



## Legislation Details (With Text)

**File #:** ID19-11060    **Version:** 1    **Name:**  
**Type:** Action Item    **Status:** Agenda Ready  
**File created:** 7/22/2019    **In control:** Planning Commission  
**On agenda:** 10/2/2019    **Final action:** 10/2/2019  
**Title:** Consider the appeal of Development Permit Application No. P19-00359 and Variance Application No. P19-02282, located on the west side of North Howard Street between Herndon and Alluvial Avenues. (Council District 6) - Planning and Development Department.

1. ADOPT Environmental Assessment No. P19-00359 / P19-02282 dated August 7, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 3 Categorical Exemption; and,
2. DENY the applicant's appeal and UPHOLD the action of the Planning and Development Department Director to:
  - a. APPROVE Development Permit Application No. P19-00359, which proposed to develop a 14-foot high by 48-foot wide digital LED, double-sided billboard; and,
  - b. DENY Variance Application No. P19-02282, requesting to vary height standards to allow for an 86-foot tall, 14-foot high by 48-foot wide double-sided digital LED billboard.

**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 Conditions of Zoning, 6. Exhibit F – Site Plan, 7. Exhibit G – Photosimulations, 8. Exhibit H - Applicant-Supplied Findings, 9. Exhibit I - Conditions of Approval dated August 7, 2019, 10. Exhibit J - Development Code, Variance, and General Plan Consistency Findings, 11. Exhibit K - Environmental Assessment, 12. Exhibit L - Appeal Letters, 13. Late Submission - Additions to Administrative Record

Date	Ver.	Action By	Action	Result
10/2/2019	1	Planning Commission	approved as amended	Fail
8/7/2019	1	Planning Commission	continued as noted	Pass

## REPORT TO THE PLANNING COMMISSION

**OCTOBER 2, 2019**

**FROM:** MIKE SANCHEZ, Assistant Director  
Development Services Division

**THROUGH:** MARGO LERWILL, Supervising Planner  
Development Services Division

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

## **SUBJECT**

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## **EXECUTIVE SUMMARY**

Mark Duran of OUTFRONT Media, on behalf of the City of Fresno, has applied for Development Permit Application No. P19-00359 and Variance Application No. P19-02282, pertaining to a ±0.33 acre parcel of property located at 7221 North Howard Street M/C, located on the west side of North Howard Street between Herndon and Alluvial Avenues. The applicant requests to vary height standards to allow for the development of an 86-foot tall, 14-foot high by 48-foot wide double-sided digital LED billboard.

Pursuant to Section 15-2605-B of the Fresno Municipal Code (FMC), new Outdoor Advertising Displays (billboards) which replace legal, existing billboards may be located on City-owned property and may feature electronic copy, at the discretion of the City Manager.

On May 31, 2019, the Director approved the Development Permit, but denied the Variance based on the inability to make all of the required Variance findings for approval. The denial was appealed by the applicant on June 17, 2019, within the prescribed appeal deadline.

## **BACKGROUND**

Pursuant to Section 15-2605-B of the Fresno Municipal Code (FMC), new Outdoor Advertising Displays (billboards) which replace legal, existing billboards may be located on City-owned property and may feature electronic copy, at the discretion of the City Manager.

There is a Condition of Zoning on the property, placed there by Rezone Application No. R-7143, that limits the types of uses allowed on the property. These Conditions of Zoning can be found in Exhibit E. Staff's position is that due to the allowance of billboards on City-owned property, the use needs be appropriate for a "business park location."

The development of a billboard further implements an Agreement that was passed by City Council on

August 25, 2016, to remove a schedule of static billboards and replace them with digital LED billboards on City-owned property, at an approximately 10 to 1 basis (1 new billboard for every 10 removed).

The applicant requests a Variance to allow for an 86-foot high billboard due in part to the existing surrounding vegetation and an on-site wireless telecommunication tower, both of which partially obstruct the billboard in the applicant-provided photosimulation (see Exhibit G). FMC Section 15-1303 allows for a maximum height of 60 feet in the O/UGM/cz (*Office/Urban Growth Management/conditions of zoning*) zone district.

The staff recommendation is to deny the applicant's request for the variance to the maximum structure height. Staff's recommended conclusion is that the findings to justify the Variance fail to satisfy the general requirement that the site or the circumstances regarding its use are unique to an extent that the Development Code could not have foreseen its necessity, and therefore compel the City to grant the Variance.

Additionally, it is staff's conclusion that if the City were to grant the Variance, there would be adverse impacts to the immediate area in the form of general blight resulting from the excessive height of the billboard structure. Should the Variance be granted, future billboard projects in the area would reasonably and consequently expect similar concessions.

The City appreciates the applicants' concern for revenue generation, and shares its desire to remain a viable partner. Unfortunately, the requested Variance carries too many negative impacts to warrant its recommendation for approval.

### Other Agencies

All comments received from the applicable agencies have been incorporated into the conditions of approval for Development Permit Application No. P19-00359. See Exhibit I for all written agency comments received.

## **Public Notice and Input**

### Council District Plan Implementation Committee

The District 6 Project Review Committee recommended to approve the Variance 4-0 (2 absent) on May 20, 2019.

