

Exhibit M - Additional Letters Received

**Planning Commission
July 19, 2023
Item A
P22-03146 ID 23-1106
Additional Letters Received**

From: [Wanger, Andrew](#)
To: [PublicCommentsPlanning](#)
Cc: [Thomas Veatch](#); brent@smittcampag.com
Subject: Fresno City Planning Commission meeting - July 19, 2023 / CUP P22-03146
Date: Tuesday, July 18, 2023 4:24:23 PM
Attachments: [image001.png](#)
[scanner@truenorthprops.com_20230718_182743.pdf](#)
[scanner@truenorthprops.com_20230718_182632.pdf](#)
[scan20230718155730.pdf](#)

External Email: Use caution with links and attachments

Dear Fresno City Planning Commission:

Please find enclosed:

1. Exhibits 1-9
2. Statement of Brent Smittcamp dated July 18, 2023

These documents should be included as part of the meeting record for the Application for a Conditional Use Permit No. P22-03146.

Andrew Wanger

Andrew Wanger
Partner | General Counsel | Clyde & Co US LLP
Direct Dial: +1 415 365 9840 | **Mobile:** +1 415 225 7549, +1 559 222 5768

CLYDE&CO

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EXHIBIT

1

Wanger, Andrew

From: Mark B. Schuh <mark_schuh@cimamanagement.com>
Sent: Friday, February 3, 2023 4:43 PM
To: publiccommentsplanning@fresno.gov; thomas.veatch@fresno.gov
Cc: Wanger, Andrew
Subject: CUP Application # P22-03146

Dear Mr. Veatch

My name is Mark Schuh and my wife and I live at 5630 N. Van Ness Blvd., Fresno, CA. We have lived in our current location since 1997 and raised a family including sons at our current home. Additionally, I have lived in the general neighborhood since 1976 so I know this area, the streets, traffic patterns and neighborhood issues very, very well.

With that said, the reason for my email to you is to express my strong opposition to CUP Application No. P22-03146. This proposed use simply does not belong in our single-family residential neighborhood that is facing a myriad of other issues materially impacting our quality of life, so much so, that we recently had to gather for a community meeting at Malloch Elementary School to discuss these issues with a host of public representatives. Discussed at that session were a minimum of the following concerns: public safety, homelessness, gang activity, infrastructure deterioration, an unmanned or unmaintained Oso De Oro Park and the ever-growing problem of the vacant lot on the southeast corner of Bullard and Van Ness. Adding yet another negative impact in the form of a non-conforming use stands to further devalue our residences.

Most importantly, the proposed use when compared to a single-family residential use will undoubtedly increase traffic flows by and next to our neighborhood school (the aforementioned Malloch Elementary). As someone who walks or runs by the school every morning and done so for the past 25+ years, I can tell you that several times a week during peak morning drop-off time I am nearly run over by parents dropping their children. Given that several of the proposed ingress/egress points for the proposed respiratory care facility are adjacent to the school, the safety of the children attending this school will no doubt be endangered by the additional activity (whether ambulance, fire or other medical transportation) the use will generate.

Mr. Veatch, I would like to implore you or any others who are involved with the decision or have a vote on this application to please spend some time at Malloch Elementary School and next to the proposed site for a school morning at approximately 8 am. I promise you that it will open your eyes as to why this proposed facility is not only ill-suited for this location but will be considered a danger to the young children attending Malloch if approved.

Thank you in advance for your time and consideration.

Sincerely – Mark Schuh

■
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■

Mark B. Schuh

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mark_schuh@cimamanagement.com

EXHIBIT

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February 4, 2023

To all concerned:

As residents at 2310 W. Roberts Ave. since 1975, we are most concerned about the potential approval of Conditional Use Permit No. P22-03146 for 2287 W. Bullard Ave. This CUP would modify long-standing planning rules and allow development of a "residential respiratory care facility" in a neighborhood historically devoted to single-family homes.

We have a number of objections, but our primary concern is with the obvious traffic problems that will be added along Morris Avenue, where an entrance and exit are indicated on the site plan. This small stretch of Morris is a narrow, one-way street already over-loaded by moving and parked buses and cars associated with the adjacent Malloch Elementary School. And, for your information, Morris currently has a problem with wrong-way violators seeking a shortcut to the school. The proposed project can only magnify these issues. (To properly reach the Morris entrance, visitors and other drivers wishing to access the care home will need to detour approximately one-half mile through residential streets.)

We are likewise concerned about changing the character of this quiet residential neighborhood to one of mixed use and with the precedent approval of this permit will set. We are greatly concerned about the safety to Malloch's students that more traffic will cause.

Thank you for your attention to this matter and careful consideration of neighbors' objections to the proposal. As objectors, we wish to be notified of any and all actions that are taken on this matter. You may use our e-mail address or mailing address of 2310 W. Roberts Ave., Fresno, CA 93711.

As a point of interest, Mr. Glaser has reviewed the applicant's materials both from the standpoint of a neighbor and a retired career planner for the City of Fresno.

Sincerely,

Lynne Enders and Francis E. Glaser

EXHIBIT

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CLYDE & Co

Clyde & Co US LLP
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San Francisco, CA 94111
USA
Telephone: +415 365 9840
Facsimile: +415 365 9801
www.clydeco.com
andrew.wanger@clydeco.us

February 6, 2023

City of Fresno
Planning and Development Department
PublicCommentsPlanning@fresno.gov

Re: CUP Application P22-03146 / 2287 W. Bullard Ave

Dear Director of Planning and Development :

Please be advised that I represent multiple residents who reside close to 2287 W. Bullard Ave, Fresno, CA 93711. My clients have received a "Neighborhood Notification" regarding Conditional Use Permit Application No. P22-03146. Further, I am a resident at 2330 W. Roberts Ave, Fresno, CA 93711 – near the proposed commercial development and a recipient of the City's "Neighborhood Notification".

The purpose of this letter is to formally object to the CUP Application (hereinafter "the Application").

The Proposed Project is Not Permitted in the RS-2 Zoning and Would Fundamentally Alter the Character of the Neighborhood

The subject residential lot at 2287 W. Bullard has been a residential lot for more than fifty years and is zoned RS-2/EQ – a single family residential designation with low density. The proposal seeks to construct two additional structures, for a total of three structures on the property, to house a total of more than fifty residents in a medical environment. This proposed business, which is most akin to a medical office or hospital land use—neither of which are permitted by right or conditionally in the RS-2/EQ zoning district—seeks to operate twenty-four hours a day and will require staff at all times. It should be noted that there are no other known businesses operating in this residential neighborhood.

The proposed use is a fundamental and drastic alteration of the current and zoned residential use. The neighbors purchased their homes with the understanding that they would reside in a residential setting, not a commercial setting burdened with increased traffic, noise, lighting,

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additional structures and parking lots on individual lots that otherwise alter the aesthetic nature of their neighborhood.

The City Must Conduct an Environmental Review Under CEQA in Advance of Considering a Conditional use Permit for the Project

A Conditional Use Permit is a quintessentially discretionary decision. As such, CEQA applies to the City's consideration of the Project. No environmental document appears to have been prepared by the City. The City cannot consider approval of the project without completing environmental review under CEQA.

The City bears the burden - not the neighbors - to assess the environmental impact of the proposed commercial use. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ["CEQA places the burden of environmental investigation on government rather than the public," and a lead agency "should not be allowed to hide behind its own failure to gather data."].)

Prior to considering any "project" under CEQA, a lead agency must first determine whether to prepare a Negative Declaration, a Mitigated Negative Declaration, or an EIR for the project. (CEQA Guidelines, § 15063.) The lead agency makes this determination based on what is called the "fair argument" standard. (CEQA Guidelines, § 15064(f)(1).) As explained by the California Supreme Court:

[S]ince the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.

(*No Oil, Inc. v. City of Los Angeles* (1975) 13 Cal.3d 68, 75.)

The Supreme Court has explained that even in "close and doubtful cases," an EIR should *always* be prepared to ensure "the Legislature's objective of ensuring that environmental protection serve as the guiding criterion in agency decisions." (*Id.* at 84; see also Pub. Resources Code, § 21101, subd. (d).) Many courts have stated that the "EIR is the heart of CEQA. The report . . . may be viewed as an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes *before* they have reached ecological points of no return." (*Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 438 [quoting *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810] [emphasis added].)

The CEQA Guidelines set forth the "fair argument" test used to evaluate whether an EIR is required:

If the lead agency finds there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR. Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency ***shall prepare an EIR*** even though it may

also be presented with other substantial evidence that the project will not have a significant effect.

(CEQA Guidelines, § 15064(f)(1); see also Pub. Resources Code, § 21080, subd. (d) [internal citations omitted].)

Accordingly, if any commenting party makes a fair argument that the proposed project's environmental impacts "may have a significant effect on the environment," the County **must** prepare an EIR, even if other substantial evidence supports the argument that adverse environmental effects will **not** occur. (CEQA Guidelines, § 15064(g)(1); see also *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316 ["[i]f there is substantial evidence of such an impact, contrary evidence is not adequate to support a decision to dispense with an EIR."].)

Here, substantial evidence supports a fair argument that an EIR is necessary:

Traffic

The Application provides no information regarding ingress and egress plans. This despite the fact that there will be more than fourteen staff members (per the Application) arriving at and leaving the facility daily, emergency vehicles, delivery vehicles, and visitor vehicles all entering and leaving the facility. Bullard Avenue is a highly trafficked throughfare that does not afford a realistic ingress / egress point for regular vehicle traffic. The Application offers no traffic study to provide the residents comfort that a feasible plan exists to prevent the aforementioned vehicle traffic from coming into the residential neighborhood to use Roberts Ave, Celeste Ave, Sequoia Ave or Morris Ave access to the property. These access points are already the subject of weekday school traffic and voluminous pedestrian traffic (adult and juvenile) due to the presence of Malloch Elementary.

