



Legislation Details (With Text)

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Title: Consideration of Conditional Use Permit Application P18-01239, for the Speeds Mart located on the northeast corner of East Shields Avenue and North Cedar Avenue (Council District 4) - Development and Resource Management Department.

1. CONSIDER Environmental Assessment No. P18-01239: Finding of Categorical Exemption pursuant to Section 15301/Class 1 of the California Environmental Quality Act Guidelines for the above Conditional Use Permit Application No. P18-01239 dated December 31, 2018.

2. DENY the applicant's appeal and UPHOLD the action of the Development and Resource Management Department Director to deny Conditional Use Permit Application No. P18-01239, requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 License (Package Store - sale of beer and wine for consumption off the premises where sold) to buy and sell beer and wine for the Speeds Mart located on the subject property.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Exhibit A- Vicinity Map, 2. Exhibit B- 2015 Aerial Photograph of Site, 3. Exhibit C- Site Plan, Floor Plan, Existing Conditions, 4. Exhibit D- Comments from Responsible Agencies, 5. Exhibit E- Noticing Map, 6. Exhibit F- Environmental Assessment, 7. Exhibit G- Fresno Municipal Code Findings, 8. Exhibit H- Operational Statement, 9. Exhibit I- Applicant Appeal Letter dated November 12, 2018

Date	Ver.	Action By	Action	Result
1/16/2019	1	Planning Commission	adopted	Pass

REPORT TO THE PLANNING COMMISSION

January 16, 2019

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Development Services Division

THROUGH: BONIQUE EMERSON, Planning Manager
Development Services Division

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SUBJECT

Consideration of Conditional Use Permit Application P18-01239, for the Speeds Mart located on the northeast corner of East Shields Avenue and North Cedar Avenue (Council District 4) - Development and Resource Management Department.

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EXECUTIVE SUMMARY

Conditional Use Permit Application No. P18-01239 was filed by Imelda Golik, Architect and pertains to ±0.23 acres of property located on the northeast corner of East Shields Avenue and North Cedar Avenue. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 20 alcohol license (*Package Store - authorizes the sale of beer and wine for consumption off the premises where sold*) for the service station/mini-mart. The property is zoned CC/UGM (*Commercial-Community/Urban Growth Management*).

On October 31, 2018 Conditional Use Permit Application No. P18-01239 was denied based on market saturation and high crime in the area. The decision has been appealed by the applicant. Staff recommends upholding the denial based on substantial evidence detailed in this staff report that Findings a, b, and c contained in Section 15-5306 of the Fresno Municipal Code cannot be made and, therefore, the Conditional Use Permit cannot be approved.

BACKGROUND

Conditional Use Permit Application No. P18-01239 was filed by Imelda Golik, Architect and pertains to ±0.23 acres of property located on the northeast corner of East Shields Avenue and North Cedar Avenue. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 20 alcohol license (*Package Store - authorizes the sale of beer and wine for consumption off the premises where sold*) for the existing service station/mini-mart. Per Table 15-1202 of the Fresno Municipal Code, a Convenience Retail use is permitted by right in the Commercial-Community/*Urban Growth Management* zone district. Alcohol sales may be allowed subject to an approved Conditional Use Permit and the requirements of Section 15-2706 of the Fresno Municipal Code. The service station/mini-mart was previously permitted with a Conditional Use Permit.

Reasons for Denial

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. The proposed project is located in 3 of these areas as described below.

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.

The nearest schools include two high schools with each being located more than 1,000 feet from the subject site. The nearest park is located more than 3,500 feet from the site. There are no public or private State-licensed schools in the area, nor are there any alcohol or drug treatment facilities in the area.

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.

There are currently four establishments selling alcohol within a 1,000 foot radius of the subject site. Approval of this one would lead to five such establishments. Section 15-2706 states that the “establishment of an ABCUP shall not lead to groupings of more than four establishments within a 1,000 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).

All the reporting districts in the Northeast Policing District average 543 criminal incidents. This reporting district (zone 2060) indicates the number of criminal incidents exceed 999. According to ABC, Census Tract 52.02 is considered a high crime area with 1,265 crimes reported.

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.

Per ABC, 3 licenses are allowed and 3 currently exist. The addition of this license would exceed the number allowed.

As described above, the project is in compliance with one locational requirement/restriction. The proposed project would not be within 500 feet of any of the identified sensitive uses. However, since

the proposed project is located within: 1) an area that results in an excess grouping of alcoholic beverage establishments, 2) a high crime area (according to ABC), and 3) a high concentration area, the proposed alcohol sale use is prohibited.

