



**AGENDA MEMO**

**PLANNING COMMISSION MEETING DATE: MAY 28, 2009**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: ABEYANCE - VAR-34008 - APPLICANT: AMERICAN WEST  
PETROLEUM - OWNER: PHAM CAPITAL, LLC**

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**\*\* CONDITIONS \*\***

**STAFF RECOMMENDATION: DENIAL.** If Approved, subject to:

**Planning and Development**

1. Approval of and conformance to the conditions for Special Use Permit (SUP-34006) and Site Development Plan Review (SDR-34010), if approved.
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

**VAR-34008 - Staff Report Page One**  
**May 28, 2009 - Planning Commission Meeting**

**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This is a request for a Variance to allow a zero-foot side yard setback where 10 feet is the minimum required and to allow a residential adjacency setback of 20 feet where 57 feet is required at the southwest corner of Sahara Avenue and Valley View Boulevard. The proposed uses cannot be conducted in a compatible and harmonious manner, as the applicant fails to meet both Title 19.08.050 Development Standards and Title 19.08.060 Residential Adjacency Standards; therefore staff is recommending denial of the subject application.

**BACKGROUND INFORMATION**

| <i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc. and Property Sales</i> |                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 03/11/65                                                                              | The Planning Commission approved a Rezoning (Z-0018-65) from R-3 (Medium Density Residential) to C-1 (Limited Commercial) and a Plot Plan Review [Z-0018-65(1) for a proposed Convenience Store with fuel pumps on 0.58 acres at the southwest corner of Sahara Avenue and Valley View Boulevard. |
| 06/03/97                                                                              | The Board of Zoning Adjustment approved a Variance (V-0047-97) to allow an existing 65-foot tall non-conforming pole sign two feet from the front property line where five feet is the minimum required setback in a C-1 (Limited Commercial) district.                                           |
| 12/18/03                                                                              | The Planning Commission approved a Site Development Plan Review (SDR-3321) for a 2,400 square-foot expansion of an existing Convenience Store with a Waiver of the perimeter and parking lot landscaping at 3701 W. Sahara Avenue. Staff recommended approval of the request.                     |
| 08/03/07                                                                              | A deed was recorded for a change of ownership at 3701 W. Sahara Avenue.                                                                                                                                                                                                                           |
| 02/08/08                                                                              | A Code Enforcement complaint (#62166) was processed for illegal signage at 3701 W. Sahara Avenue. The issue was resolved on 02/21/08.                                                                                                                                                             |
| 05/19/08                                                                              | A Code Enforcement complaint (#65746) was processed for a structure built without permits at 3701 W. Sahara Avenue. The issue was closed by Code Enforcement on 09/17/08.                                                                                                                         |
| 08/21/08                                                                              | A Code Enforcement complaint (#68941) was processed for a repair shop using paint and chemicals at 3701 W. Sahara Avenue. The issue was closed by Code Enforcement on 08/22/08.                                                                                                                   |

