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Title: Consideration of an appeal filed regarding Conditional Use Permit Application No. P22-02534 and related Environmental Assessment, for property located at 2840 Tulare Street; Located on the southeast side of Tulare Street between "R" Street and "S" Street." (Council District 3) - Planning and Development Department

Based upon the evaluation contained in this report and the appeals received from the appellants, staff recommends that the Planning Commission take the following actions:

1. CONSIDER Environmental Assessment No. P22-02534 dated January 18, 2023, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Section 15332/Class 32 Categorical Exemption.
2. DENY the appeal and UPHOLD the action of the Planning and Development Department Director in the approval of Conditional Use Permit Application No. P22-02534 authorizing the construction of a ± 2,406 square foot Starbucks shell building with a ± 840 square foot patio, a drive-through with capacity for seventeen (17) vehicles, and full improvements to the site with a new parking lot and landscaping.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Aerial Photo & Zoning Map, 2. Exhibit B - Project Information Tables, 3. Exhibit C - Project Operational Statement, 4. Exhibit D - Project Site Plan, 5. Exhibit E - Project Landscape Plan, 6. Exhibit F - Project Elevations, 7. Exhibit G - Notice of Intent to Take Action, 8. Exhibit H - Notice of Action, 9. Exhibit I - Larry Taylor Appeal Letter, 10. Exhibit J - Sean Boyd Appeal Letter, 11. Exhibit K - Notice of Public Hearing, 12. Exhibit L - Indirect Source Review & Air Impact Assessment, 13. Exhibit M - SJVAPCD Letter [11-7-22], 14. Exhibit N - Fresno Municipal Code Findings, 15. Exhibit O - Environmental Assessment - Categorical Exemption, 16. Exhibit P - Conditions of Approval, 17. Exhibit Q - Letters of Support, 18. Exhibit R - Vehicle Miles Travelled Analysis

Date	Ver.	Action By	Action	Result
3/15/2023	1	Planning Commission	RECOMMENDED FOR DENIAL	Pass

REPORT TO THE PLANNING COMMISSION

March 15, 2023

FROM: PHILLIP SIEGRIST, Planning Manager
Planning and Development Department

THROUGH: RALPH KACHADOURIAN, Supervising Planner
Planning and Development Department

BY: STEVEN MARTINEZ, Planner
Planning and Development Department

SUBJECT

Consideration of an appeal filed regarding Conditional Use Permit Application No. P22-02534 and related Environmental Assessment, for property located at 2840 Tulare Street; Located on the southeast side of Tulare Street between “R” Street and “S” Street.” (Council District 3) - Planning and Development Department

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EXECUTIVE SUMMARY

Conditional Use Permit Application No. P22-02534 was filed by Ian Robertson of IT Architecture on Behalf of Starbucks and pertains to the 1.0-acre downtown parcel located at 2840 Tulare Street. The applicant proposes construction of a ± 2,406 square foot Starbucks shell building with a ± 840 square foot patio, a drive-through with capacity for seventeen (17) vehicles, and full improvements to the site with a new parking lot and landscaping.

On January 18, 2023, the Planning and Development Director approved the Conditional Use Permit application based upon the project’s compliance with the required findings for conditional use permits pursuant to FMC Section 15-5306 (**Exhibit M - Fresno Municipal Code Findings**).

A Notice of Action (Granting) was mailed to property owners who requested to be notified once the project was approved. Two letters of appeal were received from the public: one from Sean Boyd received on February 1, 2023, one from Larry Taylor on February 2, 2023. Therefore, the subject application is being considered by the Planning Commission. (**Exhibits I and J - Appeal Letters**).

Staff recommends upholding the Director’s approval based on substantial evidence in this staff report that shows Drive-Through Facilities are a conditionally permitted use, compliant with all provisions of the Citywide Development Code, and consistent with applicable policies of the Fresno General Plan, and the Downtown Neighborhoods Community Plan which do not contain any specific policies that would restrict the proposed use.

BACKGROUND

The site previously contained a ± 7,300 square foot El Torito Restaurant which closed during the COVID-19 pandemic. The structure was demolished in Spring 2022. The site is subject to the following covenant and zone conditions:

- ❖ Deed and Covenant (Reciprocal Easements) Recorded September 7, 1982 As Instrument No.

76728, In Book 7968, Page 741

- ❖ Cross Easement Covenant Recorded September 7, 1982 As Instrument No. 76729, In Book 7968, Page 741
- ❖ PG&E Easement Recorded October 22, 1982 as Instrument No. 90320.
- ❖ PG&E Easement Recorded January 7, 1983 as Instrument No. 83001708.
- ❖ Mutual Common Ingress-Egress Access and Parking Easement Agreement Recorded March 20, 1985 As Instrument No. 85026551 of Official Records

Pursuant to Section 15-1502 of the Fresno Municipal Code (FMC), drive-through facilities are permitted in the DTN (Downtown Neighborhood / Activity Class B) zone district subject to the approval of a conditional use permit. Pursuant to Section 15-2728 of the FMC, drive-through facilities shall comply with all subsections pertaining to said use. The regulations are intended to provide for the appropriate development of drive-through facilities within the city to meet the needs of residents, business-owners, and visitors while protecting public health and safety and preventing visual blight and degradation of the community's aesthetic character. The Policies and Procedures Issue No. C-001 - Design Guidelines for Drive-Throughs, where applicable, have been applied to the proposed project to ensure that all applicable requirements and standards are being met.

