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Title: Actions pertaining to appeal from the Fresno City Planning Commission's decision concerning 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)

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. 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,
3. Take one of the following actions:
 - a. APPROVE 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.
 - 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: Planning and Development Department

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 – Fresno Municipal Code Findings, 11. Exhibit K – Environmental Assessment, 12. Exhibit L – Appeal Letter from Applicant, dated June 3, 2019, 13. Exhibit M – Appeal Letter from Councilmember Garry Bredefeld, dated October 10, 2019, 14. Additional Information - Billboard PowerPoint.pdf, 15. Additional Information - PowerPoint Presentation.pdf

Date	Ver.	Action By	Action	Result
12/5/2019	1	City Council	adopted	Pass

REPORT TO THE CITY COUNCIL

December 5, 2019

FROM: JENNIFER K. CLARK, AICP, Director
Planning and Development Department

THROUGH: MIKE SANCHEZ, AICP, Assistant Director
Development Services Division

MARGO LERWILL, Supervising Planner

Development Services Division

BY: RODNEY L. HORTON, MPA, Planner III
Development Services Division

SUBJECT

Actions pertaining to appeal from the Fresno City Planning Commission's decision concerning 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)

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EXECUTIVE SUMMARY

Mark Duran of OUTFRONT Media (the Applicant), on behalf of the City of Fresno (the City), 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 feature electronic copy, at the discretion of the City Manager. The height of any such billboard may not exceed sixty (60) feet. (Fresno Municipal Code § 1303-2.)

The District 6 Project Review Committee recommended to approve the Variance 4-0 (2 absent) on May 20, 2019. On May 31, 2019, the Director approved the Development Permit, but denied the Variance. The Director denied the Variance Application because the required findings in Section 15-5506, as discussed further, could not be made. The Director's denial was appealed by the applicant on June 17, 2019, within the prescribed appeal deadline. On October 2, 2019, the Planning Commission approved the Development Permit and the Variance Application. On October 10, 2019, Councilmember Bredefeld appealed the Planning Commission's decision to the City Council.

BACKGROUND

Development Permit Application. The Applicant filed Development Permit Application No. P19-00359 with the City to construct one back-to-back LED display at a proposed height of 86 feet (top of face) digital billboard with a 14-foot by 48-foot face. The proposed digital billboard is to be located on a ±0.33 acres parcel located east of Highway 41 at 7221 North Howard Street M/C, on the west side of North Howard Street between Herndon and Alluvial Avenues, and situated within the Office zone

district. The proposed location is within a City-owned pump station site.

The Conditions of Zoning on the property (applicable pursuant to Rezone Application No. R-7143 and attached hereto as Exhibit E) allow it to be used as a “business park location.” The placement of a billboard thereon comports with this use.

Applicant’s proposed billboard implements an Agreement between the City and Applicant (passed by City Council on August 25, 2016), pursuant to which Applicant shall 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). 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.

Section 1303-2 of the FMC, limited the height of the proposed project to sixty (60) feet.

Variance Application. The Applicant has also filed Variance Application No. P19-02282, requesting that it be allowed to install a billboard at a height of 86 feet, 26 feet beyond the 60-foot height allowed under the FMC.

Legal Requirements for Variance Approval. Section 15-6802 defines a Variance as a discretionary grant of permission to depart from the specific requirements of the Development Code that is warranted when, due to special circumstances regarding the physical characteristics of the property, the strict application of standards would deprive the property of privileges available to other properties located in the same zoning district. Section 15-5506 provides the required findings that must be met in order for a Reviewing Authority to be able to approve the Variance. The findings that are required to be met are 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;
- 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.

Variance Application Factual Background.

The Applicant filed Variance Application No. P19-02282 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).

Director Determination. On May 31, 2019, the Planning and Development Department Director denied the Variance Application because staff could not meet three of the four findings required by Section 15-5506. The Director determined that only Finding C (no detrimental impact to others) could be made, but that Finds A (extraordinary circumstances), B (necessary to prevent physical hardship), and D (consistent with purposes of applicable plans and FMC) could not be met.

Appeal to Planning Commission. The applicant filed a timely appeal to the Planning Commission on June 17, 2019 (Exhibit L) seeking to overturn the denial of the Planning and Development Department Director. The Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property (Exhibit C). No comments were received at that time.

At the October 2, 2019 Planning Commission meeting, no members from the public spoke in favor of the appeal. Three members from the public spoke in opposition to the appeal. Commissioner Hardie made a motion, seconded by Commissioner Vang, to adopt Environmental Assessment No. P19-00359/P19-02282, approve Development Permit Application No. P19-00359, and deny the applicant's appeal and uphold the action of the Planning and Development Department Director. The motion failed for lack of a majority, with Commissioners Sodhi-Layne, Bray, and Torossian voting no.