**VAR-34008 - Staff Report Page Two**  
**May 28, 2009 - Planning Commission Meeting**

|                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/14/09                                                 | The Planning Commission will consider a related Site Development Plan Review (SDR-34010) for a proposed 3,018 square-foot Convenience Store with fuel pumps and a Waiver to allow a zero-foot landscape buffer on a portion of the south and west perimeter where eight feet is required and to allow a Waiver of the Building Placement and Orientation Standards and a Special Use Permit (SUP-34006) for a Beer/Wine/Cooler Off-Sale Establishment on 0.58 acres at the southwest corner of Sahara Avenue and Valley View Boulevard. |
| <b><i>Related Building Permits/Business Licenses</i></b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 1966                                                     | The County Assessors Office indicates a construction date of 1966 for the building located at 3701 W. Sahara Avenue.                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 10/30/97                                                 | A Building Permit (#97022032) was issued to re-locate an existing pole sign at 3701 W. Sahara Avenue. The permit was finalized on 12/06/97.                                                                                                                                                                                                                                                                                                                                                                                             |
| 10/08/07                                                 | A Business License (#C05-01515) was issued for a tobacco dealer at 3701 W. Sahara Avenue. The license was marked out of business on 03/05/09.                                                                                                                                                                                                                                                                                                                                                                                           |
| 10/08/07                                                 | A Business License (#G02-00779) was issued for a garage minor auto repair at 3701 W. Sahara Avenue. The license was marked out of business on 03/05/09.                                                                                                                                                                                                                                                                                                                                                                                 |
| 02/14/08                                                 | A Business License (#R05-00573) was issued for a restaurant, take-out only at 3701 W. Sahara Avenue. The license is currently active.                                                                                                                                                                                                                                                                                                                                                                                                   |
| 04/10/08                                                 | A Business License (#C05-02600) was issued for a tobacco dealer at 3701 W. Sahara Avenue. The license was marked out of business on 03/05/09.                                                                                                                                                                                                                                                                                                                                                                                           |
| 04/10/08                                                 | A Business License (#C15-00361) was issued for a convenience store at 3701 W. Sahara Avenue. The license was marked out of business on 03/05/09.                                                                                                                                                                                                                                                                                                                                                                                        |
| 07/30/08                                                 | A Business License (#C05-02627) was issued for a tobacco dealer at 3701 W. Sahara Avenue. The license was marked out of business on 03/06/09.                                                                                                                                                                                                                                                                                                                                                                                           |
| 07/30/08                                                 | A Business License (#S05-01046) was issued for a service station at 3701 W. Sahara Avenue. The license was marked out of business on 03/06/09.                                                                                                                                                                                                                                                                                                                                                                                          |
| 07/30/08                                                 | A Business License (#C05-00366) was issued for a convenience store at 3701 W. Sahara Avenue. The license was marked out of business on 03/06/09.                                                                                                                                                                                                                                                                                                                                                                                        |
| 08/06/08                                                 | A Business License (#A45-00533) was issued for auto detailing at 3701 W. Sahara Avenue. The license is currently active.                                                                                                                                                                                                                                                                                                                                                                                                                |
| 08/11/08                                                 | A Business License (#G02-00823) was issued for a garage minor auto repair at 3701 W. Sahara Avenue. The license is currently active.                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b><i>Pre-Application Meeting</i></b>                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 03/06/09                                                 | <p>Staff met with the applicant and reviewed the requirements for a Site Development Plan Review, Variance and Special Use permit applications.</p> <ul style="list-style-type: none"> <li>• Waivers and exceptions of perimeter landscaping and building placement and orientation standards were also discussed.</li> <li>• Existing business licenses and building permits</li> <li>• Intended use and residential adjacency requirements</li> </ul>                                                                                 |

**VAR-34008 - Staff Report Page Three**  
**May 28, 2009 - Planning Commission Meeting**

| <b><i>Neighborhood Meeting</i></b>                                            |                                                                                                                                              |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| A neighborhood meeting is not required for this application nor was one held. |                                                                                                                                              |
| <b><i>Field Check</i></b>                                                     |                                                                                                                                              |
| 04/09/09                                                                      | A field check was completed on the indicated date. An existing Auto Repair Garage, Minor with fuel pumps at 3701 W. Sahara Avenue was noted. |

| <b><i>Details of Application Request</i></b> |            |
|----------------------------------------------|------------|
| <b><i>Site Area</i></b>                      |            |
| Net Acres                                    | 0.58 acres |

| <b>Surrounding Property</b> | <b>Existing Land Use</b> | <b>Planned Land Use</b>     | <b>Existing Zoning</b>          |
|-----------------------------|--------------------------|-----------------------------|---------------------------------|
| Subject Property            | Convenience Store        | SC (Service Commercial)     | C-1 (Limited Commercial)        |
| North                       | Retail                   | SC (Service Commercial)     | C-1 (Limited Commercial)        |
| South                       | Single-Family Dwellings  | L (Low Density Residential) | R-1 (Single Family Residential) |
| East                        | Convenience Store        | SC (Service Commercial)     | C-1 (Limited Commercial)        |
| West                        | Restaurant               | SC (Service Commercial)     | C-1 (Limited Commercial)        |

