



Legislation Details (With Text)

**File #:** ID 20-001546 **Version:** 1 **Name:**  
**Type:** Action Item **Status:** Agenda Ready  
**File created:** 11/5/2020 **In control:** City Council  
**On agenda:** 11/19/2020 **Final action:** 11/19/2020  
**Title:** Consideration of Variance Application No. P20-02831, a request to vary height standards to allow for the development of an 80-foot tall, 14-foot high by 48-foot wide double-sided digital LED billboard at 7221 North Howard Avenue, located on the west side of North Howard Street, between Herndon and Alluvial Avenues. (Council District 6) - Planning & Development Department.

1. CONSIDER Environmental Assessment No. P20-02831, dated November 4, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 3 Categorical Exemption; and,
2. CONSIDER Variance Application No. P20-02831 requesting authorization to vary height standards to allow for an 80-foot tall, 14-foot high by 48-foot wide double-sided digital LED billboard to be located on the subject property.

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Map, 3. Exhibit C - Noticing Map, 4. Exhibit D - Zoning Map, 5. Exhibit E - Project Information Tables, 6. Exhibit F - Site Plan, 7. Exhibit G - Operational Statement, 8. Exhibit H Fresno Municipal Code Findings to Approve or Deny, 9. Exhibit I - Environmental Assessment, 10. Exhibit J Councilmember Appeal, 11. Exhibit K Presentation

Date	Ver.	Action By	Action	Result
11/19/2020	1	City Council	approved	Pass

**REPORT TO THE CITY COUNCIL**

**November 19, 2020**

**FROM:** DAN ZACK, Assistant Director  
Planning & Development Department

**BY:** JOSE VALENZUELA, Planner III  
Development Services Division

**SUBJECT**

Consideration of Variance Application No. P20-02831, a request to vary height standards to allow for the development of an 80-foot tall, 14-foot high by 48-foot wide double-sided digital LED billboard at 7221 North Howard Avenue, located on the west side of North Howard Street, between Herndon and Alluvial Avenues. (Council District 6) - Planning & Development Department.

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## EXECUTIVE SUMMARY

Armen Devejian of OUTFRONT Media (the applicant), on behalf of the City of Fresno (the City), has applied for Variance Application No. P20-02831, pertaining to a ±1.39 acre parcel of property located at 7221 North Howard Street M/C, located on the west side of North Howard Street, between Herndon and Alluvial Avenues. The applicant requests to vary height standards to allow for the development of an 80-foot tall, 14-foot high by 48-foot wide (672 square-foot) double-sided digital LED billboard to be located on the subject property.

Pursuant to Section 15-2605-B of the Fresno Municipal Code (FMC), new Outdoor Advertising Displays (billboards) which replace legal, existing billboards may be located on City-owned property and feature electronic copy, at the discretion of the City Manager. The height of any such billboard may not exceed sixty (60) feet. (Fresno Municipal Code § 1303-2.)

The Fresno City Council approved Development Permit Application No. P19-00359 on December 5, 2019, which allowed for a 60-foot billboard at the proposed location. Additionally, City Council denied Variance Application No. P19-02282 requesting a variance to development standards which would allow for an 86-foot high billboard.

### Fresno City Planning Commission Action

The subject application was considered by the Fresno City Planning Commission at its meeting on November 4, 2020. After hearing testimony from city staff and the applicant, the Planning Commission voted to approve the proposed application by a vote of 6-0-1.

The Planning Commission's decision was appealed by Councilmember Bredefeld on November 5, 2020 (**Exhibit J**). Therefore, the subject application is now being considered by the City Council.

## BACKGROUND

The Applicant has filed Variance Application No. P20-02831, requesting that it be allowed to install a billboard at a height of 80 feet, 20 feet beyond the 60-foot height allowed under the FMC and as previously approved by City Council.

**Legal Requirements for Variance Approval.** Section 15-6802 defines a Variance as a discretionary grant of permission to depart from the specific requirements of the Development Code that is warranted when, due to special circumstances regarding the physical characteristics of the property, the strict application of standards would deprive the property of privileges available to other properties located in the same zoning district. Section 15-5506 provides the required findings that must be met in order for a Reviewing Authority to be able to approve the Variance. The findings that are required to be met are as follows:

- A. There are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to property in the vicinity and identical zoning classification, and that the granting of a Variance will not constitute a granting of a special privilege inconsistent with the limitations on the property in the vicinity and identical zone classifications;
- B. The granting of the application is necessary to prevent a physical hardship which is not of the applicant's own actions or the actions of a predecessor in interest;
- C. The granting of the application will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience, nor the preservation and conservation of open space lands; and
- D. The granting of the Variance will be consistent with the general purposes and objectives of this Code, any applicable operative plan, 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, and of the General Plan.