An alternative motion was made by Commissioner Torossian to grant the Variance Application in accordance with Section 15-5506 of the FMC. The alternative motion was approved on a 3-2 vote with Commissioners Sodhi-Layne, Bray and Torossian voting in favor of the alternative motion, and Commissioners Hardie and Vang against the alternative motion. The findings by the Planning Commission to approve the Variance Application are as follows:

- A. The existing 72-foot and 112-foot tall wireless telecommunication facilities on the subject property constitute an exceptional or extraordinary circumstances 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 Variance is necessary to prevent a physical hardship, the existing 72-foot and 112-foot tall wireless telecommunication facilities on the subject property, which are not of the applicant's own actions or the actions of a predecessor in interest;
- C. 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; and
- D. The granting of the Variance safeguards and enhances the appearance of the city, and thus

consistent with the general purposes and objectives of this Code, the Woodward Park Community Plan, and the General Plan.

Appeal to City Council. FMC Section 15-5017 provides that decisions of the Planning Commission may be appealed to the City Council by the Councilmember of the Council District in which the project is located or by the Mayor. Appeals are required to be in writing to the Planning and Development Director. On October 10, 2019, Councilmember Bredefeld filed a timely appeal of the Planning Commission's decision to grant the Applicant's Variance Application permitting the installation of a billboard with a height in excess of what is permitted under the Development Code.

Councilmember Bredefeld's appeal letter provided that the FMC limits the height of a billboard to 60 feet and that a variance application may only be granted if all of the criteria prescribed in Section 15-5506 is met. The appeal letter goes on to state that the required findings cannot be met, consistent with staff's original recommendation, thereby the Variance Application must be denied.

LAND USE PLANS AND POLICIES

Fresno General Plan and Woodward Park Community Plan. The Fresno General Plan designates the subject site for Office planned land uses and provides objectives to guide in the development of these projects. With the matter of the Variance Application aside, the approval of Development Permit Application No. P19-00359 does not conflict with policies and objectives of the Fresno General Plan and Woodward Park Community Plan. The following are excerpts of policies Development Permit Application No. P19-00359 is consistent with:

- Policy D-1-j Lighting Standards. Update lighting standards to reflect best practices and protect adjoining uses from glare and spillover light.

The project is conditioned to comply with existing signage light standards.

- Policy D-2-c Highway Beautification. Work with Caltrans, the Fresno Council of Governments, Tree Fresno, neighboring jurisdictions, and other organizations to obtain funding for highway beautification programs.

The project is required to take down, at minimum, one existing, legal billboard as required pursuant to FMC Section 15-2605-B.

- Policy NS-5-b Airport Safety Hazards. Ensure that new development, including public infrastructure projects, does not create safety hazards such as glare from direct or reflective sources, smoke, electrical interference, hazardous chemicals, fuel storage, or from wildlife, in violation of adopted safety standards.

The project has received conditional approval from the Fresno County Airport Land Use Commission, pending a renewed Finding of No Hazard from the Federal Aviation Administration.

The project will utilize vacant land where the necessary infrastructure and facilities are available to serve the property. The proposed project is consistent with many of the goals and policies of the

Fresno General Plan. The proposed project promotes diverse land uses and preserves and protects resources by developing within the city limits.

FRESNO MUNICIPAL CODE FINDINGS

Development Permit. Based upon analysis of the applications, staff concludes that the required Development Permit findings of Section 15-5206 of the FMC can be made. These findings are attached as Exhibit J.

Variance Application. Staff could not make all of the required findings for the Variance Application, as stated in Section 15-5506 of the FMC. Should Council wish to approve Variance Application No. P19-02282, Council must make the required findings in accordance with FMC Section 15-5506.

ENVIRONMENTAL FINDINGS

The California Environmental Quality Act (CEQA) permits a public agency to determine whether a particular project is exempt from CEQA. Staff has performed Environmental Assessment No. P19-00359/P19-02282 for this project and has determined that it falls within the Categorical Exemption set forth in section 15303 (Class 3/New Construction of Small Structures) of the CEQA guidelines which exempts construction of limited numbers of new, small facilities or structures.

The project proposes a small structure, whether the height of the billboard is 60 or 86 feet. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project. Furthermore, the proposed project is not expected to have a significant effect on the environment. Accordingly, a categorical exemption, as noted above, has been prepared for the project.

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. Should Council wish to approve Variance Application No. P19-02282, Council must make the required findings in accordance with FMC Section 15-5506.

Attachments:

- Exhibit A - Vicinity Map
- Exhibit B - Planned Land Use and Zoning Map
- Exhibit C - Noticing Map
- Exhibit D - Project Information Tables
- Exhibit E - Conditions of Zoning
- Exhibit F - Site Plan

Exhibit G - Photosimulations

Exhibit H - Applicant-Supplied Findings

Exhibit I - Conditions of Approval dated August 7, 2019

Exhibit J - Fresno Municipal Code Findings

Exhibit K - Environmental Assessment

Exhibit L - Appeal Letter from Applicant, dated June 3, 2019

Exhibit M - Appeal Letter from Councilmember Garry Bredefeld, dated October 10, 2019