



Legislation Details (With Text)

**File #:** ID17-1537    **Version:** 1    **Name:**  
**Type:** Action Item    **Status:** Agenda Ready  
**File created:** 11/8/2017    **In control:** Planning Commission  
**On agenda:** 12/6/2017    **Final action:**  
**Title:** Consideration of Conditional Use Permit Application No. C-16-097, located on the southwest corner of West Clinton and North Blythe Avenues (Council District 3) - Development and Resource Management Department.

1. ADOPT the Section 15332/Class 32 Categorical Exemption prepared for Environmental Assessment No. C-16-097, dated October 19, 2017;
2. DENY the appeal and UPHOLD the Director's approval of Conditional Use Permit Application No. C-16-097 requesting authorization to construct a neighborhood shopping center and establish a State of California Alcoholic Beverage Control Type 21 alcohol license (Package Store - sale of beer, wine, and distilled spirits for consumption off the premises where sold) for a proposed specialty grocery store.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photo, 3. Exhibit C - Planned Land Use Map, 4. Exhibit D - Zoning Map, 5. Exhibit E - Noticing Map, 6. Exhibit F - Project Information Tables, 7. Exhibit G - Operational Statement, 8. Exhibit H - Exhibits, 9. Exhibit I - Conditions of Approval, 10. Exhibit J - COF Policy & Procedure No. C-005, 11. Exhibit K - Appeal Letter, 12. Exhibit L - Environmental Assessment, 13. Exhibit M - FMC Findings

Date	Ver.	Action By	Action	Result
12/6/2017	1	Planning Commission		

**REPORT TO THE PLANNING COMMISSION**

**December 6, 2017**

**FROM:** MIKE SANCHEZ, Assistant Director  
Development Services Division

**THROUGH:** MCKENCIE CONTRERAS, Supervising Planner  
Development Services Division

**BY:** PHILLIP SIEGRIST, Planner II  
Development Services Division

**SUBJECT**

Consideration of Conditional Use Permit Application No. C-16-097, located on the southwest corner

of West Clinton and North Blythe Avenues (Council District 3) - Development and Resource Management Department.

1. **ADOPT** the Section 15332/Class 32 Categorical Exemption prepared for Environmental Assessment No. C-16-097, dated October 19, 2017;
2. **DENY** the appeal and **UPHOLD** the Director's approval of Conditional Use Permit Application No. C-16-097 requesting authorization to construct a neighborhood shopping center and establish a State of California Alcoholic Beverage Control Type 21 alcohol license (Package Store - sale of beer, wine, and distilled spirits for consumption off the premises where sold) for a proposed specialty grocery store.

## EXECUTIVE SUMMARY

Conditional Use Permit Application No. C-16-097 was filed by Robby Antoyan of Antoyan Architecture, on behalf of Kulvir Sekhon, and pertains to ±1.69 acres of property located on the southwest corner of West Clinton and North Blythe Avenues. The applicant proposes the phased development of a neighborhood shopping center consisting of two 7,278 square-foot single story shell buildings (Building 'A' and Building 'B') totaling approximately 14,556 square feet. In addition, eight automobile fuel pumps and canopy and on-site parking and landscaping will be provided.

Approximately 2,836 square feet of the proposed Building 'A' will be utilized as a specialty grocery store/automobile service station. In addition, the applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 (Package Store - sale of beer, wine, and distilled spirits for consumption off the premises where sold) alcohol license for the specialty grocery store/automobile service station. The remaining 4,442 square feet of Building 'A' will be utilized for general retail uses. Building 'B' will be utilized for both general retail and office uses.

The Development and Resource Management Department Director approved Conditional Use Permit Application No. C-16-097 on October 19, 2017. One letter requesting to appeal the Director's decision was received in response to the Notice of Action. The Development and Resource Management Department Director has referred this application to the Planning Commission for action, in accordance with Fresno Municipal Code (FMC) Section 15-5017-A-1, with a recommendation to deny the appeal and uphold the Director's approval of Conditional Use Permit Application No. C-16-097, subject to the conditions of approval, dated October 19, 2017.

## BACKGROUND

Conditional Use Permit Application No. C-16-097 proposes to construct a neighborhood shopping center consisting of two single story shell buildings totaling approximately 14,556 square feet, eight automobile fuel pumps and canopy, and onsite parking and landscaping. One of the proposed shell buildings will be utilized as a combination specialty grocery store/automobile service station with alcohol sales and additional general retail space. The second shell building will be utilized for general retail and office uses. In addition, the applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 (Package Store - sale of beer, wine, and distilled spirits for consumption off the premises where sold) alcohol license for the specialty grocery store/automobile service station.

