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Title: Consideration of Conditional Use Permit Application No. C-17-013, located on the southwest corner of North Figarden Drive and West Bullard Avenue. (Council District 2) - Development and Resource Management Department.

1. ADOPT the Negative Declaration prepared for Environmental Assessment No. C-17-013 dated June 12, 2017; and,

2. APPROVE Conditional Use Permit Application No. C-17-013 requesting to develop a commercial center consisting of a 3,764 square-foot ampm convenience store, an ARCO fuel facility consisting of eight multi-product fuel dispensers under an overhead canopy, a 4,000 square-foot retail building, and a 3,462 square-foot quick serve restaurant with a drive-through service window, subject to compliance with the Conditions of Approval dated July 19, 2017.

3. DENY Conditional Use Permit Application No. C-17-013 requesting to establish a Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for the ampm convenience store.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. A C-17-013 Vicinity Map, 2. B C-17-013 2015 Aerial, 3. C C-17-013 Land Use Map, 4. D C-17-013 Zoning Map, 5. E Noticing Map, 6. F Exhibits, 7. G Operational Statement, 8. H Letters of Opposition, 9. I Letter from Applicant, 10. J Environmental Assessment, 11. K Findings, 12. L Conditions of Approval

Date	Ver.	Action By	Action	Result
7/19/2017	1	Planning Commission	approved as amended	Pass

REPORT TO THE PLANNING COMMISSION

July 19, 2017

FROM: MIKE SANCHEZ, Assistant Director
Development Services Division

THROUGH: MCKENCIE CONTRERAS, Supervising Planner
Development Services Division

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Development Services Division

SUBJECT

Consideration of Conditional Use Permit Application No. C-17-013, located on the southwest corner of North Figarden Drive and West Bullard Avenue. (Council District 2) - Development and Resource Management Department.

1. **ADOPT** the Negative Declaration prepared for Environmental Assessment No. C-17-013 dated June 12, 2017; and,
2. **APPROVE** Conditional Use Permit Application No. C-17-013 requesting to develop a commercial center consisting of a 3,764 square-foot ampm convenience store, an ARCO fuel facility consisting of eight multi-product fuel dispensers under an overhead canopy, a 4,000 square-foot retail building, and a 3,462 square-foot quick serve restaurant with a drive-through service window, subject to compliance with the Conditions of Approval dated July 19, 2017.
3. **DENY** Conditional Use Permit Application No. C-17-013 requesting to establish a Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for the ampm convenience store.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. C-17-013 was filed by Julio Tinajero of Milestone Associates, on behalf of Surina Mann of Figarden Petroleum, and pertains to ±2.41 acres of property located on the southwest corner of North Figarden Drive and West Bullard Avenue. The applicant proposes development of a commercial center consisting of a 3,764 square-foot convenience store and requests the establishment of a State of California Alcoholic Beverage Control Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for the ampm convenience store, an ARCO fuel facility consisting of 8 multi-product fuel dispensers under an overhead canopy, a 4,000 square-foot retail building, and a 3,462 square-foot quick serve restaurant with a drive-through service window. Staff is recommending approval of all of the above except the Type 20 license.

The Planning Commission is considering this project because the applicant is appealing the denial of the Type 20 license. The Planning Commission is also considering this application because several property owners have expressed opposition.

BACKGROUND

Conditional Use Permit Application No. C-17-013 proposes development of a commercial center consisting of a 3,764 square-foot convenience store and requests the establishment of a State of California Alcoholic Beverage Control Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for the ampm convenience store, an ARCO fuel facility consisting of eight multi-product fuel dispensers under an overhead canopy, a 4,000 square-foot retail building, and a 3,462 square-foot quick serve restaurant with a drive-through service window. Per Table 15-1202 of the Fresno Municipal Code (FMC), a General Market is permitted by right in the CC (Commercial - Community) zone district. Alcohol sales and a drive-through restaurant may be allowed subject to an approved Conditional Use Permit.

Section 15-2706 of the FMC, regulates a variety of types of alcohol sales and sales locations.

Specifically, 15-2706-E states an “establishment shall not be located within 500 feet of an existing establishment.” A Shell station and mini-mart with an active Type 20 is located approximately 302 feet from the proposed ampm mini-mart. Furthermore, the code states an “establishment shall not be located in an area of high concentration,” The project is located in an area of high concentration as determined by the Department of Alcoholic Beverage Control. Therefore, the Director is recommending denial of the request to establish a Type 20 alcohol license at this location.

