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Agenda Date: 3/4/2021
Council Meeting

2021 MAR -2 P 11:03

CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Information Packet

ITEM(S)

File ID 21-315 (10:15 A.M.)

Consideration of Plan Amendment/Rezone Application Nos. P20-00635, Conditional Use Permit Application No. P20-00636 and related Environmental Assessment No. P20-00635/P20-00636 for approximately 12.18 acres of property located on the northeast corner of East Jensen and South Maple Avenues. (Council District 5) - Planning and Development Department.

Contents of Supplement: Community Emails.

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council 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 City Council 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.

CUTTONE & ASSOCIATES

BRIAN K. CUTTONE, ESQ.

BCUTTONE@CUTTONELAW.COM

March 2, 2021

Luis Chavez
Fresno City Council Member
District 5
2600 Fresno Street, Room 2097
Fresno, CA 93721

Douglas Sloan
City Attorney
2600 Fresno Street, Room 2031
Fresno, CA 93721

Re: Proposed Mixed Use Development, At 4645 Jensen Avenue

Dear Mr. Chavez and Mr. Sloan:

I represent Jaswant Kahlon and Jas Kahlon, concerned residents and business owners in the area of Maple and Jensen Avenue (the "Proposed Project"). The Kahlons and many of the other residents, teachers, administrators of schools in the area and business owners in this community have expressed their concern and objected to the Proposed Project since the Developer has continuously failed to address their concerns that the Proposed Project does not promote the public health, safety, peace, comfort, convenience, prosperity, and general welfare of the local residents and businesses.

I wrote to Council Member Chavez on behalf of my clients on February 21, 2020 expressing concerns over the proposed development plan, a letter that remains missing from the record of the Proposed Project. In response, a representative from Mr. Chavez' office informed us that we needed to address our concerns to the City's Attorney's office for a response. Therefore, we have included Mr. Sloan in this letter. I have enclosed the February 21, 2020 letter for your convenience. I am writing once again on behalf of my clients to further express opposition to the Proposed Project on the grounds that it (1) includes another gas station/convenience store; (2) will exacerbate the oversaturation of stores with liquor licenses in the area; (3) that this oversaturation would be in violation of Fresno City Ordinance No. 2020-045 ("The Responsible Neighborhood Market Act").

As you are well aware, the Fresno City Council adopted The Responsible Neighborhood Market Act on October 15, 2020 for the purpose of combatting the undue concentration or oversaturation of liquor licenses in the Fresno area. In the immediate area of the proposed project, there are 16 liquor licenses, which indisputably constitute undue concentration as defined in California Business and Professions Code section 23958.4. Further, there are over 30 gas stations in this area.

In addition to the present oversaturation of liquor licenses in the immediate project area, there is an ongoing gas station and small grocery store, with a liquor license within 500 feet of the Proposed Project. If the gas station/convenience store proposed to be included, were to obtain a liquor license, the current proposed plan would be in violation of The Responsible Neighborhood Market Act, which explicitly states, "the establishment shall not be located within 1000 feet of an existing establishment." Project developers have made claims that alcohol will not be sold at the proposed gas station/convenience store but have provided no assurances and cannot unless a restrictive covenant is recorded against the Proposed Project.

Present at the community development meeting which occurred on November 20, 2019 were numerous residents of the area who expressed their concerns with the project. Amongst these concerns, residents once again brought up the oversaturation of gas stations and establishments selling alcohol in the immediate area. Increasing the presence of these kinds of establishments by including one in the Proposed Plan would only contribute to the concerns that the Responsible Neighborhood Market Act was intended to address. The Developer has promoted the Proposed Project with a gas station/convenience Store as the anchor for the Proposed Project.

As of now, the nearest traditional grocery store to the Proposed Project site is 2.4 miles away. Residents indicated that the present lack of healthy and affordable food options in the area has created a significant need for a grocery store nearby, which they proposed would be preferable to the development of yet another gas station/convenience store in the Proposed Project space.

