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Title:	Consider the appeal of Conditional Use Permit Application No. C-16-076, located on the southeast corner of North First Street and East McKinley Avenue. (Council District 7) - Development and Resource Management Department.				
	<p>1. ADOPT Environmental Assessment No. C-16-076 dated March 7, 2017, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 Categorical Exemption; and,</p> <p>2. DENY the appeal and UPHOLD the Director's Approval of Conditional Use Permit Application No. C-16-076 to authorize the applicant to establish a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license, subject to compliance with the Conditions of Approval dated March 24, 2017.</p>				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	1. Exhibit A Vicinity Map.pdf, 2. Exhibit B 2015 Aerial Photograph of Site.pdf, 3. Exhibit C Planned Land Use Map.pdf, 4. Exhibit D Zoning Map.pdf, 5. Exhibit E Noticing Map.pdf, 6. Exhibit F Site Plan.pdf, 7. Exhibit G Floor Plan.pdf, 8. Exhibit H Operational Statement.pdf, 9. Exhibit I Comments from Responsible Agencies.pdf, 10. Exhibit J Public Opposition Letters.pdf, 11. Exhibit K Environmental Assessment.pdf, 12. Exhibit L Fresno Municipal Code Findings.pdf, 13. Exhibit M Conditions of Approval dated March 24 2017.pdf				

Date	Ver.	Action By	Action	Result
5/17/2017	1	Planning Commission	approved	Pass

REPORT TO THE PLANNING COMMISSION

May 17, 2017

FROM: MIKE SANCHEZ, Assistant Director
Development Services Division

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SUBJECT

Consider the appeal of Conditional Use Permit Application No. C-16-076, located on the southeast corner of North First Street and East McKinley Avenue. (Council District 7) - Development and Resource Management Department.

1. **ADOPT** Environmental Assessment No. C-16-076 dated March 7, 2017, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 Categorical Exemption; and,
2. **DENY** the appeal and **UPHOLD** the Director's Approval of Conditional Use Permit Application No. C-16-076 to authorize the applicant to establish a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license, subject to compliance with the Conditions of Approval dated March 24, 2017.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. C-16-076 was filed by Steve Rawlings of Alcoholic Beverage Consulting, on behalf of Sarkis Basmajian, and pertains to the existing 20,828-square-foot grocery and household goods store, 99 Cents Only, on ±6.83 acres of property located on the southeast corner of North First Street and East McKinley Avenue. The applicant requests authorization to establish a State of California ABC Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold).

On March 24, 2017, during the protest period following the Notice of Intent to Take Action on Conditional Use Permit Application C-16-076, staff received a letter from the D.A.V. Charities of Central California, Inc. indicating they wished to protest the possible approval of this application.

BACKGROUND

Conditional Use Permit Application No. C-16-076 was filed by Steve Rawlings of Alcoholic Beverage Consulting, on behalf of Sarkis Basmajian, and pertains to the existing 20,828-square-foot grocery and household goods store, 99 Cents Only, on ±6.83 acres of property located on the southeast corner of North First Street and East McKinley Avenue. The applicant requests authorization to establish a State of California ABC Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold). Per Table 15-1202, a General Market is permitted by right in the CC (Commercial - Community) zone district. Alcohol sales may be allowed in the CC zone district subject to an approved Conditional Use Permit. Fresno Municipal Code (FMC) Section 15-2706 Alcohol Sales, which regulates a variety of types of alcohol sales and sales locations, does not apply. Under Section 15-2706-C-2, establishments that are larger than 10,000 square feet are exempt from requirements and restrictions contained in that section.

Despite the location of the project being exempt from Section 15-2706, in particular the subsections restricting alcohol sales in areas of high crime and alcohol license overconcentration, the applicant met with the Director and staff to discuss these concerns. The applicant submitted materials indicating the 99 Cents Only store chain derives approximately 70% of their revenue from the sale of fresh produce and other food stuffs. At 20,828 square feet, the store is considered by the applicant and owner to be a mid-sized neighborhood alternative to a supermarket. The store is seeking to offer a more complete grocery shopping experience to its budget-minded customers, consisting primarily of females shopping for their families and senior citizens on a fixed income.

To overcome concerns about overconcentration of alcohol sales in Fresno and that alcohol sales at the location would be conducted in a manner similar to a convenience or liquor store rather than a grocery store, the applicant proposed or agreed to several conditions of approval including:

- The purchase of an existing alcohol license from within Fresno city limits;
- All conditions required by the Fresno Police Department;
- Only warm display of beer and wine, limited to 36 lineal feet of shelving units;
- Beer and malt products sold only in manufacturer pre-packaged multi-unit quantities, never as a single serving;
- Wine sold in minimum 750 ml bottles;
- No beer or wine advertisements in the store windows.

It should be noted that the store does not intend to sell alcohol for 99 cents and that it would be economically infeasible to do so with the prohibition on single-serving sales.

