



Legislation Details (With Text)

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Title: Consideration of Conditional Use Permit Application P18-00486, for the Dollar General at 3707 West Shields Avenue, located on the south side of West Shields Avenue east of North Brawley Avenue (Council District 3) - Planning and Development Department.

Based upon the evaluation contained in this report and appeal received from the project applicant, staff recommends that the Planning Commission take the following action:

1. ADOPT Environmental Assessment No. P18-03953 dated July 25, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 Categorical Exemption.
2. DENY the applicant’s appeal and UPHOLD the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P18-00486, requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 License (Package Store - sale of beer and wine for consumption off the premises where sold) to buy and sell beer and wine for the Dollar General located on the subject property.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photograph of Site, 3. Exhibit C - Planned Land Use Map, 4. Exhibit D - Zoning Map, 5. Exhibit E - Site Plan, Floor Plan, 6. Exhibit F - Comments from Responsible Agencies, 7. Exhibit G - Noticing Map, 8. Exhibit H - Categorical Exemption Dated July 17 2018, 9. Exhibit I - Fresno Municipal Code Findings, 10. Exhibit J - Operational Statement, 11. Exhibit K - Applicant Appeal Letter Received June 20, 2019, 12. Exhibit L – Draft Conditions of Approval Dated October 16, 2019

Date	Ver.	Action By	Action	Result
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REPORT TO THE PLANNING COMMISSION

October 16, 2019

FROM: MIKE SANCHEZ, Assistant Director
Development Services Division

BY: MARGO LERWILL, Planner
Development Services Division

SUBJECT

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EXECUTIVE SUMMARY

Conditional Use Permit Application No. P18-00486 was filed by Steve Rawlings of Alcoholic Beverage Specialists and pertains to an existing Dollar General located at 3707 West Shields Avenue. The applicant requests a Finding of Public Convenience or Necessity to establish a State of California Alcoholic Beverage Control license from a Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold).

On June 12, 2019, Conditional Use Permit Application No. P18-00486 was denied based on market saturation, high crime in the area, and the danger to public health posed by over-concentration of alcohol in the neighborhood. The decision has been appealed by the applicant, requesting an exception under Fresno Municipal Code (FMC) Section 15-2706-E-5. Staff recommends upholding the denial based on substantial evidence detailed in this staff report that Findings A, B, C, and D contained in Section 15-5306, as well as a Finding of Section 15-2706-E-5, of the Fresno Municipal Code cannot be made and, therefore, the Conditional Use Permit cannot be approved.

BACKGROUND

Conditional Use Permit Application No. P18-00486 was filed by Steve Rawlings of Alcoholic Beverage Specialists and pertains to an 8,320-square-foot existing Dollar General home goods and convenience grocery store located at 3707 West Shields Avenue, on ±1.36 acres on the south side of West Shields Avenue east of North Brawley Avenue.

The applicant requests a Finding of Public Convenience or Necessity to establish a State of California Alcoholic Beverage Control license from a Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold).

Per Table 15-1202, Convenience Retail is permitted by right in the CG (Commercial - General) zone district. Alcohol sales may be allowed subject to a Conditional Use Permit and the requirements of Section 15-2706 of the Fresno Municipal Code.

Police Department Review

The Northwest Policing District has indicated they oppose this project based on the fact that the subject site is in an area that is over-concentrated for off-sale alcohol license and is a High Crime Reporting District. In Census Tract number 38.05, where the proposed use is located, six California Department of Alcoholic Beverage Control (ABC) licenses are allowed. At the time of the police review, there were eight (currently seven) existing licenses, constituting an over-concentration without the addition of this license. The reporting district average number of offenses is 543. The total number in this district is 578.

Although they remain in opposition to the proposed project, the Fresno Police Department provided conditions to be incorporated into the Conditions of Approval dated October 16, 2019 (Exhibit L), should the Planning Commission decide to grant approval of the request to establish a Type 20 ABC license. Standard ABC CUP conditions include compliance with the FMC limiting noise and unlawful nuisance, compliance with ABC rules and employee educations, video camera surveillance, limitations on alcohol types and servings, and limitations on on-site alcohol consumption and loitering.