The subject property is located within the jurisdiction of the Fresno General Plan and the West Area

Community Plan. Both plans designate the subject 1.69 acre site for Community Commercial planned land uses which is intended to serve local needs such as convenience shopping and small offices. The subject property is located in the CC/UGM (*Community Commercial/Urban Growth Management*) zone district which is consistent with the Community Commercial planned land use. Therefore, the proposed neighborhood shopping center consisting of a combination specialty grocery store/automobile service station and general retail/office space is consistent with the Community Commercial planned land use designation.

Pursuant to Table 15-1202 (Land Use Regulation - Commercial Districts) of the FMC, both general retail and offices are permitted “by-right” in the CC zone district with an approved Development Permit and are not special uses listed in Chapter 15, Article 27.

Pursuant to City of Fresno Policy and Procedure No. C-005, specialty grocery stores are permitted in the same zone districts and permitted in the same manner as general markets. Pursuant to FMC Table 15-1202, general markets are permitted in the CC zone district “by-right.” Therefore, specialty grocery stores are permitted in the CC zone district. However, specialty grocery stores requesting to sell alcoholic beverages are permitted with an approved conditional use permit in accordance with and subject to additional regulations for special uses in FMC Section 15-2706. Furthermore, specialty grocery stores following prescribed design guidelines outlined in Policy and Procedure No. C-005 may qualify for Exception B of FMC Section 15-2706-E-5 (Exception from Location Restrictions) and therefore are allowed to sell alcoholic beverages with an approved conditional use permit in accordance with and subject to additional regulations for special uses pursuant to FMC Section 15-2706.

Pursuant to FMC Table 15-1202, automobile service stations are permitted in the CC zone district subject to an approved conditional use permit application and additional regulations for special uses in FMC Section 15-2755.

### **Police Department Review**

The Fresno Police Department is not in opposition of this Conditional Use Permit providing the applicant agrees to their conditions as stated in the memo dated March 7, 2017 and the conditions are included as conditions of approval for Conditional Use Permit Application No. C-16-097.

### **Other Agencies**

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. C-16-097. See Exhibit I for all written agency comments received.

### **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 ABC.

### Number of Existing and Allowed ABC Licenses

The subject site is located in Census Tract 38.08 which has a population of approximately 5,082. ABC authorizes one off-sale alcohol license per 1,075 people per census tract. Therefore, per ABC, four off-sale alcohol licenses are allowed in Census Tract 38.08. According to ABC, Census Tract

38.08 currently has four active off-sale alcohol licenses. Therefore, the addition of a new off-sale alcohol license would create an over-concentration of off-sale alcohol licenses within Census Tract 38.08; one more than authorized for that census tract.

## Citywide Development Code

### Location Restrictions

According to FMC Section 15-2706-E (Location Restrictions for New Establishments), new off-sale alcohol establishments that are under 10,000 square feet are prohibited if they are within one of the following areas:

1. **Near Sensitive Uses.** The establishment shall not be located within 500 feet of the following:
  - a. A public park, playground, recreational area, or youth facility, including a nursery school, preschool, or day care facility;
  - b. A public or private State-licensed or accredited school; or
  - c. An alcohol or other drug abuse recovery or treatment facility.
2. **Near Other Alcoholic Beverage Establishments.** The establishment shall not be located within 500 feet of an existing establishment, nor may it lead to a grouping of more than four establishments within a 1,000 foot radius.
3. **Within High Crime Areas.** The establishment shall not be located in an area of high crime, as defined by the California Business and Professions Code 23958.4(a)(1) et seq., and as determined by the Department of Alcoholic Beverage Control (ABC).
4. **Within High Concentration Areas.** The establishment shall not be located in an area of high concentration, as defined by the California Business and Professions Code 23958.4(a)(3) et seq., and as determined by the Department of Alcoholic Beverage Control.

The proposed establishment is in compliance with two of the four locational restrictions as it would not be located within 500 feet of any of the identified sensitive uses, nor be located within a high crime area. However, as explained in the ABC Regulations section above, the proposed establishment would create an overconcentration of off-sale alcohol licenses within Census Tract 38.08. In addition, the proposed establishment would be located within 500 feet of an existing establishment.

While the proposed establishment is in compliance with only two of the four locational restrictions, FMC Section 15-2706-E-5 does, however, allow for an exception to be made to the location restrictions if the Review Authority determines any one of the following:

### Exception from Location Restrictions

- a. The proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use a) would be

detrimental to the public health, safety, or welfare of persons located in the area, or b) would increase the severity of existing law enforcement or public nuisance problems in the area.

