



Legislation Details (With Text)

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Title: Consideration of Conditional Use Permit Application No. P20-02556, a request to establish a Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for a proposed 7 Eleven automobile service station and convenience store located at 1137 North Chestnut Avenue at the southwest corner of North Chestnut and East Olive Avenues (Council District 7) - Planning & Development Department.

1. CONSIDER Environmental Assessment No. P20-01633/P20-02556, dated November 4, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 32 (Infill Development Projects) Categorical Exemption; and,

2. DENY the applicant's appeal and UPHOLD the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P20-02556 requesting to establish a Type 20 Off-Sale Beer & Wine alcohol sales license for a proposed 7 Eleven convenience store and service station.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photograph, 3. Exhibit C - Planned Land Use, 4. Exhibit D - Zoning Map, 5. Exhibit E - Project Information Tables, 6. Exhibit F - Notice Map, 7. Exhibit G - Master Application & Owners Authorization, 8. Exhibit H - Operational Statement, 9. Exhibit I - Exhibits (Site Plan, Elevations, Floor Plan, and Landscape Plans), 10. Exhibit J - Alcohol License Map, 11. Exhibit K - Policy and Procedure No. C-005, Specialty Grocery Stores, 12. Exhibit L - Department & Agency Comments, 13. Exhibit M - Notice of Intent to Take Action, 14. Exhibit N - Email in Response to NOI, 15. Exhibit O - CUP P20-02556 Denial Letter, 16. Exhibit P - Applicant Appeal Letter, 17. Exhibit Q - Public Hearing Notice & Noticing Map, 18. Exhibit R - Fresno Municipal Code Findings, 19. Exhibit S - Environmental Assessment, 20. Exhibit T - Draft Conditions of Approval

| Date | Ver. | Action By | Action | Result |
|-----------|------|---------------------|----------|--------|
| 11/4/2020 | 1 | Planning Commission | approved | Pass |

REPORT TO THE PLANNING COMMISSION

November 4, 2020

FROM: Dan Zack, Assistant Director
Planning & Development Department

THROUGH: RALPH KACHADOURIAN, Supervising Planner
Development Services Division

BY: PHILLIP SIEGRIST, Planner III
Development Services Division

SUBJECT

Consideration of Conditional Use Permit Application No. P20-02556, a request to establish a Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for a proposed 7 Eleven automobile service station and convenience store located at 1137 North Chestnut Avenue at the southwest corner of North Chestnut and East Olive Avenues (Council District 7) - Planning & Development Department.

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2. **DENY** the applicant's appeal and **UPHOLD** the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P20-02556 requesting to establish a Type 20 Off-Sale Beer & Wine alcohol sales license for a proposed 7 Eleven convenience store and service station.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. P20-02556 was filed by Robert Vermeltfoort, of Vermeltfoort Architects Inc., and requests authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Off-Sale Beer & Wine [Package Store] - sale of beer and wine for consumption on off the premises where sold) for a proposed 7 Eleven convenience store and service station.

Related Conditional Use Permit Application No. P20-01633 was filed for purposes of facilitating physical development of the site and establishing a ±5,151 square-foot commercial shell building to be utilized as a combination 7-Eleven convenience store/automobile service station and a future drive-through restaurant (Starbucks).

On October 22, 2020, the Planning & Development Department Director denied Conditional Use Permit Application No. P20-02556 as the project does not satisfy the required location restrictions of Section 15-2706-E of the Fresno Municipal Code (FMC) which prohibit an off-sale establishment that is near other off-sale alcoholic beverage establishments and within a high crime and over-concentrated area, and the inability to make the required findings for conditional use permits under FMC Section 15-5306 (**Exhibit O**, Denial Letter).

On October 28, 2020, the Planning & Development Department Director approved related Conditional Use Permit Application No. P20-01633 for the development of the property, subject to conditions of approval dated October 28, 2020.

The Director's decision to deny the request to establish an off-sale alcohol license was appealed by the applicant on October 23, 2020 (**Exhibit P**). No appeals pertaining to the Director's approval of related Conditional Use Permit Application No. P20-01633 for the development of the property have been received. Therefore only the alcohol related application is being considered by the Planning Commission.

Staff recommends upholding the denial based on substantial evidence detailed in this staff report that; 1) that the special permit application will not meet the location restrictions for alcohol sales nor the exception provisions specified under Section 15-2706-E; and 2) specific Findings made by the Director in denial of the Conditional Use Permit contained in Section 15-5306 remain valid.

BACKGROUND

Conditional Use Permit Application No. P20-01633, as approved with conditions dated October 28, 2020, authorizes the construction a ±5,151 square-foot commercial shell building to be utilized as a combination 7-Eleven convenience store/automobile service station and a future drive-through restaurant (Starbucks). Additional on and off-site improvements will be provided including but not limited to parking, landscaping, a two-cell trash enclosure, two points of ingress and egress, and curbs, gutters, and sidewalks.