The Applicants do not take a position nor provide their view as to which ingress / egress point will be used. This is likely intentional because they must know that Bullard is not a realistic and safe option. As such, the resultant burden to the residential neighborhood will be extensive and unfair. The roads in this neighborhood already suffer greatly from the Malloch Elementary traffic and the neighbors have been in contact with the County (specifically, Supervisor Brandau's office directed residents to Robert Jeffers for road repair updates) for years to obtain repairs to Roberts Ave, Sequoia Ave and Celeste Ave. The requested repairs have yet to commence and roads remain in disrepair. Additional vehicle traffic on these roads from the commercial use of the subject lot will further degrade these roads.

The increased vehicle and truck traffic will also heighten the safety risk to residents and students, parents, and users of Malloch Elementary (this includes numerous youth sports teams that utilize the fields at Malloch on a weekly basis). A medical facility with fifty-four residents will require frequent deliveries, emergency vehicle and staff trips in and out of the property. A normal residence in this neighborhood has two to three vehicles – the Application denotes more than twenty parking spaces for staff and visitors. The deviation from a normal residential lot use is not reasonable nor desirable.

The intersections of Bullard and Van Ness and Bullard and Forkner are frequently the scenes of vehicular accidents. Adding another inflection point on the busy thoroughfare that Bullard Ave is constitutes a dubious proposal.

Lighting

The Application appears to contemplate at least six light posts to provide lighting to the extensive parking areas that will surround the three buildings. No indication is given in the Application as to how many other additional lighting sources will be constructed – but there will undoubtedly be lighting attached to the three structures that will remain on the entirety of the night given that the facility necessarily will be staffed twenty-four hours a day. The application fails to address the glare and aesthetic impact of the commercial lighting plan in a residential neighborhood, or otherwise offer any mitigation to ensure there will be no adverse impacts on the school or adjacent residential properties.

Noise

A commercial facility shoehorned into a residential neighborhood will necessarily generate additional noise during the entirety of its operational day – here, twenty-four hours a day. This will mean vehicle noise, emergency vehicle noise, delivery truck noise (with corresponding reverse gear warnings), and HVAC units necessary to regulate temperatures within three medical structures.

The Operational Statement Suggests the Applicant Seeks to Avoid Environmental Review Under CEQA Until a Later Date

Given that the City did not provide any information concerning CEQA in response to requests for records concerning the Project, it appears the City and the Applicant may seek to assert the Project is exempt from environmental review. This suspicion has been heightened because the Operational Statement submitted by the Applicant suggests that the project includes a potential subdivision, but the property will “not be subdivided until a later date.” This strongly suggests the Applicant is seeking to avoid discretionary actions for which no exemption applies to a later date—after the Project is fully built and the construction is part of the environmental baseline.

Because the Applicant plainly intends to subdivide at some point in the future, the “project” as a whole admittedly includes a subdivision, which would not be exempt from CEQA. If the environmental review does not include assessment of the subdivision, this constitutes a piecemeal approach to environmental review, which is prohibited under CEQA as a failure to assess the “whole of an action.” (CEQA Guidelines, § 15378(c).)

Application Materials are Insufficient

The materials submitted to the City and the impacted neighbors are wholly inadequate to enable a reasoned analysis and review of the project and Application. If this is a function of the owners not wanting to invest in a thorough plan – that creates concerns that the project itself will be done on the “cheap” and degrade the character of the neighborhood. If the lack of information is due to the owners not wishing to reveal the “whole story” then this is also a problem for the residents. Again, the applicant seeks to fundamentally alter a use that has existed for more than fifty years

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– the neighbors should not have to carry the burden of justifying why such a proposal is unreasonable. The Application should explain why the use is necessary and reasonable.

It is the position of my clients that the Application should be denied and the integrity of this residential neighborhood preserved.

I wish to be notified of the Director's final project action so as to preserve any appellate rights.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Andrew Wanger', with a stylized, cursive script.

Andrew Wanger

Cc: Thomas Veatch (Thomas.veatch@fresno.gov)
Mike Karbassi (Mike.Karbassi@fresno.gov)

EXHIBIT

4

Wanger, Andrew

From: Scott Black <sblack@calfund.net>
Sent: Monday, February 6, 2023 9:36 AM
To: PublicCommentsPlanning@fresno.gov
Cc: Thomas.veatch@fresno.gov; Wanger, Andrew
Subject: FW: 2287 W. Bullard Ave

Dear Director of Planning and Development Department:

I write to you to object to Conditional Use Permit Application No. P22-03146.

I reside at 2342 W. Bullard Ave – across the street from 2287 W. Bullard Ave. The proposal to alter 2287 W. Bullard from a single-family residence to a commercial medical business is an unacceptable and undesirable use of the residential lot at issue. This alteration to our neighborhood will open the door to any commercial business applying to build multiple structures on a residential lot in our purely residential neighborhood. I purchased my home because of its location and inclusion in a low-density area not next to commercial developments. To consider creating an entry / exit point for a business on this stretch of Bullard Ave is not well-planned. Bullard Ave is a busy street and adding vehicles that will turn off of Bullard into a business will negatively impact the flow of traffic and create a safety hazard.

I respectfully request that the Planning Department reject the Application and maintain the current zoning for our neighborhood.

I wish to be advised of the Director's final decision and can be reached at sblack@calfund.net

Thank you,
S. Scott Black

S. Scott Black
NMLS # 325429

California Funding
700 E. Shaw Ave, Ste 101
Fresno, CA 93711
(559) 224-6200
(559) 437-1593
NMLS # 325594

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EXHIBIT

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David D. Schneider
Director
dschneider@fennemorelaw.com
8080 N Palm Avenue, Third Floor
Fresno, California 93711
PH (559) 446-3218 | FX (559) 432-4590
fennemorelaw.com

February 6, 2023

VIA E-MAIL

City of Fresno
Planning and Development Department
publiccommentplannin@fresno.gov

Re: CUP Application P22-03146 / 2287 W. Bullard Ave

Dear Planning and Development Director:

I represent several residents that currently reside within the immediate vicinity of, and in many cases within 1,000 feet of, 2287 W. Bullard Ave, Fresno, CA 93711 (the "Subject Property"). The purpose of this letter is to formally object to CUP Application No. P22-03146 (the "Project").

Several residents have requested materials from the City in an attempt to learn more about the Project, as the information initially provided to the residents has not been sufficiently detailed for them to understand all of the impacts the Project—a commercial medical office development—would have on the surrounding neighborhoods. They have since been provided some application materials from the City that comprise of: 1) June 13, 2022 letter from Infinite Living generally describing the planned use; 2) and, a 5 page site plan. These materials continue to be wholly inadequate and insufficient to inform and advise the residents of the Project's potential impacts.

Under Section 15-5306 of the Development Code, one of the factors for approval is whether the project will have a substantial adverse impact to public health, safety, or welfare. The lack of sufficient information in the Application regarding the impact of the proposed development prevent the City from being able to meet the necessary findings. Given that the City has represented to the neighbors that this is the body of the application materials, it appears any findings to support the approval of a Conditional Use Permit would be unsupported by substantial evidence. This is particularly true given that the City does not appear to have prepared an environmental document under the California Environmental Quality Act, § 21000, *et seq.* ("CEQA"), and has not provided any information to the public regarding any supposedly applicable exemption.

City of Fresno
February 6, 2023
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Alternatively, if the City has not provided all relevant application materials to area residents concerning the application for the Project, the City has failed to meet its obligations under the Public Records Act by failing to fully and timely respond to a request for records. (Govt. Code, § 6253.) Either way, the City should decline to approve the Project.

In addition, while the application materials are incomplete and unclear, the City's "Neighborhood Notification" characterizes the proposed commercial project as a "residential respiratory care facility" [Application Description]. The Application further states, "the facility will provide acute care services, skilled nursing care and complex respiratory care . . ." [Ibid]. Fresno Municipal Code, Section 15-6702 defines "Residential Care Facilities as:

***Residential Care Facilities.** Facilities that are licensed by the State of California to provide permanent living accommodations and 24-hour **primarily non-medical care** and supervision for persons in need of personal services, supervision, protection, or assistance for sustaining the activities of daily living... (emphasis added)*

Thus, it is clear that the proposed facility is not a Residential Care Facility as defined by the City.

The current zoning designation for the lot at issue is RS-2/EQ. This denotes a district of single-family residences with very low density. Table 15-902 (City Development Code) does not even contemplate the proposed use – a group of structures housing up to fifty-plus residents requiring constant medical care. As such, the Application should be denied because it is not a permitted or conditional use under the City's Development Code.

Even if the City could assert the Project is a permitted or conditional use under the Development Code, the City would need to assess the impact associated with inviting commercial office and medical uses into the heart of a residential neighborhood. CEQA requires agencies to evaluate the land use and planning impacts associated with projects proposed under CEQA. In its evaluation of this issue, a land agency must ask whether the proposed project would:

-Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect. (CEQA Guidelines, Appendix G.)

My clients and the residents of this neighborhood purchased their homes with the understanding that they were moving into a low density, non-commercial neighborhood. The proposed Application seeks to radically transmogrify the lot at issue to triple the normal number of structures on the lot, construct large numbers of parking places (more than twenty), and operate a twenty-four hour a day business with numerous vehicle trips in and out of the facility. A business

City of Fresno
February 6, 2023
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operating twenty-four hours a day, seven day a week, three hundred sixty-five days a year in a residential neighborhood is the proverbial square peg in a round hole.

The applicant's Operational Statement also contains admissions that the City is seeking to piecemeal environmental review of the Project. Specifically, the Applicant's June 13, 2022 letter contemplates subdividing – "The property will consist of two phases and will not be subdivided until a later date.". This is a clear signal that the applicant is seeking to avoid CEQA at this time, and that a subdivision will be requested *after* the Project is fully built out. Subdivision is plainly a discretionary action that requires CEQA review. (*Rominger v. County of Colusa* (2014) (224 Cal.App.4th 690.) Given that the applicant expressly *intends* to subdivide, any exemption or other CEQA document that fails to describe all project components would result in the environmental failing to assess the "whole of the action" as required under Section 15378 of the CEQA Guidelines. (See also *Santiago Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830.)

At a minimum, the Applicant and the City should provide information relating to the expected number of vehicle trips, the distance of those trips, the noise, light, and other environmental factors associated with a three structure facility populated with more than fifty residents and fifteen staff members in a low density zoned neighborhood.