- b. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.
- c. The proposed outlet for the off-premises sale of alcoholic beverages would act as a public convenience or necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety.

As previously mentioned in the Background section above, specialty grocery stores following prescribed design guidelines outlined in Policy and Procedure No. C-005 may qualify for Exception B of FMC Section 15-2706-E-5.

#### Policy and Procedure No. C-005

Policy and Procedure No. C-005, attached as Exhibit J, was adopted to ensure that specialty grocery stores include elements which more closely resemble supermarkets or neighborhood grocery stores versus convenience stores. The eight required elements are as follows:

**A. Minimum Gross Floor Area.** The minimum gross floor area shall be 1,500 square feet. Furthermore;

- i) A least 70 percent of retail space shall be dedicated to a specialized category of food products such as foods from a specific country, ethnicity, or locality; and
- ii) At least 10 percent of the retail space shall be dedicated to fresh foods such as dairy, (excluding ice cream), produce, meat, poultry, and fish; and
- iii) Alcohol may not constitute more than five percent of the retail floor area.

*The proposed specialty grocery store is approximately 2,836 square feet. Furthermore, both the Operational Statement and Exhibit E-F dated August 25, 2017 demonstrate that the shelf space devoted to the sale of alcoholic beverages represents less than 5% of the retail floor area. In addition, the fresh food display area represents more than 10% of the retail floor area. Therefore the project meets the minimum gross floor area requirement.*

**B. Ceiling Height.** The minimum ceiling height shall be 15 feet. Dropped ceilings are

prohibited. Furthermore;

*The operational statement dated August 25, 2017, indicates that the ceiling height for the proposed specialty grocery store shall be no less than 15 feet high, with open/exposed roof structure and HVAC ducting with suspended LED light fixtures. Therefore, the project meets the minimum ceiling height requirement.*

**C. Lighting.** Lighting shall be of efficient retail lighting design.

*As mentioned above, the proposed specialty grocery store will feature suspended LED light fixtures. Therefore, the project meets the efficient retail lighting requirement.*

**D. Shelving Height.** Main grocery shelves shall be a minimum of seven feet high.

*The floor plan for Building 'A' on Exhibit E-F, dated August 25, 2017, depicts three rows of shelving approximately seven feet high which are to be located at the center of the proposed specialty grocery store. Therefore the project meets the minimum shelving height requirement.*

**E. Flooring Materials.** The floor shall be finished concrete or other high quality, durable material.

*The flooring material for the specialty grocery store was not specified in the operational statement or any of the exhibits submitted for the project. Therefore, compliance with this requirement shall be included in the Conditions of Approval letter, dated October 19, 2017.*

**F. Window Signage.** Window signage for alcoholic beverage products is prohibited.

**G. Fresh Food Display.** Fresh foods shall be located in the front of the store and visible from the front door.

*The floor plan for Building 'A' on Exhibit E-F, dated August 25, 2017, depicts two fresh food display areas located in the front of the store and visible from the front door. Therefore the project meets the fresh food display requirement.*

**H. Architecture.** The architectural style of the main building shall be carried into the design of all accessory structures (e.g. trash receptacles, canopy, lighting fixture, etc.). If

the specialty grocery store is a standalone building within a unified shopping center the architectural design of the specialty grocery store shall be compatible with the exterior design of the unified shopping center.

*Exhibits B and E-F, dated August 25, 2017, demonstrate that the roof structures for the fuel canopy and the trash enclosure carry the same architectural style as the overhanging roof entrances of the main buildings. Therefore, the project meets the architecture requirement for specialty grocery stores.*

The proposed specialty grocery store will comply with the definition for Specialty Food Grocer and meet all eight of the key design elements pursuant to Policy and Procedure No. C-005 and therefore, qualifies for Exception B of FMC Section 15-2706-E-5. Therefore, the proposed establishment is allowed to sell alcoholic beverages with an approved conditional use permit in accordance with and subject to additional regulations for special uses pursuant to FMC Section 15-2706.

## LAND USE PLANS AND POLICIES

### Fresno General Plan

The Fresno General Plan designates the subject property for the Community Commercial planned land use and provides objectives to guide in the development of this project. The Community Commercial planned land use designation is intended for commercial development that primarily serves local needs such as convenience shopping and small offices. The Fresno General Plan provides goals, objectives, and policies to guide development. The following are applicable goals from the Fresno General Plan.