Police Department Review

The Southeast Policing District does not oppose the project but has requested conditions addressing compliance with Fresno Municipal Codes limiting noise and unlawful nuisance, compliance with State of California Alcoholic Beverage Control (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 (included in Exhibit I) have been incorporated into the Conditions of Approval dated March 24, 2017 (Exhibit M) in their entirety.

Fresno Unified School District (FUSD) Review

FUSD provided comments indicating the district does not support this application. Their comment letter expressed concerns regarding potentially dangerous interactions between students and the proposed operation. The proposed location is within approximately 500 feet of Mayfair Elementary School.

It should be noted that the project location faces East McKinley Avenue, and Mayfair Elementary faces East Home Avenue and only includes entrances on East Home Avenue and North Bond Street. There is a wall behind the proposed location that blocks direct access from the shopping center to East Home Avenue. The project location is separated from the school by building orientation, walls behind and east of the shopping center, and fences around the school.

Housing and Neighborhood Revitalization Review

On January 5, 2017, per the request of the City of Fresno Development Team, DARM staff met with the City of Fresno Housing and Neighborhood Revitalization Manager to discuss possible impacts of the proposed project. Concerns expressed at that meeting included the area's large Southeast Asian immigrant population and the challenge of alcoholism faced by the community. It was also noted that there is already an actual liquor store across North First Street from the proposed project. Finally, there was concern that the rear of the proposed project location posed a strong danger of drawing loiterers and would encourage public drinking among the area's homeless population.

DARM staff believes that the conditions of approval, in particular the prohibitions on window

advertisement and on single-serving sales and the limitation to warm storage only, will effectively discourage on-premise consumption. Fresno Police Department conditions will also serve to alert the business to loitering and nuisance issues that could violate the conditions of approval and could lead to revocation of their pending Type 20 license by the ABC.

Other Agencies

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. C-16-076. See Exhibit I for all written agency comments received.

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 ABC in order to sell alcohol. Prior to the issuance of an ABC license, the ABC will conduct its own analysis of the applicant's Type 20 license application. As part of that analysis, the ABC is awaiting the decision on this Conditional Use Permit Application from the City of Fresno.

Letters of Opposition

On March 9, 2017, a Notice of Intent to Take Action was mailed to residents and businesses within 1,000 feet of the location (see Exhibit E for Noticing Map). Three letters of opposition were received (Exhibit J).

Letter #1, received via email on March 13, 2017, came from the property owner of Mayfair Center, which is across East McKinley Avenue and north of the project location. The property owner was forthcoming about the fact that his shopping center tenants include a competing 99 cent store. He expressed concerns about the effects alcohol sales were already having on his property after he had invested in property improvements.

Staff contacted the property owner via telephone and discussed whether the proposed conditions of approval alleviated his concerns to any degree. During that conversation, the property owner indicated that crime and alcohol consumption among the homeless were his primary concerns and had caused him to hire additional security. The proposed conditions of approval did address his concerns somewhat. He declined to decide at that time whether he wished to appeal a possible application approval to the Planning Commission and indicated he would think that over and decide when he received a Notice of Action. The property owner was included in the notice mailing for this hearing and was also contacted via telephone by DARM staff, who left a voicemail for him with hearing details.

Letter #2, dated March 14, 2017 and received on March 17, 2017, came from the owner of a nearby residential four-plex. The complex owner expressed concern about the adverse effects on neighborhood children and students of adding a liquor store to the area. He anticipated higher rates of assaults, thefts, underage drinking, alcohol-related hospitalizations, drunken driving incidents, and pedestrian injuries. The complex owner also related that panhandling and drug-use among the homeless was an issue and he did not want the proposed project location to become another hang out to bother the public. He seemed to believe that the homeless would be allowed to enter the store from behind to purchase alcohol despite there being no public access at the rear of the building (see Exhibits F and G).

Staff contacted the property owner via telephone and discussed whether the proposed conditions of approval alleviated his concerns to any degree. The proposed conditions of approval addressed his concerns to some degree. In part because the property owner lives out of town and could neither attend a Planning Commission meeting himself nor find a local friend or relative to attend to represent his concerns, he declined to appeal the possible approval of this application. Despite these challenges to the property owner's possible attendance of this hearing, he was included in the hearing notice mailing.

Staff believes the concerns regarding public drunkenness and underage drinking have been addressed by the Fresno Police Department conditions of approval prohibiting on-site loitering and alcohol consumption and requiring employee training on establishing ABC education for employees to prevent sales to persons under the age of 21. Staff also believes the conditions requiring warm storage only, limiting display space, and prohibiting single-serving sales and window advertisement of alcohol will serve to make the proposed project location unattractive to homeless consumers and others likely to desire to consume alcohol on premises. The homelessness issues within the neighborhood involve matters of law enforcement and social services beyond the purview of DARM in its role in short-range planning and development services.

