this section is to establish minimum requirements and standards for fences in order to promote safety, provide screening, and to protect the aesthetic assets of the community. Fences constructed in commercial zones shall comply with the standards set forth herein:

1. The requirements of this subsection shall apply only to fences built after the adoption date of the ordinance codified in this section. Fences built before that date shall be considered legal nonconforming fences. Existing fences being replaced after the adoption date of the ordinance codified in this section shall meet the requirements of this section. The construction of any fence, arbor, or trellis requires a building/land use permit.
2. Fences located between the street and the required front yard setback line or street side yard setback line shall not exceed a height of three feet where fences would provide less than 50 percent visibility. Fences providing at least 50 percent visibility shall not exceed a height of four feet within the required front yard or street side yard. Examples of fences that could meet 50 percent visibility include spaced rail fences and spaced picket fences. If the commercially zoned property abuts any residential property the fencing requirements will be those of subsection E of this section.
3. No fence shall exceed a total height of six feet above existing or finished grade in a commercial zone unless the site qualifies for an exception in subsection (M)(8) of this section.

All proposed fences shown throughout the projects previous and current plans show compliance with this section of code, with the exception of the fence along the south east section of site along Bock Avenue (shown during SEPA and Design Review). A segment of fence shown at 6' is along the property line. While this fence does a good job of creating a visual buffer between the site and neighboring residential, it will need to meet the 5' setback. This will be easily accomplished and will maintain a fenced perimeter and will include some landscaping between the fence and sidewalk. This is specified in a condition of approval.

4. Fences utilized to enclose drainage detention ponds or other drainage facilities in any zone shall meet the requirements of the King County Washington Surface Water Design Manual, as well as any other applicable regulations of this section and the Sumner Municipal Code. Chain link fences used to enclose drainage detention ponds or other drainage facilities shall be green or black coated or painted.

Not applicable, there are no above ground drainage facility on the site.

5. No barbed wire, razor wire, or electric fence shall be allowed within neighborhood commercial or general commercial zones. An exception may be granted in the interchange commercial zone if the site qualifies for an exception under subsection (M)(8) of this section.

6. Arbors and trellises will be subject to the following:

a. An arbor of up to three additional feet in height to a nine-foot maximum can be constructed over a gate, walkway, or entryway. The maximum width of an arbor shall be eight feet. These requirements apply to arbors sited in the front and side yard and to arbors attached to fences. Arbors shall be of structurally sound design.

b. A trellis of up to two additional feet in height to a maximum of eight feet may be added to a fence as a decorative element. Trellises with a horizontal element shall not encroach onto adjacent properties. Trellises shall be a structurally sound part of the fence design.

Decorative trellising is used at the north east corner of the site at the corner of Main Street and Bock Avenue. The trellis is built in conjunction with a low brick wall. The top of the trellis measures in at 9', which would exceed the 8' listed above and can be modified at time of development permit to be 8' high.

7. Chain Link Fencing. Chain link fencing is not allowed within the required front yard or required street side yard. Chain link fencing shall be black or green coated or painted along street fronts.

No chain link fencing exception is proposed under the current project and in the event that it was used, it would need to meet this requirement.

8. Exceptions to the fencing standards set forth in this subsection may be granted through a city permit, provided the following criteria are met:

- a. The applicant has demonstrated a need for additional safety and security measures to protect the site; and
- b. Reasonable alternatives which result in reduced or no deviation from the code have been considered and the applicant demonstrates that the alternatives are not reasonably feasible; and
- c. The adjustment to the standards is the minimum necessary to accommodate security fencing; and
- d. The exception will not create harmful impacts to public ways, adjacent properties or the safety of the general public; and
- e. The proposed fencing complies with the standards listed in subsections (M)(9) and (M)(10) of this section; and
- f. The applicant has provided sufficient documentation to describe the proposal, such as a cross-section and elevation of the fencing types proposed, and a site plan with the fence location and setbacks; and
- g. For barbed wire fencing or electrified fencing, the owner shall agree in writing to a “hold harmless” agreement indemnifying the city against any claims related to injury from the proposed fencing.

No fence exception is proposed under the current project and all fences either meet the standard requirements as shown or as conditioned.