- Objective LU-1: Establish a comprehensive citywide land use planning strategy to meet economic development objectives, achieve efficient and equitable use of resources and infrastructure, and create an attractive living environment.
- Policy LU-1-a: **Promote Development within the Existing City Limits as of December 31, 2012.** Promote new development, infill, and rehabilitation of existing building stock in the Downtown Planning Area, along BRT corridors, in established neighborhoods generally south of Herndon Avenue, and on other infill sites and vacant land within the City.
- Policy LU-2-a: **Infill Development and Redevelopment.** Promote development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available by considering the establishment and implementation of supportive regulations and programs.

The proposed project is consistent with the objectives and policies of the Fresno General Plan, as it would allow development of existing properties within the City of Fresno. The project promotes commercial development and reinvestment within the City and preserves and protects resources within the City by expanding opportunities for development on infill properties. Infill development conserves resources and takes advantage of existing infrastructure. Furthermore, the proposed neighborhood shopping center will enhance the overall character of the neighborhood by creating a more complete neighborhood.

## **West Area Community Plan**

The subject property is designated for Community Commercial planned land uses by the West Area Community Plan. Upon reviewing the policies contained in the Plan staff has determined that there are no policies that are applicable or are more restrictive than those contained in the FMC.

## **Public Notice and Input**

### Council District Plan Implementation Committee

There is no District 3 Plan Implementation Committee to recommend approval of the project, thus no comments or recommendations were received.

### Public Notice

In accordance with FMC Section 15-5305, the Development and Resource Management Department mailed a Notice of Intent to Take Action to surrounding property owners within 1,000 feet of the subject site. In response to the mailed notice, one phone call, one letter, and two emails were received in opposition to the project. Concerns primarily centered on the off-sale alcohol use and the over-concentration of alcohol licenses within the area.

The Director of the Development and Resource Management Department approved Conditional Use Permit Application No. C-16-097 on October 19, 2017. In accordance with FMC Section 15-5009, staff sent a Notice of Action only to those individuals who responded to the Notice of Intent. In response to the mailed Notice of Action, one formal appeal letter, dated November 3, 2017, was received. The appeal letter, attached as Exhibit K, listed several reasons for the appeal. Pursuant to FMC Section 15-5017-A-1, the Director has referred this application to the Planning Commission for action.

### Notice of Planning Commission Hearing

The Development and Resource Management Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property (Exhibit E). No comments have been received to date.

## **Analysis of Comments & Concerns**

As previously mentioned, concerns primarily centered on the proposed use (off-sale of alcoholic beverages) and the resulting over-concentration of off-sale alcohol licenses within the area. However, as discussed in the Background, Location Restrictions, and the Policy and Procedure No. C-005 sections above, Specialty Grocery Stores are excepted from the location restrictions pursuant to FMC Section 15-2706-E-5-b.

The following is an analysis of the reasons expressed in the formal appeal letter (Exhibit J) that was received in response to the Notice of Action:

**Reason #1:** The subject establishment will be located within 500 feet of an existing establishment (Johnny Quik), and will lead to a grouping of more than four establishments within a 1,000 foot radius in violation of FMC Section 15-2706-E-2. In addition to the Johnny Quik, the following four Type 21 and Type 20 off-sale alcohol establishments are in close proximity to the subject property: • Save Mart, 4043 West Clinton Avenue • CVS, 4077 West Clinton Avenue • Shop and Gas, 4386 West Shields Avenue • Walgreens, 2424 North Brawley Avenue

**Response:** The proposed establishment would be located within 500 feet of an existing establishment (Johnny Quik, 4385 West Clinton Avenue); however, it would not lead to a grouping of more than four establishments within a 1,000 foot radius. Furthermore, the proposed establishment is not in close proximity to the four locations mentioned above as they range approximately 1,879 to 2,770 feet away from the subject property.

**Reason #2:** The subject establishment will add to an already high concentration of establishments that sell alcoholic beverages for off-site consumption in the area and potentially cause deleterious effects and nuisances on surrounding neighborhoods and businesses in direct conflict with the stated purposes of FMC Section 15-2706-B. In addition to the Johnny Quik and five establishments listed under point one, the four Type 21 establishments are located within one mile of the subject property.

**Response:** FMC Section 15-2706-B states that the purpose for establishing regulations for establishments that sell alcoholic beverages for off-site consumption is to ensure establishments operate in a manner that is mutually beneficial to surrounding uses and to also provide mechanism to prevent and correct any associated problems. While the proposed establishment would result in Census Tract 38.08 being over-concentrated by one off-sale alcohol licenses (mentioned in the ABC Regulations section), that alone is not enough of a reason to determine the establishment will cause deleterious effects and nuisances on surrounding neighborhoods and businesses. Furthermore, given the conditions of approval and the project's compliance with applicable provisions of the FMC (including FMC Section 15-2706) and Policy and Procedure No. C-005, the off-sale alcohol use associated with the specialty grocery store will not have a negative impact on either the subject site or neighboring properties. In addition, neither the Fresno General Plan nor the FMC restrict the number of establishments within a one mile area of any particular property.

