



## Legislation Details (With Text)

**File #:** ID19-11058    **Version:** 1    **Name:**  
**Type:** Action Item    **Status:** Agenda Ready  
**File created:** 7/22/2019    **In control:** Planning Commission  
**On agenda:** 8/7/2019    **Final action:**  
**Title:** Consider the appeal of Conditional Use Permit Application Nos. P18-02233 and P19-00458, located at the northeast corner of South Orange and East North Avenues. (Council District 3) - Planning and Development Department.

Based upon the evaluation contained in this report, staff recommends that the Planning Commission take the following actions:

1. ADOPT Mitigated Negative Declaration prepared for Environmental Assessment No. P18-02233 dated May 22, 2019.
2. APPROVE Conditional Use Permit Application No. P18-02233 to authorize the construction, in two phases:  
Phase 1
  - 1) Development of a 3,062-square foot convenience retail and service station with 12 fueling positions.
  - 2) Development of a 2,227-square foot restaurant without alcohol sales, with a drive-through facility.Phase 2
  - 1) Development of a 5,000 square-foot retail building with one drive-through facility.
  - 2) Development of a 3,000 square foot fast food building with one drive-through facility.
3. DENY the appeal and UPHOLD the Director's Approval of Conditional Use Permit Application No. P19-00458 to authorize a 3,062 square foot service station to establish a State of California Alcohol and Beverage Control Type 21 alcohol license, subject to compliance with the Conditions of Approval dated August 7, 2019.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A Vicinity Map, 2. Exhibit B Planned Land Use and Zoning Map, 3. Exhibit C Noticing Map, 4. Exhibit D - Project Information Tables, 5. Exhibit E Operational Statement, 6. Exhibit F Site Plan, 7. Exhibit G Floor Plan, 8. Exhibit H Elevations, 9. Exhibit I Conditions of Approval dated August 7, 2019, 10. Exhibit J Fresno Municipal Code Findings, 11. Exhibit K Environmental Assessment, 12. Exhibit L Appeal Letter dated June 13, 2019

Date	Ver.	Action By	Action	Result
8/7/2019	1	Planning Commission	continued	Pass

## REPORT TO THE PLANNING COMMISSION

**AUGUST 7, 2019**

**FROM:** MIKE SANCHEZ, Assistant Director

Development Services Division

**THROUGH:** BONIQUE EMERSON, Planning Manager  
Development Services Division

MARGO LERWILL, Supervising Planner  
Development Services Division

**BY:** JARRED OLSEN, Planner III  
Development Services Division

## **SUBJECT**

Consider the appeal of Conditional Use Permit Application Nos. P18-02233 and P19-00458, located at the northeast corner of South Orange and East North Avenues. (Council District 3) - Planning and Development Department.

Based upon the evaluation contained in this report, staff recommends that the Planning Commission take the following actions:

1. **ADOPT** Mitigated Negative Declaration prepared for Environmental Assessment No. P18-02233 dated May 22, 2019.
2. **APPROVE** Conditional Use Permit Application No. P18-02233 to authorize the construction, in two phases:
  - Phase 1
    - 1) Development of a 3,062-square foot convenience retail and service station with 12 fueling positions.
    - 2) Development of a 2,227-square foot restaurant without alcohol sales, with a drive-through facility.
  - Phase 2
    - 1) Development of a 5,000 square-foot retail building with one drive-through facility.
    - 2) Development of a 3,000 square foot fast food building with one drive-through facility.
3. **DENY** the appeal and **UPHOLD** the Director's Approval of Conditional Use Permit Application No. P19-00458 to authorize a 3,062 square foot service station to establish a State of California Alcohol and Beverage Control Type 21 alcohol license, subject to compliance with the Conditions of Approval dated August 7, 2019.

## **EXECUTIVE SUMMARY**

Conditional Use Permit Application Nos. P18-02233 and P19-00458 were filed by George Grim with Centerline Design, LLC on behalf of Neil Angelillo of Kettleman 99 LP, pertaining to a ±3.92 acre parcel of property located at 2999 South Orange Avenue, located at the northeast corner of South Orange and East North Avenues. The applicant requests authorization to develop the site in two phases. In the first phase, the development is proposed to be composed of a 3,062 square foot convenience retail and service station with 12 fueling positions and a 2,227 square foot restaurant

without alcohol sales, with a drive-through facility. The second phase will be composed of a 5,000 square-foot retail building with one drive-through facility, and a 3,000 square foot fast food building with one drive-through facility. Additionally, the applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 alcohol license (*Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold.*) for the 3,062-square foot convenience retail/service station.