| <b><i>Special Districts/Zones</i></b>             | <b><i>Yes</i></b> | <b><i>No</i></b> | <b><i>Compliance</i></b> |
|---------------------------------------------------|-------------------|------------------|--------------------------|
| <b>Special Area Plan</b>                          |                   | X                |                          |
| <b><i>Special Districts/Zones</i></b>             | <b><i>Yes</i></b> | <b><i>No</i></b> | <b><i>Compliance</i></b> |
| <b>Special Purpose and Overlay Districts</b>      |                   |                  |                          |
| A-O Airport Overlay District (200-foot)           | X                 |                  | Y                        |
| <b>Trails</b>                                     |                   | X                | N/A                      |
| <b>Rural Preservation Overlay District</b>        |                   | X                | N/A                      |
| <b>Development Impact Notification Assessment</b> |                   | X                | N/A                      |
| <b>Project of Regional Significance</b>           |                   | X                | N/A                      |

**DEVELOPMENT STANDARDS**

***Pursuant to Title 19.08.050, the following development standards are proposed:***

| <b><i>Standard</i></b> | <b><i>Required/Allowed</i></b> | <b><i>Provided</i></b> | <b><i>Compliance</i></b> |
|------------------------|--------------------------------|------------------------|--------------------------|
| Min. Lot Size          | N/A                            | 0.58 acres             | Y                        |
| Min. Lot Width         | 100 Feet                       | 170 Feet               | Y                        |

**VAR-34008 - Staff Report Page Four**  
**May 28, 2009 - Planning Commission Meeting**

|                                |          |           |   |
|--------------------------------|----------|-----------|---|
| Min. Setbacks                  |          |           |   |
| • Front (east property line)   | 25 Feet  | 66.5 Feet | Y |
| • Side (south property line)   | 10 Feet  | Zero Feet | N |
| • Corner (north property line) | 15 Feet  | 34.5 Feet | Y |
| • Rear (west property line)    | 20 Feet  | 25.9 Feet | Y |
| Max. Lot Coverage              | 50%      | 25%       | Y |
| Max. Building Height           | N/A      | 19 Feet   | Y |
| Trash Enclosure                | Screened | Screened  | Y |
| Mech. Equipment                | Screened | Screened  | Y |

***Pursuant to Title 19.08.060 Residential Adjacency Standards***

| <b><i>Residential Adjacency Standards</i></b> | <b><i>Required/Allowed</i></b> | <b><i>Provided</i></b> | <b><i>Compliance</i></b> |
|-----------------------------------------------|--------------------------------|------------------------|--------------------------|
| 3:1 proximity slope                           | 57 Feet                        | 20 Feet                | N                        |
| Adjacent development matching setback         | 15 Feet                        | 20 Feet                | Y                        |
| Trash Enclosure                               | 50 Feet                        | 60 Feet                | Y                        |

## **ANALYSIS**

The proposed 3,018 square-foot Convenience Store with fuel pumps fails to meet both Title 19.08.050 Development Standards and Title 19.08.060 Residential Adjacency Standards. The proposed building is located zero feet from the southern property line, which requires a 10-foot setback in a C-1 (Limited Commercial) district is required, which is a deviation of 100%. Furthermore, the applicant fails to meet the 3:1 proximity slope requirement, which requires the proposed 19-foot building to be located 57 feet from the residential property to the south, but due to the intervening right-of-way the setback is reduced to 20 feet.

Alternative site design or a project of smaller scope would alleviate the need for this Variance; therefore, staff is recommending denial of the request as the applicant has created a self-imposed hardship by proposing to build within the required setback and locate the proposed Convenience Store too close to existing single-family residential homes to the south.

## **FINDINGS**

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.

**VAR-34008 - Staff Report Page Five**  
**May 28, 2009 - Planning Commission Meeting**

Additionally, Title 19.18.070L states:

Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by proposing to build within the required setback and locate the proposed Convenience Store to close to existing single-family residential homes to the south. Alternative site design would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the sites physical characteristics, it is concluded that the applicants hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

**NEIGHBORHOOD ASSOCIATIONS NOTIFIED**

13

**ASSEMBLY DISTRICT**      8

**SENATE DISTRICT**      11

**NOTICES MAILED**      871

**APPROVALS**      0

**PROTESTS**      8