Central Unified School District Review

Central Unified School District did not provide comments on the proposed project, though it was routed to them for review. The southern/rear portion of the subject side abuts the Central Unified Central Learning Adult/Alternative School Site which is a public school.

Other Agencies

All comments received from applicable agencies have been included for review (Exhibit F) and have been included in draft Conditions of Approval should the Planning Commission make a finding for an exception under FMC Section 15-2706-E-5. No physical improvements are included in this application.

See Exhibit F for all agency comments received.

Alcohol Sales

As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of off-sale alcohol sales can have a negative effect on neighborhood health. In public meetings held during the development of the General Plan, the following concerns were discussed:

- **Market saturation.** Some neighborhoods feel they have an overabundance of establishments with off-sale licenses to sell alcohol.
- **Fear of crime.** Community members often see a strong relationship between establishments with off-sale licenses to sell liquor and rates of nuisances and crime.
- **Danger to schools.** Residents are concerned when alcohol sales are allowed too close to schools because of the impact on teenage drinking.

It has been suggested that alcohol sales establishments possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses,

especially when such establishments are concentrated near one another. For this purpose, Section 15-2706 of the Fresno Municipal Code contains restrictions on the location for new establishments proposing to sell alcohol.

These restrictions are based upon proximity to schools, public parks, playgrounds and recreational areas, as well as other youth facilities such as day care facilities. In addition restrictions apply based upon proximity to alcohol or drug abuse recovery or treatment facilities, proximity to other establishments which sell alcoholic beverages; and, within areas of high crime. The City of Fresno relies on information from the Police Department and the Alcoholic Beverage Control (ABC) in the consideration of permit applications respective to areas of high crime or an over-concentration of ABC licenses.

Alcoholic Beverage Control 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) in order to sell alcohol. Prior to the issuance of an ABC license, ABC is awaiting the decision on the subject Conditional Use Permit Application.

Number of Existing and Allowed ABC Licenses

According to the ABC, census tract 38.05 has seven currently active off-sale alcohol licenses, one more than has been authorized for that census tract, so the census tract is over-concentrated.

Citywide Development Code

Article 27 (Standards for Specific Uses and Activities), Section 15-2706 (Alcohol Sales), Sub-Section E (Location Restrictions for New Establishments) prohibits new off-sale alcohol establishments that are under 10,000 square feet 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.

Since the proposed project is located within both a high concentration and high crime area (according to ABC), and located within 500 feet of a public school the proposed new alcohol CUP is prohibited. The only way around this requirement is for the Review Authority to determine that one of the following exceptions will apply:

1. 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.
2. 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.
3. 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.

The Director was unable to determine that an exception applies and therefore denied the application.

The project is not in compliance with locational restriction No. 1, as Central Unified has a public school abutting the southern property line of the subject site, and located within 500 feet of the project site.

The project does not comply with locational restriction No. 2, as there are two other off-sale alcohol sales establishments within 500 feet of the project site, both directly across from the Dollar General on the north side of West Shields Avenue. Within a 1,000-foot radius, the proposed project would be the fourth off-sale alcohol sales establishment.

The project does not comply with locational restriction No. 3, as it is located in a high crime area as defined by the ABC. The reporting district average number of offenses is 543. The total number in this district is 578. The Fresno Police Department has expressed opposition to the project based on the crime and over-concentration of alcohol uses in the area.

The project does not comply with locational restriction No. 4, as it is located in an area with an over-concentration of off-sale alcohol licenses, as determined by the ABC based on population within the census tract. In Census Tract number 38.05, where the proposed use is located, six California ABC licenses are allowed. There are currently seven existing, constituting an over-concentration without the addition of this license.

Land Use Plans and Policies

Fresno General Plan

The Fresno General Plan provides goals, objectives, and policies to guide development. The following are excerpts from the Plan.

Goal 8 states: *Develop Complete Neighborhoods and districts with an efficient and diverse mix of residential densities, building types, and affordability which are designed to be healthy, attractive, and centered by schools, parks, and public and commercial services to provide a sense of place and that provide as many services as possible within walking distance.*

While the proposed project is intended to enhance the shopping experience of local residents by providing alcohol as part of a greater range of products conveniently available within a single store and within walking distance of nearby residential development, two other locations across West Shields Avenue from the subject site already provide off-sale alcohol.

