



Legislation Details (With Text)

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On agenda:	11/5/2020	Final action:		11/5/2020	
Title:	CONTINUED Consideration of Conditional Use Permit Application No. P20-00545, located on the northwest corner of North Cedar Avenue and East Tulare Street (Council District 7) - Planning and Development Department.				
	<p>1. ADOPT Environmental Assessment No. P20-00545 dated July 23, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a CEQA Guidelines 15332/Class 32 Categorical Exemption (In-fill development).</p> <p>2. ADOPT the finding pursuant to Government Code Section 65863(b)(2) that there is substantial evidence in the record that remaining sites identified in the Housing Element can accommodate the City of Fresno's share of the Regional Housing Needs Assessment (RHNA).</p> <p>3. DENY the appeal and UPHOLD the Planning Commission's and Planning and Development Director's actions on approval of Conditional Use Permit Application No. P20-00545 which requested authorization to develop a 3,131-square-foot 7-11 convenience store and service station, subject to compliance with the Conditions of Approval dated July 23, 2020.</p>				
Sponsors:	Planning and Development Department				
Indexes:					
Code sections:					
Attachments:	1. Exhibit A - Aerial Photograph of Site, 2. Exhibit B - Planned Land Use Map and Zoning, 3. Exhibit C - Public Notices and Map, 4. Exhibit D - Project Information Tables, 5. Exhibit E - Plan Exhibits (Site Plan, Elevations, Floor Plans), 6. Exhibit F - Operational Statement, 7. Exhibit G - Conditions of Approval Packet dated July 23, 2020, 8. Exhibit H - FMC and Housing Element Findings, 9. Exhibit I - Environmental Assessment dated July 23, 2020, 10. Exhibit J - Letters of Protest Received, 11. Exhibit K - Protest & Appeal Letter dated 8/11/2020, 12. Exhibit L - Additional Protest Letter Received 9/16/2020, 13. Exhibit M - Planning Commission Resolution 13685, 14. Exhibit N - Letter from District 7 Councilmember dated 9/18/2020, 15. Exhibit O - Powerpoint Slides, 16. 20-001495 11.5.20 1.30pm Hearing - Exhibit O - Powerpoint re Plan Amendment Application No. P20-00545.pdf, 17. Additional Information Community Emails Received - ID 20-001495.pdf				

Date	Ver.	Action By	Action	Result
11/5/2020	1	City Council	approved	Pass

REPORT TO THE CITY COUNCIL

November 5, 2020

FROM: DAN ZACK, AICP, Assistant Director
Development Services Division

THROUGH: RALPH KACHADOURIAN, Supervising Planner
Development Services Division

BY: THOMAS VEATCH, Planner
Development Services Division

SUBJECT

CONTINUED Consideration of Conditional Use Permit Application No. P20-00545, located on the northwest corner of North Cedar Avenue and East Tulare Street (Council District 7) - Planning and Development Department.

1. **ADOPT** Environmental Assessment No. P20-00545 dated July 23, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a CEQA Guidelines 15332/Class 32 Categorical Exemption (In-fill development).
2. **ADOPT** the finding pursuant to Government Code Section 65863(b)(2) that there is substantial evidence in the record that remaining sites identified in the Housing Element can accommodate the City of Fresno's share of the Regional Housing Needs Assessment (RHNA).
3. **DENY** the appeal and **UPHOLD** the Planning Commission's and Planning and Development Director's actions on approval of Conditional Use Permit Application No. P20-00545 which requested authorization to develop a 3,131-square-foot 7-11 convenience store and service station, subject to compliance with the Conditions of Approval dated July 23, 2020.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. P20-00545 was filed by Terri Dickerhoff of CGR Development on behalf of SKW Tulare LLC and pertains to approximately ±0.55 acres located on the northwest corner of North Cedar Avenue and East Tulare Street. The applicant requested authorization to develop a new 3,131-square-foot 7-11 convenience store and gas station. Development will include four fuel dispensers, a 1,908-square-foot fuel island canopy, a trash enclosure, and six parking spaces. A request for a CUP to authorize an Alcoholic Beverage Control (ABC) License is not included in this current application request.

