



Legislation Details (With Text)

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Title: Consideration of Conditional Use Permit Application No. C-16-033, located on the southwest corner of East Belmont and Van Ness Avenues. (Council District 3) - Development and Resource Management Department.

1. ADOPT Environmental Assessment No. C-16-033 dated December 11, 2017, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 3 Categorical Exemption.

2. APPROVE Conditional Use Permit Application No. C-16-033 requesting authorization to develop an approximately 3,453 square-foot Johnny Quik convenience store, an 849 square-foot quick serve restaurant with indoor seating, restrooms, and an 8-station Chevron fueling facility with a 2,160 square-foot canopy, subject to compliance with the Conditions of Approval dated December 20, 2017.

3. DENY Conditional Use Permit Application No. C-16-033 requesting to establish a Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for the Johnny Quik convenience store.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit_A_Aerial, 2. Exhibit_B_Operational Statement and Exhibits (Site Plan, Elevations, Floor Plan), 3. Exhibit_C_Zoning, 4. Exhibit_D_LandUse, 5. Exhibit_E_LocationRestrictions, 6. Exhibit_F_ABC_HighCrimeHighConcentrationStats, 7. Exhibit_G_CensusTract 6,22,23, 8. Exhibit_H_Department and Agency Comments, 9. Exhibit_I_Public Hearing Notice and Comments, 10. Exhibit_J_EnvironmentalAssessment, 11. Exhibit_K_FMC_Findings, 12. Exhibit_L_ConditionsofApproval

Date	Ver.	Action By	Action	Result
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12/20/2017	1	Planning Commission		
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REPORT TO THE PLANNING COMMISSION

December 20, 2017

FROM: MIKE SANCHEZ, Assistant Director
Development Services Division

THROUGH: BONIQUE EMERSON, Planning Manager
Development Services Division

BY: RICKY CAPERTON, Planner III
Development Services Division

Subject

Consideration of Conditional Use Permit Application No. C-16-033, located on the southwest corner of East Belmont and Van Ness Avenues. (Council District 3) - Development and Resource Management Department.

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EXECUTIVE SUMMARY

Conditional Use Permit Application No. C-16-033 was filed by Ken Vang of Precision Engineering, on behalf of George Beal of Beal Developments and pertains to 0.55 acres of property located at 940 E Belmont Avenue, located on the southwest corner of East Belmont and North Van Ness Avenues (Exhibit A). Conditional Use Permit Application No. C-16-033 proposes construction of an approximately 3,453 square-foot Johnny Quik convenience store, an 849 square-foot quick serve restaurant with indoor seating, restrooms, and an 8-station Chevron fueling facility with a 2,160 square-foot canopy. The applicant also requests authorization to acquire a Type 20 alcohol license (*Package Store - sale of beer and wine for consumption off the premises where sold*) for the convenience store.

The Planning Commission is considering this project because the applicant is appealing the recommendation of denial of the Type 20 license, relocation of the existing billboard, and removal of one of the proposed driveways.

BACKGROUND

Conditional Use Permit Application No. C-16-033 proposes construction of an approximately 3,453 square-foot Johnny Quik convenience store, an 849 square-foot quick serve restaurant with indoor seating, restrooms, and an 8-station Chevron fueling facility with a 2,160 square-foot canopy (Exhibit B). The applicant also requests authorization to acquire a Type 20 alcohol license (*Package Store - sale of beer and wine for consumption off the premises where sold*) for the convenience store. The subject property was part of a city-initiated Plan Amendment and Rezone (Application Nos. A-17-002 and R-17-004), which rezoned the subject property from CMS (*Commercial-Main Street*) to CG (*Commercial-General*). A zoning and land use map is provided as Exhibit C and D, respectively. The project is considered a Service Station, Convenience Retail with alcohol sales, and a restaurant, which are all either permitted or conditionally permitted uses in the CG zoning district specified in the

FMC pursuant to FMC Sections 15-2706, Alcohol Sales, and 15-2755, Service Stations.

Citywide Development Code

Section 15-2706 - Alcohol Sales

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.

According to the California Alcoholic Beverage Control (ABC), the proposed project is located within both a high concentration area, and a high crime area, as described below under the "Alcoholic Beverage Control" heading. Further, the proposed project is within 500 feet of three (3) existing establishments permitted with off-sale alcohol licenses; as well as within 500 feet of an existing drug abuse recovery treatment facility, as shown in Exhibit E. BAART Programs is a drug treatment facility located at 539 Van Ness Avenue, approximately 300 feet north of the subject property. Therefore, the proposed alcohol CUP is prohibited.