Conditional Use Permit Application No. P20-02556 requests authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Off-Sale Beer & Wine [Package Store] - sale of beer and wine for consumption on off the premises where sold) for the related 7 Eleven convenience store.

For informational purposes, the applicant will be obtaining an existing Type 21 alcohol license (Off-Sale Beer, Wine, and Distilled Spirits - for consumption off the premises where sold) from Didier's Liquor, located on the adjacent parcel to the west, and downgrading it a Type 20 alcohol license. In addition, the applicant will be purchasing an additional off-sale alcohol license from within the City of Fresno and retiring it.

The property is zoned CC (*Community Commercial*). Pursuant to Table 15-1202 (Land Use Regulations - Commercial Districts) of the FMC, alcohol sales (off-site) are permitted in the CC zone district with an approved conditional use permit and subject to additional regulations in accordance with Section 15-2706 of the FMC, including applicable location restrictions.

Alcoholic Beverage Control (ABC) Regulations

In addition to obtaining a Conditional Use Permit from the City of Fresno, the applicant is required to obtain a license from the California Department of Alcoholic Beverage Control (ABC) awaiting the decision on the subject Conditional Use Permit Application.

Number of Existing and Allowed ABC Licenses

The subject site is located in Census Tract 28. According to ABC, Census Tract 28 currently has eight (8) active off-sale alcohol licenses; seven (7) Type 20 and one (1) Type 21.

ABC authorizes one off-sale alcohol licenses per 1,120 people within Census Tract 28, which has an approximate population of 5205. Per ABC, a total of two (4) off-sale alcohol licenses are allowed in Census Tract 28. Therefore, there are currently four more off-sale alcohol license in Census Tract 28 than permitted for that census tract. If the Type 21 alcohol license from Didier's Liquor is transferred to the site and downgraded to the requested Type 20 alcohol license, then approval would not result in an increase of alcohol licenses within Census Tract 28. However the census tract will still remain over concentrated with eight (8) Type 20 alcohol licenses; four more than permitted.

Fresno Police Department Review

The Fresno Police Department, Southeast Policing District reviewed the subject application and does not support the issuance of a State of California ABC Type 20 alcohol license at this location due to it being located within a documented high crime area and over concentrated census tract. The typical reporting district experiences an average of 4,354 criminal offenses per year. The Southeast Policing District in which project site is located has experienced 95,752 calls for service within the last year. A total of 762 Violent Crime Offenses were reported, and 3592 Property Crime Offenses reported for the 2019 calendar year. Furthermore, during the past 9 months, there have been excessive incident reports and calls for police service within a 1 mile radius of the premise. Between January 1 and September 23, 2020 there were approximately 699 calls for service. Of the total, 47 Violent Crime Offenses were reported, and 49 Property Crime Offenses reported. Therefore, the Fresno Police Department recommends denial of the application (P20-02556) as the proposed use would be detrimental to the public health, safety, or welfare of persons and businesses located in the surrounding area.

Because the Fresno Police Department does not support the applicant's request, they did not provide alcohol related conditions to be incorporated into conditions of approval for the Draft Conditions of Approval dated November 4, 2020 (**Exhibit T**). However, should the Planning Commission resolve to approve the request to permit a Type 20 ABC license, the Standard Fresno Police Department ABC CUP conditions contained in the attached Draft Conditions of Approval dated November 4, 2020 shall apply. Standard ABC CUP conditions include compliance with the FMC limiting noise and unlawful nuisance, compliance with ABC rules and employee education, video camera surveillance, limitations on alcohol types and serving sizes, and limitations on on-site alcohol consumption and loitering.

Citywide Development Code

The proposed conditional use permit shall comply with the requirements of FMC Section 15-2706.

Location Restrictions

According to FMC Section 15-2706-E (Location Restrictions for New Establishments), new off-sale alcohol establishments that are under 10,000 square feet are prohibited 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.

The establishment is not located within 500 feet of a sensitive use.

- 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 existing off-sale alcoholic beverage establishments located at the intersection of North Chestnut and East Olive Avenues. (1) Didier's Liquor (Type 21) located on the adjacent parcel approximately 120 feet north; (2) Family Dollar (Type 20) located in the C & O Shopping Center at the northeast corner of Chestnut and Olive Avenues; (3) Fresno Community Market (Type 21) located in the C & O Shopping Center at the northeast corner of Chestnut and Olive Avenues; and (4) EZ Mart #5, (Type 20) located approximately 250 feet east at the southeast corner of Chestnut and Olive Avenues). All four existing establishments are within a 1,000 foot radius of each other.