I was present at the February 17th, 2021 Planning Commission meeting in which the aforementioned concerns were brought up and were outright disregarded. Moreover, the developer was stated that there had been no complaints from the community regarding the Proposed Project. This is completely false. In addition to the concerns raised regarding the oversaturation of gas stations/convenience stores in the area and the expressed need for a grocery store, pharmacy and nutritional food outlets residents complained about the Proposed Project of a four-story apartment building. They explained that the height of this building would create a direct line of sight into the backyards of the surrounding homes creating concerns over privacy and a loss of property value. There are multiple unresolved issues with the Proposed Project, but neither the Developer nor the Planning Commission cared to hear about or address it.

It is the responsibility of the City and the Developer to make decisions based on the best interest of the residents within the community. The current proposed plan not only fails to consider the best interests of the community, but the Developer has demonstrated a blatant disregard for the residents' concerns. The City and Developers continue in failing to consider the best interest of the community as they move forward with the Proposed Project.

Luis Chavez
March 2, 2021
Page 3 of 3

I will be appearing at the March 4, 2021 City Council meeting to further address the abovementioned concerns regarding the Proposed Project in hopes that these important community issues will finally be addressed.

Very truly yours,

Brian K. Cuttone

BKC/lf

DECLARATION REGARDING P20-00635 and P20-00636

1. My name is Maria Aviles and my address is _____ ("Residence").

2. My Residence is located within _____ feet of the proposed building site on 12.18 acres located on the northeast corner of East Jensen Avenue and South Maple Avenue in Fresno, California ("Building Site").

3. As of the date I signed this Declaration below, I have not received a notice for the city planning application record number P20-00636.

4. As of the date I signed this Declaration below, I have not received a notice for the city planning application amendment for rezone record number P20-00635.

5. I am against having the four story apartments overlooking my single family residence, invading my privacy and lowering my property value.

6. I am against another gas station and convenience store in our neighborhood. Presently, we have over 30 gas stations and 16 establishments selling liquor, beer and wine. These are not the type of business we need in our area. We need a full service grocery store, day care, pharmacy and doctors offices. A gas station/convenience store is not an anchor store that brings value or serves a need for our community, as proposed by the developer of this project.

7. Also, I am against more fast food restaurants in our area. We need healthier choices and more small business restaurants.

8. With respect to the liquor license for the proposed gas station/liquor store, we were informed by the developer that the gas station/convenience store is not interested in selling alcohol, at this time. However, no assurances have been made nor can be made that their interest won't change in the near future.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing statements are true and correct and that if called as a witness herein, I could and would competently testify thereto.

Dated: 2/25/21

BY: _____

DECLARATION REGARDING P20-00635 and P20-00636

1. My name is Leonard, and my address is _____ ("Residence").

2. My Residence is located within _____ feet of the proposed building site on 12.18 acres located on the northeast corner of East Jensen Avenue and South Maple Avenue in Fresno, California ("Building Site").

3. As of the date I signed this Declaration below, I have not received a notice for the city planning application record number P20-00636.

4. As of the date I signed this Declaration below, I have not received a notice for the city planning application amendment for rezone record number P20-00635.

5. I am against having the four story apartments overlooking my single family residence, invading my privacy and lowering my property value.

6. I am against another gas station and convenience store in our neighborhood. Presently, we have over 30 gas stations and 16 establishments selling liquor, beer and wine. These are not the type of business we need in our area. We need a full service grocery store, day care, pharmacy and doctors offices. A gas station/convenience store is not an anchor store that brings value or serves a need for our community, as proposed by the developer of this project.

7. Also, I am against more fast food restaurants in our area. We need healthier choices and more small business restaurants.

8. With respect to the liquor license for the proposed gas station/liquor store, we were informed by the developer that the gas station/convenience store is not interested in selling alcohol, at this time. However, no assurances have been made nor can be made that their interest won't change in the near future.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing statements are true and correct and that if called as a witness herein, I could and would competently testify thereto.