9. Fencing Exceptions Standards – All Commercial Zones.

- a. Public facilities, minor and major utility facilities, and wireless communication facilities may construct fences in accordance to the standards set forth for such facilities.
- b. Fences located around potentially dangerous facilities or equipment on the interior of a site where there is a demonstrated need to provide added security and public safety may exceed the height requirements set forth in this section to a maximum height of eight feet. Examples of a demonstrated need include sites utilizing draining

facilities with steep slopes, water tanks, heavy or dangerous machinery or equipment, hazardous substances, hazardous waste, etc.

No fence exception is proposed under the current project and all fences either meet the standard requirements as shown or as conditioned.

10. Fencing Exceptions Standards – Interchange Commercial Zone...

This subsection is not applicable as it only addresses the IC zone.

N. Repealed by Ord. 2624.

O. Outdoor sales shall be allowed for espresso/coffee businesses, taverns, micro-breweries, brewpubs, bars and restaurants provided the following are met:

1. Temporary outdoor sales...
2. Permanent outdoor sales standards...

Not applicable. No outdoor sales are proposed for this project and a convenience store/gas station is not a listed use that would be allowed outdoor sales.

P. For properties located within the area defined as East Main Street in SMC [18.43.020](#), the setback may be increased to 15 feet when the area between the sidewalk and the building:

1. Is utilized as usable pedestrian space such as a plaza, outdoor seating, or public art (fountain, etc.); or
2. Is used for outdoor displays of merchandise or when the displays are an intrinsic part of the nature of the business or it provides a pedestrian amenity. Examples include, but are not limited to, the display of motorized vehicles that are offered for sale, nurseries, outdoor monuments, etc. Additional landscaping may be required that is a minimum five feet wide as measured from the front property line and running parallel to the street for the entire frontage of the property, except for driveways, and meets the city of Sumner design and development guidelines.

The proposal looks to locate the building setback some from Valley Ave and East Main Street due to overhead power lines and an existing easement. The proposed design meets the requirements in subsection #1 of this performance standard and does a good job of creating a design that connects to Main Street, provides landscaped pockets to add a soft touch and

includes outdoor seating on paved areas and bicycle parking. The site design has completed design review.

Q. All development is subject to applicable Sumner design and development guidelines.

The proposed project has already completed Design Review. The project went to Sumner's Design Commission for review with a recommendation of approval with conditions and received a Director approval with conditions on July 23rd 2021. See Exhibit M.

R. Drive-through businesses and drive-through espresso/coffee businesses located within the neighborhood commercial district (except on Main Street) or East Main Street area shall be subject to the following...

Not applicable.

S. A light manufacturing, fabrication, assembling and repairing use within the neighborhood commercial or general commercial zone may be allowed as an accessory use to a retail business, provided it meets all the following performance standards:

1. Be contained within a fully enclosed structure;
2. The operation shall not create noise, light, glare, vibration, or odor that would disturb the peace, quiet, and comfort of neighboring residents, retail uses, lodging and restaurant uses; and
3. Must have a retail component that represents at least 15 percent of the total floor area.

Not applicable.

T. A contractor business shall be permitted an outside storage yard for materials, vehicles and equipment as an accessory use; provided, that the outside storage yard...

Not applicable.

U. Truck parking in the IC zone shall be screened from view of an abutting public right-of-way or from future or present bicycle or pedestrian paths...

Not applicable.

V. Drive-through businesses and drive-through espresso/coffee businesses located within the Town Center area or located within a neighborhood commercial district on Main Street shall be subject to the following...

Not applicable.

W. Indoor emergency shelters and indoor emergency housing shall...

Not applicable.

X. Permanent supportive housing and transitional housing shall...

Not applicable.

Y. Vehicle Repair, Automotive Collision...

Not applicable.

Z. Odor and Emissions. Gas stations shall not create odor in such quantities as to be readily detectable beyond the boundaries of the site, or produce air emissions that are not compliant with regional, state, and federal emission standards, and shall utilize best available control technologies to reduce odors and emissions.

The proposed gas station will be required to operate in a way that does not produce offsite odors and comply with all State and Federal requirements.

