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Title: Consideration of an appeal filed regarding Conditional Use Permit Application No. P23-00244 and related Environmental Assessment for property located at 3045 West Bullard Avenue on the southwest corner of West Bullard and North Marks Avenues (Council District 2).

- ADOPT Environmental Assessment No. P23-00244, dated July 1, 2023, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Section 15301/Class 1 Categorical Exemption.
- DENY the appeal and UPHOLD the action of the Planning Commission to approve Conditional Use Permit Application No. P23-00244 authorizing the extension of the hours of operation for an existing restaurant with alcohol sales with a State of California Alcoholic Beverage Control (ABC) Type 47 alcohol license (On-Sale General - Eating Place), subject to the Conditions of Approval dated October 4, 2023, as amended by the Planning Commission.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photograph, 3. Exhibit C - Zoning Map, 4. Exhibit D - Project Information Tables, 5. Exhibit E - Noticing Map.pdf, 6. Exhibit F - Owner's Letter of Authorization, 7. Exhibit G - Operational Statement, 8. Exhibit H - Exhibits (Site Plan, Elevation Photos, Floor Plans), 9. Exhibit I - Appeal Letter from CUP, 10. Exhibit J - Department & Agency Comments, 11. Exhibit K - Fresno Municipal Code Findings, 12. Exhibit L - Environmental Assessment [07-01-2023], 13. Exhibit M - Revised Conditions of Approval amended by the Planning Commission [10-4-2023], 14. Exhibit N - Public Comments, 15. Exhibit O - Planning Commission Resolution No. 13814, 16. Exhibit P - Appeal Letter from Planning Commission [10-11-2023], 17. Exhibit Q - PowerPoint Presentation

Date	Ver.	Action By	Action	Result
11/16/2023	1	City Council	APPROVED	Pass

REPORT TO THE CITY COUNCIL

FROM: JENNIFER CLARK, Planning & Development Director
Planning & Development Department

BY: LUKE RISNER, Planner II
Planning & Development Department

SUBJECT

Consideration of an appeal filed regarding Conditional Use Permit Application No. P23-00244 and related Environmental Assessment for property located at 3045 West Bullard Avenue on the southwest corner of West Bullard and North Marks Avenues (Council District 2).

- ADOPT Environmental Assessment No. P23-00244, dated July 1, 2023, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through

a Section 15301/Class 1 Categorical Exemption.

2. DENY the appeal and UPHOLD the action of the Planning Commission to approve Conditional Use Permit Application No. P23-00244 authorizing the extension of the hours of operation for an existing restaurant with alcohol sales with a State of California Alcoholic Beverage Control (ABC) Type 47 alcohol license (On-Sale General - Eating Place), subject to the Conditions of Approval dated October 4, 2023, as amended by the Planning Commission.

RECOMMENDATIONS

1. ADOPT Environmental Assessment No. P23-00244, dated July 1, 2023, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Section 15301/Class 1 Categorical Exemption.
2. DENY the appeal and UPHOLD the action of the Planning Commission to approve Conditional Use Permit Application No. P23-00244 authorizing the extension of the hours of operation for an existing restaurant with alcohol sales with a State of California Alcoholic Beverage Control (ABC) Type 47 alcohol license (On-Sale General - Eating Place), subject to the Revised Conditions of Approval dated October 4, 2023, as amended by the Planning Commission.

EXECUTIVE SUMMARY

Conditional Use Permit Application P23-00244 was filed by Valarie Richardson of Locked In restaurant and pertains to an existing 3,500 square-foot restaurant with alcohol sales located at 3045 West Bullard Avenue within the Marks & Bullard Shopping Center.

The existing restaurant with alcohol sales is currently operating under a State of California ABC Type 47 alcohol license (Restaurant - sale of beer, wine, and distilled spirits for consumption on the premises where sold, minors allowed) and authorized to operate between the hours of 9:00 am - 10:00 pm. Under this special permit application (P23-00244), the applicant requests authorization to extend the hours of operation to 8:00 am - 2:00 am.

On August 7, 2023, the Planning and Development Department Director approved Conditional Use Permit Application P23-00244 subject to compliance with the Conditions of Approval dated August 7, 2023 (Exhibit M).

On August 17, 2023, the applicant filed an appeal related to specific conditions included in the conditions of approval which: (1) restrict the hours of operation to no later than 12:00 am; and (2) prohibit live music entertainment (Exhibit I, Appeal Letter).

On October 4, 2023, the Planning Commission denied the appeal and upheld the original Conditions of Approval dated August 7, 2023 adding that the applicant shall be permitted to have live music only on Fridays and Saturdays until 10:00 P.M. The Planning Commission Resolution (Exhibit O) is attached for more information.

