



## Legislation Details (With Text)

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<b>On agenda:</b>	3/1/2018	<b>Final action:</b>		3/1/2018	
<b>Title:</b>	<p>HEARING to consider Conditional Use Permit Application No. C-16-033, located on the southwest corner of East Belmont and North Van Ness Avenues. (Council District 3)</p> <p>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.</p> <p>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 8-station Chevron fueling facility with a 2,160 square-foot canopy, subject to compliance with the Conditions of Approval dated December 20, 2017.</p> <p>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.</p>				
<b>Sponsors:</b>	Planning and Development Department				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. Exhibit_A -Aerial Photograph, 2. Exhibit_B-Conditions of Approval, 3. Exhibit_C-Operational Statement and Exhibits (Site Plan, Elevations, Floor Plan), 4. Exhibit_D-Zoning Map, 5. Exhibit_E-Land Use Map, 6. Exhibit_F-Proposed Access, 7. Exhibit_G-Locational Restrictions, 8. Exhibit_H-Planning Commission Notice and Comments, 9. Exhibit_I-Planning Commission Resolution_13515, 10. Exhibit_J_City Council Notice.pdf, 11. Exhibit_K-FMC_Findings, 12. Exhibit_L-Environmental Assessment, 13. Exhibit_M-City Council PPT				

Date	Ver.	Action By	Action	Result
3/1/2018	1	City Council	adopted as amended	Pass

## REPORT TO THE CITY COUNCIL

**March 1, 2018**

**FROM:** JENNIFER K. CLARK, Director  
Development and Resource Management Department

**THROUGH:** MIKE SANCHEZ, Assistant Director  
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**BY:** RICKY CAPERTON, Planner III  
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## **SUBJECT**

HEARING to consider Conditional Use Permit Application No. C-16-033, located on the southwest corner of East Belmont and North Van Ness Avenues. (Council District 3)

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 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.

## **RECOMMENDATIONS**

Staff recommends that the City Council take the following actions:

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 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.

## **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 East Belmont Avenue, 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 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 City Council is considering this project on appeal by Councilmember Oliver Baines regarding Condition of Approval #4 included as part of the Planning Commission's December 20, 2017

approval of Conditional Use Permit Application No. C-16-033.

Condition of Approval #4 in the Conditions of Approval dated December 20, 2017 (Exhibit B), requires that the applicant revise the site plan to remove one of the proposed driveways to achieve compliance with Section 15-2755-A(1)(a) of the Fresno Municipal Code (FMC), which states that there shall be no more than two vehicular access points to/from a public street.

## **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 8-station Chevron fueling facility with a 2,160 square-foot canopy (Exhibit C). 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 D and E, respectively. The project is considered a Service Station, and Convenience Retail with alcohol sales. Convenience Retail is a by-right use and Service Stations and Alcohol Sales are conditionally permitted uses in the CG zone district. The project is also subject to FMC Sections 15-2706, Alcohol Sales, and 15-2755, Service Stations.

## **Citywide Development Code**

### **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 East Belmont Avenue, one at North Van Ness Avenue, one at East Madison Avenue, as well as access provided via the alley along the western boundary of the property (Exhibit F).

The proposed number of driveways conflicts with Section 15-2755-A(1)(a), and would create a pedestrian safety hazard 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 states:

*“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.”*

At this intersection of the subject property, East Belmont Avenue is classified in the Fresno General Plan as a collector street, and North Van Ness is a Scenic Drive, both of which are considered “major” roadways. In order to comply with both Section 15-2755 of the FMC and General Plan Policy MT-2-e, City Staff, as a condition of approval, is requiring removal of one of the driveways. As conditioned, the project site would still include a total of three (3) access points, including two access

points to and from public streets, as well as the alley access.

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

- 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, and of the General Plan.

### **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 G. 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:

- 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.

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.

## **Other Agencies**

All comments received from the applicable agencies have been incorporated into the Conditions of Approval dated December 20, 2017 for Conditional Use Permit Application No. C-16-033.

## **LAND USE PLANS AND POLICIES**

### **Fresno General Plan**

The Fresno General Plan designates the subject property for the General Commercial planned land uses and provides objectives to guide in the development of this project. The General 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-16-033 meets the policies and objectives of the Fresno General Plan, with the exception of General Policy MT-2-e, discussed above regarding driveway and access consolidation. 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, the proposed project is consistent with respective general 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.

### **Public Notice and Input**

#### **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.

#### Fresno City Planning Commission Action

Conditional Use Permit Application No. C-16-033 was considered by the Fresno City Planning Commission at its meeting on December 20, 2017. In accordance with Section 15-5007 of the FMC, a notice of public hearing was mailed to surrounding property owners within 1,000 feet of the subject property on December 8, 2017. Ten public comment letters were received during the public noticing period, including nine that were generally not in favor of the project, specifically the alcohol sales, and one letter in support. Following the public noticing period leading up to the Planning Commission hearing, an additional 10 letters were received, generally in opposition to the proposed project, namely the sale of alcohol. The Planning Commission Public Hearing Notice and Comments are included as Exhibit H. During the December 20, 2017 Planning Commission hearing, six individuals from the public spoke in opposition of the project, and one in support.

After a complete hearing, the Commission was unable to find substantial evidence in the administrative record to determine any of the exceptions in accordance with FMC Section 15-2706-E-5 apply and was unable to make the required findings pursuant to FMC Section 15-5306.

The Planning Commission voted unanimously in favor of staff's recommendation which include approval of Conditional Use Permit Application No. C-16-033 for the Service Station and Convenience Store use, subject to Conditions of Approval dated December 20, 2017, which included conditions that prohibited the relocation of the existing billboard, and required a removal of one of the proposed driveways to a public street. The Commission also voted unanimously to deny Conditional Use Permit Application No. C-16-033 requesting to establish a Type 20 alcohol license for the Johnny Quik convenience store. Planning Commission Resolution No. 13515 is included as Exhibit I.

In accordance with Section 15-5017 of the FMC, Councilmember Baines appealed the decision specifically regarding Condition of Approval #4, relating to the proposed number of driveways.

#### Notice of City Council Hearing

In accordance with Section 15-5007 of the FMC, a notice of public hearing was mailed to surrounding property owners within 1,000 feet of the subject site on February 6, 2018 (Exhibit J).

### **FRESNO MUNICIPAL CODE FINDINGS**

The Conditional Use Permit 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 City Council decides to grant approval of the request for additional driveways, the Council must find that there is substantial evidence in the administrative record to make all of the findings mentioned above and amend them to include the additional driveways, or require the applicant to submit an application for a Variance per Article 55 of the FMC. If the applicant submits an application for a variance, the following findings would be required pursuant to FMC Section 15-5506:

- 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, and of the General Plan.

## 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 L).

## **LOCAL PREFERENCE**

Local preference was not considered because this 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 Development and Resource Management Department.

Attachments: Exhibit A - Aerial Photograph

Exhibit B - Conditions of Approval, dated December 20, 2017

Exhibit C - Operational Statement and Exhibits (Site Plan, Elevations, Floor Plan)

Exhibit D - Zoning Map

Exhibit E - Land Use Map

Exhibit F - Proposed Access

Exhibit G - Locational Restrictions

Exhibit H - Planning Commission Public Hearing Notice and Comments

Exhibit I - Planning Commission Resolution No. 13515

Exhibit J - City Council Public Hearing Notice

Exhibit K - FMC Findings

Exhibit L - Environmental Assessment

Exhibit M - City Council PowerPoint Presentation