- C. *The proposed development shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design;*

Discussion: The proposed development will be compatible generally with the surrounding land uses in terms of traffic, building and site design. Limited traffic impact is anticipated, as this project generally captures existing vehicles already traveling through the area. Any commercial development at this location will increase traffic from the current vacant lot and one single family dwelling. The site and building design comply with Sumner's design and development guidelines and matches or complements the design of many other commercial projects in town.

- D. *The proposed use shall be in keeping with the goals and policies of the Sumner comprehensive plan;*

Discussion: The Comprehensive Plan includes numerous statements in support of this development, excerpts of the Comprehensive Plan have been included in this report under section #5. The project incorporates construction of complete

streets through sidewalks, street trees and street lights as well as construction and dedication of a cross access corridor per the East Main Street Design Strategy.

- E. *All measures have been taken to minimize the possible adverse impacts which the proposed use may have on the area in which it is located.*

Discussion: The proposed convenience store and gas station has been designed in such a way to minimize all possible adverse impacts which the proposed use may have on the area. These measures include:

- Site and Building design elements including locating the more intensive aspects of the project towards Main Street and Valley Avenue such as the air compressor, fuel vent, loading and delivery stall and elements like extra parking and potential EV charging closer to residential zones.
- Fencing is shown or conditioned along the south side of the site adjacent to residential zones and continuing north on Bock Avenue. The site also includes a large landscape buffer along the south and southeast sections of the site.
- Lighting is required to be down shielded and ensure lighting does not trespass on to adjacent sites.

- 10. Expiration and timing of land use permits -** Land use permit decisions shall abide by and are regulated under SMC 18.56.220.

10. STAFF RECOMMENDATION

Proposal CUP-2022-0002 for a conditional use permit for a convenience store and eight fuel stations should be APPROVED with the following conditions by the Sumner Hearing Examiner.

1. This project shall abide by all conditions from the MDNS issued May 25th, 2022, with a final modification on April 10, 2023.
2. The project shall abide by the design, layout and conditions from the approved Design Review Director's Decision under PLN-2020-0078. At time of development permit application, applicant shall submit construction plans showing substantial compliance with the design approved under PLN-2020-0078 and the projects SEPA documents and determination and include colored building, trash enclosure and fuel canopy elevations showing and labeling materials. Applicant shall also include site plans and landscape plans in compliance with Design Review PLN-2020-0078, the projects SEPA documents and determination along with the documents included with the CUP under CUP-2022-0002 and SMC 18.41. All plans submitted during development permits

shall include applicable conditions and mitigating measures from the PLN-2020-0078 Director Decision, SEPA MDNS and the projects CUP decision.

3. Alternate locations for the fuel vent should be considered if said alternative would provide for the greatest distance between the fuel vent and residential properties while still ensuring screening to the greatest extent possible from public streets and sidewalks.
4. Right of way dedication will be required along all project frontages as necessary to accommodate the required street frontage improvements. The ROW corners will be radiused, not segmented as shown on the site plan.
5. All frontages will be improved by the project with full frontage improvements to meet minimum standards for the roadway. Such improvements will include illumination, sidewalk, planter strip, driveway approaches, etc. as needed due to a lack of existing improvements, damage to existing improvements, or insufficiency of existing improvements.
6. Cross Access corridor - the Cross Access corridor shall be designed, constructed and an easement provided per SMC 18.43.100 prior to final approval and Certificate of Occupancy for this project. The location of the cross-access corridor shall be consistent with location shown on the project's site plans and run along the project's southern property line and connect Valley Avenue to Bock Avenue.
7. Traffic measures – signage and or painting shall be installed at the driveway approach on East Main as a Right in Right out driveway. Signage style and location will be at the discretion of the City Engineer and in compliance with the City's standard details and any other applicable MTCA standards.
8. Traffic measures – the driveway approach along E Main will include stamped and stained concrete subject to final design approval by the City Engineer.
9. Truck Circulation – plans will need to show that the fuel trucks will be able to maneuver without crossing into opposing traffic. Driveway approaches may need to be modified to provide adequate angles. Fuel trucks shall abide by the ingress and egress depicted on the plans.
10. Noise –
 - a. Operations at the project site shall abide by Sumner noise control ordinance in SMC 8.14. This includes a maximum of 57 dBA generated by the project site as measured from residential properties. The maximum dBA must be reduced by 10 dBA between the hours of 10:00pm through 7:00am.
 - b. Information demonstrating the dBA of the proposed air compressor shall be provided prior to issuance of development permits for the compressor. If during operation the air compressor or other equipment is found to violate Sumner's noise ordinance, then sound attenuating measures shall be implemented until such equipment reaches compliance with SMC 8.14.