The Director approved the Conditional Use Permits on May 31, 2019. One appeal was received concerning Conditional Use Permit Application No. P19-00458, to establish a State of California Alcoholic Beverage Control Type 21 alcohol license.

## BACKGROUND

**Conditional Use Permit Application No. P18-02233** requests authorization to construct the following, in two phases:

- Phase 1
  - Development of a 3,062-square foot convenience retail and service station with 12 fueling positions.
  - Development of a 2,227-square foot restaurant without alcohol sales, with a drive-through facility.
- Phase 2
  - Development of a 5,000 square-foot retail building with one drive-through facility.
  - Development of a 3,000 square foot fast food building with one drive-through facility.

Per Table 15-1302, Convenience Retail, Service Stations, and Restaurants without Alcohol use are permitted by right in the Heavy Industrial zone district. Drive-Through Facilities may be allowed subject to an approved Conditional Use Permit and the requirements of Section 15-2728.

**Conditional Use Permit Application No. P19-00458** requested authorization to establish a Type 21 alcohol license (*Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold.*) for the convenience retail/service station mentioned above. Alcohol sales may be allowed subject to an approved Conditional Use Permit and the requirements of Section 15-2706 of the Fresno Municipal Code.

### Police Department Review

The Police Department has no concerns regarding the proposed project.

### Fresno Unified School District (FUSD) Review

FUSD provided comments indicating the district did not support this application, due to the proposed sale of alcohol.

### Other Agencies

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application Nos. P18-02233 and P19-00458. See Exhibit H for all written agency comments received.

Citywide Development Code

*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.

Since the proposed project is located within a high concentration area, the proposed alcohol sale use is prohibited, unless one of the exceptions below are made:

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 project is located in Census Tract 15, which is approximately 14.7 square miles large and contains five (5) active licenses, where only two (2) are allowed. The City of Fresno's Sphere of

Influence within this Census Tract is approximately 2.5 square miles, or roughly 17 percent of the entire Census Tract. Most Census Tracts in Fresno are only one (1) square mile large. Except for one license approximately 1.4 miles away, the off-sale licenses are located in the Census Designated Place Malaga, located outside the City's Sphere of Influence. The City of Fresno has no jurisdiction outside its Sphere of Influence.

The project's proximity to the following uses is as follows (measured in miles, as the crow flies):

School	Distance		Park	Distance
Orange Center Elementary	1.1		Mary Ella Brown Park	1.8
West Fresno Elementary	1.6			
Calwa Elementary	1.1		Residence	Distance
Kirk Elementary	1.9		Planned Residential	1.0
Aynesworth Elementary	1.9		Legal Non-Conforming	0.8

Due to the project's proximity to State Route 99, coincidentally also the outskirts of the Industrial Triangle, the placement of restaurants, convenience stores, gasoline-dispensing service stations provides ancillary services to area employees and State Route 99 travelers, and protects the likely future, ideal location of heavy industrial planned land uses of the Triangle. Given the distance from similar and sensitive uses, the project's proximity to a state corridor and its location on the periphery of the Industrial Triangle, 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. To further bolster this finding, the Conditional Use Permit has been conditioned to transfer two (2) alcohol licenses in high concentration areas, and retire one of those, resulting in a net loss of one off-sale alcohol license within Fresno city limits. Because the majority of the concentration is found outside its Sphere, it is beyond the City's control to prevent another license from being issued outside its sphere, and therefore recommends that the transference occurs within Fresno city limits.

### *Service Stations and Drive Through Facilities*

Article 27 (Standards for Specific Uses and Activities), Sections 15-2728 (Drive-Through Facilities) and 15-2755 (Service Stations) establishes specific requirements for these types of uses. The proposed project complies with all applicable standards, subject to the Conditions of Approval found in Exhibit I.

Based upon the above analysis, staff recommends that the staff concludes that the required findings of Sections 15-2706 and 15-5306 of the FMC can be made. These findings are attached as Exhibit J.

## **LAND USE PLANS AND POLICIES**

### **Fresno General Plan**

The Fresno General Plan designates the subject site for Heavy Industrial planned land uses and provides objectives to guide in the development of these projects. Conditional Use Permit Application Nos. P18-02233 and P19-00458 meets all policies and objectives of the Fresno General Plan. The following are excerpts of such objectives.

- **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.
- **Policy LU-2-a Infill Development and Redevelopment.** Promote development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available by considering the establishment and implementation of supportive regulations and programs.
- **Policy LU-6-f Auto-Oriented Commercial Uses.** Direct highway-oriented and auto-serving commercial uses to locations that are compatible with the Urban Form policies of the General Plan. Ensure adequate buffering measures for adjacent residential uses, noise, glare, odors, and dust.
- **Policy MT-2-i Transportation Impact Studies.** Require a Transportation Impact Study (currently named Traffic Impact Study) to assess the impacts of new development projects on existing and planned streets for projects meeting one or more of the following criteria, unless it is determined by the City Traffic Engineer that the project site and surrounding area already has appropriate multi-modal infrastructure improvements.

