

**CITY OF MERCED
Planning Commission**

MINUTES

Merced City Council Chambers
Wednesday, December 5, 2012

Chairperson COLBY 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: Dwight Amey, Kimberly Madayag, Carole McCoy, Brandon Williams, and Chairperson Travis Colby

Commissioners Absent: None (two vacancies)

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

1. **APPROVAL OF AGENDA**

M/S AMEY-MADAYAG, and carried by unanimous voice vote (two vacancies), to approve the Agenda as submitted.

2. **MINUTES**

M/S MCCOY-WILLIAMS, and carried by unanimous voice vote (two vacancies), to approve the Minutes of November 7, 2012, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Conditional Use Permit #1175, initiated by Kevin Bever for the Sign Guys, applicant for Pearson Scott, LLC, property owner. This application involves a request to install a shopping center sign for the Promenade Shopping Center located at the northwest corner of Yosemite Avenue and Paulson Road (787 E. Yosemite Avenue) within Planned Development (P-D) #48 with a Neighborhood Commercial (C-N) designation.

Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #12-21.

Public testimony was opened at 7:03 p.m.

Speakers from the Audience in Favor:

KEVIN BEVER, spoke on behalf of the applicant, Atwater
ROBERT TYLER, Merced

No one spoke in opposition to the project.

Public testimony was completed at 7:11 p.m.

M/S MADAYAG-WILLIAMS, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #12-31, and approve Conditional Use Permit #1175, subject to the Findings and fourteen (14) Conditions set forth in Staff Report #12-21 (RESOLUTION #3010):

AYES: Commissioners McCoy, Madayag, Amey, Williams, and
Chairperson Colby

NOES: None

ABSENT: None (two vacancies)

ABSTAIN: None

- 4.2 Conditional Use Permit #1173, initiated by Halferty Development Company, LLC, applicant for the BMC West

Corporation, property owner. This application involves a request to construct a mini-mart with a gas station (7-Eleven) and a free-standing retail store (Family Dollar Store) and to allow beer and wine to be sold for off-site consumption at both businesses. This site is located at the southwest corner of West 16th Street and Martin Luther King, Jr. Way, within a Central Commercial (C-C) zone.

Planner NELSON reviewed the report on this item. She noted a memo from Planning staff amending Conditions #9 and #21 per the applicant's request. The memo was provided to the Commission prior to the meeting. For further information, refer to Staff Report #12-22.

Public testimony was opened at 7:27 p.m.

Speaker from the Audience in Favor:

CHRIS PETO, spoke on behalf of the applicant, Pasadena

No one spoke in opposition to the project.

Public testimony was completed at 7:31 p.m.

M/S COLBY-MADAYAG, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #12-28, and approve Conditional Use Permit #1173, subject to the Findings and thirty-three (33) Conditions set forth in Staff Report #12-22 (RESOLUTION #3011):

AYES: Commissioners McCoy, Madayag, Amey, Williams, and Chairperson Colby

NOES: None

ABSENT: None (two vacancies)

ABSTAIN: None

4.3 General Plan Amendment #12-01 and Site Utilization Plan Revision #5 to Planned Development (P-D) #9, initiated by Golden Valley Engineering, applicant for L.J. Steiner, LLC,

property owner. This application involves a change in the General Plan land use designation for Building #3 within Fahrens Park Plaza, located at the southeast corner of State Hwy. 59 and Buena Vista Drive, from “Business Park” (BP) to “Neighborhood Commercial” (CN), and a change in the Site Utilization Plan for Planned Development (P-D) #9 for Building #3 to allow those uses permitted in the C-N Zone (but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors).

Planner NELSON reviewed the report on this item. She noted a letter of opposition received from Omer H. Brawley Family Trust. This was provided to the Commission prior to the meeting. For further information, refer to Staff Report #12-20 - Addendum.

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

Speaker from the Audience in Favor:

JOHN HINCHEY, spoke on behalf of the applicant, Merced

No one spoke in opposition to the project.

Public testimony was completed at 7:51 p.m.

M/S MCCOY-MADAYAG, and carried by the following vote, to recommend to City Council that they find that the previous environmental review [Mitigated Negative Declaration for Environmental Review #11-19 for General Plan Amendment #11-03 and Site Utilization Plan Revision #4 to Planned Development #9] remains sufficient and no further documentation is required (Section 15162 Findings); and recommend approval of General Plan Amendment #12-01 and Site Utilization Plan Revision #5 to Planned Development (P-D) #9, Modification of Conditions #1, #8, #14, the addition of Condition #17, and the Modification of Mitigation Measure M-3 as set forth in Exhibit A of Planning Commission

Resolution #2949 - Amended (Attachment G of Staff Report #12-20 - Addendum), and subject to the Findings A through K of Staff Report #12-20 - Addendum (RESOLUTION #2949 - Amended):

AYES: Commissioners McCoy, Madayag, Amey, Williams, and Chairperson Colby

NOES: None

ABSENT: None (two vacancies)

ABSTAIN: None

4.4 Appointment of a Planning Commission Representative to the Bellevue Corridor Community Plan Ad-hoc Citizens Advisory Committee

M/S COLBY-MADAYAG, and carried by unanimous voice vote (two vacancies), to appoint Commissioner MCCOY as the Planning Commission Representative to the Bellevue Corridor Community Plan Ad-hoc Citizens Advisory Committee.

5. **INFORMATION ITEMS**

5.1 Planning Commission Resignations (Mary Ward and Richard Cervantes)

Chairperson COLBY acknowledged the contributions of recently resigned Planning Commissioners, Mary Ward and Richard Cervantes, and thanked them for their service.