If the operator were to obtain the Type 21 alcohol license from Didier's Liquor and downgrade it to a Type 20, the proposed establishment will still be located within 500 feet of an existing off-sale alcoholic beverage establishment (EZ Mart #5) and the grouping of four establishments within a 1,000 foot radius will still remain. Therefore, the proposed establishment is prohibited as it is located near other existing establishments.

*For informational purposes Didier's Liquor and the proposed establishment are located within Census Tract 28, Family Dollar and Fresno Community Market are located within Census Tract 29.06, and EZ Mart #5 is located within Census Tract 29.05. See **Exhibit J**, Alcohol License Map.*

- 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).

As explained in the Police Department Review section, the establishment is located in a documented high crime area. The typical reporting district experiences an average of 4,354 criminal offenses per year. The Southeast Policing District in which project site is located has experienced 95,752 calls for service within the last year. A total of 762 Violent Crime Offenses were reported, and 3592 Property Crime Offenses reported for the 2019 calendar year. Furthermore, during the past 9 months, there have been excessive incident reports and calls for police service within a 1 mile radius of the premise. Between January 1 and September 23, 2020 there were approximately 699 calls for service. Of the total, 47 Violent Crime Offenses were reported, and 49 Property Crime Offenses reported. Therefore, the establishment is prohibited.

- 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.

The subject site is located in Census Tract 28. In this Census Tract there are eight (8) existing licenses and four (4) are allowed. As mentioned in the ABC Regulations section above, the request to obtain the existing Type 21 alcohol license and downgrade it to a Type 20 alcohol license would not result in an increase in off-sale alcoholic beverage licenses within Census Tract 28. However, the establishment is still located within an area of high concentration and is therefore prohibited.

The establishment/proposed project is not in compliance with three of the four aforementioned

location restrictions pursuant to FMC Section 15-2706-E. It is located within 500 feet of two existing off-sale alcoholic beverage establishments (Didier's Liquor and EZ Mart #5); and within a documented high crime area and an over concentrated census tract. Therefore, the proposed new alcohol CUP is prohibited per the FMC unless an exception is applicable.

Exception from Location Restrictions

According to FMC Section 15-2706-E-5, a new establishment may be excepted from the location restrictions if the Review Authority determines any one of the following:

- a. 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.
- b. 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.
- c. 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 proposed 7 Eleven will offer for sale to the general public a wide variety of goods and services, including packaged foods, fountain soft-drinks, coffees, teas, bottled beverages, tobacco, fresh and healthy food, beer and wine. The Director was unable to make any of the exception findings and therefore, denied the request to establish a Type 20 alcohol license on October 22, 2020.

The Director has established a formal policy to allow for an exception to be made to allow alcohol sales at Specialty Grocery Stores if the store includes 8 key elements. This policy is attached as **Exhibit K** (Policy and Procedure No. C-005). The convenience store aspect of the 7 Eleven does not contain these 8 elements and thus the Director could not make this exception based on this Policy.

Fresno Unified School District (FUSD) Review

FUSD reviewed the subject application and does not support the request to establish a Type 20 alcohol license at the proposed 7 Eleven convenience store.

Other Agencies

Due to the Director's denial of Conditional Use Permit Application No. P20-02556, comments and conditions received from the applicable agencies were not included in the conditions of approval for related Conditional Use Permit Application No. P20-01633, dated October 28, 2020. See **Exhibit L** for all written agency comments received.

Should the Planning Commission decide to grant approval of the request to obtain a Type 21 ABC

license, then the conditions of approval for Conditional Use Permit Application No. P20-01633, dated October 27, 2020 shall be revised to include comments and conditions related to Conditional Use Permit Application No. P20-02556. All comments received from the applicable agencies have been incorporated into the draft conditions of approval for Conditional Use Permit Application Nos. P20-01633 and P20-02556 dated November 4, 2020 (See **Exhibit T**).

Public Notice and Input

Council District Project Committee Review

There is no Council District 7 Project Review Committee. Therefore, the proposed project was not reviewed and there is no committee recommendation.

Notice of Intent to Take Action

Pursuant to FMC Section 15-5305, the Planning and Development Department mailed a Notice of Intent to Take Action (**Exhibit M**) to surrounding property owners within 1,000 feet of the subject site on October 9, 2020, in accordance with FMC Section 15-5007. One email in opposition to the project was received (**Exhibit N**). However, concerns were not related to the sale of alcohol.

The Director's decision to deny P20-02556, a request to establish an off-sale alcohol license, was appealed by the applicant on October 23, 2020 (**Exhibit P**). Therefore, the subject application (P20-02556) shall be considered by the Planning Commission.

Notice of Planning Commission Hearing

In accordance with Section 15-5007 of the FMC, the Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property on October 23, 2020 (**Exhibit Q**). No comments have been received to date.