Based on the foregoing, my clients respectfully request that the Application be denied.

I hereby request notice of the Director's final action on the Application.

Sincerely,

FENNEMORE DOWLING AARON



David D. Schneider

DDSC/tlb

cc: Thomas Veatch (Thomas.veatch@fresno.gov)
Brent Smittcamp (brent@smittcampag.com)
Mike Karbassi (Mike.Karbassi@fresno.gov)

EXHIBIT

6

Wanger, Andrew

From: Chelsey Juarez <chelsey.juarez@gmail.com>
Sent: Thursday, February 23, 2023 8:46 PM
To: PublicCommentsPlanning@fresno.gov; Thomas.veatch@fresno.gov;
Mike.karbassi@fresno.gov
Cc: Wanger, Andrew
Subject: CUP Application No. P22-03146

Mr. Karabassi,

I live at 2216 W Roberts Ave. Fresno 93711. On 2/23/23 I attended a meeting held at Mallock Elementary School by Mr. Jason Andrade, President of Infinite Living regarding the proposed CUP application No. P22-03146. There were approximately 30 members of the neighborhood present at this meeting. I can confidently say after attending the meeting that the concerns of the neighbors were not allayed by Mr. Andrade or his team. I am vehemently opposed to this permit and to this facility. This meeting made it even more clear that the VanNess extension neighborhood is not the appropriate place for this facility. I again urge you and your fellow council members to vote NO on this permit and prevent this facility from moving any further.

Best,
Dr. Chelsey Juarez

—

Dr. Chelsey Juarez
Associate Professor of Anthropology
Department of Anthropology
California State University Fresno

The Fresno State campus sits in the midst of the San Joaquin Valley, a valley rich in the traditions and representation of Native American peoples and cultures. We are grateful to be in the traditional homelands of the Yokuts and Mono peoples, whose diverse tribal communities share stewardship over this land.

—

EXHIBIT

7

June 16, 2023

VIA EMAIL

PLANNING AND DEVELOPMENT DEPARTMENT

Attn: Ms. Jennifer K. Clark

PublicCommentsPlanning@fresno.gov

Re: Appeal of Action Granting CUP Application No. P22-03146

Dear Director Clark:

Please accept the following as an Appeal of the "Notice of Action granting Conditional Use Permit Application No. P22-03146 & Related Environmental Assessment" date June 2, 2023.

Appellant Interest in / Relationship to the Subject Property

I own the five-acre parcel at 5811 N. Forkner Ave. This residential property shares its west fence line with 2287 W. Bullard Ave – the property at issue. For the entirety of the time my family has owned 5811 N. Forkner, 2287 W. Bullard has been a single-family residence. The CUP at issue allows the transformation of 2287 W. Bullard into a commercial property - maybe not in zoning designation, but for sure in reality – with the potential to be subdivided into three separate lots – all with commercial medical buildings on site. This proposal and potentiality for change to the neighborhood is an unacceptable alteration of the residential character of our neighborhood and I am appealing the Planning and Development departments decision to grant the CUP.

Grounds for Appeal

1. Section 15-5306 of the Fresno Municipal Code applies to the approval of a CUP application. Section 15-5306 states:

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.

- A. 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;

- B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;
- C. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;
- D. 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
- E. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required; and
- F. 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.
(Fresno Municipal Code, § 15-5306.)

The proposed alteration of the single-family residence at 2287 W. Bullard into a three building, 13,500 square foot commercial medical operation is a drastic alteration of the property's use that violates 15-5306 (A-E). Fresno Municipal Code section 15-903 (Density and Massing) contemplates a single dwelling per lot for RS-2 zoning. There exists no justification for altering the property's current use given the RS-2 zoning. The unprecedented proposal to build three separate structures on the property and operate them as commercial enterprises with the proposed subdivision of the lot later (into three parcels) constitutes an unusual and unacceptable use of the lot. No such similar property use exists in the neighborhood.

This is a "single family very low density" zoned neighborhood. The CUP seeks to triple the density of a single lot, alter it from a single family lot to a commercial property housing 54 residents plus staff, operating 24 hours a day, seven days a week and does so without any explanation as to why this lot and why this neighborhood.

Our family residence has been used and enjoyed for decades as a part of a distinct neighborhood that exemplifies the City's use of the RS-2 zoning designation. The current proposal to allow the current zoning to be drastically altered will result in unacceptable amount of increased traffic, noise, lighting, and additional structures and parking lots on an individual lot. The proposed commercial medical facility with fifty-four residents will be completely at odds with any other lot in the neighborhood.

1. Traffic – Bullard Avenue is a highly trafficked thoroughfare essential to the City's efficient movement of morning and evening commute traffic. The Application and department of Planning documents provide scant information as to how employee, delivery, emergency and waste removal vehicles will impact Bullard Ave with

frequent entry into and exit from the commercial facility. The number of trips in and out of the facility will create an unusual and unique traffic pattern for Bullard that should be studied.

2. Noise - The proposed commercial medical facility will generate unusual and never before experienced additional noise that will necessarily impact my residence. There will be increased vehicle noise, emergency vehicle noise, delivery truck noise, and operational activity involved with the commercial facility. The facility proposes to operate 24 hours a day, seven days a week – offering no break in its noise production to my residence or the neighbors' residences. There are normal "single family" noises that our neighborhood experiences – occasional dog barking, children playing, basketballs being dribbled. But, we have never had a daily flow of emergency vehicles, waste disposal vehicles, employee traffic that will never cease, break or disappear – it will be omnipresent for as long as the facility operates with no limit on the hour of the day or night as to when the noise can be regulated. This is why cities create residential neighborhoods and commercial districts - to allow for the quiet enjoyment of one's property after one purchases a residential, very low density property. There are more appropriate sites in the City for the proposed commercial medical facility.
3. Lighting – A commercial medical facility that operates 24 hours a day will necessarily require night time lighting that far exceeds that of a single family home. The additional light required for three buildings totaling 13,500 square feet will be unusual and excessive for the neighborhood. My concern is that my residence will be directly impacted by any proposed lighting plan that will need to account for employees coming and going, emergency vehicles entering the property and general security concerns.

Conclusion

For each of the foregoing reasons, Appellant requests that the Planning Commission and/or the City Council hear this appeal and overrule the Planning Director's approval of the Conditional Use Permit. Appellant also joins in the letter filed with the Planning and Development Department by Andrew Wanger on June 14, 2023.

Thank you for your consideration of this appeal.

Brent Smittcamp

cc: Thomas Veatch (thomas.veatch@fresno.gov)

EXHIBIT

8

CLYDE & Co

Clyde & Co US LLP
150 California Street
15th Floor
San Francisco, California 94111
Telephone: (415) 365-9800
Facsimile: (415) 365-9801
www.clydeco.us
Andrew G. Wanger
andrew.wanger@clydeco.us

June 14, 2023

VIA EMAIL

PLANNING AND DEVELOPMENT
DEPARTMENT
Attn: Ms. Jennifer K. Clark
PublicCommentsPlanning@fresno.gov

Re: Appeal of Action Granting CUP Application No. P22-03146

Dear Director Clark:

Please accept the following as an Appeal of the "Notice of Action granting Conditional Use Permit Application No. P22-03146 & Related Environmental Assessment" date June 2, 2023.

A. The Director's Approval of Permit Application No. P22-03146

Fresno Municipal Code section 15-5017, subdivision (A), states the following:

Decisions of the Director made pursuant to this Code may be appealed to the Planning Commission by filing a written appeal with the Director. Appeals may be filed by any person aggrieved by the decision. The appeal shall identify the decision being appealed and shall clearly and concisely state the reasons for the appeal. The appeal shall be signed by the person making the appeal and accompanied by the required fee.

All appeals shall be filed with the Director in writing within 15 days of the date of the action, decision, CEQA determination, motion, or resolution from which the action is taken." (Municipal Code § 15-5017, subd. (B).) The Director issued notice of her approval of Permit Application No. P20-03146 on June 2, 2023.

As such, this appeal, on the grounds described below, is timely submitted.

B. Appellants Interest in / Relationship to the Subject Property

The Appellants, including the undersigned, are comprised of multiple members of the public who reside within 1000 feet of 2287 W. Bullard Ave, Fresno, CA 93711. Specifically, I reside at 2330 W. Roberts Ave, Fresno, CA 93711.

PLANNING AND DEVELOPMENT DEPARTMENT
Attn: Ms. Jennifer K. Clark
June 14, 2023
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C. Grounds for Appeal

The City cannot make the findings required under Section 15-5306 of the Fresno Municipal Code to support the approval of a CUP Section 15-5306 states:

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.

- A. 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;
- B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;
- C. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;
- D. 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
- E. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required; and
- F. 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.
(Fresno Municipal Code, § 15-5306.)

The CUP at issue does not satisfy the requirements of multiple sections of 15-5306 as noted below.

1. The proposed project seeks to house fifty-four residents within 100 feet of an elementary school. The Applicant offers no evidence that its policies or procedures will prohibit individuals convicted of a crime under California Penal Code sections 288 or 288.5 from residing across the street from Malloch Elementary School. This potentially violates Penal Code section 3003(g). The State of California has deemed ½ mile a suitable distance for such high-risk individuals to reside in relation to elementary schools such as Malloch. No accounting for this scenario appears to have been considered by the Applicant or the Director in granting the CUP. [Section 15-5306 (c) above.]

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2. The Proposed Project is not suitable for RS-2 Zoning, the current zoning of the property at issue, and would fundamentally alter the character of the neighborhood. The subject residential lot at 2287 W. Bullard has been a residential lot for more than fifty years and is zoned RS-2/EQ – a single-family “very low density” residential designation. The proposal seeks to construct two additional structures, for a total of three structures on the property, to house a total of more than fifty residents in a commercial medical environment. This proposed business, which is most akin to skilled nursing facility or hospital land use—neither of which are permitted by right or conditionally in the RS-2/EQ zoning district—seeks to operate twenty-four hours a day and will require staff at all times. It should be noted that there are no other known businesses or similar operations in the neighborhood bounded by Forkner Ave to the east, Herndon Ave to the north, Barstow Ave to the south and Van Ness Boulevard to the west.

