

**CITY OF MERCED
Planning Commission**

MINUTES

Merced City Council Chambers
Wednesday, December 7, 2011

Vice-Chairperson MCCOY called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Travis Colby, Mary Ward, Dwight Amey, Bob Acheson, and Vice-Chairperson Carole McCoy

Commissioners Absent: Kimberly Madayag and Chairperson Richard Cervantes (both absent excused)

Staff Present: Planning Manager Espinosa, Associate Planner Sterling, Planner Nelson, Deputy City Attorney Rozell, and Recording Secretary Lane

1. **APPROVAL OF AGENDA**

M/S WARD-ACHESON, and carried by unanimous voice vote (two absent), to approve the Agenda as submitted.

2. **MINUTES**

M/S WARD-ACHESON, and carried by unanimous voice vote (two absent), to approve the Minutes of November 9, 2011, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Conditional Use Permit #1163, initiated by Taher Murshed, property owner. This application involves a request to allow the sale of liquor for off-site consumption. This is a change in the Alcohol Beverage Control (ABC) license type from a Type 20 (off-sale beer and wine only) to a Type 21 (off-sale general, which allows beer, wine, and liquor to be sold) for the Best Buy Market located at 1220 W. 9th Street, generally located at the southwest corner of West 9th and “S” Streets within a Neighborhood Commercial (C-N) zone.

Planner NELSON reviewed the report on this item. She noted a memo modifying Condition #11 to provide a specific time frame for alley and parking lot improvements, which was provided to the Commission prior to the meeting. For further information, refer to Staff Report #11-19.

Public testimony was opened at 7:14 p.m.

Speakers from the Audience in Favor:

PAUL LO, the applicant's representative, Merced
TAHER MURSHED, the applicant, Merced

Speakers from the Audience in Opposition:

ROY DAVIS, Merced
OSBALDO BENAVIDEZ, Merced

Speaker from the Audience (Neutral):

GLORIA GARCIA, Merced

Public testimony was completed at 7:49 p.m.

M/S WARD-COLBY, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #11-32, and approve Conditional Use Permit #1163, subject to the Findings and thirty-two (32) Conditions set forth in Staff Report #11-19, amending Condition #11 as follows (RESOLUTION #2997):

(New language underlined, deleted language ~~strikethrough~~.)

“11. The parking lot and alley (along the property frontage) paving shall be repaired. All potholes shall be filled and repaved according to City Standards within 60 days of this approval. The parking lot and alleyway shall be continuously maintained to prevent potholes.”

AYES: Commissioners Colby, Ward, Acheson, and Vice-Chairperson McCoy

NOES: Commissioner Amey

ABSENT: Commissioner Madayag and Chairperson Cervantes

ABSTAIN: None

4.2 Status on the Martin Luther King Jr. Way Revitalization Strategy and Action Strategy Matrix

Associate Planner STERLING gave a presentation on the Martin Luther King Jr. Way Revitalization Plan progress and answered a few questions from the Commission. For further information, refer to the Planning Commission Memo of December 7, 2011, regarding Agenda Item 4.2.

4.3 Cancellation of January 4, 2012, Planning Commission Meeting due to Lack of Items

M/S WARD-ACHESON, and carried by unanimous voice vote (two absent), to cancel the Planning Commission Meeting of January 4, 2012.

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

There was no discussion regarding the calendar of meetings/events.

6. **ADJOURNMENT**

There being no further business, Vice-Chairperson MCCOY adjourned the meeting at 8:18 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



CAROLE MCCOY, Vice-Chairperson
Merced City Planning Commission

CITY OF MERCED
Planning Commission

Resolution #2997

WHEREAS, the Merced City Planning Commission at its regular meeting of December 7, 2011, held a public hearing and considered **Conditional Use Permit #1163**, initiated by Taher Murshed, property owner. This application involves a request to allow the sale of liquor for off-site consumption. This is a change in the Alcohol Beverage Control (ABC) license type from a Type 20 (off-sale beer and wine only) to a Type 21 (off-sale general, which allows beer, wine, and liquor to be sold) for the Best Buy Market located at 1220 W. 9th Street, generally located at the southwest corner of West 9th and “S” Streets within a Neighborhood Commercial (C-N) zone; also known as Assessor’s Parcel No. 032-121-004; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through F of Staff Report #11-19; and,

WHEREAS, after reviewing the City’s Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #11-32, and approve Conditional Use Permit #1163, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner Ward, seconded by Commissioner Colby, and carried by the following vote:

- AYES: Commissioners Colby, Ward, Acheson, and Vice-Chairperson McCoy
NOES: Commissioner Amey
ABSENT: Commissioner Madayag and Chairperson Cervantes
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 2997

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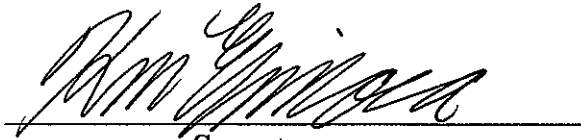
December 7, 2011

Adopted this 7th day of December 2011



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:CUP#1163 Taher Murshed

Conditions of Approval
Planning Commission Resolution #2997
Conditional Use Permit #1163

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (elevations - photos) -- Attachment B of Staff Report #11-19, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superceded by Code) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with the conditions set forth in Site Plan Review Resolution #192 previously approved for this site.
5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
8. No sales of alcoholic beverages shall be allowed between the hours of 2:00 a.m. and 6:00 a.m.
9. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine containers shall be sold as part of a pack or carton.
10. "No Loitering" signs shall be placed on the building along the alley and the front of the store.
11. The parking lot and alley (along the property frontage) paving shall be repaired. All potholes shall be filled and repaved according to City Standards within 60 days of this approval. The parking lot and alleyway shall be continuously maintained to prevent potholes.
12. The proprietor and/or successors in interest and management shall be prohibited from externally advertising or promoting beer & wine and/or distilled spirits including, but not limited to, window and wall signage.
13. The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, open container laws and other nuisance-related issues.
14. The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct result from the proposed land use, the conditional use permit may be subject to review and revocation by the City of Merced after a public hearing and following the procedures outlined in the Merced Municipal Code.
15. Sufficient lighting shall be provided throughout the site to provide a safe environment for patrons of the businesses at this location. If lighting does not currently exist, it shall be provided within 60 days of this approval. Details to be worked out with staff.
16. The premises shall remain clean and free of debris at all times.