Goal 9 states: *Promote a city of healthy communities and improve quality of life in established neighborhoods.*

Goal 16 states: *Protect and improve public health and safety.*

High exposure to liquor stores and the easy availability of alcohol in the neighborhood affects public health, safety, and quality of life in the neighborhood. A local resident or pedestrian may be exposed to public drunkenness and criminal activities - like gambling and drug dealing - that contribute to an environment of social disorder around many liquor sales outlets. Furthermore, there may be a higher probability of exposure to drivers under the influence of alcohol in close proximity to a liquor store.

A high density of liquor stores contributes to economic and social disintegration. Similar to power plants and refineries, alcohol outlets represent a form of unwanted land use that conflicts with desirable land uses such as schools, parks, and residences. The over-concentration of liquor stores increases the perceived lack of safety and limits walkability in a neighborhood. Moreover, concentrations of liquor stores in a neighborhood can constrain economic opportunities for current and new business and therefore are both a symptom and accelerator of economic decline.

Finally, a high density of liquor stores can contribute to a variety of health and safety problems. Studies show that neighborhoods with higher concentrations of liquor stores also have higher rates of alcohol-related hospitalizations, drunk driving accidents, and pedestrian injuries.

West Area Community Plan

The West Area Community Plan provides a wide range of objectives for the development of the area. The following is an excerpt from the West Area Community Plan.

Objective W-7 states: Ensure that new industrial, commercial, office, public facility, and other nonresidential development is compatible with surrounding areas and provides an attractive appearance.

Increasing the number of alcohol sales establishments within the West Area Community Plan area, with the associated negative community and economic impacts described and cited above, within close proximity of existing sales locations, and in an area of high concentration and high crime conflicts with community concerns and is not in compliance with the plan objective to enhance the compatibility of proposed commercial nonresidential in the area.

District 3 Plan Implementation Committee

A new review committee for Council District 3 has recently been formed. However, at the time that the application for the proposed project was reviewed, Council District 3 did not have a formal committee to provide comments on projects in the area.

Notice of Planning Commission Hearing

The Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property (Exhibit G) on October 4, 2019. Staff also sent notices, via U.S. mail and email, to individuals who requested notification. Responses received prior to the Planning Commission hearing will be provided to Commission for review.

FRESNO MUNICIPAL CODE FINDINGS

The required findings under Section 15-5306 of the Fresno Municipal Code 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 adverse 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.

Based upon the analysis of the application, staff concludes that the required findings of FMC Section 15-5306 cannot be made for the alcohol use. The Director is unable to make a finding allowing an exception to the new establishment locational restrictions which prohibit a new alcohol establishment in a high crime areas and high concentration areas, and located within 500 feet of a public school. These findings are attached as Exhibit I.

If the Planning Commission decides to grant approval of the proposed project, the Commission must find that there is substantial evidence in the administrative record to make these findings, as well as an exception found in Section 15-2706-E-5, and amend the findings to include the sale of alcohol.

ENVIRONMENTAL FINDINGS

The California Environmental Quality Act permits a public agency to determine whether a particular project is exempt from CEQA. A determination of a Categorical Exemption under Section 15301/Class 1 of the CEQA Guidelines was made and Environmental Assessment No. P18-00486

was completed for this project on July 17, 2018 (Exhibit H).

A Section 15301/Class 1 exemption from CEQA requirements applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing structures and facilities involving negligible or no expansion of use beyond that existing at this time.

Conditional Use Permit Application No. P18-00486 requests a license to include alcohol sales with its household and grocery products but does not include a physical expansion or an expansion of use, such as extended hours. The proposed project poses no additional environmental impacts beyond those already existing. The above described project complies with all conditions described in Section 15301/Class 1 of the California CEQA Guidelines.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the West Area Community Plan and Fresno General 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, it can be concluded that the proposed Conditional Use Permit Application No. P18-00486 is not appropriate for the project site.

If the Planning Commission decides to grant approval of the proposed project, the Commission must find that there is substantial evidence in the administrative record that the project can make the required findings of FMC Sections 15-2706-E-5 and 15-5306. Should the Planning Commission make the required findings, approval of the conditional use permit application shall be subject to the applicant's compliance with the Conditions of Approval dated October 16, 2019.

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
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