### 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 C). No comments have been received to date.

## FRESNO MUNICIPAL CODE FINDINGS

Based upon analysis of the applications, staff concludes that the required Development Permit findings of Section 15-5206 of the FMC can be made (see Exhibit J), however staff could not make all of the required findings for the Variance, which are detailed as follows:

*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;*

As the applicant-provided photosimulations show, the digital billboard is visible at a Code-compliant height of 60 feet from the southbound travel direction of State Route 41. The applicant states that the billboard cannot be marketable due to the location of existing cell towers on the same property (“a jungle of infrastructure”). Staff’s analysis shows that the cell tower pole obstructs at most two (2) percent of the billboard. Furthermore, the applicant’s own Media Kit for Fresno shows existing billboards blocked to the same degree by streetlights and traffic signals. Common sense logic states that if bisected billboards are not marketable, they would not be placed in the applicant’s own Media Kit, let alone exist. Furthermore, CalTrans-owned trees exist not only adjacent to the subject property, but in fact all area Office-zoned properties abutting State Route 41. There are procedures available to the applicant to have CalTrans trees trimmed. Adding to this, the City’s zoning ordinance in the past and currently requires parking lot trees, street trees, and lot coverage trees.

There are no exceptional and extraordinary circumstances and conditions applicable to the property that would justify the allowance of a 43% height increase beyond what is allowed. Therefore, the granting of the Variance would constitute a granting of a special privilege, inconsistent with the limitation on the property in the vicinity and identical zoning classifications, this finding cannot be made.

*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;*

The applicant states that the presence of existing wireless telecommunication facilities found on the same property constitutes a physical hardship, due to the tower pole obstructing the messaging that would be found on a billboard of Code-compliant height.

Because these structures are located on the same site, they are therefore are the actions of a predecessor-in-interest. Because the physical hardship is of the action of a predecessor-in-interest, this finding cannot be made.

*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*

The digital billboard will be required to comply with the California Building Code, all CalTrans requirements, and has been found to be consistent with the Fresno County Airport Land Use Compatibility Plan, subject to approval by the FAA, and up to a height of 86 feet.

*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.*

The approval of the Variance would be inconsistent with the Development Code's Purpose, FMC Section 15-102-J, "To safeguard and enhance the appearance of the city." The approval of the Variance would create an overheight billboard which would not safeguard nor enhance the appearance of the city, as it would overwhelm its surroundings by its large scale and form. The approval of a Variance due to existing light poles and trees that could be trimmed would create precedence, thereby preventing the Development Code from safeguarding the appearance of the City. For these reasons, this finding cannot be made.

Based on the analysis above, staff concludes that three of the four the required findings of Fresno Municipal Code Section 15-5506 cannot be made for the proposed Variance application. Therefore, the Variance cannot be granted.

## **ANALYSIS OF THE APPEAL LETTER**

**Below is an analysis of the issue raised in the appeal letters, found in Exhibit L:**

### Manchester Sign

The applicant refers in their letter several times to the 85-foot freestanding sign located on Manchester Center property, where off-premise content has been displayed. The applicant states that the approval of this sign establishes precedence.

### Physical Hardship (Visual Clutter)

The applicant states that due to the existing towers on site, and the surrounding vegetation off-site, that these represent a physical hardship to the development of a billboard, resulting in a reduction of potential revenue for the billboard.

### Monetary Hardship

Additionally, the applicant provides a pro forma of the revenue and profit-sharing agreement the applicant has with the City. The applicant states that due to the visual obstructions, a code-compliant

billboard would have its revenue cut in half.

**Response:**

Manchester Center Sign

This sign is located several miles away, and is in a CR (Commercial - Regional) zone district. Therefore it is not property 1) in the vicinity and 2) with identical zone classifications. Like previously stated, Manchester Center is surrounded by street trees, parking lot trees, freeway trees, and lot coverage trees.

Furthermore, the sign was approved for on-premise commercial messages only and the mechanisms that allowed its height are stated in the Development Code (the commercial floor area the sign covers is over 300,000 square feet, which allows it up to 100 feet in height when adjacent to a freeway). Additionally, the Master Sign Program that allowed the sign contains not just the digital sign itself, but a multitude of signage and higher quality signage regulations that the development subjects itself to in order to obtain the allowances. No such mechanisms are in place for off-premise commercial messages. Manchester Center is also in an area with increased focus on redevelopment, with Transit-Oriented Development Density Bonuses, a Transit Hub serving the entire city, as well as 75-foot height maximums.

Based on the above information, Variance Finding A still cannot be made.

Physical Hardship (Visual Clutter)

The applicant requests a Variance due to in part to the visual clutter on site that would obstruct the sign. The wireless telecommunication towers were erected by predecessors-in-interest, T-Mobile and the City of Fresno.

Staff does not concur that a height increase is the optimal solution to providing visibility to the sign. As the photosimulations depict, there appears to be space between obstructions (trees and telecommunication towers) that the billboard could be situated between. Similar, if the billboard was installed, and the trees continued to grow, its negative impacts (a highly visible, generally overbearing structure) would still be present. In addition, if the wireless tower were to be removed when it was no longer necessary by the lessee, or the trees trimmed, topped, or irreparably damaged, the overheight billboard would still remain as an extraordinary structure for a problem that has already subsided on its own.

Because the Variance Finding B does not allow the variation of development standards due to the action/actions of a predecessor or predecessor-in-interest, the Variance cannot be approved.

Monetary Hardship

The applicant presents several arguments that they do not operate profitable billboards with similar obstructions, and that the denial of the Variance would reduce revenue by fifty percent, supported by an applicant-supplied pro forma. Monetary hardship is not a criterion to obtaining a Variance.

**CONCLUSION**

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Woodward Park 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 Development Permit Application No. P19-00359 is appropriate for the subject site, but Variance Application No. P19-02282 is not appropriate for the subject site.

Action by the Planning Commission regarding the Development Permit and Variance 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
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