On October 11, 2023, Councilmember Mike Karbassi (Council District 2) filed an appeal of the Planning Commission's decision (Exhibit P).

Staff recommends upholding the Planning Commission's approval as conditioned based on substantial evidence in this staff report that shows the existing Restaurant with conditioned Alcohol Sales is a conditionally permitted use, compliant with all provisions of the Citywide Development

Code, and consistent with applicable policies of the Fresno General Plan and Bullard Community Plan.

BACKGROUND

The subject application pertains to an existing 3,500 square-foot restaurant w/ alcohol (Locked In) and outdoor dining and patio area located at 3045 West Bullard Avenue within the Marks & Bullard Shopping Center. The existing establishment is currently operating under a State of California ABC Type 47 alcohol license (Restaurant - sale of beer, wine, and distilled spirits for consumption on the premises where sold, minors allowed) and authorized to operate between the hours of 9:00 am - 10:00 pm pursuant to previously approved Conditional Use Permit P21-06413.

Under this special permit application (CUP P23-00244), the applicant requests authorization to extend the hours of operation within the existing restaurant to 8:00 am - 2:00 am.

The subject property is zoned CC (*Commercial - Community*). Pursuant to FMC Section 15-6704 (Commercial Use Classifications), Restaurants with Alcohol Sales as well as Bars/Nightclubs/Lounges are classified as Eating and Drinking Establishments.

Pursuant to FMC Table 15-1202, Restaurants with Alcohol Sales as well as Bars/Nightclubs/Lounges are permitted subject to an approved Conditional Use Permit. The additional standards for specific uses and activities provided under FMC Section 15-2751 (Restaurants with Alcohol Sales, Bars, Nightclubs, and Lounges) apply. In addition, because the restaurant has an existing outdoor patio, the provisions of FMC Section 15-2744 (Outdoor Dining and Patio Areas) also apply.

For informational purposes, pursuant to FMC Section 15-2751-F, dancing is permitted in Restaurants with Alcohol and Bars; however, it shall be incidental to the primary use.

Hours of Operation

The primary operational restriction for Restaurants with Alcohol Sales is a limitation on the hours which alcohol is served. FMC Table 15-2751-G (Special Standards) requires all restaurants to stop sales, service, and consumption of alcohol by no later than 12:00 am and all bars to stop sales, service, and consumption by 2:00 am.

Pursuant to FMC Table 15-2744-A, the hours of operation for outdoor dining and patio areas for Restaurants with Alcohol sales is limited to no earlier than 7:00 am and no later than 10:00 pm when within 100 feet from a residential district and no later than 12:00 am when further than 250 feet from a residential district.

The nearest residential property is approximately 195 feet (measured from the easterly edge of the tenant space to the nearest residentially zoned property line) southeast (across Bullard Avenue) of the establishment. Therefore, the existing patio area is required to close at 10:00 pm.

The proposed hours of operation are Monday - Sunday: 8:00 am - 2:00 am with the service of alcohol proposed to stop at closing (2:00 am). Based upon the proposed hours of operation, the establishment requests to operate under two (2) modes of operation (e.g., Restaurant w/ alcohol converting to a Bar/Nightclub after 12:00 am).

As described in more detail below, the Police Department requested the hours of operation be limited

to no later than 10:00 pm should the subject application be approved. The Planning and Development Director has conditioned the establishment to close at 12:00 am. Furthermore, on September 21, 2023, the property owner provided authorization to operate until 12:00 am with no live music occurring past 11:30 pm.

It is noted that on October 4, 2023, the Planning Commission upheld the Director's decision authorizing the extension of hours of operation until 12:00 am. In addition, the Planning commission amended the conditions of approval to allow live music entertainment only on Fridays and Saturdays until 10:00 P.M.

Based upon the hours of operation authorized by the property owner and as conditioned (stop service of alcohol and close at 12:00 am latest), the project is in compliance with the type of use per Table 15-2751-G and will operate under one (1) mode of operation (Restaurant with Alcohol).

Alcoholic Beverage Control (ABC) Regulations

In addition to obtaining a Conditional Use Permit from the City of Fresno, the applicant is required to obtain a license from the California Department of Alcoholic Beverage Control (ABC). The applicant currently has a Type 47 alcohol license issued by ABC. As such, ABC is awaiting the decision on the subject Conditional Use Permit application prior to modifying operational restrictions on the alcohol license.

Police Department

On June 7, 2023, the Fresno Police Department (FPD) initially provided a letter of protest due to concerns that the location will be run as a nightclub and not a restaurant. The letter expressed concerns related to hours of operation, live entertainment, dancing, and the restaurant operating more closely to a nightclub.