- c. Fuel and other deliveries transported by trucks that would exceed Sumner's reduced dBA maximums as listed in measure 6(a) above shall only occur between the hours of 7:00am and 10:00pm.
 - d. The store's loading stall shall be located adjacent to the building as shown in the projects SEPA site plan. Locating the loading stall up against the building in the parking area located south of the building and closets to Valley Ave will keep noise generating activities furthest from residential properties. This stall shall also include a sign asking that the engine be turned off during loading/unloading.
11. Environmental Remediation shall be completed prior to or concurrent with the project's development and shall include cleanup of the site and offsite contamination related to and or coming from this site, specifically the northwest corner of the site and adjacent ROW. Work associated with the convenience store and fuel station site and building may occur at the applicant's own risk prior to issuance of a No Further Action (NFA) or NFA likely by the Department of Ecology. No Certificate of Occupancy shall be granted until a NFA is issued unless the circumstances in the following sentence are present. If cleanup actions require long-term compliance monitoring to be conducted prior to Ecology issuing a No Further Action determination, a demonstration that exposure pathways are incomplete for building occupants, and written Ecology concurrence, is sufficient to allow for occupation of the building through a temporary certificate of occupancy. All current and future permits must comply with Ecology clean up regulations and any issued NFA and its conditions.
 12. Fencing heights and locations shall comply with SMC 18.16 at time of development permit. Fencing shall be required along Bock Avenue south of the driveway approach on Bock Avenue must be setback from the sidewalk a minimum of 5' and the space between will need to include landscaping.
 13. 6' masonry or wood fencing shall be required along the project's southern property line adjacent to residential zones and comply with SMC 18.16.080(E).
 14. Lighting – a photometric plan showing safe and adequate levels as described in Sumner's Design Guidelines without creating any offsite lighting impacts or light trespass shall be provided prior to issuance of building permit. All lighting shall be down shielded and be contained on the property.
 15. Air –
 - a. Project development, operations and refueling shall not create any noticeable odor beyond the site's property line.
 - b. Construction and operations shall meet Puget Sound Clean Air Agency regulations and testing.
 16. BLA – the project shall complete a boundary line adjustment or lot consolidation to create a development that will comply with setbacks and development regulations. The BLA or lot consolidation shall be submitted prior to Building permit issuance and recorded prior to issuance of Certificate of Occupancy.

17. The Project shall abide by all local, State and Federal regulations and receive necessary approvals prior to commencement of work.
18. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

11. APPEALS

An appeal of this decision may be filed pursuant to Sumner Municipal Code (SMC) Section 18.56.030 for Type V decisions through the judicial system within 21 days of the date of decision.

Exhibits:

- A. Staff report
- B. CUP Application
- C. CUP Criteria Cover Letter
- D. Site Plans and Elevations
- E. Floor Plan
- F. Proof of Ownership
- G. Good Neighbor Plan
- H. ALTA Survey Valley Sq
- I. Environmental Clean up
 - 1 Summary Letter
 - 2 Farralon Report 7-18-22
 - 3 ECY Letter 1-9-2023
- J. Traffic Impact Analysis
- K. SEPA Checklist
- L. SEPA MDNS
- M. Design Review Director's Decision
- N. CUP Notice of Application and Hearing
- O. Zoning Maps
 - 1. Zoning Map 1995
 - 2. Zoning Map 2005
 - 3. Zoning Map 2021
- P. Public Comments (includes SEPA and CUP Comments)
 - 1 SEPA Comments
 - 2 CUP Comments
- Q. Ordinance 2824