Fresno Municipal Code section 15-903 (Density and Massing) contemplates a single dwelling per lot for RS-2 zoning. The Application seeks approval for three distinct residential structures totalling more than 13000 square feet. Thus, the statement in the “Categorical Exemption Environmental Assessment” document that , “. . . the proposed project will meet all the provisions of the FMC . . .” is incorrect and misleading. [Section 15-5306 (a, d, e) above.]

Further, the “Categorical Exemption Environmental Exemption” document contains a further error when it states, “The project site . . . is currently vacant.” (Section (c)). There currently exists a single-family residence on the property, consistent with the RS-2 zoning.

The Planning Department repeatedly characterizes the project as a “residential care facility” when in fact it is not. It is a commercial medical facility more akin to a skilled nursing facility. The proposed residents, as described by the Applicant, likely could not survive without constant medical intervention, e.g, the use of ventilators. Residential care facilities have been established for adult residents able to independently engage in daily living activities in a non-medical setting. Indeed, the Applicant characterized the facility as follows: “Our team of medical professionals will provide Acute Care Services, Skilled Nursing Care and Complex Respiratory Care on a 24 hours a day basis.” [See, June 13, 2022 Infinite Care Living letter describing project] This project cannot be likened to a Residential Care Facility.

The appellants and residents of the neighborhood purchased their homes with the understanding that they would reside in a residential setting, not a commercial setting burdened with increased traffic, noise, lighting, additional structures and parking lots on individual lots that otherwise alter the aesthetic nature of their neighborhood. Introducing a commercial medical facility with fifty-four residents in close proximity to single-family residential properties has the likelihood of diminishing property values and opening the door to future commercial properties in the neighborhood. This is

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an unprecedented commercial-medical use of a residential lot in the neighborhood in direct contravention of the applicable zoning.

3. Traffic - The Application provides no information regarding ingress and egress plans beyond identifying the access points to the property. This despite the fact that there will be more than fourteen staff members (per the Application) arriving at and leaving the facility daily, emergency vehicles, delivery vehicles, waste management vehicles, and visitor vehicles - all entering and leaving the facility. Bullard Avenue is a highly trafficked thoroughfare that does not afford a realistic ingress / egress point for regular vehicle traffic. The Application offers no traffic study to provide the residents comfort that a feasible plan exists to prevent the aforementioned vehicle traffic from coming into the residential neighborhood to use Sequoia Ave or Morris Ave access to the property. These access points are already the subject of weekday school traffic (morning, noon and afternoon drop-off and pick-up) and voluminous pedestrian traffic (adult and juvenile) due to the presence of Malloch Elementary.

The Applicants do not take a position nor provide their view as to which ingress / egress point will be used - Bullard Ave or Morris Ave. This is likely intentional because they must know that Bullard is not a realistic or safe option. The use of Morris Ave would significantly increase traffic around Malloch Elementary. Further, use of Morris Ave will create an unreasonable and unforeseen burden to the residential neighborhood.

The increased vehicle and truck traffic will also heighten the safety risk to residents and students, parents, and users of Malloch Elementary (this includes numerous youth sports teams that utilize the fields at Malloch on a weekly basis). A medical facility with fifty-four residents will require frequent deliveries, medical waste removal, emergency vehicle and staff trips in and out of the property. A normal residence in this neighborhood has two to three vehicles - the Application denotes more than twenty parking spaces for staff and visitors. The deviation from a normal residential lot use is not reasonable nor desirable.

The intersections of Bullard and Van Ness and Bullard and Forkner are frequently the scenes of vehicular accidents. Adding another inflection point for deliveries, employee turns and visitor traffic on the busy thoroughfare that Bullard Ave is represents a dubious and mis-guided proposal.

4. Noise - A commercial medical facility shoehorned into a residential neighborhood will necessarily generate additional noise during the entirety of its operational day - here, twenty-four hours a day. This will mean vehicle noise, emergency vehicle noise, delivery truck noise (with corresponding reverse gear warnings), and HVAC units necessary to regulate temperatures within three medical structures. The "Categorical Exemption Environmental Exemption" prepared by the Planning Department offers the conclusory and unsupported statement, "... staff has

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determined that the proposed project will not result in any significant mobile or transportation-related noise impacts.” This statement ignores reality – there will be noise impacts 24 / 7 as delivery vehicles, employee vehicles, emergency vehicles, waste removal vehicles and visitor vehicles will frequent the proposed project. To state otherwise is to misrepresent the facts.

Prior to considering any “project” under CEQA, a lead agency must first determine whether to prepare a Negative Declaration, a Mitigated Negative Declaration, or an EIR for the project. (CEQA Guidelines, § 15063.) The lead agency makes this determination based on what is called the “fair argument” standard. (CEQA Guidelines, § 15064(f)(1).) As explained by the Supreme Court:

[S]ince the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact. (*No Oil, Inc. v. City of Los Angeles* (1975) 13 Cal.3d 68, 75.)

The Supreme Court has explained that even in “close and doubtful cases,” an EIR *should always* be prepared to ensure “the Legislature’s objective of ensuring that environmental protection serve as the guiding criterion in agency decisions.” (*Id.* at 84; see also Pub. Resources Code, § 21101, subd. (d).) Many courts have stated that the “EIR is the heart of CEQA. The report . . . may be viewed as an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes **before** they have reached ecological points of no return.” (*Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 438 [quoting *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810] [emphasis added].)

The CEQA Guidelines set forth the “fair argument” test used to evaluate whether an EIR is required:

If the lead agency finds there is substantial evidence in the record that the project *may* have a significant effect on the environment, the lead agency *shall* prepare an EIR. Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency **shall prepare an EIR** even though it may also be presented with other substantial evidence that the project will not have a significant effect. (emphasis added)

(CEQA Guidelines, § 15064(f)(1); see also Pub. Resources Code, § 21080, subd. (d) [internal citations omitted].)

Moreover, an agency’s failure to gather or analyze information on a project’s impacts can expand the scope of the fair argument standard necessitating the preparation of an EIR. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 [“CEQA places the burden of environmental investigation on government rather than the public,” and a lead agency “should not be allowed to hide behind its own failure to gather data.”].)

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Accordingly, if any commenting party makes a *fair* argument that the proposed project's environmental impacts "may have a significant effect on the environment," the City *must* prepare an EIR, even if other substantial evidence supports the argument that adverse environmental effects will *not* occur. (CEQA Guidelines, § 15064(g)(1); see also *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316 ["[i]f there is substantial evidence of such an impact, contrary evidence is not adequate to support a decision to dispense with an EIR."].)

Here, substantial evidence supports a fair argument that an EIR is necessary, as explained above. (See *supra*, § C.2-4) Because the Class 32 exemption does not apply, and a "fair argument" exists, an EIR must be prepared.

The City has determined that the Project falls within the Class 32 Exemption for In-Fill Development Projects. (CEQA Guidelines, § 15332.) That exemption states:

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value, as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

(Id.)

The substantial evidence test governs judicial review of an agency's factual determination of whether a project fits within a categorical exemption. (See, e.g., *Don't Cell Out Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 358; *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 817; *Meridian Ocean Sys. v. State Lands Commission* (1990) 222 Cal.3d 153, 169.) As noted above, the City's conclusion that the project would not result in any significant effects relating to traffic, noise, air quality, or water quality is unsupported by the evidence, much less "substantial evidence".

But even if the Class 32 exemption facially applied, Section 15300.2 of the CEQA Guidelines provides several exceptions to the use of categorical exemptions. (See generally *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086.) Section 15300.2 applies to all categorical exemptions. As provided in Section 15300.2 and elucidated in cases such as *Berkeley Hillside*, "unusual circumstances" prevent an agency from relying upon a categorical exemption when those circumstances present a "fair argument" that there will be a significant environmental effect.

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June 14, 2023

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Both “unusual circumstances” and a “fair argument” exist here. First, this Project seeks to construct a commercial medical facility in residential neighborhood that is zoned as such (RS-2). The placement of such a facility would be a first in the area and a radical alteration of the character of the neighborhood. Second, the proposed square footage of the development - 13,000 – far exceeds any residence in the area and is disproportionately larger than any residence in the area. Third, there are no RS-2 zoned lots in the neighborhood wherein three commercial buildings have been shoehorned into a single lot. These all support the conclusion that Application raises “unusual circumstances” that are unprecedented in this very low density residential neighborhood. In addition, there is certainly a “fair argument”, as discussed above, that the Project would result in potentially significant environmental impacts.

Under Section 15-5005, subdivision (I), “any aggrieved person may appeal the following environmental determinations made by non-elected decision making bodies of the City directly to Council in the manner described in Section 15-5017”

1. Determination that a project is or is not subject to environmental review.
2. Determination that a project is exempt from environmental review.
3. Approval of a Negative Declaration or Mitigated Negative Declaration.
4. Approval of a Finding of Conformity with the Master EIR.
5. Certification of a Final EIR.

Section 15-5005(D)(1) further states:

If the Director has determined that a project is exempt from environmental review under CEQA, such determination shall be supported with necessary written findings and substantial evidence and included in any public notice required for the project. The notice shall include a citation to the applicable statute or CEQA Guideline section under which it is found to be exempt. (emphasis added)

The Planning and Development Department’s decision lacks evidence, much less “substantial evidence” as required by 15-5005, that the project should be considered exempt from CEQA. Indeed, the decision is filled with conclusory statements unsupported by evidence. The decision seeks to transmogrify the proposed medical facility into a “Residential Care Facility” – a legally recognized entity under the State of California regulatory scheme found in the California Code of Regulations Title 22, Division 6, Chapter 8.

Additionally, because the Applicant plainly intends to subdivide at some point in the future, the “project” as a whole admittedly includes a subdivision, which would not be exempt from CEQA. Applicant’s June 13, 2022 letter provided to residents living within 1000 feet of the project and part of the Planning Department’s file states: “The property will consist of two phases and will not be subdivided until a later date.” (emphasis added) If the environmental review does not

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Attn: Ms. Jennifer K. Clark
June 14, 2023
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include assessment of the subdivision, this constitutes a piecemeal approach to environmental review, which is prohibited under CEQA as a failure to assess the "whole of an action." (CEQA Guidelines, § 15378(c).)