### **Roosevelt Community Plan and North Avenue Industrial Triangle Specific Plan**

Upon reviewing the policies contained in the Roosevelt Community Plan and North Avenue Industrial Triangle Specific 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.

## **ENVIRONMENTAL FINDINGS**

An environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines. This process included the distribution of requests for comment from other responsible or affected agencies and interested organizations.

Preparation of the environmental assessment necessitated a thorough review of the proposed project and relevant environmental issues and considered previously prepared environmental and technical studies pertinent to the area, including the Fresno General Plan Master Environmental Impact Report SCH No. 2012111015 (MEIR).

An initial study of the above-described project had been conducted, and it has been determined to be a subsequent project that is not fully within the scope of the MEIR prepared for the Fresno General Plan as provided by CEQA, as codified in the Public Resources Code (PRC) Section 21157.1(d) and the CEQA Guidelines Section 15177(c). Therefore, DARM proposes to adopt a Mitigated Negative Declaration for this project.

It has been further determined that all applicable mitigation measures identified within the Fresno General Plan MEIR have been applied to the project, together with specific mitigation measures 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 CEQA Section 15178(a). In addition, pursuant to PRC Section 21157.6(b)(1), staff has determined

that no substantial changes have occurred with respect to the circumstances under which the MEIR was certified and that no new information, which was not known and could not have been known at the time that the MEIR was certified as complete, has become available. Therefore, it has been determined based upon the evidence in the record that the project will not have significant impact on the environment and that the filing of a mitigated negative declaration is appropriate in accordance with the provisions of CEQA Section 21157.5(a)(2) and CEQA Guidelines Section 15178(b)(1) and (2).

Based upon the attached environmental assessment and with the project specific mitigation imposed, staff has determined that there is no substantial evidence in the record that the project may have a significant direct, indirect, or cumulative effect on the environment and has prepared a mitigated negative declaration for this project. A public notice of the attached mitigated negative declaration finding for Environmental Assessment No. P18-02233 was published on April 26, 2019. The required 30-day review period expired on May 28, 2019.

### **ANALYSIS OF THE APPEAL LETTER**

There was one appeal letter received in response to the Notice of Action issued for the project. The appeal letter was delivered on behalf of Councilmember Arias.

#### **Below is an analysis of the issue raised in the appeal letter dated June 3, 2019 (Exhibit L):**

Councilmember Arias requested that the following conditions be placed on the Conditional Use Permit pertaining to the sale of alcohol for off-site consumption:

1. An off-sale establishment at the southeast corner of Kings Canyon and Cedar be downgraded from a Type 21 to Type 20 State of California Alcohol Beverage Control license.
2. An off-sale establishment at the southeast corner of McKinley and Palm be remodeled.

#### **Response:**

The applicant did not agree to the proposed conditions. The Development Code, in approving a Conditional Use Permit, allows the Review Authority to impose reasonable conditions or restrictions deemed necessary to, among other things, achieve the Required Findings for a Conditional Use Permit. Those findings 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;
- B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;
- 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;

- 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.

The original conditions that were imposed upon the approval of the Conditional Use Permit were found by the Director to be reasonable to achieve the above Finding C. These findings are supported in detail in Exhibit J. Staff could not come to the conclusion that inclusion of the requested conditions by Councilmember Arias, which include a condition to be imposed upon a different location, is reasonably related to the impacts caused by the approval of this Conditional Use Permit.

## CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the North Avenue Industrial Triangle Specific Plan, Roosevelt Community Plan, and Fresno General Plan; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment. Upon consideration of this evaluation, it can be concluded that Conditional Use Permit Application Nos. P18-02233 and P19-00458 are appropriate for the subject site.

Action by the Planning Commission regarding the Conditional Use Permit applications and associated environmental assessment is final unless appealed to the City Council in accordance with Section 15-5017 of the FMC.

### Attachments:

- Exhibit A - Vicinity Map
- Exhibit B - Planned Land Use and Zoning Map
- Exhibit C - Noticing Map
- Exhibit D - Project Information Tables
- Exhibit E - Operational Statement
- Exhibit F - Site Plan
- Exhibit G - Floor Plan
- Exhibit H - Elevations
- Exhibit I - Conditions of Approval dated August 7, 2019
- Exhibit J - Fresno Municipal Code Findings
- Exhibit K - Environmental Assessment
- Exhibit L - Appeal Letter dated June 3, 2019