The FPD also provided the latest closing hours of several nearby restaurants that have the same Type 47 license, which are as follows:

- Culichi Town: Friday and Saturday closes at midnight
- Texas Roadhouse: Friday and Saturday closes at 11:00 pm
- Casa Corona: Friday and Saturday closes at 10:00 pm
- Ovidio: Friday and Saturday closes at 9:30 pm
- Elbow Room Bar and Grill: Friday and Saturday closes at 11:00 pm

In addition, the FPD provided crime statistics related to the subject establishment (Locked In) which operates under a Type 47 alcohol license and several nearby restaurants with alcohol. During a one-year period between July 10, 2022 and June 7, 2023, "Locked In" had a total of 17 calls for service. The several restaurants in the area with the same license type had a combined total of eight (8) calls for service.

On September 20, 2022, Locked In was issued a Notice and Order Violation (MORPO) from the Fresno Police Department for violating its hours of operation as set forth in its current Conditional Use Permit, as well as having loud music and fights occurring inside and outside of the business.

On July 3, 2023, the FPD provided an updated letter that stated FPD is still in opposition of this

conditional use permit. However, if the application were to be approved by the Planning and Development Department and authorized to operate past 10:00 pm, the Police Department requested additional requirements/conditions (Exhibit J) be included into the Conditions of Approval letter which include but are not limited to: additional cameras; employment of one BSIS uniformed licensed security guard per 100 people after 8:00 pm; no live music allowed on the premises; the kitchen remain open for a full menu during all business hours; and 51% of all sales come from food sales.

It's noted that live music is not listed as a prohibited use or activity in the citywide development code.

All the Police Department's requested requirements/conditions have been included in the conditions of approval except for the requirement to cease operations at 10:00 pm. As previously mentioned above, the project was approved to operate until 12:00 am by the Planning and Development Director and the Planning Commission. Furthermore, the Planning Commission authorized live music entertainment to occur at the establishment only on Fridays and Saturdays until 10:00 P.M.

Fresno Unified School District (FUSD) Review

The FUSD reviewed the proposed project and provided comments indicating the district did not support this application. Their comment letter, dated May 11, 2023, expressed concerns regarding the Type 47 application and potentially dangerous interactions between students and the proposed location. FUSD indicated their response was subject to the State of California ABC and the Fresno Police Department's review and support of the proposed project.

Per the State ABC Act, an alcohol license can be refused by the State if the location is within 600 feet from schools. The project location is approximately 3,465 feet from the nearest school (Malloch Elementary School) which is approximately 2,850 feet further than the State minimum distance requirement.

Other Agencies

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application P23-00244 (Exhibit J).

Public Notice and Input

Neighborhood Meeting

The establishment is approximately 195 feet away from the nearest residential property. Pursuant to FMC Table 15-2751-G and Section 15-2751-Q, applications for bars which will be located within 300 feet of properties planned and zoned for residential uses shall be required to conduct a neighborhood meeting in accordance with Section 15-5006. A neighborhood meeting was held by the applicant on May 1, 2023. Three members of the public attended.

Council District 2 Project Committee Review

On June 12, 2023, the Council District 2 Project Review Committee (Committee) voted to recommend denial of the project 3 votes to 0. The Committee stated concerns about the Operational Statement and questioned how the restaurant owner was going to require IDs after 10:00 pm if there

were still minors within the restaurant.

Notice of Intent to Take Action

A notice of intent to take action was mailed to nearby property owners on July 20, 2023, which commenced a 10-day comment period. One phone call and four letters of protest were received; one request to be notified of the Director's decision was received. The letters expressed the following concerns:

- Increased crime including drunk drivers, public intoxication, fighting and littering.
- Safety of elderly residents.
- The business would operate as a bar rather than as a restaurant.
- Proximity to the existing residential homes and library.
- Loud music.
- Increased calls to the police department.
- The existence of two restaurants that serve alcohol within the shopping center.
- Overall disturbance of the resident's peace and safety

Notice of Action

The Planning and Development Department sent a Notice of Action to the applicant, property owner, and Councilmember on August 7, 2023, in accordance with FMC Section 15-5009.

Applicant Appeal

On August 17, 2023, a timely appeal was received by the Planning and Development Department from the applicant opposing the Director's decision in granting Conditions of Approval of Conditional Use Permit Application No. P23-00244 (Exhibit I). An analysis of the appeal is provided in more detail below.