Dated:

BY:

DECLARATION REGARDING P20-00635 and P20-00636

1. My name is Jenna Cooper and my address is _____ ("Residence").

2. My Residence is located within 200 feet of the proposed building site on 12.18 acres located on the northeast corner of East Jensen Avenue and South Maple Avenue in Fresno, California ("Building Site").

3. As of the date I signed this Declaration below, I have not received a notice for the city planning application record number P20-00636.

4. As of the date I signed this Declaration below, I have not received a notice for the city planning application amendment for rezone record number P20-00635.

5. I am against having the four story apartments overlooking my single family residence, invading my privacy and lowering my property value.

6. I am against another gas station and convenience store in our neighborhood. Presently, we have over 30 gas stations and 16 establishments selling liquor, beer and wine. These are not the type of business we need in our area. We need a full service grocery store, day care, pharmacy and doctors offices. A gas station/convenience store is not an anchor store that brings value or serves a need for our community, as proposed by the developer of this project.

7. Also, I am against more fast food restaurants in our area. We need healthier choices and more small business restaurants.

8. With respect to the liquor license for the proposed gas station/liquor store, we were informed by the developer that the gas station/convenience store is not interested in selling alcohol, at this time. However, no assurances have been made nor can be made that their interest won't change in the near future.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing statements are true and correct and that if called as a witness herein, I could and would competently testify thereto.

Dated: _____

DECLARATION REGARDING P20-00635 and P20-00636

1. My name is JUAN GRIMAHU and my address is _____ ("Residence").

2. My Residence is located within 20 feet of the proposed building site on 12.18 acres located on the northeast corner of East Jensen Avenue and South Maple Avenue in Fresno, California ("Building Site").

3. As of the date I signed this Declaration below, I have not received a notice for the city planning application record number P20-00636.

4. As of the date I signed this Declaration below, I have not received a notice for the city planning application amendment for rezone record number P20-00635.

(5) I am against having the four story apartments overlooking my single family residence, invading my privacy and lowering my property value.

(6) I am against another gas station and convenience store in our neighborhood. Presently, we have over 30 gas stations and 16 establishments selling liquor, beer and wine. These are not the type of business we need in our area. We need a full service grocery store, day care, pharmacy and doctors offices. A gas station/convenience store is not an anchor store that brings value or serves a need for our community, as proposed by the developer of this project.

(7) Also, I am against more fast food restaurants in our area. We need healthier choices and more small business restaurants.

(8) With respect to the liquor license for the proposed gas station/liquor store, we were informed by the developer that the gas station/convenience store is not interested in selling alcohol, at this time. However, no assurances have been made nor can be made that their interest won't change in the near future.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing statements are true and correct and that if called as a witness herein, I could and would competently testify thereto.

Dated:

BY _____

DECLARATION REGARDING P20-00635 and P20-00636

1. My name is Paul Valenzuela and my address is _____ ("Residence").

2. My Residence is located within one block feet of the proposed building site on 12.18 acres located on the northeast corner of East Jensen Avenue and South Maple Avenue in Fresno, California ("Building Site").

3. As of the date I signed this Declaration below, I have not received a notice for the city planning application record number P20-00636. no

4. As of the date I signed this Declaration below, I have not received a notice for the city planning application amendment for rezone record number P20-00635. no

5. I am against having the four story apartments overlooking my single family residence, invading my privacy and lowering my property value. no

6. I am against another gas station and convenience store in our neighborhood. Presently, we have over 30 gas stations and 16 establishments selling liquor, beer and wine. These are not the type of business we need in our area. We need a full service grocery store, day care, pharmacy and doctors offices. A gas station/convenience store is not an anchor store that brings value or serves a need for our community, as proposed by the developer of this project. no

7. Also, I am against more fast food restaurants in our area. We need healthier choices and more small business restaurants. no

8. With respect to the liquor license for the proposed gas station/liquor store, we were informed by the developer that the gas station/convenience store is not interested in selling alcohol, at this time. However, no assurances have been made nor can be made that their interest won't change in the near future. no

I declare under penalty of perjury, under the laws of the State of California, that the foregoing statements are true and correct and that if called as a witness herein, I could and would competently testify thereto.