Police Department Review

The Fresno Police Department does not oppose the project, or the issuance of an 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 July 19, 2017 (Exhibit L) 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 2,175 feet from Figarden Elementary School.

Other Agencies

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. C-17-013. See Exhibit L for all written agency comments received.

Alcoholic Beverage Control (ABC) Regulations

In addition to obtaining a Conditional Use Permit from the City of Fresno, the applicant is required to obtain a license from the California Department of Alcoholic Beverage Control awaiting the decision on the subject Conditional Use Permit Application.

Number of Existing and Allowed ABC Licenses

According to the ABC, census tract 42.12 has 14 currently active off-sale alcohol licenses, four more than has been authorized for that census tract; therefore the census tract is over concentrated.

Citywide Development Code

Article 27 (Standards for Specific Uses and Activities), Section 15-2706 (Alcohol Sales), Sub-Section E (Location Restrictions for New Establishments) prohibits new off-sale alcohol establishments that are under 10,000 square feet if they are within one of the following areas:

1. **Near Sensitive Uses.** The establishment shall not be located within 500 feet of the following:
 - a. A public park, playground, recreational area, or youth facility, including a nursery school, preschool, or day care facility;
 - b. A public or private State-licensed or accredited school; or
 - c. An alcohol or other drug abuse recovery or treatment facility.
2. **Near Other Alcoholic Beverage Establishments.** The establishment shall not be located within 500 feet of an existing establishment, nor may it lead to a grouping of more than four establishments within a 1,000 foot radius.
3. **Within High Crime Areas.** The establishment shall not be located in an area of high crime, as defined by the California Business and Professions Code 23958.4(a)(1) et seq., and as determined by the Department of Alcoholic Beverage Control (ABC).
4. **Within High Concentration Areas.** The establishment shall not be located in an area of high concentration, as defined by the California Business and Professions Code 23958.4(a)(3) et seq., and as determined by the Department of Alcoholic Beverage Control.

The proposed project is located within both a high concentration area (according to ABC), and within 500 feet of an existing establishment therefore, the proposed new alcohol CUP is prohibited. 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, is denying the request to establish a Type 20 alcohol license.

The project is in compliance with the two other locational requirements/restrictions. The proposed project would not be within 500 feet of any of the identified sensitive uses and is not within a high crime area.

Letters of Opposition

On March 17, 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). Seven letters of opposition were received (attached as Exhibit H), and one individual came to express her concerns in person.

Many of the letters mentioned concerns related to increased traffic and noise. Impacts to water quality and air pollution were also mentioned in a letter questioning the decision to adopt a Negative Declaration for the project. Opposition also had concerns with crime rates in the area, over saturation of the mini-mart/convenience store market, and the number of establishments in the vicinity selling alcohol.

Staff received 132 post cards from neighbors stating opposition to the project. Of those responses, 108 individuals were in opposition because they do not believe another gas station is needed to service the needs of surrounding residents, 105 were concerned with the 24 hour nature of the proposed project, and 87 were concerned about the additional traffic generated by the proposed project.

- **Concern #1:**
Some of the neighbors were concerned with the increase of traffic and associated impacts to air quality.

Response:

A Traffic Impact Study was prepared for the project. This study was reviewed by the Public Works Department, Traffic Division, and it was determined that the additional amount of trips generated by the proposed project can be absorbed by the existing and planned infrastructure through the payment of impact fees for improvements. The Level of Service (LOS) for studied intersections will remain at a LOS D or better with existing conditions plus the project. Cumulative impacts of expected development by 2035 plus the project are still considered less than significant, even though the LOS drops to an E, due to the fact that the delay is less than a 5 second increase. The payment of traffic impact fees will be used by the City to maintain circulation infrastructure at acceptable levels into the future.

The San Joaquin Valley Air Pollution Control District has commented on the project and will require compliance with multiple District Rules and Regulations to protect the health of residents both near the project site and within the air basin at large. In their memo, (included in Exhibit L) the Air District states, "Project specific emissions of criteria pollutants are not expected to exceed District Significance thresholds of 10 tons/year NOX, 10 tons/year TOG, and 15 tons/year PM10. Therefore, the District concludes that project specific criteria pollutant emissions would have no significant adverse impact on air quality."

- **Concern #2:**
Some of the neighbors were concerned with the increase of noise generated by the project.

Response:

Although the project will create some additional activity in the area, the project will be

required to comply with all noise policies from the Fresno General Plan and the noise ordinance from the FMC. These policies are designed to protect nearby residents.