In approving the Development, the Director erroneously determined the Project was not subject to environmental review. As such, this appeal is also made pursuant to Section 15-5005(l)(1), such that the appeal must be heard by the City Council.

D. Conclusion

For each of the foregoing reasons, Appellants request that the Planning Commission and/or the City Council hear this appeal and overrule the Planning Director's approval of the Conditional Use Permit.

Thank you for your consideration of this appeal.

Very truly yours,



Andrew G. Wanger

cc: Thomas Veatch (thomas.veatch@fresno.gov)

PLANNING AND DEVELOPMENT DEPARTMENT
Attn: Ms. Jennifer K. Clark
June 14, 2023
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APPELLANTS

Andrew & Christa Wanger
2330 W. Roberts Ave

Geoff & Linda Dervishian
2350 W. Roberts Ave

Ryan & Lauren Peranick
2340 W. Roberts Ave

Jamee & Phil Moltini
2331 W. Roberts Ave

Monica & Steve Swanson
6075 N. Sequoia

Lynn & Frank Glaser
2310 W. Roberts Ave

Chelsey Juarez / Viktor Zaytsev
2216 W. Roberts Ave

William & Karen Podolsky
6072 N. Sequoia Ave

Jim & Kitty Burden
6060 N. Sequoia Ave

Leo & Sandra Landaverde
5786 N. Woodson Ave

Art & Renea Estrada
5661 N. Sequoia Ave

Jennifer & Erich Lemker
2217 W. Roberts Ave

Richard & Carol Yruegui
5745 N. Van Ness Blvd

Mark & Mary Schuh
5630 N. Van Ness Blvd

John Garry
2361 W. Celeste

EXHIBIT

9

July 18, 2023

PUBLIC HEARING
6:00 P.M.

Dear Fresno City Planning Commission:

My name is Brent Smittcamp. My family has resided at 5811 N. Forkner, Fresno, CA 93711 for more than forty years. Our property sits to the east of 2287 W. Bullard Ave and shares a fence along our western property line. The purpose of this statement is to object to the Conditional Use Permit Application currently being considered by your Department (No. P22-03146). Unfortunately, I cannot be present for the meeting as I will be out of town but submit this written statement to ensure the Commission is apprised of my views as the next door residential neighbor to the proposed commercial project.

The proposal to modify the current use of 2287 W. Bullard from a single-family residence to a three building commercial enterprise that operates full-time - 24 hours a day, 365 days a year – is wholly inconsistent with the current zoning and, more importantly, the current character of our neighborhood. While the Application materials are thin and lacking in details to afford me the opportunity to analyze noise, vehicle and human traffic, lighting, trash, air pollution, and other important factors that will necessarily impact my property – the logical conclusion is that the residential character of our property and the surrounding properties will incur significant effects relating to traffic, noise, and air quality.

The proposed use represents an unprecedented use of a residential lot in our neighborhood. There are no other commercial operations in our RS-2 zoned neighborhood. Indeed, there are no other lots in our neighborhood wherein three 5000 square foot buildings are located housing 54 residents. It is beyond confusing to contemplate why this commercial operation would be considered for our low-density residential neighborhood.

The proposed use will need to involve significant lighting for a commercial parking lot which will undoubtedly cause glare issues for my family's residence. This lighting will need to remain on the entirety of the night given that the facility intends to operate 24 hours a day. Additionally, the traffic pattern for the property will significantly increase the flow of vehicles and trucks around our property. This will not be a desirable or insignificant consequence. Bullard Ave is highly used thoroughfare and the idea that staff or delivery vehicles from the medical facility will be able to regularly enter the business from Bullard is not logical or feasible. The alternative solution then becomes increasing daily traffic around Malloch Elementary – and introducing vehicles that may not be familiar with the student population and less careful than a neighbor or parent is when driving around a school populated with their children.

My family purchased our home with the intent of joining a low-density residential neighborhood, as it was zoned decades ago, and becoming part of the fabric of a vibrant, safe and family-based community. My father made significant improvements to our five-acre lot. The concept of wedging a full-time commercial business next door to our residence will significantly impact our use and enjoyment of our residence and result in unacceptable increases in traffic, noise, and lighting, issues that are incompatible with a low-density residential neighborhood.

Accordingly, I strongly encourage you to reject the Director's action to approve the Conditional Use Permit Application. To reject the approval of the CUP will preserve the unique and valuable nature of our neighborhood that has flourished over the decades, to acknowledge the overwhelming views of the neighborhood residents, and to confirm the considered judgment of prior zoning decisions.

Thank you for your consideration of my statement.

A handwritten signature in blue ink, appearing to read 'Brent Smittcamp', with a stylized, cursive script.

Brent Smittcamp

From: [robert](#)
To: [Thomas Veatch](#)
Subject: Re: Environmental assessment No. P22-03146 July 19.2023
Date: Tuesday, July 18, 2023 11:34:24 AM

External Email: Use caution with links and attachments

Thomas. Also noise from ambulances, sirens etc very loud for the environment and increased traffic in residential area. Thank you. Robert Norswing Jr.

> On Jul 18, 2023, at 10:54 AM, robert <bestemore@msn.com> wrote:

>

> Dear Thomas. We received a notice of public hearing on environmental assessment No. P2203146 concerning conditional use permit No. P22-03146. We are opposed to this project. It is the wrong project for this residential neighborhood. The entrances to the property on Bullard Ave will cause additional traffic congestion and accidents. There are already enough accidents at Bullard and Van Ness as it is. Safety should be a concern for your department. The property entrance next to Malloch School is not conducive for ingress/egress either, this is where the children get on the school buses. This and many other concerns make this a very poorly conceived project. Thank you. Robert and Victoria Norswing Jr.

Planning Commission

September 6, 2023

RECEIVED

SEP 05 2023

Planning & Development Department
City of Fresno



Information Packet

ITEMS

File ID 23-1286

Consideration of Conditional Use Permit Application P22-03146, and related Environmental Assessment P22-03146 pertaining to ±1.38 acres of property located on the south side of West Bullard Avenue, between North Van Ness Boulevard and North Forkner Avenue (Council District 2).

Contents of Supplement:

Exhibit O – Additional Communications received 09/05/2023

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the Commission after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the Planning Commission meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

September 5, 2023

VIA EMAIL

PLANNING AND DEVELOPMENT DEPARTMENT

Attn: Ms. Jennifer K. Clark

PublicCommentsPlanning@fresno.gov

Re: Neighborhood meeting re CUP Application No. P22-03146

Dear Director Clark:

Neighborhood Meeting

The principals of Infinite Living recently held a further meeting with neighbors residing within 1000 feet of the proposed medical commercial development at 2287 W. Bullard Ave, Fresno, CA 93711.

Unfortunately, the meeting did not result in a compromise resolution of the pending Conditional Use Permit Application. The pending Application seeks the alteration of a single-family residential property in a very low-density neighborhood (RS-2 zoning) to a three-building commercial medical development that will operate 24 hours a day, 7 days a week, 365 days a year.

At the meeting, the developers floated the possibility of reducing their proposed commercial operation from: 3 buildings, 54 residents and 13,500 square feet of building plus parking lots; to, 2 buildings, 36 residents, 9000 square feet of buildings and parking lots. This proposal was not well-received by the neighbors given the lighting, traffic, noise, and safety issues associated with the operation of a 24 hour a day commercial facility.

The neighbors in attendance raised the possibility of a single building operation – similar to commercial medical properties at Bullard and Fruit Avenues and Forkner and San Madele Avenue properties. A single building option was dismissed out of hand by the Developers as not economically feasible under their profit models. Further, the neighbors suggested an alternative use that focused on PUD-style residences on the lot to address a significant shortage of single-family homes in the neighborhood. This idea was not responded to by the Developers.

The meeting was marked by rude and dismissive commentary from a principal in the Developers group, which hampered efforts to engage in a constructive dialogue. Unfortunately, the

PLANNING AND DEVELOPMENT DEPARTMENT

Attn: Ms. Jennifer K. Clark

September 5, 2023

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neighbors are being asked to “trust” an unproven developer group that has never built and operated these type of facilities, much less on the grand scale proposed – 3 buildings and 54 beds.¹ While certain issues of concern to the neighborhood, such as egress and ingress near the elementary school, were discussed – no amendments to the CUP application have occurred to my knowledge and the current application calls for:

3 buildings for a total of 14,500 square feet of structures;

a subdivided lot into 3 parcels;

ingress and egress on Bullard Ave, Morris Ave and Sequoia Ave;

54 beds; and,

a parking lot with commercial lighting standards.

Thus, it is this CUP application which will be considered and voted on by the Planning Commission.

Municipal Code – Use Regulations

At the July meeting, questions were raised by Commissioners as to the proposed medical facilities being characterized as “Residential Care Facilities” (RCFE). The issue arose because the May 24, 2023 Report submitted by Mr. P. Siegrist supporting approval of the Application for the CUP cited to Municipal Code Section 15-902 as support for the conclusion the the proposed Congregate Living Health Facility was an acceptable use in a neighborhood zoned RS-2. Section 15-902 does not reference “Congregate Living Health Facility” as an acceptable or permitted use. Thus, the effort was made in the Siegrist Report to “liken” a Congregate Living Health Facility to an RCFE. This effort must fail. Under California Code of Regulation, Title 22, Section 87891(a)(8), RCFEs under California law are prohibited from accepting residents who require life support systems such as ventilators. The pending CUP Application specifically states that the 3 building will offer “24/7 Sub Acute Nursing (For Vent and Trach Dependent Patients) and 24- Hour Skilled Nursing Care.”(emphasis added) There can be no dispute that a Congregate Living Health Facility is not an RCFE or even “like” an RCFE.

Further, the Planning Department’s Report and the Application fail to adhere to the requirements of Section 15-5020 (“Director’s Determination”) of the Municipal Code, which would otherwise allow the Director to accept a petition to address a non-permitted use.