Dated: 7/25/21

BY: _____

DECLARATION REGARDING P20-00635 and P20-00636

1. My name is Don Wallace, and my address is _____ ("Residence").

2. My Residence is located within 100 feet of the proposed building site on 12.18 acres located on the northeast corner of East Jensen Avenue and South Maple Avenue in Fresno, California ("Building Site").

3. As of the date I signed this Declaration below, I have not received a notice for the city planning application record number P20-00636.

4. As of the date I signed this Declaration below, I have not received a notice for the city planning application amendment for rezone record number P20-00635.

5. I am against having the four story apartments overlooking my single family residence, invading my privacy and lowering my property value.

6. I am against another gas station and convenience store in our neighborhood. Presently, we have over 30 gas stations and 16 establishments selling liquor, beer and wine. These are not the type of business we need in our area. We need a full service grocery store, day care, pharmacy and doctors offices. A gas station/convenience store is not an anchor store that brings value or serves a need for our community, as proposed by the developer of this project.

7. Also, I am against more fast food restaurants in our area. We need healthier choices and more small business restaurants.

8. With respect to the liquor license for the proposed gas station/liquor store, we were informed by the developer that the gas station/convenience store is not interested in selling alcohol, at this time. However, no assurances have been made nor can be made that their interest won't change in the near future.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing statements are true and correct and that if called as a witness herein, I could and would competently testify thereto.

Dated: 2-24-2021 BY: _____

CUTTONE & ASSOCIATES

BRIAN K. CUTTONE, ESQ.

BCUTTONE@CUTTONE.LAW.COM

February 25, 2020

Via Email at luis.chavez@fresno.gov

Hon. Luis Chavez
Fresno City Council Member
District 5
2600 Fresno Street, Room 2097
Fresno, CA 93721

Via Email at Cecilia.lopez@fresno.gov

City of Fresno Planning Commission
2600 Fresno Street, Room 3065
Fresno, CA 93721

Re: Proposed Mixed Use Development, At 4645 Jensen Avenue

Dear Mr. Chavez:

I represent Jaswant Kahlon and Jas Kahlon, concerned residents and business owners in the area of Maple and Jensen Avenues, which is the location of a proposed mixed use development, at 4645 Jensen Avenue (the "Proposed Project"). The Kahlons and many of the other residents, teachers, administrators of schools in this area and business owners in this community object to the Proposed Project since it fails to promote the public health, safety, peace, comfort, convenience, prosperity and the general welfare of the local residents. More importantly, the Project will unequivocally exacerbate the economic and social issues of our downtrodden community.

For the aforementioned reasons and those set forth below, on my clients' behalf, we respectfully request a meeting with both of you to express the concerns and the specifics of the objection to the Proposed Project, by the community.

A more than cursory review of the active ABC licenses for this particular area, and frankly all of District 5, will reveal an oversaturation or undue concentration of liquor licenses for this area. In the immediate area of the Proposed Project, there are over 16 liquor licenses, which are undisputable, an undue concentration, as defined in California Business and Professions Code section 23958.4, which is attached for your convenient review.

As stated in the Fresno Municipal Code section 15-2706, establishments selling alcohol "possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, **especially when the establishments are concentrated near one another. . . .**" (Emphasis added.) The

Proposed Project, which contains both onsite and offsite alcohol sales will exacerbate the problem that already exists in this community and of which the Municipal Code promulgated to mitigate. Further, the Proposed Project will necessarily violate the proscriptions set forth in 15-2706 E and California Business and Professions Code section 23958.4.

The fact of the matter is that the Proposed Project, as presently promoted, will be a nuisance to this community. While the State has the exclusive jurisdiction regarding licensing and dispensing of alcoholic beverages, the City of Fresno, including the Council and Planning Commission are required to regulate activity in and around a licensed establishment, such as drunkenness, drug activity, prostitution, harassment of pedestrians, excessive noise and other conduct that constitutes a public or private nuisance. See Government Code section 38771.