However, according to Section 15-2706 of the FMC, a new establishment may be excepted from location restrictions if the Review Authority determines any one of the following:

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 make any of these findings and therefore, cannot support the request to establish a Type 20 alcohol license.

Section 15-2605 - Prohibited Signs

Section 15-2605, Prohibited Signs, of the FMC prohibits several sign types, locations, and materials. Specifically, 15-2605-B, Outdoor Advertising, prohibits the following:

Billboards and any other off-premises outdoor advertising signs which convey a commercial message as their primary purpose. This provision, however, does not prohibit agreements to relocate presently existing, legal billboards, pursuant to Business and Professions Code Section 5412. The new billboards which replace existing billboards may be located on City-owned property and may feature electronic copy, at the discretion of the City Manager. Replacement billboards shall comply with all applicable federal, State, and local regulations. This exception shall only apply to the City of Fresno.

The project proposes to relocate an existing billboard to another location within the project site; however, as stated above, the FMC states that the new billboard, which replaces an existing billboard, may be located on City-owned property. Because the subject property is not City-owned, the relocation of the existing billboard is prohibited. Further, Section 5412 of the Business and Professions Code states the following:

5412. Notwithstanding any other provision of this chapter, no advertising display which was lawfully erected anywhere within this state shall be compelled to be removed, nor shall its customary maintenance or use be limited, whether or not the removal or limitation is pursuant to or because of this chapter or any other law, ordinance, or regulation of any governmental entity, without payment of compensation, as defined in the Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure), except as provided in Sections 5412.1, 5412.2, and 5412.3. The compensation shall be paid to the owner or owners of the advertising display and the owner or owners of the land upon which the display is located.

This section applies to all displays which were lawfully erected in compliance with state laws and local ordinances in effect when the displays were erected if the displays were in existence on November 6, 1978, or lawfully erected after November 6, 1978, regardless of whether the displays have become nonconforming or have been provided an amortization period. This section does not apply to on-premise displays as specified in Section 5272 or to displays which are relocated by mutual agreement between the display owner and the local entity.

“Relocation,” as used in this section, includes removal of a display and construction of a new

display to substitute for the display removed.

It is a policy of this state to encourage local entities and display owners to enter into relocation agreements which allow local entities to continue development in a planned manner without expenditure of public funds while allowing the continued maintenance of private investment and a medium of public communication. Cities, counties, cities and counties, and all other local entities are specifically empowered to enter into relocation agreements on whatever terms are agreeable to the display owner and the city, county, city and county, or other local entity, and to adopt ordinances or resolutions providing for relocation of displays.

Consistent with Section 5412 of the Business and Professions Code, City Staff is not requesting the removal of the existing billboard if the project applicant can provide proof of its lawful erection. However, consistent with Section 15-2605, the billboard may not be relocated as proposed. Therefore, City Staff has included a Condition of Approval denying the relocation of the billboard.

Section 15-2755 - Services Stations (Vehicular Access)

Section 15-2755, Service Stations, of the FMC, regulates Service Station uses, including site design and access. Specifically, Section 15-2755-A(1)(a) states:

There shall be no more than two vehicular access points to/from a public street. Additional access may be provided by neighboring properties.

The project proposes a total of four (4) access points, including one along Belmont Avenue, one at Van Ness Avenue, one at East Madison Avenue, as well as access provided via the alley along the western boundary of the property. Therefore, as a Condition of Approval, City Staff is recommending removal of one of the driveways, which would still allow for a total of three (3) access points. The amount of vehicular access points proposed by the project creates an unfriendly environment for pedestrians by allowing vehicle access from every side of the project site. Further, General Plan Policy MT-2-e establishes a policy for driveway and access consolidation, which reads “Take advantage of opportunities to consolidate driveways, access points, and curb cuts along designated major roadways when a change in development or a change in intensity occurs or when traffic operation or safety warrants.”

In order for the proposed number of vehicular access points to be allowed, the Planning Commission would have to either interpret this language of the code differently or the applicant would need to apply for a variance, which would require findings to be made pursuant to FMC Section 15-5506.

Alcoholic Beverage Control (ABC)

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). On July 20, 2017, correspondence with Jessica Edwards from the ABC resulted in the information below. Correspondence with the ABC is included as Exhibit F.

High Crime Area

As discussed above, the FMC establishes locational restrictions for alcohol-related uses which prohibit new alcohol establishments in high crime areas as determined by the ABC.

Based on correspondence with Jessica Edwards from the California Department of Alcoholic Beverage Control (ABC) on July 20, 2017, Fresno District Office, the subject property is in crime reporting district 2554. According to the ABC, 543 calls for service is considered high crime for Fresno, and the reporting district has 1,410 calls for service. Therefore, ABC considers the subject property to be within a high crime area.