### **Variance Application Factual Background.**

The Applicant previously filed Variance Application No. P19-02282 requesting authorization to allow an 86-foot high billboard to be located on the subject property due in part to the existing surrounding vegetation and an on-site wireless telecommunication tower, both of which partially obstruct the billboard.

Director Determination. On May 31, 2019, the Planning and Development Department Director denied the Variance Application because staff could not make three of the four findings required by Section 15-5506. The Director determined that only Finding C (no detrimental impact to others) could be made, but that Findings A (extraordinary circumstances), B (necessary to prevent physical hardship), and D (consistent with purposes of applicable plans and FMC) could not be met.

Appeal to Planning Commission. The applicant filed a timely appeal to the Planning Commission on June 17, 2019 seeking to overturn the denial of the Planning and Development Department Director. The Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property. No comments were received at that time.

At the October 2, 2019 Planning Commission meeting, no members from the public spoke in favor of the appeal. Three members from the public spoke in opposition to the appeal. Commissioner Hardie made a motion, seconded by Commissioner Vang, to adopt Environmental Assessment No. P19-00359/P19-02282 approve Development Permit Application No. P19-00359, and deny the applicant's appeal and uphold the action of the Planning and Development Department Director. The motion failed for lack of a majority, with Commissioners Sodhi-Layne, Bray, and Torossian voting no.

An alternative motion was made by Commissioner Torossian to grant the Variance Application in accordance with Section 15-5506 of the FMC. The alternative motion was approved on a 3-2 vote with Commissioners Sodhi-Layne, Bray and Torossian voting in favor of the alternative motion, and Commissioners Hardie and Vang against the alternative motion. The findings which were made by

the Planning Commission to approve the Variance Application at that time were as follows:

- A. The existing 72-foot and 112-foot tall wireless telecommunication facilities on the subject property constitute an exceptional or extraordinary circumstances applicable to the property involved that do not apply generally to property in the vicinity and identical zoning classification, and that the granting of a Variance will not constitute a granting of a special privilege inconsistent with the limitations on the property in the vicinity and identical zone classifications;
- B. The granting of the Variance is necessary to prevent a physical hardship, the existing 72-foot and 112-foot tall wireless telecommunication facilities on the subject property, which are not of the applicant's own actions or the actions of a predecessor in interest;
- C. The digital billboard will be required to comply with the California Building Code, all Caltrans requirements, and has been found to be consistent with the Fresno County Airport Land Use Compatibility Plan, subject to approval by the FAA, and up to a height of 86 feet; and
- D. The granting of the Variance safeguards and enhances the appearance of the city, and thus consistent with the general purposes and objectives of this Code, the Woodward Park Community Plan, and the General Plan.

Appeal to City Council. FMC Section 15-5017 provides that decisions of the Planning Commission may be appealed to the City Council by the Councilmember of the Council District in which the project is located or by the Mayor. Appeals are required to be in writing to the Planning and Development Director. On October 10, 2019, Councilmember Bredefeld filed a timely appeal of the Planning Commission's decision to grant the Applicant's Variance Application permitting the installation of a billboard with a height in excess of what is permitted under the Development Code.

Councilmember Bredefeld's appeal letter provided that the FMC limits the height of a billboard to 60 feet and that a variance application may only be granted if all of the criteria prescribed in Section 15-5506 is met. The appeal letter went on to state that the required findings cannot be met, consistent with staff's original recommendation, thereby the Variance Application must be denied.

On December 5, 2019, the Fresno City Council considered the Variance Application which would allow the height of the billboard to be no greater than 86 feet in height, therefore granting a 26-foot deviation. In addition, Council considered Development Permit Application No. P19-00359 allowing the construction of the billboard at 60 feet in height. Discussion was held regarding revenue impacts, highway grade and its role with the FMC, input from nearby constituents and the benefits of approving a billboard sign to remove ten blighted static billboards throughout the City. The City Council considered testimony from the applicant, City Manager's Office and Planning Division staff to determine if the project met Variance findings. On a motion by Councilmember Bredefeld, seconded by Councilmember Chavez, the Fresno City Council approved Development Permit Application No. P19-00359 and denied the proposed Variance Application No. P19-02282 with a vote of 5-1-1.

On September 4, 2020, the applicant filed the current subject Variance Application No. P20-02831 which proposes a deviation from the FMC to allow an 80-foot tall billboard sign. No other change has been proposed from the previous Variance application other than a 6-foot reduction in height (from the 86' high sign which was previously proposed to the 80' high sign presently proposed) of the 14-

foot high by 48-foot wide digital billboard sign.