Letter #3, dated March 20, 2017, and received on March 24, 2017, was delivered in person by the general manager of the D.A.V. Charities of Central California, Inc., which operates the Disabled American Veterans Thrift Store at 3163 East McKinley Avenue, across the street and north of the proposed project location. The letter expressed concern regarding there already being a number of liquor stores, grocery stores, and restaurants selling alcohol in the area. Crime, homelessness, and added costs for security were also concerns listed in the letter.

Staff spoke with the D.A.V. general manager when he delivered the letter of opposition and discussed with him whether the proposed conditions of approval alleviated his concerns to any degree. He indicated the conditions did not satisfy his concern and he wished to appeal the possible approval of this conditional use permit to the Planning Commission. Staff informed him they would schedule this matter for a hearing with the Planning Commission and notified him of the hearing date by mail and by telephone but was unable to confirm with him directly that he would attend the hearing as he had originally indicated.

Staff believes the Conditions of Approval dated March 24, 2017 (Exhibit M) address the concerns of Letter #3, as discussed in relation to the previous letters of opposition.

Land Use Plans and Policies

The Fresno General Plan designates the subject property for the CC (Commercial-Community) planned land uses and provides objectives to guide in the development of this project. The CC (Commercial-Community) 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-16-076 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.

Roosevelt Community Plan

Upon reviewing the policies contained in the Roosevelt 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.

It should be noted that the Roosevelt Community Plan identifies community issues and concerns for citizens living within its planning area. These concerns include development that generates a negative perception about the community, crime, alcohol abuse, and at-risk youth. Staff believes, as discussed in sections above, that the conditions of approval for this project adequately address these community concerns with measures that allow the applicant to provide their customers with a limited selection of beer and wine in such a way that does not encourage on-premises or public consumption of alcohol or contribute to an increased atmosphere of crime and homelessness.

District 7 Plan Implementation Committee

Council District 7 does not have a formal committee to provide comments on projects in the area. The Council District staff member who receives notification of projects did not provide comments.

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). Staff also sent notices, via U.S. mail and email, to individuals who requested notification.

ENVIRONMENTAL FINDINGS

Environmental Assessment No. C-16-076 considered potential environmental impacts associated with the development permit application request. The California Environmental Quality Act (Public Resource Code Section 21000 et seq.) permits a public agency to determine whether a particular

project is exempt from CEQA. A determination of a Categorical Exemption, Section 15301/Class 1 of the CEQA Guidelines was made based on the conclusion that the application represented a negligible expansion of use with no associated physical expansion, and Environmental Assessment No. C-16-076 was completed for this project on March 7, 2017 (Exhibit K).

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.

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. Staff believes that there is substantial evidence to support the findings, as noted below.

Finding A: All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls, and fences, parking, loading, recycling areas, landscaping, and other required features; and,

- The use proposed by Conditional Use Permit Application No. C-16-076, the addition of Type 20 alcohol sales within an existing grocery store, is allowed in the CC (Commercial-Community) zone district with a conditional use permit. The existing and proposed use is in compliance with all applicable chapters of the FMC.

Finding B: The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,

- The proposed project is in compliance with the Fresno General Plan and the Roosevelt Community Plan. The proposed use is compatible with the surrounding uses and the concept of creating complete neighborhood with a full range of amenities within walking distance for residents.

Finding C: The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located.

- The Type 20 ABC license will not have a negative impact on either the subject site or neighboring properties given the project conditions of approval. The applicant will be required to comply with the Fresno Police Department and the County of Fresno Department of Public Health requirements. These conditions are intended to help protect the public health, safety, and welfare of patrons and surrounding properties. Approval of the special permit would be in accordance with applicable provisions of the FMC, including the determination that all findings have been made relative to the issuance of a conditional use permit for the proposed project.

Finding 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,

- The grocery and household goods store is surrounded by commercial uses within the shopping center. Medium density residential uses exist south and west of the project, which provides an amenity for those residents. The use is compatible with the planned land use for the location and surrounding area, indicating that it will remain compatible for the foreseeable future.

Finding E: The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

- The proposed establishment of a State of California Alcoholic Beverage Control Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) is consistent with the allowable land use and intensity requirements per the underlying zone district. Adequate access, parking, utilities and services has been provided to serve the property and were reviewed for consistency with the requirements of the CC (Commercial-Community) planned land use and zone district.

These findings are attached as Exhibit L.

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 Roosevelt Community Plan; compliance with the provisions of the Fresno Municipal Code; 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-16-076 is appropriate for the project site.

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 - 2015 Aerial Photograph of Site
Exhibit C - Planned Land Use Map
Exhibit D - Zoning Map
Exhibit E - Noticing Map
Exhibit F - Site Plan
Exhibit G - Floor Plan
Exhibit H - Operational Statement
Exhibit I - Comments from Responsible Agencies
Exhibit J - Public Opposition Letters
Exhibit K - Environmental Assessment
Exhibit L - Fresno Municipal Code Findings
Exhibit M - Conditions of Approval dated March 24, 2017