High Concentration Area

As discussed above, the FMC establishes locational restrictions for alcohol-related uses which prohibit new alcohol establishments in high concentration areas as determined by the ABC.

Based on correspondence with Jessica Edwards from the California Department of Alcoholic Beverage Control on July 20, 2017, Fresno District Office, the subject property is in Census Tract 6 which has up to five (5) recommended licenses. As of July 2017, there were nine (9) active ABC licenses (Exhibit G). Therefore, Census Tract 6 is considered to be high a concentration area. Further both Census Tracts directly to the north of the project site (Tracts 22 and 23), are considered high concentration as well, both exceeding the allowed number of off-sale licenses.

The applicant has indicated the willingness to purchase an existing Type 20 ABC license from a location across the street (511 N Van Ness Avenue, East N Save Market) and transfer that license to the proposed project site. The ABC license at 511 N Van Ness is in Census Tract 23, which is also considered a high concentration area; however, Tract 23 is currently only over the recommended license limit by one (1) ABC license. Therefore, if the applicant was to purchase and transfer that license, Census Tract 23 would be at the allowable limit of off-sale licenses rather than exceed it and Tract 23 would no longer be considered a high concentration area. However, under this scenario, the transfer of the license would be adding one (1) additional license to Census Tract 6, and would exacerbate the over concentration resulting in ten (10) ABC licenses in Tract 6.

Police Department Review

The Fresno Police Department does not oppose the project, or the issuance of a State of California Alcoholic Beverage Control (ABC) license, but has provided conditions addressing compliance with the FMC limiting noise and unlawful nuisance, compliance with ABC rules and employee education, video camera surveillance, limitations on alcohol types and servings, and limitations on on-site alcohol consumption and loitering.

The Fresno Police Department's comments shall be incorporated into the Conditions of Approval dated December 20, 2017 in their entirety if the Planning Commission votes to approve the sale of alcohol at this location.

Fresno Unified School District (FUSD) Review

FUSD provided comments indicating the district did not support this application. Their comment letter expressed concerns regarding potentially dangerous interactions between students and the proposed

operation but indicated their response was subject to the Alcoholic Beverage Control Act and the Fresno Police Department's review and support of the proposed project. The location is approximately 0.5 miles (2,640 feet) from Lowell Elementary School located at 171 N Poplar Avenue and approximately 0.5 miles (2,640 feet) from Big Picture Elementary School located at 735 N Glenn Avenue.

Other Agencies

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. C-16-033. See Exhibit H for all written agency comments received.

Land Use Plans and Policies

The Fresno General Plan designates the subject property for the Commercial-General planned land use and provides objectives to guide in the development of this project. The Commercial-General planned land use designation 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.

Conditional Use Permit Application No. C-16-033 meets the policies and objectives of the Fresno General Plan. The following are excerpts of such objectives.

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.

Goal 8: 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.

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.

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.

The proposed project promotes increased opportunity, economic development, business, and job creation to serve the neighborhood and regional visitors and it preserves and protects resources within the City by expanding development into infill sites. Therefore, it is staff's opinion that the proposed project is consistent with respective general and community plan objectives and policies and will not conflict with any applicable land use plan, policy or regulation of the City of Fresno, with the exception of the sale of alcohol, number of proposed driveways, and the relocation of the existing

billboard.

Fresno High-Roeding Community Plan

Upon reviewing the policies contained in the Fresno High-Roeding 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.

Tower District Specific Plan

Upon reviewing the policies contained in the Tower District Specific Plan and its Design Guidelines, the project is not in compliance with the Tower District Design Guidelines. As described below, the Tower District Committee recommended the project not be approved in a 2-2 vote on June 2, 2017. Section 15-104 of the FMC specifies that in the event of the conflict between the Code and an operative plan (e.g., Tower District Specific Plan), the code shall control, unless the project is located within an area with adopted design guidelines. However, the Tower Design Guidelines includes a section stating that the Development Director may make determination overriding the Design Review Committee's recommendation.

Tower District Committee

The proposed project has been reviewed by the Tower District Committee on the following dates:

- **August 21, 2015:** The Tower District Committee recommended that the project incorporate Tower District Specific Plan design criteria, including placing the buildings to the front of the street and open directly to the sidewalk; parking be located to the rear of the lot; and that the project incorporate pedestrian-oriented uses and design.
- **February 3, 2017:** The Tower District Committee did not take action pending preparation of elevations.
- **June 2, 2017:** The Tower District Committee recommended the project not be approved in a 2-2 vote.

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, dated December 8, 2017 (Exhibit I). As of December 13, 2017, the following letters were received in opposition, which are also included in Exhibit I.