Analysis of the Appeal Letter

- *Issue #1:* "I would like to make a formal appeal to proposed hours of operation from Monday - Sunday 8:00 a.m. to 12:00 a.m... I would like for the city to stay with the obvious indication in paragraph 1 (Monday - Sunday 8:00 a.m. to 2:00 a.m.)... Culichi Town, Ovidio Italian Restaurant, Elbow Room Bar and Grill, and Press Box are allowed to stay open later."

Response:

As previously stated in the staff report, the approved Conditional Use Permit for Culichi Town (C-18-005) allows the restaurant to operate between the hours of 10:00 am to 10:00 pm on Monday through Wednesday and 10:00 am to 12:00 am on Thursday through Sunday.

The approved Conditional Use Permit for Press Box (C-09-187) allows the restaurant to operate between the hours of 11:15 am to 12:30 am on Monday through Friday, 9:00 am to 12:30 am on Saturday, and 9:00 am to 10:00 pm on Sunday.

The other two existing restaurants (Elbow Room Bar and Grill and Ovidio Italian Restaurant)

were approved to sell alcohol under the master Conditional Use Permit No. C-94-86. Staff's research has not shown any approved operating hours for Elbow Room Bar and Grill or Ovidio Italian Restaurant, but their listed operating hours are shown below.

Elbow Room Bar and Grill currently lists their operating hours as 11 am to 9 pm on Monday and Tuesday, 11 am to 10 pm on Wednesday and Thursday, 11 am to 11 pm on Friday, 10 am to 11 pm on Saturday, and 10 am to 9 pm on Sunday.

Ovidio Italian Restaurant currently lists their operating hours as 3 pm to 9 pm on Sunday and Tuesday, 11:30 am to 9 pm on Wednesday and Thursday, 11:30 am to 9:30 pm on Friday, 12 pm to 9:30 pm on Saturday, and closed on Monday.

Staff has reached out to the California Department of Alcoholic Beverage Control, and there are no operating conditions regarding alcohol sales for Elbow Room Bar and Grill or Ovidio Italian Restaurant. That said, none of the identified businesses have approved or listed hours of operation beyond 12:30 a.m.

- Issue #2: "Calls to my established business were not as projected to the director of the Planning Department."

Response:

As stated in the Fresno Police Department's memorandum dated July 3, 2023 (Exhibit J), Locked In had a total of 17 calls for service during the timeframe of July 10, 2022 to June 7, 2023. Five other restaurants with the same Type 47 alcohol license in the Northwest Police District have had a combined total of 8 calls for service in that same timeframe.

Planning Commission

In accordance with Section 15-5007 of the FMC, the Planning and Development Department mailed notices of the Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property and to the appellant on September 22, 2023 (Exhibit E).

On October 4, 2023, the Planning Commission considered Conditional Use Permit Application No. P23-00244. The applicant spoke in opposition to the condition in the Fresno Police Department memorandum dated July 3, 2023 prohibiting live music. The Fresno Police Department gave a presentation to support their requested conditions. After a complete hearing, the Planning Commission denied the appeal and approved the original Conditions of Approval dated August 7, 2023 adding that the applicant shall be permitted to have live music only on Fridays and Saturdays until 10:00 P.M. The Planning Commission Resolution (Exhibit O) is attached for more information.

Appeal of Planning Commission Action

On October 11, 2023, an appeal of Planning Commission's action to approve the application with modified conditions was filed by Councilmember Karbassi due to concerns related to the modified Conditions of Approval and potential impacts to the surrounding neighborhood.

City Council

On November 3, 2023, in accordance with Section 15-5007 of the FMC, the Planning and Development Department mailed notices of this City Council hearing to surrounding property owners within 1,000 feet of the subject property and to the appellant.

LAND USE PLANS AND POLICIES

Fresno General Plan

The Fresno General Plan designates the subject site for Commercial - Community planned land uses and provides objectives to guide in the development of these projects. The Commercial - Community district is intended for commercial development that primarily serves local needs such as convenience shopping and offices. Specific uses allowed include medium-scale retail, office, civic and entertainment uses, supermarkets, drug stores, and supporting uses.

Small-scale retail and ancillary office uses are also permitted. The existing restaurant with the proposed alcohol use occupies a small portion of the site and will be situated just east of a dry-cleaning business.

The proposed project meets all policies and objectives of the Fresno General Plan, and the following are excerpts of the relevant goal and objective:

Goal 1 - Increase opportunity, economic development, business, and job creation. Use urban form, land use, and Development Code policies to streamline permit approval, promote local educational excellence and workforce relevance, significantly increase business development and expansion, retain, and attract talented people, create jobs, and sustained economic growth, strategically locate employment lands and facilities, and avoid over-saturation of a single type of housing, retail, or employment.