The project was initially approved by the Planning & Development Director on July 26, 2020. An appeal by a nearby resident was sent by email on August 1, 2020. **(Exhibit K)** A signed email version of the appeal letter was mailed certified on August 4, 2020 and was received by the City on August 11, 2020. The email letter was submitted within the project's 15-day appeal period.

The appellant protested the development of a convenience store and service station in their neighborhood stating safety concerns regarding the service station use as well as health concerns regarding tobacco sales and junk food being sold through the convenience store use, and with its close proximity to Roosevelt High School and the impacts it would have on the neighborhood students.

ACTION BY PLANNING COMMISSION

On September 16, 2020 the Planning Commission considered the appeal of the project during a public hearing. Staff and the applicant provided presentations; and a letter received on the day of the hearing, in response to the Public Hearing Notice, that expressed opposition to the project was distributed to the Commission (**Exhibit L**).

The appellant and other members of the public were provided opportunity to express their concerns, opposition, as well as support of the project. The appellant reiterated their concerns (discussed in the noticing section below) and protest of the project. Two members of the public spoke in support of the project, noting that developing the vacant lot would be beneficial to the neighborhood. Additionally, a representative of Fresno County Economic Development Corporation (EDC) spoke in favor of the project.

After hearing public testimony from the applicant and other concerned parties, Staff recommended that the Planning Commission deny the appeal and that the Director's decision be upheld due to the project being consistent with the standards of the Development Code; the project is an acceptable use for the parcel based on its use classification in the Neighborhood Mixed-Use zone district; provides a suitable development of the vacant parcel that at one time was occupied by a service station use that served the surrounding neighborhood. The Planning Commission voted to approve the proposed project by a vote of 5-0, with 1 abstention and 1 absent. (Resolution 13685 is attached as **Exhibit M**)

In accordance with FMC Section 15-5017-A-2 of the Development Code, Councilmember Esparza (District 7) submitted an appeal of the Commission's decision regarding the Conditional Use Permit in order to discuss and explore the neighborhood impacts of the proposed project. (**Exhibit N**)

BACKGROUND

PREVIOUS SUBMITTAL

A prior Conditional Use Permit Application No. P18-03222 was proposed for a similar 7-11 convenience store and service station that included Conditional Use Permit Application No. P18-03223, for an ABC Type 20 off-sale alcohol license at this location, which was considered by the Planning Commission on February 20, 2019. For this previous application, the development of the physical convenience store and service station was approved, however, the request for the CUP to establish an ABC Type 20 off-sale alcohol license was denied based on non-compliance with the development code because the establishment was within a high crime reporting district; there is an overconcentration of alcohol licenses in the area/census tract; and due to the use being in close proximity to Roosevelt High School.

CURRENT APPLICATION

The current application proposal is a similar service station and convenience store use by 7-11, however the application does not contain a request for a separate CUP to establish an ABC off-sale alcohol license. The proposed site plan is similar to the prior application in 2019 however the proposed facades of the convenience store building are different reflecting a design in a "Mission" style of architecture similar to the buildings of the adjacent Roosevelt High School. (**Exhibit E**)

COMMENTS FROM OTHER AGENCIES

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. P20-00545. See **Exhibit H** for all written agency comments received.

PUBLIC NOTICE AND INPUT

COUNCIL DISTRICT PROJECT REVIEW COMMITTEE

Council District 7 does not have a Project Review Committee and therefore could not make a recommendation on the project.

NOTICE OF INTENT TO TAKE ACTION

Prior to the Director's action to approve the project on July 26, 2020, a Neighborhood Notice of Intent to Take Action was mailed to property owners within 1,000 feet of the project site on June 19, 2020. Several letters of protest from the Notice of Intent was received (**Exhibit J**). Generally, the issues raised in the letters of protest ranged from opposition to another service station being constructed in the neighborhood in relation to the existing number of service stations nearby; its proximity to the high school; crime that could potentially occur; traffic danger from fueling trucks; the sale of tobacco products; the lack of fresh food provided by the store; and the desire for a park to be constructed on the site instead. Only one request was made to receive a Notice of Action on the Director's approval of the project.

NOTICE OF PLANNING COMMISSION HEARING

The Planning and Development Department mailed public notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property on September 4, 2020 (**Exhibit C**).