- **Concern #3:**
One letter expressed concern with environmental impacts such as water quality and light and glare.

Response:

All environmental impacts were evaluated in an Initial Study prepared for the project. The review determined the proposed project to be a subsequent project that is fully within the scope of the Master Environmental Impact Report (MEIR) SCH No. 2012111015 prepared for the Fresno General Plan and a Negative Declaration is recommended for adoption. The Initial Study found the proposed project will not generate additional significant effects to environmental resources. Water quality is maintained through the City's sewer and storm drain system. Light and glare are reduced to levels of less than significant by appropriately placing light sources in accordance with the FMC and including shields and non-reflective materials.

- **Concern #4:**
Some of the neighbors were concerned about crime rates in the area, over saturation of the mini-mart/convenience store market, and the number of establishments in the vicinity selling alcohol.

Response:

In this case, the Director has recommended an ABC license not be issued for this location because of its close proximity to another convenience store with a Type 20 license, and it is in an area of high concentration. The Police Department provided comments to reduce the number for calls of service to this location, with or without alcohol sales.

- **Concern #5:**
Some of the neighbors were concerned with the 24 hour nature of the proposed project.

Response:

The FMC does not regulate the hours of operation for commercial uses in this zone district. The project will be required to comply with all noise policies from the Fresno General Plan and the noise ordinance from the FMC which sets acceptable noise levels for uses dependent upon the land use and the time of day. The Police Department has place conditions of approval on the project to ensure public safety and to minimize any impact to the surrounding area. The conditions will help to maintain an environment that is least likely to generate criminal activity, public complaints, and police calls for service.

The applicant has objected to the denial of their request to establish a Type 20 license (specifically condition of approval #2). They have provided a letter in support of granting an exception from the location requirements of 15-2706 of the FMC (Exhibit I).

Land Use Plans and Policies

The Fresno General Plan designates the subject property for the Community Commercial planned

land use and provides objectives to guide in the development of this project. The Community Commercial 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-17-013 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.

Bullard Community Plan

Upon reviewing the policies contained in the Bullard 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.

District 2 Plan Implementation Committee

The applicant spoke to the District 2 Plan Implementation Committee at their regularly scheduled meeting on April 10, 2017. The committee voted to recommend approval of the proposed project at that time.

Notice of Planning Commission Hearing

This item was originally scheduled to be heard by the Planning Commission on July 5, 2017. Due to a noticing error, the item was continued to the July 19, 2017 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, to individuals who requested notification.

ENVIRONMENTAL FINDINGS

Environmental Assessment No. C-17-013 considered potential environmental impacts associated with the conditional use permit application request. The review determined the proposed project to be a subsequent project that is fully within the scope of the MEIR SCH No. 2012111015 prepared for the Fresno General Plan.

The subject property is proposed to be developed at intensity and scale that is permitted by the Community Commercial planned land use designation for the subject site. Thus, the development of the subject property in accordance with Conditional Use Permit Application No. C-17-013 will not facilitate an additional intensification of uses beyond those which already exist or would be allowed by the above-noted planned land use designation. Moreover, it is not expected that the future development will adversely impact existing city service systems or the traffic circulation system that serves the subject property. These infrastructure findings have been verified by the Public Works and Public Utilities Departments. It has been further determined that all applicable mitigation measures of the MEIR have been applied to the project necessary to assure that the project will not cause significant adverse cumulative impacts, growth inducing impacts, and irreversible significant effects beyond those identified by the MEIR as provided by California Environmental Quality Act (CEQA) Guidelines Section 15177(b)(3).

Based on the initial study prepared, the following findings are made: (1) The proposed project was identified as a Subsequent Project in the MEIR because its land use designation and permissible intensity and scale are allowed as set forth in the Fresno General Plan; (2) The proposed project will not generate additional significant effects not previously identified and analyzed by the MEIR for the reasons discussed within the environmental assessment for the subject project; and, (3) No new additional mitigation measures are required because the proposed project will not generate additional significant effects not previously identified and analyzed by the MEIR. Therefore, the Development and Resource Management Department proposes to adopt a Negative Declaration for this project (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 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 Bullard Community 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-17-013 is appropriate for the project site, subject to the conditions of approval.

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 - Exhibits (Site Plan, Elevations, Floor Plans)
Exhibit G - Operational Statement
Exhibit H - Letters of Opposition
Exhibit I - Letter from Applicant
Exhibit J - Environmental Assessment
Exhibit K - Fresno Municipal Code Findings
Exhibit L - Conditions of Approval dated July 19, 2017