The project will comply with all Development Code requirements including setbacks, landscaping, and parking requirements, as incorporated into the conditions of approval.

Other Agencies

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. P22-02534.

Public Noticing and Input

Council District 3 Project Review Committee

The Council District 3 Project Review Committee reviewed the project on December 13, 2022, and voted to recommend approval with no additional comments and/or recommendations. Motion passed by a vote of 3 ayes and 0 noes.

Notice of Intent to Take Action

Pursuant to FMC Section 15-5305, the Planning and Development Department mailed a Notice of Intent to Take Action (Neighborhood Notice) (**Exhibit G - Notice of Intent to Take Action**) to surrounding property owners within 1,000 feet of the subject site on November 30, 2022, in accordance with FMC Section 15-5007.

Four emails were received in response to the notice; three in opposition and one with concerns, but with support for the project. The responses expressed the following concerns: 1.) close proximity to three other Starbucks within ½ mile; 2.) impact to surrounding local businesses; 3.) size of the proposed drive-through; 4.) emissions from idling vehicles; 5.) additional traffic on “R” Street and Tulare Street; 6.) noise; 7.) consistency with downtown’s urban form. One individual requested to be notified of the Director’s decision.

Response to Concerns Raised:

1. Close Proximity to Three Other Starbucks Within ½ Mile:

Staff recognizes the close proximity to other Starbucks, however, there is no law or code

which prohibits companies from opening additional locations within a given distance to other locations.

2. Impact to Surrounding Local Businesses:

Staff recognizes the close proximity to other national, regional, and local businesses, however, there is no law or code which prohibits national chains from opening new locations within a given distance to other national, regional, or local businesses.

3. Size of The Proposed Drive-Through:

There is no law or code which dictates the maximum stacking size of a drive-through, however, the University of California Institute of Transportation Studies Access Management and Site Design suggest a minimum stacking for 10 vehicles. The proposed length of the drive-through will accommodate a stacking/queuing of up to 17 vehicles. The proposed Starbucks is anticipated to have a daily vehicle trip count of over 1,100, however, the trip-generation was not calculated by the size of drive-thru, but the size of the primary structure. A larger drive-through helps to better control drive-through traffic during peak hours, and guides cars waiting in line away from parking stalls, drive-aisles, and pedestrian walkways.

4. Emissions from Idling Vehicles:

The project will not result in any significant effects to air quality whereas the San Joaquin Valley Air Pollution Control District conducted an Indirect Source Review/Air Impact Assessment of the project and concluded the baseline emissions for construction and operation will be less than two tons NOx per year and two tons PM10 per year. Pursuant to District Rule 9510 Section 4.3, this project is exempt from the requirements of Section 6.0 (General Mitigation Requirements) and Section 7.0 (Off-site Emission Reduction Fee Calculations and Fee Schedules) of the rule. Therefore, the project will not have a significant effect on air quality.

5. Additional Traffic On "R" Street and Tulare Street:

The Department of Public Works has standardized thresholds for projects and their potential impact(s) on traffic. When projects exceed the thresholds, Public Works requires a Traffic Impact Study. Although the project may produce additional traffic than the previous tenant, the project did not exceed any significant threshold therefore requiring a TIS.

6. Noise:

The project will not result in any significant effects to noise whereas the project will be in compliance with City of Fresno noise standards outline in Fresno Municipal Code Section 15-2506.

7. Consistency with Downtown's Urban Form:

As conditioned pursuant to Fresno Municipal Code Sections 15-1503 through 15-1505, the project will align with the development code, and be consistent with the vision of downtown's urban form.

Notice of Action

Pursuant to FMC Section 15-5305, the Planning and Development Department sent a Notice of Action (**Exhibit H - Notice of Action**) to the protestor on January 18, 2023, in accordance with FMC Section 15-5009.

On February 2 and February 3, 2023, timely appeals were received by the Planning and Development Department opposing the Director's decision to grant the approval of Conditional Use Permit Application No. P22-02534 (**Exhibits I and J - Appeal Letters**).

Notice of Planning Commission Hearing

In accordance with FMC Section 15-5007, the Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property and appellant on March 3, 2023 (**Exhibit K - Notice of Public Hearing**).

Analysis of the Appeal Letters

Issue No.1:

An appellant believes the project will conflict with and degrade the pedestrian environment when the drive-through is at capacity. They stated drivers will make a left turn into the drive-through and block the sidewalk.