¹ The neighbors have had to call the Fresno Police Department on multiple occasions to the subject property as it has become a known haven for the unhoused.

Accordingly, the legal mandates of the City's Municipal Code have not been met during the Application process and, as a result, this Application should be denied.

The CUP Application Should Be Denied

1. Section 15-5306 of the Fresno Municipal Code applies to the approval of a CUP application. Section 15-5306 states:

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.

- A. 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;

[As noted above, the Municipal Code does not allow for Congregate Living Health Facility : 15-902]

- B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;

[The current zoning is RS-2 – single family very low density residential. A 3 building commercial medical facility is not consistent with this use.]

- C. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;

[The proposed project will irreparably alter the character of the neighborhood, significantly increase noise, traffic, light, and human traffic to a wholly residential neighborhood. It is being shoehorned into a family neighborhood developed over five decades.]

- D. 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;

[The project is unprecedented in the RS-2 low density neighborhood. No other lot in this zoned area has three buildings operating on a 24 /7 / 365 commercial basis.]

- E. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required;

[The traffic, lighting, noise issues represent a wholesale alteration of the residential neighborhood. Bullard Avenue is a major throughfare and the proposal to use it as a primary ingress / egress point for employees, visitors, deliveries, and emergency vehicles is misguided. The lighting will interfere with the contiguous neighbor's enjoyment of his property.]

and,

- F. 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.
(Fresno Municipal Code, § 15-5306.)(emphasis added)

Conclusion

The unprecedented proposal to build three separate structures on the property and operate them as commercial enterprises with the proposed subdivision of the lot later (into three parcels) constitutes an unusual and unacceptable use of the lot. No such similar property use exists in the neighborhood.

Based on the foregoing, the Planning Commission should reject the pending Application.

Thank you for your consideration of this letter.



Andrew Wanger

cc: Thomas Veatch (thomas.veatch@fresno.gov)

**Planning Commission
September 6, 2023**

**Additional Comments Received
Item VII-A ID 23-1286
P22-01346**

From: bigmamagibbs@aol.com
To: [Thomas Veatch](#)
Subject: Property @ 2287 West Bullard Avenue
Date: Wednesday, September 06, 2023 11:38:14 AM

External Email: Use caution with links and attachments

City of Fresno Planning and Development,

My husband and I have lived at 5737 N. Sequoia Avenue for the past 36 years. It's a very quiet street outside of school traffic at peak times of the day, which has been of no concern to us. Recently, the above referenced home has become a concern. The proximity of the Bullard Avenue home to ours is only a hundred feet and easily visible if you are in our front yard. Following is a recent history of the home at **2287 West Bullard Avenue**.

In early 2000 a rapist lived in a trailer on the back side of the property for several years. He was allowed to live by the school even though he was a registered sex offender, due to the fact he was not a pedophile.

Next, came the son of the homeowner who dealt drugs out of the house for several years. The drug dealing literally happened on the street in front of Malloch Elementary at all hours of the day and night. We watched the buyers come and go for years.

A couple moved in for the next 6 or 7 years until the property was sold in April of 2022. The owner ran his construction business out of the home. Since his death, and the sale of the home, the house has been occupied on and off by homeless people. This is when the property and driveway access were boarded up to hopefully prevent further access by unauthorized people. An officer from the Fresno Police Department checks the surrounding area on a frequent basis and has told me he can't believe this goes on across from the elementary school.

Two weeks ago we heard the helicopter and Fresno PD asking someone to come out with their hands up. I do not know details of the incident, but someone was hiding in the home.

Last Saturday, September 2, 2023 at 2:00 in the afternoon smoke was billowing from the fireplace. Obviously someone was inside either cooking food or possibly meth!

With all due respect to the neighbors who oppose this project, you most likely have not visually experienced what goes on at this location. I am confident that your concern for the children attending Malloch School is of more concern than a commercial property

being built on the location. The property has been zoned RS-2 for as long as we have known,

so some type of commercial use is likely going to happen. (We doubt anyone would build a single family home facing Bullard which is such a busy street.) This Respiratory Care Center seems to be an acceptable and safe solution to the problem as long as access to the facility is on Bullard Avenue and not Morris Avenue.

Thank you,

Jim and Mary Ann Gibbs

From: jason.californiaretailbuilders.com
To: [Thomas Veatch](#)
Subject: Pictures
Date: Wednesday, September 06, 2023 10:30:31 AM

External Email: Use caution with links and attachments

Pics of outside and pics of a existing CLHF

California Retail Builders, Inc.

Jason Andrade
President

360W. Bedford, Suite 103
Fresno, California 93711

559.286.6151
www.californiaretailbuilders.com

License Number - 997048

From: jason.californiaretailbuilders.com
To: [Thomas Veatch](#)
Subject: Email 2 of 2 pics of existing CLHF
Date: Wednesday, September 06, 2023 10:29:52 AM

External Email: Use caution with links and attachments







California Retail Builders, Inc.