- **Letter #1 from Richard Burrell, December 13, 2017:** Mr. Burrell lives in the Lowell neighborhood and has expressed opposition to the proposed alcohol license at the proposed site, citing issues of drunkenness in the general area.
- **Letter #2 from Kat Borba, December 13, 2017:** Ms. Borba lives in the Lowell neighborhood and expresses opposition to the proposed sale of alcohol, citing over saturation of liquor stores and gas stations. Ms. Borba points out that there are 3 other small convenience stores

that sell liquor, and 18 liquor stores within 1 mile, as well as 7 other gas stations.

- **Letter #3 from Stephen Walter, December 13, 2017:** Mr. Walter is a resident at 934 E Mildreda (one block from the project site), and opposes the application. Mr. Walter cites too many stores selling alcohol within a few blocks of the proposed project and that vagrants are visible loitering around these sites.
- **Letter #4 from Esther Delahay, December 12, 2017:** Ms. Delahay provided a letter in opposition to the proposed project citing overconcentration in liquor, as well as homeless and transient issues. Ms. Delahay expresses concern that alcohol could contribute to a decrease in safety and health of the entire community, and cites that there are 18 liquor stores within 1 mile of the project site, and 7 other gas stations.
- **Letter #5 from Grayson Conrad, December 13, 2017:** Mr. Conrad expressed opposition to the proposed project citing issues of over concentration of alcohol in the area.
- **Letter #6 from Carolyn Conrad, December 13, 2017:** Ms. Conrad expressed opposition to the proposed project citing issues of over concentration of alcohol in the area.
- **Letter #7 from Alice Keeler, December 14, 2017:** Ms. Keeler expressed that although there is an alcohol problem in the neighborhood, she does not agree that the project would place an additional burden on the neighborhood. In general, Ms. Keeler describes her positive experiences with Chevron and Johnny Quik establishments and that they aren't "slummy" establishments. Ms. Keeler supports the project.
- **Letter #8 from Brenda and Daniel Dominguez, December 14, 2017:** Mr. and Ms. Dominguez expressed opposition to the project citing over-saturation of convenience stores and gas stations in the area.
- **Letter #9 from Chris Collins, December 14, 2017:** Mr. Collins expressed opposition to the project citing over-saturation of convenience stores and gas stations in the area.
- **Letter #10 from Ingrid Swanepoel, December 14, 2017:** Ms. Swanepoel expressed opposition to additional stores selling alcohol in the Tower District.

ENVIRONMENTAL FINDINGS

Environmental Assessment No. C-16-033 considered potential environmental impacts associated with the conditional use permit application request. 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 15303/Class 3 of the CEQA Guidelines was made based on the conclusion that the proposed project consists of construction and location of a new, small facility/structure under CEQA Guidelines Section 15303(c). Under Section 15303(c) of the CEQA Guidelines, a project may be exempt that meets the following:

"A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities area available and the surrounding area is not environmentally sensitive."

Environmental Assessment No. C-16-033, a Class 3 Categorical Exemption, was completed for the

proposed project on December 11, 2017 (Exhibit J).

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 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 analysis of the application, staff concludes that the required findings of Section 15-5306, of the FMC can be made if the request for alcohol sales, additional driveways, and relocation of the existing billboard is denied. These findings are attached as Exhibit K.

If the Planning Commission decides to grant approval of the request to obtain a Type 20 ABC license, the Commission must find that there is substantial evidence in the administrative record to make all the findings mentioned above and amend them to include the sale of alcohol. The Planning Commission shall find that there is substantial evidence in the administrative record to determine any of the following:

Exceptions. A new establishment may be excepted from location restrictions if the Review Authority determines any of the following:

- 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.

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 Tower District Specific Plan; compliance with the provisions of the FMC; 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-16-033 for the service station use is appropriate for the project site, subject to the conditions of approval, provided as Exhibit L. However, Conditional Use Permit No. C-16-033 for the alcohol related cannot be supported for the reasons mentioned in this staff report.

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

EXHIBITS

- Exhibit A - Aerial
- Exhibit B - Operational Statement and Exhibits (Site Plan, Floor Plans, Elevations)
- Exhibit C - Zoning Map
- Exhibit D - Land Use Map
- Exhibit E - Locational Restrictions Map
- Exhibit F - ABC High Crime and High Concentration Correspondence
- Exhibit G - Census Tract 6, 22, 23 ABC License Map
- Exhibit H - Department and Agency Comments
- Exhibit I - Public Hearing Notice and Public Comment
- Exhibit J - Environmental Assessment
- Exhibit K - Fresno Municipal Code Findings
- Exhibit L - Conditions of Approval dated December 20, 2017