Response to Issue No.1:

The entrance of the drive-through to the closest sidewalk is more than 160-feet away. It is not factual that drivers making a left turn from Tulare Street will turn into the drive-through. It is only speculative the drive-through will block vehicular or pedestrian traffic. Note: the parking lot is capable of handling additional vehicles beyond the drive-through capacity.

Issue No.2:

An appellant believes the project will result in significant impacts to traffic when the drive-through is at capacity. They reiterated their concern in issue no. 1 and stated drivers will make a left turn into the drive-through and block the sidewalk and traffic.

Response to Issue No.2:

As previously stated, the entrance of the drive-through to the closest sidewalk is more than 160-feet away. It is not factual that drivers making a left turn from Tulare Street will turn into the drive-through. It is only speculative the drive-through will block vehicular or pedestrian traffic. Note: the parking lot is capable of handling additional traffic beyond the drive-through capacity.

Issue No.3:

An appellant stated "more should be done to encourage a taller building to fit in the style of surrounding buildings, and more to serve local interests."

Response to Issue No.3:

Pursuant to the Fresno Municipal Code, the proposed drive-through is a conditionally permitted use and the project, as conditioned, meets the objective zoning standards. Therefore, the project cannot be denied on those criteria.

Issue No.4:

Both appellants state the project will have a significant impact on air quality.

Response to Issue No.4:

The claim is speculative and does not provide any evidence the project would have an impact. The project will not result in any significant effects to air quality whereas the San Joaquin

Valley Air Pollution Control District conducted an Indirect Source Review/Air Impact Assessment of the project and concluded the baseline emissions for construction and operation will be less than two tons NOx per year and two tons of PM10 per year (**Exhibit L - Indirect Source Review and Air Impact Assessment**). Pursuant to District Rule 9510 Section 4.3, this project is exempt from the requirements of Section 6.0 (General Mitigation Requirements) and Section 7.0 (Off-site Emission Reduction Fee Calculations and Fee Schedules) of the rule. Therefore, the project will not have a significant effect on air quality.

Issue No.5:

An appellant stated the air pollutant PM2.5 was not considered when examining air quality impacts.

Response to Issue No.5:

That claim is not factual. In the San Joaquin Valley Air Pollution Control District's letter to the City of Fresno on November 7, 2022 (**Exhibit M - SJVAPCD Letter Dated November 7, 2022**), the District wrote that project specific annual criteria pollutant emissions (including PM2.5) from construction and operation are not expected to exceed any of the significance thresholds as identified in the District's Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI)."

Issue No.6:

An appellant questioned the legitimacy of the San Joaquin Valley Air Pollution Control District's review.

Response to Issue No.6:

The San Joaquin Valley Air Pollution Control District is mandated to comply with Federal and State laws regarding air quality. Their review provided to the City of Fresno is considered sufficient in all aspects.

LAND USE PLANS AND POLICIES

Fresno General Plan

The Fresno General Plan designates the subject site for Downtown Neighborhood planned land uses and provides objectives to guide in the development of these projects. Conditional Use Permit Application No. P22-02534 meets policies and objectives of the Fresno General Plan. The following is an excerpt of such objectives.

General Plan 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 project promotes development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available.

Downtown Neighborhoods Community Plan

The Downtown Neighborhoods Community Plan designates the subject site for Downtown Neighborhood planned land uses and provides objectives to guide in the development of these projects. Conditional Use Permit Application No. P22-02534 meets policies and objectives of the plan. The following is an excerpt of such objectives.

Downtown Neighborhoods Community Plan Goal 2.12.4: Allow drive-thru businesses along certain corridors but ensure the drive-through facilities do not conflict with or degrade the pedestrian environment.

As conditioned, the project will not conflict with or degrade the pedestrian environment.

FRESNO MUNICIPAL CODE FINDINGS

The required findings for a Conditional Use Permit under FMC Section 15-5306 are as follows:

- a. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code; and,
- b. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,
- c. The proposed use will not be substantially averse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements; and
- d. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and,
- e. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.
- f. The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5.

Based upon analysis of the application, staff concludes that the required findings of FMC Section 15-5306 can be made for the proposed project. These findings have been made and are attached (**Exhibit N - Fresno Municipal Code Findings**).

ENVIRONMENTAL FINDING

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 15332/Class 32 of the CEQA Guidelines was made and Environmental Assessment No. P22-02534 was completed for this project. (**See Exhibit O - Environmental Assessment - Categorical Exemption**).

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

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

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Downtown Neighborhoods Community Plan and the 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 of this evaluation, it can be concluded that the proposed Conditional Use Permit Application No. P22-02534 is appropriate for the project site.

ATTACHMENTS:

- Exhibit A - Aerial Photo & Zoning Map
- Exhibit B - Project Information Tables
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