Jason Andrade
President

360W. Bedford, Suite 103
Fresno, California 93711

559.286.6151
www.californiaretailbuilders.com

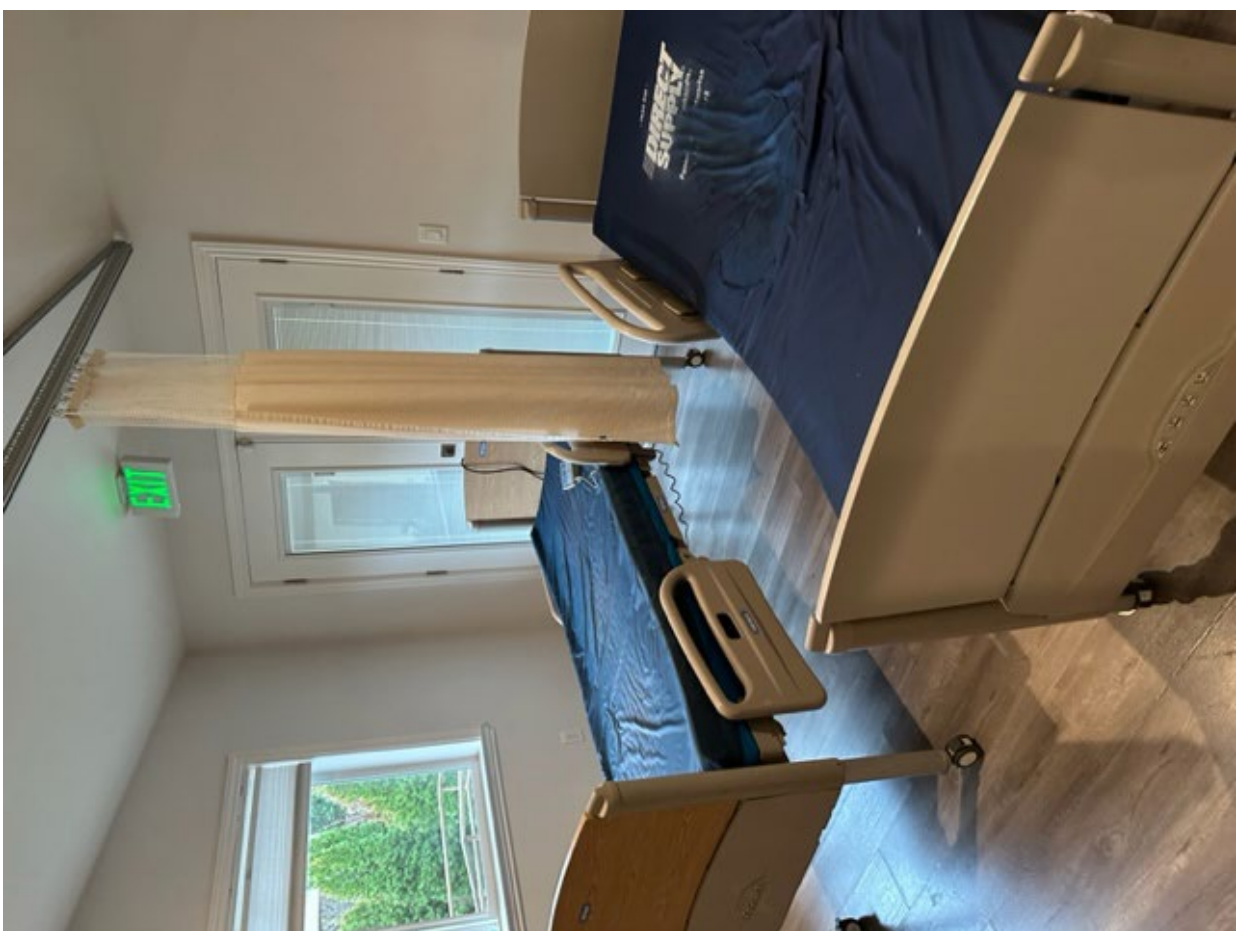
License Number - 997048

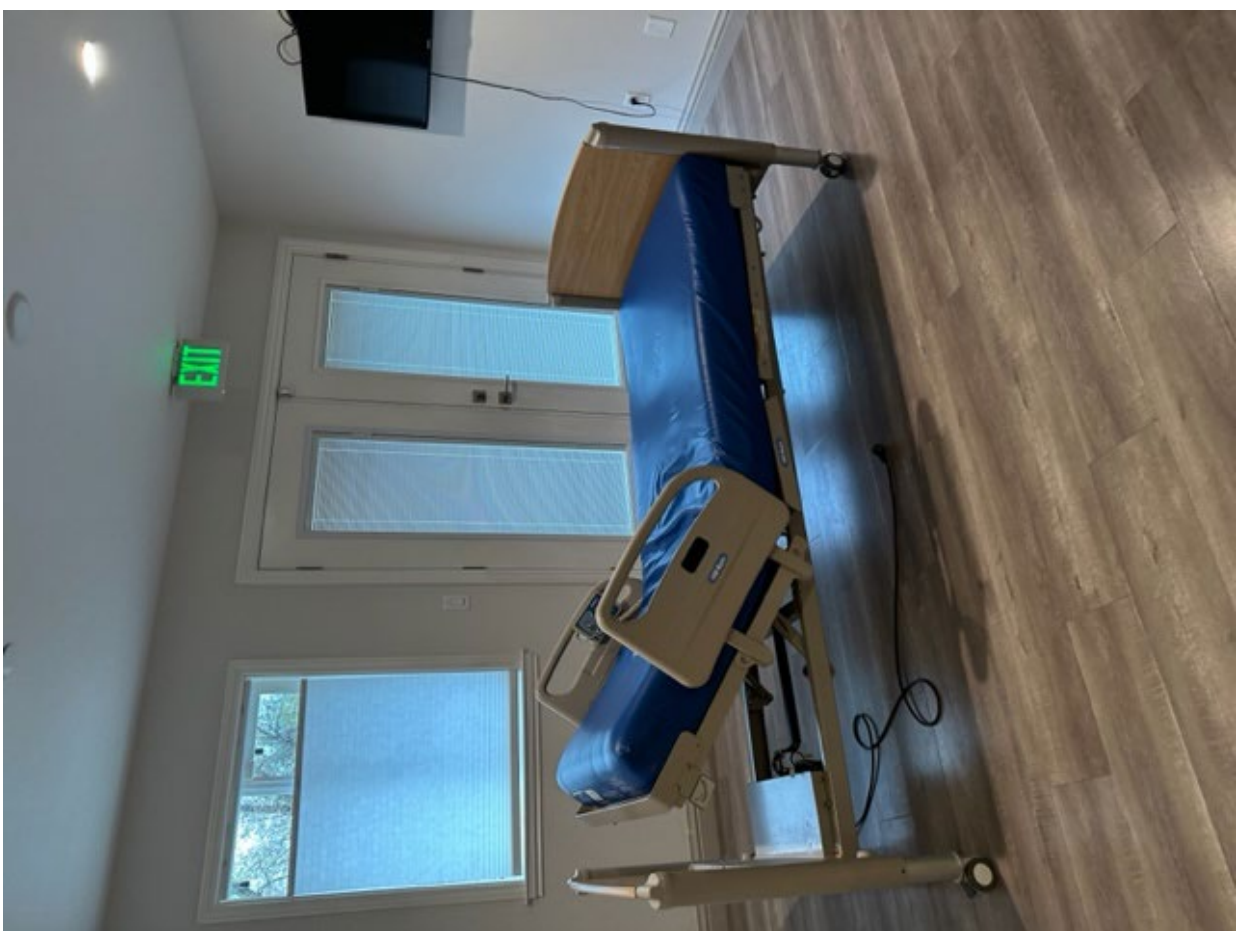
From: jason.californiaretailbuilders.com
To: [Thomas Veatch](#)
Subject: Pics email of existing CLHF 1 of 2
Date: Wednesday, September 06, 2023 10:29:12 AM

External Email: Use caution with links and attachments













California Retail Builders, Inc.

Jason Andrade

President

360W. Bedford, Suite 103

Fresno, California 93711

559.286.6151

www.californiaretailbuilders.com

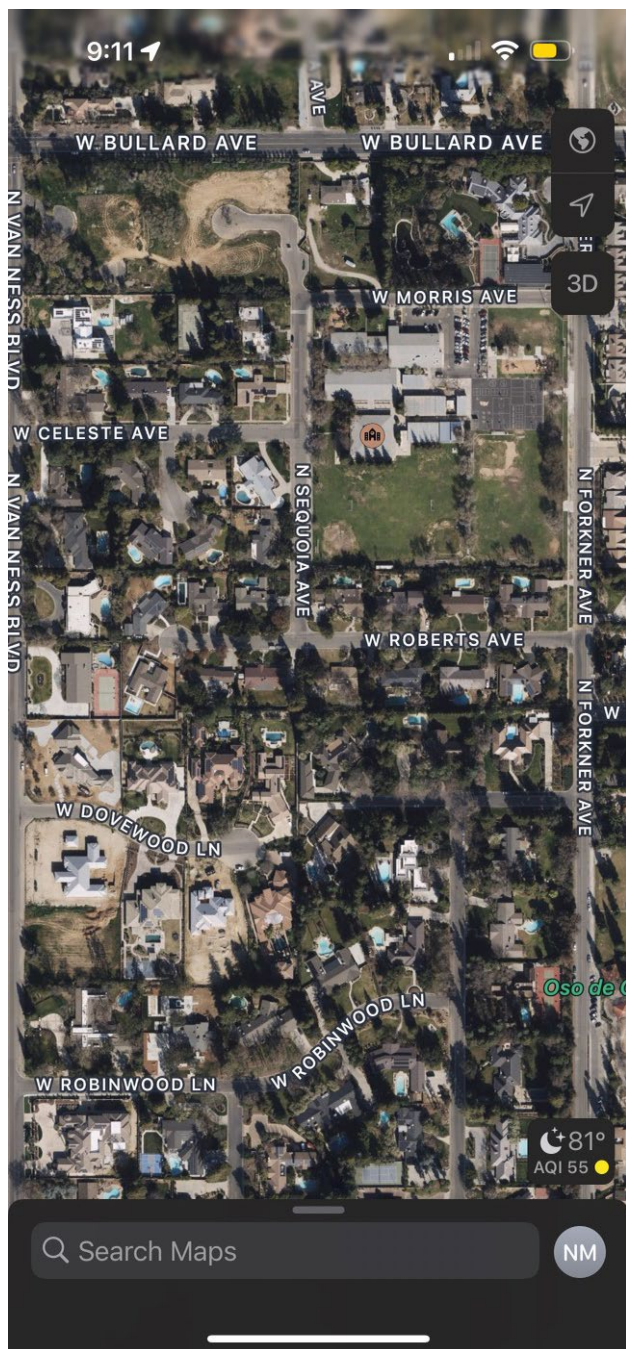
License Number - 997048

From: [Jason Andrade](#)
To: [Thomas Veatch](#)
Subject: Pics property Bullard
Date: Wednesday, September 06, 2023 10:20:29 AM

External Email: Use caution with links and attachments

Pics of our property





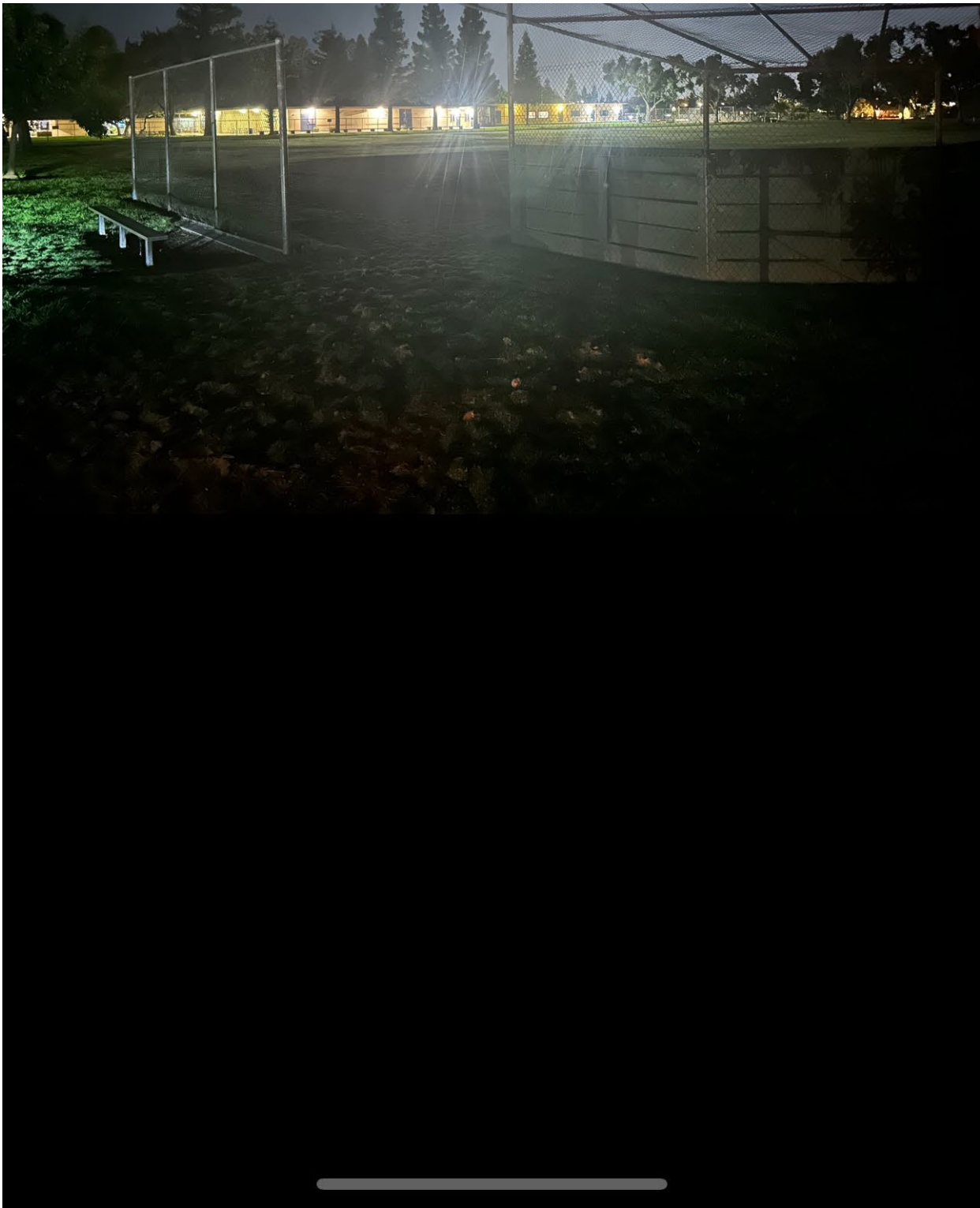














From: [PublicCommentsPlanning](#)
To: [Thomas Veatch](#)
Subject: FW: CUP Application No. P22-03146 Sept. 6 2023 meeting
Date: Wednesday, September 06, 2023 7:40:21 AM

FYI

Rob Holt | Supervising Planner
Current Planning | Planning & Development
2600 Fresno Street | Fresno CA 93721
559.621.8056
Robert.Holt@Fresno.gov



Resources: [Planning & Development](#) | [GIS Data Hub – Interactive Zoning Map](#) | [Fresno Municipal Code](#)
[Accela Citizens Access \(ACA\) Online Plans/Permits/Inspections](#) | [ACA Instruction Videos](#)

From: jim burden <jimburden44@gmail.com>
Sent: Tuesday, September 05, 2023 6:29 PM
To: PublicCommentsPlanning <PublicCommentsPlanning@fresno.gov>
Subject: CUP Application No. P22-03146 Sept. 6 2023 meeting

External Email: Use caution with links and attachments

My wife and family built and have lived in our home 1/2 block from the terrible proposed project on Bullard Ave. for 35 years. It is not Zoned for such use and will bring down the values of all homes in the area. And each of you knows that the objections Mr. Wanger has presented are all true and warranted. It is very clear. Whoever votes yes on this project will be remembered and replaced ASAP. This IS OUR BACKYARD, and we will not forget if you vote in favor of violating our zoning Laws. Jim & Kitty Burden...