LAND USE PLANS AND POLICIES

The Fresno General Plan designates the subject property for Community Commercial planned land use and provides objectives to guide in the development of this project. The Community Commercial planned land use designation is intended for commercial development that primarily serves local needs such as convenience shopping and small offices. Many of the city's current commercial districts fall into this designation. Specific uses allowed include medium scale retail, office, civic and entertainment uses, supermarkets, drug stores and supporting uses.

The Fresno General Plan provides goals, objectives, and policies to guide development. The following are applicable goals from the Urban Form, Land Use & Design, and Public Utilities & Services elements of the Fresno General Plan:

- **Goal 9:** *Promote a city of healthy communities and improve quality of life in established neighborhoods.*
- **Goal 16:** *Protect and improve public health and safety.*

Alcohol Sales

High exposure to the easy availability of alcohol sales affects public health, safety, and quality of life in a neighborhood. Alcohol sales outlets that are near other outlets or are in close proximity to sensitive uses increase the perceived lack of safety in a neighborhood. Moreover, concentrations of such outlets can contribute to a variety of health and safety problems including higher rates of alcohol-related hospitalizations, drunken driving accidents, and pedestrian injuries.

As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of off-sale alcohol sales 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.

It has been suggested that alcohol sales establishments possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when such establishments are concentrated near one another. For this purpose, Section 15-2706 of the FMC contains restrictions on the location for new establishments proposing to sell alcohol.

These restrictions are based upon proximity to schools, public parks, playgrounds and recreational areas, as well as other youth facilities such as day care facilities. In addition, restrictions apply based upon proximity to alcohol or drug abuse recovery or treatment facilities, proximity to other establishments which sell alcoholic beverages; and, within areas of high crime. The City of Fresno relies on information from the Police Department and the Alcoholic Beverage Control (ABC) in the consideration of permit applications respective to areas of high crime or an overconcentration of ABC licenses.

Roosevelt Community Plan

Upon reviewing the goals and policies contained in the Roosevelt Community Plan, staff has determined that there are no applicable policies restrictive to alcohol sales than those already provided in the Fresno General Plan and the Fresno Municipal Code.

Fresno County Airport Land Use Compatibility Plan

The proposed project is located within the area of influence under the Fresno County Airport Land Use Compatibility Plan (ALUCP). The project site is located within the Fresno Yosemite International Airport's (FYIA) Safety Zone 6 - Traffic Pattern Zone. Listed uses such as stadiums and similar uses are prohibited in Traffic Pattern Zone 6. The proposed off-sale establishment is not a listed prohibited use. Therefore the proposed project is compatible and in compliance with the Airport Land Use Compatibility Plan. Therefore, the City of Fresno Airports Department anticipates no adverse impacts on Fresno Yosemite International Airport as a result of the proposed project and the use is consistent

with the Fresno County Airport Land Use Compatibility Plan.

FRESNO MUNICIPAL CODE FINDINGS

The required findings for a conditional use permit under Section 15-5306 of the Fresno Municipal Code 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 made by the Director to deny the special permit under FMC Section 15-5306 (A, B, C, D, & E) are appropriate. These findings are attached as **Exhibit R**.

If the Planning Commission decides to grant approval of the request to obtain a Type 20 ABC license, the Commission must find that there is substantial evidence in the administrative record to make all the findings required by Section 15-5306 and amend them to include the sale of alcohol. The Planning Commission shall also find that there is substantial evidence in the administrative record to determine any of the following exceptions in accordance with FMC Section 15-2706-E-5 apply:

- a. 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.
- b. 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.
- c. 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.

ENVIRONMENTAL FINDINGS

No environmental findings are necessary to adopt a staff recommendation for denial for the project, Conditional Use Permit Application No. P20-02556, to establish a Type 20 Off-Sale Beer & Wine alcohol sales license.

However, should the Planning Commission make the required findings in accordance with FMC Section 15-5306 and also finds an exception to the Location Restrictions, and grants approval of the request to obtain a Type 20 ABC license then adoption of a Section 15332/Class 32 (Infill Development) Categorical Exemption, pursuant to the California Environmental Quality Act (CEQA) Guidelines, is considered appropriate. The attached Categorical Exemption was prepared for Environmental Assessment No. P20-01633/P20-02556 and dated November 4, 2020 (**Exhibit S**) may be adopted by the Commission if the required findings are made as set forth above.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan, Roosevelt Community Plan, and the Fresno County Airport Land Use Compatibility Plan, compliance with the specific provisions of Development 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. Upon consideration of this evaluation, it can be concluded that Conditional Use Permit Application No. P20-02556, a request to obtain a Type 20 alcohol license, is not appropriate for the subject property.

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 be excepted from the location restrictions pursuant to FMC Section 15-2706-E and make the required findings of FMC Section 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 Draft Conditions of Approval dated November 4, 2020 (**Exhibit T**).

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 - Aerial Photograph
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