At the November 4, 2020 Planning Commission meeting, no members from the public spoke in favor or in opposition of the project. Commissioner Hardie made a motion, seconded by Commissioner Sodhi-Layne, to adopt Environmental Assessment No. P20- 02831 and approve the applicant's variance application. The motion passed on a 6-0-1 vote. The findings which were made by the Planning Commission to approve the Variance Application were as follows:

A. The existing 72-foot and 112-foot tall wireless telecommunication facilities on the subject property constitute an exceptional or extraordinary circumstances applicable to the property involved that do not apply generally to property in the vicinity and identical zoning classification, and that the granting of a Variance will not constitute a granting of a special privilege inconsistent with the limitations on the property in the vicinity and identical zone classifications;

B. The granting of the Variance is necessary to prevent a physical hardship, the existing 72-foot and 112-foot tall wireless telecommunication facilities on the subject property, which are not of the applicant's own actions or the actions of a predecessor in interest;

C. The digital billboard will be required to comply with the California Building Code, all Caltrans requirements, and has been found to be consistent with the Fresno County Airport Land Use Compatibility Plan, subject to approval by the FAA, and up to a height of 80 feet; and

D. The granting of the Variance safeguards and enhances the appearance of the city, and thus consistent with the general purposes and objectives of this Code, the Woodward Park Community Plan, and the General Plan.

## Public Notice and Input

### Council District Project Committee Review

The Council District 6 Project Review Committee reviewed this project on September 21, 2020 and voted to approve with no additional comments and/or recommendations.

### Notice of City Council Hearing

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 on November 6, 2020 (**Exhibit C**). No comments have been received to date.

## LAND USE PLANS AND POLICIES

**Fresno General Plan and Woodward Park Community Plan.** The Fresno General Plan designates the subject site for Office planned land uses and provides objectives to guide in the development of these projects. Excluding the Variance Application matter, the approval of Development Permit Application No. P19-00359 does not conflict with policies and objectives of the Fresno General Plan and Woodward Park Community Plan. The following are excerpts of policies Development Permit Application No. P19-00359 is consistent with:

- Policy D-1-j Lighting Standards. Update lighting standards to reflect best practices and protect

adjoining uses from glare and spillover light.

*The project is conditioned to comply with existing signage light standards.*

- Policy D-2-c Highway Beautification. Work with Caltrans, the Fresno Council of Governments, Tree Fresno, neighboring jurisdictions, and other organizations to obtain funding for highway beautification programs.

*The project is required to take down, at minimum, one existing, legal billboard as required pursuant to FMC Section 15-2605-B.*

- Policy NS-5-b Airport Safety Hazards. Ensure that new development, including public infrastructure projects, does not create safety hazards such as glare from direct or reflective sources, smoke, electrical interference, hazardous chemicals, fuel storage, or from wildlife, in violation of adopted safety standards.

*The project has received conditional approval from the Fresno County Airport Land Use Commission, pending a renewed Finding of No Hazard from the Federal Aviation Administration.*

The project will utilize vacant land where the necessary infrastructure and facilities are available to serve the property. The proposed project is consistent with many of the goals and policies of the Fresno General Plan. The proposed project promotes diverse land uses and preserves and protects resources by developing within the city limits.

## **FRESNO MUNICIPAL CODE FINDINGS**

Should the City Council wish to approve or deny Variance Application No. P20-02831, the Council must make the required finding in accordance with FMC Section 15-5506. Alternative sets of findings have been provided to either approve or deny the project and are attached to this report (See **Exhibit H**). The approval findings in Exhibit H were derived from Planning Commission's Resolution No. 13613, which were adopted for the previous Variance Application No. P19-02282 in 2019.

## **ENVIRONMENTAL FINDINGS**

The California Environmental Quality Act (CEQA) permits a public agency to determine whether a particular project is exempt from CEQA. Staff has performed Environmental Assessment No. P20-02831 for this project and has determined that it falls within the Categorical Exemption set forth in section 15303 (Class 3/New Construction of Small Structures) of the CEQA guidelines which exempts construction of limited numbers of new, small facilities or structures.

The project proposes a small structure, whether the height of the billboard is 60 or 80 feet. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project. Furthermore, the proposed project is not expected to have a significant effect on the environment. Accordingly, a categorical exemption, as noted above, has been prepared for the project.

## **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.

## **CONCLUSION**

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Woodward Park 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. Should the City Council wish to approve Variance Application No. P20-02831, the Council must make the required findings in accordance with FMC Section 15-5506.

Action by the City Council is final with Section 15-5017-F of the FMC.

Attachment: Exhibit A - Vicinity Map  
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