From: [Lynne Glaser](#)
To: [Thomas Veatch](#)
Subject: 2287 W. Bullard
Date: Tuesday, September 05, 2023 5:42:37 PM

External Email: Use caution with links and attachments

As long-time residents of this low-density residential neighborhood, we strongly oppose the development of a major commercial full-time residential medical building at 2287 W. Bullard Ave.

First, it is completely out of sync with the intent and here-to-fore use of the property, and the developed use of the neighborhood in which it would reside.

Second, it will appreciably add to the traffic flow, a flow already intensified during the comings and goings at the adjacent Malloch School. Access from Bullard will be dicey going westward, because of the heavy eastward flow. Access via Roberts, Celeste, Morris and/or Celeste already impact residential neighbors because of the school, which we agreeably live with. Additionally, the increased traffic will wear more seriously on the roads' surfaces.

Add on to that, the type of lighting and other services/utilities required to operate, and you get what could only be considered an obtrusive mess.

Neighbors have attempted to interface with the hopeful developers to no avail, in part due to one partner's dismissive and rude behavior. For one thing, we have proposed a single building with lower number of patients. But we were informed that the developers could not make enough money that way.

We also proposed more small housing through condos or as a PUD. That is something that is sorely needed, and would maintain the original intent and long-existing character/use.

Please say NO.

Lynne and Frank Glaser
2310 W. Roberts, Fresno 93711

Sent from my iPhone

From: [Wanger, Andrew](#)
To: [PublicCommentsPlanning](#); [Thomas Veatch](#)
Subject: CUP Application No. P22-03146 / Sept. 6, 2023 meeting
Date: Tuesday, September 05, 2023 3:51:39 PM
Attachments: [image001.png](#)
[scanner@truenorthprops.com_20230905_175636.pdf](#)

External Email: Use caution with links and attachments

Dear Director Clark:

Please see attached in advance of tomorrow's meeting.

Very truly yours,
Andrew Wanger

Andrew Wanger
Partner | General Counsel | Clyde & Co US LLP
Direct Dial: +1 415 365 9840 | Mobile: +1 415 225 7549

CLYDE&CO

150 California Street | 15th Floor | San Francisco | CA 94111 | USA
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September 5, 2023

VIA EMAIL

PLANNING AND DEVELOPMENT DEPARTMENT

Attn: Ms. Jennifer K. Clark

PublicCommentsPlanning@fresno.gov

Re: Neighborhood meeting re CUP Application No. P22-03146

Dear Director Clark:

Neighborhood Meeting

The principals of Infinite Living recently held a further meeting with neighbors residing within 1000 feet of the proposed medical commercial development at 2287 W. Bullard Ave, Fresno, CA 93711.

Unfortunately, the meeting did not result in a compromise resolution of the pending Conditional Use Permit Application. The pending Application seeks the alteration of a single-family residential property in a very low-density neighborhood (RS-2 zoning) to a three-building commercial medical development that will operate 24 hours a day, 7 days a week, 365 days a year.

At the meeting, the developers floated the possibility of reducing their proposed commercial operation from: 3 buildings, 54 residents and 13,500 square feet of building plus parking lots; to, 2 buildings, 36 residents, 9000 square feet of buildings and parking lots. This proposal was not well-received by the neighbors given the lighting, traffic, noise, and safety issues associated with the operation of a 24 hour a day commercial facility.

The neighbors in attendance raised the possibility of a single building operation – similar to commercial medical properties at Bullard and Fruit Avenues and Forkner and San Madele Avenue properties. A single building option was dismissed out of hand by the Developers as not economically feasible under their profit models. Further, the neighbors suggested an alternative use that focused on PUD-style residences on the lot to address a significant shortage of single-family homes in the neighborhood. This idea was not responded to by the Developers.

The meeting was marked by rude and dismissive commentary from a principal in the Developers group, which hampered efforts to engage in a constructive dialogue. Unfortunately, the

neighbors are being asked to “trust” an unproven developer group that has never built and operated these type of facilities, much less on the grand scale proposed – 3 buildings and 54 beds.¹ While certain issues of concern to the neighborhood, such as egress and ingress near the elementary school, were discussed – no amendments to the CUP application have occurred to my knowledge and the current application calls for:

3 buildings for a total of 14,500 square feet of structures;

a subdivided lot into 3 parcels;

ingress and egress on Bullard Ave, Morris Ave and Sequoia Ave;

54 beds; and,

a parking lot with commercial lighting standards.

Thus, it is this CUP application which will be considered and voted on by the Planning Commission.

Municipal Code – Use Regulations

At the July meeting, questions were raised by Commissioners as to the proposed medical facilities being characterized as “Residential Care Facilities” (RCFE). The issue arose because the May 24, 2023 Report submitted by Mr. P. Siegrist supporting approval of the Application for the CUP cited to Municipal Code Section 15-902 as support for the conclusion the the proposed Congregate Living Health Facility was an acceptable use in a neighborhood zoned RS-2. Section 15-902 does not reference “Congregate Living Health Facility” as an acceptable or permitted use. Thus, the effort was made in the Siegrist Report to “liken” a Congregate Living Health Facility to an RCFE. This effort must fail. Under California Code of Regulation, Title 22, Section 87891(a)(8), RCFEs under California law are prohibited from accepting residents who require life support systems such as ventilators. The pending CUP Application specifically states that the 3 building will offer “24/7 Sub Acute Nursing (For Vent and Trach Dependent Patients) and 24- Hour Skilled Nursing Care.”(emphasis added) There can be no dispute that a Congregate Living Health Facility is not an RCFE or even “like” an RCFE.

Further, the Planning Department’s Report and the Application fail to adhere to the requirements of Section 15-5020 (“Director’s Determination”) of the Municipal Code, which would otherwise allow the Director to accept a petition to address a non-permitted use.

¹ The neighbors have had to call the Fresno Police Department on multiple occasions to the subject property as it has become a known haven for the unhoused.

Accordingly, the legal mandates of the City's Municipal Code have not been met during the Application process and, as a result, this Application should be denied.

The CUP Application Should Be Denied

1. Section 15-5306 of the Fresno Municipal Code applies to the approval of a CUP application. Section 15-5306 states:

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.

- A. 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;

[As noted above, the Municipal Code does not allow for Congregate Living Health Facility : 15-902]

- B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;

[The current zoning is RS-2 – single family very low density residential. A 3 building commercial medical facility is not consistent with this use.]

- C. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;

[The proposed project will irreparably alter the character of the neighborhood, significantly increase noise, traffic, light, and human traffic to a wholly residential neighborhood. It is being shoehorned into a family neighborhood developed over five decades.]

- D. 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;

[The project is unprecedented in the RS-2 low density neighborhood. No other lot in this zoned area has three buildings operating on a 24 /7 / 365 commercial basis.]

- E. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required;

[The traffic, lighting, noise issues represent a wholesale alteration of the residential neighborhood. Bullard Avenue is a major throughfare and the proposal to use it as a primary ingress / egress point for employees, visitors, deliveries, and emergency vehicles is misguided. The lighting will interfere with the contiguous neighbor's enjoyment of his property.]

and,

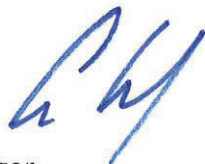
- F. The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5.
(Fresno Municipal Code, § 15-5306.)(emphasis added)

Conclusion

The unprecedented proposal to build three separate structures on the property and operate them as commercial enterprises with the proposed subdivision of the lot later (into three parcels) constitutes an unusual and unacceptable use of the lot. No such similar property use exists in the neighborhood.

Based on the foregoing, the Planning Commission should reject the pending Application.

Thank you for your consideration of this letter.



Andrew Wanger

cc: Thomas Veatch (thomas.veatch@fresno.gov)

From: [PublicCommentsPlanning](#)
To: [Thomas Veatch](#)
Subject: FW: CUP Application No. P22-03146 / Sept. 6, 2023 meeting
Date: Wednesday, September 06, 2023 1:00:28 PM

FYI

Rob Holt | Supervising Planner
Current Planning | Planning & Development
2600 Fresno Street | Fresno CA 93721
559.621.8056
Robert.Holt@Fresno.gov



Resources: [Planning & Development](#) | [GIS Data Hub – Interactive Zoning Map](#) | [Fresno Municipal Code](#)
[Accela Citizens Access \(ACA\) Online Plans/Permits/Inspections](#) | [ACA Instruction Videos](#)

From: Renea Estrada <renea61@comcast.net>
Sent: Wednesday, September 06, 2023 12:59 PM
To: PublicCommentsPlanning <PublicCommentsPlanning@fresno.gov>
Subject: CUP Application No. P22-03146 / Sept. 6, 2023 meeting

External Email: Use caution with links and attachments

To Whom It May Concern:

My husband Art Estrada and I are the homeowners at 5661 N. Sequoia Ave. Fresno, CA 93711. We are unable to attend tonight's meeting due to my husband testing positive for Covid this morning. We would like to have our opposition to this development noted. We do not support this property being developed into anything other than low-density residential, in keeping with our current neighborhood situation.

Respectfully,

Renea Estrada

Sent from [Mail](#) for Windows