**Reason #3:** The establishment will be located in close proximity to El Capitan Middle School and McKinley Elementary School, in violation of FMC Section 15-2706-E-1-b.

**Response:** FMC Section 15-2706-E-1-b prohibits new establishments from being located within 500 feet of a public or private school. El Capitan Middle School and McKinley Elementary School are located approximately 1,200 feet away from the subject property. Therefore, the establishment is not in violation of FMC Section 15-2706-E-1-b.

**Reason #4:** The applicant submitted insufficient information to establish that any "Exception" found in FMC Section 15-2706-E-5, would be applicable and in particular, there is no public convenience or necessity for the subject establishment in the area and the community is not underserved.

**Response:** The applicant submitted enough information for staff to determine the project's compliance with the Specialty Food Grocer definition and meet all eight of the key design elements pursuant to Policy and Procedure No. C-005. As such, there is sufficient information for the Review Authority to determine the proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience pursuant to FMC Section 15-2706-E-5-b.

**Reason #5:** The finding that an “Exception” found in FMC Section 15-2706-E-5, is applicable constitutes an abuse of discretion and/or an error in judgment given the lack of supporting information submitted by the applicant and the high concentration of establishments near the subject property.

Response: As explained throughout the staff report, demonstrated in the Project Comments from Planning (included in Exhibit I), and mentioned in the previous appeal response, there is sufficient supporting information for staff to determine that the project will comply with the Specialty Food Grocer definition and meet all eight of the key design elements in accordance with Policy Procedure No. C-005. Therefore, there is sufficient evidence for the Review Authority to make Finding B of FMC Section 15-2706-E-5.

**Reason #6:** The applicant submitted an application and plans for a typical convenience store and gas station, which are insufficient to establish that the subject property would be developed into a neighborhood grocery store or specialty food store as defined in FMC Section 15-6704.

Response: While the project does include a gas station aspect, the applicant submitted sufficient information to demonstrate that the proposed project will comply with the definition for Specialty Food Grocer and meet all eight of the key design elements pursuant to Policy and Procedure No. C-005 as explained in the staff report.

**Reason #7:** The addition of the subject establishment to an already high concentration of establishments in the vicinity will lead to the other existing establishments being closed and involuntarily taken by the City of Fresno after the City enacts the proposed “ABC CUP” ordinance and requires establishments to renew their “ABC CUP” every two years.

Response: There is no evidence in the record showing the project will lead to the closure of existing establishments or involuntary revocation of ABC CUPs by the City of Fresno. Furthermore, there currently is no policy or code which requires renewal of conditional use permits at this time.

## ENVIRONMENTAL FINDINGS

The proposed project was determined to be exempt from the State of California Environmental Quality Act (CEQA) by the Development and Resource Management Department on October 19, 2017 through a Section 15332/Class 32 (Infill Development) Categorical Exemption. No further environmental assessment is needed. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project and no adverse environmental impacts will occur as a result of the proposed project.

## FRESNO MUNICIPAL CODE FINDINGS

Based upon analysis of the applications, staff concludes that the required findings of Section 15-5306 of the FMC can be made. These findings are attached as Exhibit M to this staff report.

## 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 the West Area Community Plan; 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. Upon consideration of this evaluation, it can be concluded that Conditional Use Permit Application No. C-16-097 is appropriate for the subject property.

Action by the Planning Commission is final unless appealed to City Council in accordance with Section 15-5017 of the FMC.

Attachments:

- Exhibit A - Vicinity Map
- Exhibit B - Aerial Photograph
- Exhibit C - Planned Land Use Map
- Exhibit D - Zoning Map
- Exhibit E - Noticing Map
- Exhibit F - Project Information Tables
- Exhibit G - Operational Statement dated August 25, 2017
- Exhibit H - Exhibits (Site Plan, Floor Plan, Elevations, Landscape Plan) dated August 25, 2017
- Exhibit I - Conditions of Approval dated October 19, 2017; including memoranda from responsible or commenting agencies.
- Exhibit J - City of Fresno Policy and Procedure No. C-005
- Exhibit K - Appeal Letter dated November 3, 2017
- Exhibit L - Environmental Assessment
- Exhibit M - Fresno Municipal Code Findings