To best serve the community, developers and the City should be focusing on providing a development at the site that will service the actual needs of the residents such as a pharmacy, a traditional, affordable grocery store, family restaurants, medical services and the like.

What our community does not need is more liquor stores and gas stations selling overpriced food items and alcohol, contributing to alcoholism, violence and poverty. Moreover, building more apartments without the necessary infrastructure and services, such as grocery store, medical services, pharmaceuticals, parks and family oriented restaurants and clothing stores, will only exacerbate the downtrodden economic and social characteristics of our community.

Before considering approving any project at the proposed site, the Council and Commission should consider what is in the best interests of the community and not make a decision of approval solely based upon tax revenue.

Obviously, there will also be significant environmental effects of the Proposed Project, which will exacerbate the environmental issues that this community already is dealing with. It is unlikely that the impacts of the Proposed Project will be able to satisfy the CEQA guidelines or be able to provide adequate mitigation of those impacts. Nevertheless, the community does not want to wait for the findings of the EIR to object to the Proposed Project as they believe that the Proposed Project, as currently stated, will possess certain characteristics that will certainly cause deleterious effects and nuisances on the surrounding neighborhoods and businesses

As you are aware, the Proposed Project is being objected to by local school teachers and administrators, local businesses and residents.

In sum, we would like you to support your constituents and the citizens you both serve that are adamantly opposed to the Proposed Project, for the reasons outlined herein and many more.

Hon. Luis Chavez
February 25, 2020
Page 3 of 5

We are requesting: (1) a response to this letter; (2) a meeting to discuss the objections and legitimate concerns of the community; (3) that you keep us apprised of any and all meetings before the Commission and the Council relating to the Proposed Project and (4) your recognition of the adverse affects the Proposed Project will have on this community and support in objecting to it.

I look forward to your response to our request as we are ready and will be available, at your convenience to discuss this very important community issue.

Very truly yours,

Brian K. Cuttone

BKC/rs

§ 23958.4. Undue concentration; licensure for public convenience or necessity; definitions; exclusions; Los Angeles premises destroyed by civil disturbances

(a) For purposes of Section 23958, "undue concentration" means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

If the local governing body, or its designated subordinate officer or body, does not make a determination within the 90-day period, then the department may issue a license if the applicant shows the department that public convenience or necessity would be served by the issuance. In making its determination, the department shall not attribute any weight to the failure of the local governing body, or its designated subordinate officer or body, to make a determination regarding public convenience or necessity within the 90-day period.

(c) For purposes of this section, the following definitions shall apply:

(1) "Reporting districts" means geographical areas within the boundaries of a single governmental entity (city or the unincorporated area of a county) that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests.

(2) "Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery,

aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(3) "Population within the census tract or census division" means the population as determined by the most recent United States decennial or special census. The population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(4) "Population in the county" shall be determined by the annual population estimate for California counties published by the Demographic Research Unit of the Department of Finance.

(5) "Retail licenses" shall include the following:

(A) Off-sale retail licenses: Type 20 (off-sale beer and wine) and Type 21 (off-sale general).

(B) On-sale retail licenses: All retail on-sale licenses, except Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer and wine for fishing party boat), Type 45 (on-sale beer and wine for boat), Type 46 (on-sale beer and wine for airplane), Type 53 (on-sale general for train and sleeping car), Type 54 (on-sale general for boat), Type 55 (on-sale general for airplane), Type 56 (on-sale general for vessels of more than 1,000 tons burden), and Type 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) A "premises-to-premises transfer" refers to each license being separate and distinct, and transferable upon approval of the department.

(d) For purposes of this section, the number of retail licenses in the county shall be established by the department on an annual basis.

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued before April 29, 1992, whose premises were destroyed or rendered unusable as a result of the civil disturbances occurring in Los Angeles from April 29 to May 2, 1992, to reopen and operate those licensed premises.

(f) This section shall not apply if the premises have been licensed and operated with the same type license within 90 days of the application.