Objective LU-6 - Retain and enhance existing commercial areas to strengthen Fresno's economic base and site new office, retail, and lodging use districts to serve neighborhoods and regional visitors.

Bullard Community Plan

Upon reviewing the policies contained in the Bullard Community Plan, staff has determined that there are no policies that are applicable or are more restrictive than those contained in the FMC or the Fresno General Plan. However, pursuant to FMC Section 15-104-B-4, should there be a conflict between the FMC and the Bullard Community Plan, the FMC shall control.

ENVIRONMENTAL FINDINGS

The California Environmental Quality Act (CEQA) permits a public agency to determine whether a particular project is exempt from CEQA. A determination of a Categorical Exemption, Section 15301/Class 1 (Existing Facilities) of the CEQA Guidelines was made and Environmental Assessment P23-00244 was completed for this project on July 1, 2023.

Conditional Use Permit Application P23-00244 will allow for an existing restaurant with alcohol to extend the existing operating hours to 8:00 am to 12:00 am. Thus, because the project here involves the negligible expansion of operation hours for the existing restaurant, it qualifies for a Class 1

Exemption. The environmental assessment and review of the above-stated findings is attached hereto as (Exhibit L).

None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 applies to the project. No potential cumulative or significant effects will result from the project as conditioned. The proposed project will not result in damage to scenic resources. The project is not located on land identified as a hazardous waste site on any list compiled pursuant to Section 65962.5 of the Government Code. There are no historic resources on the subject property for which the project may cause a substantial adverse change in significance.

Therefore, the proposed project is not determined to have a significant effect on the environment. A categorical exemption, as noted above, has been prepared for the project and the area is not environmentally sensitive.

FRESNO MUNICIPAL CODE FINDINGS

The required findings under Section 15-5306 of the FMC are as follows:

- 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; and,
- b. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,
- c. The proposed use will not be substantially averse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements; and,
- 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.

Based upon analysis of the application, staff concludes that the required findings made by the Director to approve the special permit under FMC Section 15-5306 (A, B, C, D, E & F) are appropriate. These findings are attached as (Exhibit K).

Pursuant to FMC Section 15-5307, in approving a Conditional Use Permit, the decision-maker may impose reasonable conditions or restrictions deemed necessary to:

- A. Ensure that the proposal conforms in all significant respects with the General Plan and with any other applicable plans or policies and design guidelines adopted by the City Council.
- B. Achieve the general purposes of this Code or the specific purpose of the zoning district in which the project is located.

- C. Achieve the findings for a Conditional Use Permit listed in FMC Section 15-5306, Required Findings; or,
- D. Mitigate any potential impacts identified as a result of environmental review conducted in compliance with the California Environmental Quality Act.

The Conditions of Approval have been added to the project and are outlined in Exhibit M. Conditions are also provided by departments and agencies that reviewed the project. The Fresno Police Department (FPD) is not in opposition provided the applicant agrees to the comments provided by the FPD on July 3, 2023, outlined in the Conditions of Approval. As previously noted, the project was approved with conditions to operate until 12:00 am by the Planning and Development Director and the Planning Commission. Furthermore, the Planning Commission authorized live music entertainment to occur at the establishment only on Fridays and Saturdays until 10:00 P.M.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan and Bullard Community Plan, and Design Guidelines; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment and concludes that the required findings contained with FMC Section 15-5306 can be made.

Upon consideration of this evaluation, it can be concluded that Conditional Use Permit Application No. P23-00244, to establish a State of California ABC Type 47 alcohol license (On Sale General - Eating Place) for the existing restaurant located at 3045 W Bullard Ave is appropriate for the project site. Staff recommends that the City council deny the appeal and uphold the action of the Planning Commission as previously described in this staff report.

If the City Council decides to uphold the appeal and deny the request for the proposed use, the City Council must find that there is insufficient evidence in the administrative record that the findings required by FMC Section 15-5306 can be made. Action by City Council is final.

LOCAL PREFERENCE

Local preference was not considered because this project does not include a bid or award of a construction or service contract.

FISCAL IMPACT

Affirmative action by the Council will result in timely deliverance of the review and processing of the applications as is reasonably expected by the applicant. Prudent financial management is demonstrated by the expeditious completion of this land use application inasmuch as the applicant has paid to the City a fee for the processing of this application and that fee is, in turn, funding the respective operations of the Planning and Development Department.

Attachments:

Exhibit A - Vicinity Map

Exhibit B - Aerial Photograph
Exhibit C - Zoning Map
Exhibit D - Project Information Tables
Exhibit E - Noticing Map
Exhibit F - Owner's Letter of Authorization
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