LAND USE PLANS AND POLICIES

FRESNO GENERAL PLAN

The Fresno General Plan designates the subject property for the Neighborhood Mixed Use planned land use and provides objectives to guide in the development of this project. The Fresno General Plan provides goals, objectives, and policies to guide development. The following are applicable policies and objectives from the Fresno General Plan.

Objective LU-1: Establish a comprehensive citywide land use planning strategy to meet economic development objectives, achieve efficient and equitable use of resources and infrastructure, and create an attractive living environment.

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-2: Plan for infill development that includes a range of housing types, building forms, and land uses to meet the needs of both current and future residents.

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.

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.

Policy LU-6-a: Design of Commercial Development. Foster high quality design, diversity, and a mix of amenities in new development with uses through the consideration of guidelines, regulations and design review procedures.

The proposed convenience store and service station promotes increased economic development and a business that will 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.

DOWNTOWN NEIGHBORHOODS COMMUNITY PLAN

Upon reviewing the policies contained in the Downtown Neighborhoods Community Plan, staff has determined that there are no policies that are applicable or are more restrictive than those contained in the Fresno General Plan or the Fresno Municipal Code (FMC).

CITYWIDE DEVELOPMENT CODE

Under FMC Chapter 15, Article 27 (Standards for Specific Uses and Activities), Section 15-2755 (Service Stations) establishes specific requirements for the establishment of these types of uses. Article 11 (Use Classifications - Mixed Use Districts), Section 15-1102 identifies "Convenience Retail" as a permitted use and "Service Stations" as permitted subject to a Conditional Use Permit. The proposed project complies with all applicable standards per the development code provisions, subject to the Conditions of Approval found in **Exhibit G**.

The development code does not have a limitation on the number of convenience store/service stations in a given area. The only restriction is that there shall not be more than two service stations located at the same intersection. As demonstrated above, the project complies with this restriction as it currently would be the only service station at this intersection location.

HOUSING ELEMENT

This project is located on a parcel listed in the 2013-2023 RHNA Housing Element Sites Inventory, which anticipates seven units of moderate housing at this site. The 2013-2023 RHNA obligations for moderate are 3,228 units and the existing surplus capacity is 952 units for a total existing capacity of 4,180 units. This project proposes the construction of a convenience store and gas station with zero units of housing, thus this project will result in the loss of seven moderate units from the Sites Inventory, resulting in a the surplus capacity of 945 units.

As the remaining sites identified in the Housing Element are adequate to meet the requirements of Section 65583.2 of the California Government Code and to accommodate the City's share of the regional housing need pursuant to Section 65584, this project is consistent with the Housing Element. (**Exhibit H**)

FRESNO MUNICIPAL CODE FINDINGS

CONDITIONAL USE PERMIT

Based upon analysis of the application, staff concludes that the required findings contained within Sections 15-5306 (Conditional Use Permit Findings) of the Fresno Municipal Code and Section

65863 of the California Government Code can be made. These findings are attached as **Exhibit H**.

ENVIRONMENTAL FINDINGS

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 15332/Class 32 of the CEQA Guidelines was made and Environmental Assessment No. P20-00545 was completed for this project on July 23, 2020. (**Exhibit I**).

The construction of a service station and convenience store is consistent the General Plan designation of Neighborhood Mixed-Use and with applicable policies of the General Plan and Downtown Community Plan. The project as conditioned is consistent with the applicable regulations based on its zoning designation of Neighborhood Mixed-Use. The proposed development is within city limits on 0.55 acre property, and surrounded by urban uses. The project site has no value as habitat for rare or endangered species because the project site is currently vacant but was previously developed and occupied by commercial structures and is surrounded by urban uses. The proposed service station is not to occur at a density or an intensity that would result in result in any significant effects relating to traffic, noise, air quality, or water quality and has been conditioned to comply with any applicable regulations related to these subjects. The site can adequately be served by all required utilities and public services because the surrounding neighborhood has already been substantially developed and the site will be served by sewer, water and solid waste and public services.

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 Downtown Neighborhoods Community Plan; compliance with the provisions of the Fresno Municipal Code; 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 upon consideration of this evaluation, it can be concluded that approval of Conditional Use Permit Application No. P20-00545, for the development of the 7-11 a convenience store and service station is appropriate for the project site.

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 Planning and Development Department.

Attachments:

- Exhibit A: Aerial Photograph of Site
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- Exhibit C: Public Notices and Map
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