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Planning and Development Department

Jennifer K. Clark, AICP, HDFP
Director

January 26, 2021

Please reply to:
Jose Valenzuela
Jose.Valenzuela@fresno.gov

Bill Robinson
Sol Development Associates, LLC
bill@soldevelopment.com
(Sent via email only)

**SUBJECT: CONDITIONAL USE PERMIT APPLICATION NO. P20-02834 FOR
PROPERTY LOCATED AT 2020 WEST SHAW AVENUE (APN: 415-070-15S)**

Dear Bill Robinson:

On January 26, 2021, the Planning and Development Department Director denied Conditional Use Permit Application No. P20-02834, requesting authorization to obtain a State of California Alcoholic Beverage Control Type 20 alcohol license (authorizes the sale of beer and wine for consumption off the premises where sold) to sell off-sale alcohol for the proposed 7-Eleven convenience store and gas station at the address mentioned above. The property is zoned CMX (*Corridor/Center Mixed Use*).

This denial action is based upon the project's compliance with the requirements of Fresno Municipal Code (FMC) Section 15-2706-F (Location Restrictions for New Establishments). The proposed off-sale alcoholic beverage establishment is located within 1,000 feet of three existing off-sale alcoholic beverage establishments (Rite Aid, 7-Eleven, and Kwik Serv) and exceeds the Citywide ratio allowance.

According to FMC Section 15-2706-F-6, a new establishment may be excepted from the location restrictions if the Review Authority determines all of the following:

- a. The proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.
- b. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.
- c. The proposed outlet for the off-premises sale of alcoholic beverages would act as a public convenience or necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety.

- d. The primary use of the establishment, based on information provided by the applicant, has been determined by the Review Authority to meet the definition of a General Market including a supermarket, neighborhood grocery store or a Healthy Food Grocer.

The Director was unable to make the required findings.

Therefore, in accordance with required findings specified for Conditional Use Permits under Chapter 15, Article 53, §15-5306 of the FMC, the proposed use, to establish a Type 20 off-sale alcohol license for the proposed 7-Eleven service station and convenience store, is denied based on the following:

Findings per Fresno Municipal Code Chapter 15, Article 53, Section 15-5306	
A Conditional Use Permit shall only be granted if the decision-maker determines that the project as submitted or as modified conforms to all of the following criteria. If the decision-maker determines that it is not possible to make all of the required findings, the application shall be denied.	
Finding a:	<i>The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code;</i>
Finding (a) cannot be made for the following reason: The proposed off-sale alcohol establishment (7-Eleven) will not comply with FMC Section 15- 2706-F (Location Restrictions for New Establishments). The establishment is located within 1000 feet of three existing off-sale licenses (Rite Aid, 7-Eleven, and Kwik Serv) and exceeds the Citywide ratio allowance.	
Finding b:	<i>The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;</i>
Finding (b) cannot be made for the following reason: The proposed 7-Eleven service station and convenience store with alcohol sales is consistent with the current General Plan and Bullard Community Plan land use designation of Corridor/Center Mixed Use; however, the requested off-sale alcohol license will not reduce current adverse impacts on adjacent properties and/or on the general public and will be inconsistent with general plan goals to promote healthy communities and improve quality of life in established neighborhoods, and to protect and improve public health and safety.	
As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of off-sale alcohol sales and high exposure to the easy availability of alcohol sales affects public health, safety, and quality of life in a neighborhood. In public meetings held during the development of the General Plan, concerns regarding market saturation, fear of crime, and danger to schools were raised.	
Furthermore, concentrations of alcohol sales outlets or the establishment of outlets that are in close proximity to one another further increases the perceived lack of safety in a neighborhood and can contribute to a variety of health and safety problems including higher rates of alcohol-related hospitalizations, drunken driving accidents, and pedestrian injuries; thus the proposed project has the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when the establishment are concentrated near other existing establishments.	

Finding c:	<i>The proposed use will be substantially adverse to the public health, safety, or general welfare of the community, and will be detrimental to surrounding properties or improvements in that;</i>
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Finding (c) cannot be made for the following reason: As described in Finding (b) above, the proposed off-sale alcohol use will not reduce current substantially adverse impacts to the public health, safety, or general welfare of the community in that its location near other establishment. Areas in which there are multiple off-sale establishments located within close proximity to one another can contribute to a variety of health and safety problems including higher rates of alcohol-related hospitalizations, drunken driving accidents, and pedestrian injuries. As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of off-sale alcohol sales can have a negative effect on neighborhood health.

Finding d:	<i>The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and,</i>
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Finding (d) cannot be made for the following reason: The proposed off-sale alcohol use for the proposed 7-Eleven service station and convenience store is within close proximity to existing single-family residences. The location and operating characteristics of the proposed 7-Eleven service station and convenience store with alcohol sales are incompatible with the surrounding vicinity and land uses given the approval of this application have a surplus of the allowed off-sale alcohol establishments with a ratio of one off-sale alcohol exceed one license per 2,500 residents and near three existing off-sale establishments. Furthermore, the proposed project conflicts with the Fresno General Plan goals to promote healthy communities and improve quality of life in established neighborhoods, and to protect and improve public health and safety.

Finding e:	<i>The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.</i>
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Finding (e) cannot be made for the following reason: While the type and intensity of the use proposed may be suitable with respect to access, the proposed off-sale alcohol license for 7-Eleven is located near three existing off-sale establishments. Therefore has the potential to contribute to a variety of safety problems including drunken driving accidents and pedestrian injuries which result in increased calls for police and emergency services. Therefore the project is not suitable based on the services required to address public safety concerns.

Finding f:	<i>The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5.</i>
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Finding (f) can be made: The proposed project is located within the Fresno Yosemite Airport influence area Zone 7 – Precision Approach Zone. Precision Approach Zone 7 prohibits uses that may be hazardous to flights. The development of the convenient store and gas service station is not considered a hazardous use or structure therefore is compatible and consistent with the Fresno Airport Land Use Compatibility Plan. Additionally, the Federal Aviation Administration (FAA) Form 7460-2 was filed with the FAA and a determination that no hazard to the air navigation would occur as a result of the proposed project. Therefore, the proposed project is compatible and in compliance with the Airport Land Use Compatibility Plan.

APPEALS

The Directors decision may be appealed to the Planning Commission by filing a written appeal with the Director within 15 days of the date the action was taken. Appeals may be filed by any person aggrieved by the decision. The appeal shall include the appellant's interest in or relationship to the subject property, the decision or action appealed and specific reasons why the applicant believes the decision or action appealed should not be upheld. The appeal shall be signed by the person making the appeal and accompanied by the required fee.

In the event you wish to appeal the Director's decision, you may do so by filing a written appeal with the planner identified in this letter. The written request must be received at the Planning & Development Department by the close of business on **Wednesday, February 10, 2021**. The written request should be addressed to Jennifer K. Clark, AICP, Director, and include the application number referenced above.

If you have any questions regarding this letter, feel free to contact me at (559) 621-8070.

Sincerely,



Jose Valenzuela, Supervising Planner
Development Services Division