Exceptions to Locational Restrictions

Section 15-2706 does allow exceptions to be made that would allow for the approval of a new alcohol establishment, even if the site does not meet the location restrictions described above. The exceptions to these requirements are as follows:

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 exception findings, and therefore, the Director is recommending denial of the authorization to sell alcohol based on the site not being in compliance with 3 of the 4 locational requirements as described above.

Police Department Review

The Northeast Policing District is not in opposition to the project as long as the applicant agrees with all the conditions noted in their letter dated October 30, 2018. The Northeast Policing District will require that the applicant comply with various conditions, including but not limited to the establishment of a Security Plan, the installation of video cameras, and that all employees at the store have ABC training.

The Police Department has indicated that there is both a high concentration of establishments selling alcohol in the area as well as a high concentration of crime in the area. The Police also noted that there were five calls for service at this location in 2018 with four out of the five calls being related to the homeless.

Fresno Unified School District (FUSD) Review

FUSD did not provide any comments regarding this application.

Other Agencies

All comments received from the applicable agencies will be incorporated into the conditions of approval for Conditional Use Permit Application No. P18-01239, in the event that the project is

approved by Planning Commission. See Exhibit D for all written agency comments received.

Public Notice and Input

Council District Plan Implementation Committee

The District 4 Plan Implementation Committee voted to recommend approval of the project on October 29, 2018.

No Letters of Opposition were received

On October 12, 2018, a Notice of Intent to Take Action was mailed to residents and businesses within 1,000 feet of the location. Staff received no letters of opposition.

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). No comments have been received to date.

LAND USE PLANS AND POLICIES

Fresno General Plan

The Fresno General Plan designates the subject property for the Commercial-Community planned land use and provides objectives to guide in the development of this project. The planned land use designation is to allow for a range of retail and service uses that are not appropriate in other areas because of high volumes of traffic and potential impacts on other uses. The Fresno General Plan provides goals, objectives, and policies to guide development. The following are applicable goals from the Fresno General Plan.

As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of liquor stores can have a negative effect on neighborhood health. In public meetings held during the development of the General Plan, the following concerns were discussed:

- **Market saturation.** Some neighborhoods feel they have an overabundance of establishments with off-sale licenses to sell alcohol.
- **Fear of crime.** Community members often see a strong relationship between establishments with off-sale licenses to sell liquor and rates of nuisances and crime.
- **Danger to schools.** Residents are concerned when alcohol sales are allowed too close to schools because of the impact on teenage drinking.

The proposed service station/mini-mart (previously approved under a separate application) promotes increased opportunity, economic development, and business to serve the neighborhood and it

preserves and protects resources within the City by not expanding development onto sites where infrastructure and services do not exist. However, the proposed alcohol related use is considered to be substantially adverse to the public health, safety, or general welfare of the community, and detrimental to surrounding properties or improvements. Therefore, it is the opinion of staff that the proposed project is not consistent with respective general plan objectives and policies and may conflict with applicable land use plans, policies or regulation of the City of Fresno.

McLane Community Plan

Upon reviewing the policies contained in the McLane 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.

Housing Element

This project is not on a site listed in the Housing Element Sites Inventory.

FRESNO MUNICIPAL CODE FINDINGS

Conditional Use Permit

The required findings under Section 15-5306, Conditional Use Permit, 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 FMC Section 15-5306 (a, b, & c) cannot be made. The Director is unable to make a finding allowing an exception to the new establishment locational restrictions, and the high crime nature of the area would be detrimental to the public health, safety, or welfare of persons and businesses located in the surrounding area. These findings are attached as Exhibit G.

If the Planning Commission decides to grant approval of the request to establish 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, as well an exception found in Section 15-2706-E-5 and amend them to include the sale of alcohol.

ENVIRONMENTAL FINDINGS

Section 15301 of the CEQA Guidelines addresses projects involving existing facilities. Projects that fall within Class 1 consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

The proposed structure is less than 10,000 square feet, does not use significant amounts of hazardous substances, all necessary public services and facilities are available and the surrounding 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 Fresno General Plan and the McLane 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. Upon consideration of this evaluation, it can be concluded that approval of the alcohol use proposed under Conditional Use Permit Application No. P18-01239 is not appropriate for the project site.

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 that the project can make the required findings of FMC Sections 15-2706-E-5 and 15-5306. Should the Planning Commission make the required findings, approval of the conditional use permit application shall be subject to the applicant's compliance with the attached Conditions of Approval from the Police Department and compliance with all operational requirements contained in Section 15-2706 of the Fresno Municipal Code.

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 Photography of the Site
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