5.2 Calendar of Meetings/Events

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

6. **ADJOURNMENT**

There being no further business, Chairperson COLBY adjourned the meeting at 7:59 p.m.

Planning Commission Minutes

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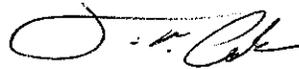
December 5, 2012

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson
Merced City Planning Commission

CITY OF MERCED
Planning Commission

Resolution #3010

WHEREAS, the Merced City Planning Commission at its regular meeting of December 5, 2012, held a public hearing and considered **Conditional Use Permit #1175**, initiated by Kevin Bever for the Sign Guys, applicant for Pearson Scott, LLC, property owner. This application involves a request to install a shopping center sign for the Promenade Shopping Center located at the northwest corner of Yosemite Avenue and Paulson Road (787 E. Yosemite Avenue) within Planned Development (P-D) #48 with a Neighborhood Commercial (C-N) designation; also known as Assessor's Parcel No. 231-180-006; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through D of Staff Report #12-21; and,

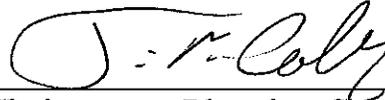
NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #12-31, and approve Conditional Use Permit #1175, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Madayag, seconded by Commissioner Williams, and carried by the following vote:

AYES: Commissioners McCoy, Williams, Madayag, Amey, and
Chairperson Colby
NOES: None
ABSENT: None (two vacancies)
ABSTAIN: None

December 5, 2012

Adopted this 5th day of December 2012



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval
Planning Commission Resolution #3010
Conditional Use Permit #1175

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) - Attachments B and C of Staff Report #12-21, 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 Resolution #2735 for Conditional Use Permit #1033 previously approved for this project.
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. The shopping center sign shall comply with all requirements set forth in Merced Municipal Code Section 17.36.667, "Free-standing signs identifying shopping centers over thirty-five thousand square feet."
9. All signing on the shopping center sign is included in the total allowable sign area for each tenant.
10. Prior to installing tenant signing on the shopping center sign, the owner (or their contractor) shall demonstrate to the City that the sign area used for wall signing does not exceed the maximum allowed for that tenant space.
11. A maximum of 25% of the allowable sign area for each tenant on the shopping center sign may be used for a logo.
12. This approval shall supersede the monument sign allowed on Yosemite Avenue by Administrative Conditional Use Permit #AS-111.
13. The existing monument sign on Yosemite Avenue shall be removed prior to installation of the shopping center sign.
14. All exterior sign surfaces shall be regularly maintained, and any damage caused by weathering, vandalism, or other factors shall be repaired in keeping with approved materials and finishes.

n:shared:planning:PC Resolutions:CUP#1175 Exhibit A

CITY OF MERCED
Planning Commission

Resolution #3011

WHEREAS, the Merced City Planning Commission at its regular meeting of December 5, 2012, held a public hearing and considered **Conditional Use Permit #1173**, initiated by Halferty Development Company, LLC, applicant for the BMC West Corporation, property owner. This application involves a request to construct a mini-mart with a gas station (7-Eleven) and a free-standing retail store (Family Dollar Store) and to allow beer and wine to be sold for off-site consumption at both businesses. This site is located at the southwest corner of West 16th Street and Martin Luther King, Jr. Way, within a Central Commercial (C-C) zone; also known as Assessor's Parcel Numbers 031-360-014 and -069; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through O of Staff Report #12-22; and,

NOW THEREFORE, 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 #12-28, and approve Conditional Use Permit #1173, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

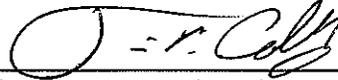
AYES: Commissioners McCoy, Williams, Madayag, Amey, and
Chairperson Colby
NOES: None
ABSENT: None (two vacancies)
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3011

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December 5, 2012

Adopted this 5th day of December 2012



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

n:\shared\planning\PC Resolutions\CUP#1173 Halfety Dev mini mart & gas station

Conditions of Approval
Planning Commission Resolution #3011
Conditional Use Permit #1173

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibits 2, 3, and 4 (elevations) - Attachments B, C, D, and E of Staff Report #12-22, 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. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. 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.

6. 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.
7. A raised concrete median shall be constructed in 16th Street between Martin Luther King, Jr. Way and K Street allowing a left-hand turn at the intersection of Martin Luther King, Jr. Way and 16th Street as well as a left-hand turn into the project site at the intersection of 16th Street and K Street. The median shall be constructed to meet all City Standards and requirements of the 16th Street Design Guidelines.
8. A raised concrete median shall also be constructed in Martin Luther King, Jr. Way south of the intersection with 16th Street extending to the Union Pacific Railroad right-of-way. This median shall allow a left-hand turn at the intersection of Martin Luther King, Jr. Way and 16th Street. This median shall be constructed to meet all City Standards and shall match the design of the existing median in Martin Luther King, Jr. Way south of the Union Pacific Railroad track.
9. The owner shall dedicate approximately 540 square feet of right-of-way at the northeast corner of the property as shown on Exhibit 1 - Site Plan (Attachment B of Staff Report #12-22). A 7-foot Public Utilities Easement (PUE) shall also be dedicated along the entire property frontage on both 16th Street and Martin Luther King, Jr. Way. All dedications shall be done by Deed and shall be recorded prior to the issuance of a certificate of occupancy for any building.
10. The developer is responsible for providing handicap accessibility throughout the site and around the perimeter of the site along the public sidewalks. If handicap accessibility cannot be obtained at the intersection of the driveways and the sidewalk area by providing accessibility within the public right-of-way, the property owner shall dedicate the necessary right-of-way needed to meet both federal and state handicap accessibility requirements. If dedication is required, it shall be recorded by deed prior to the issuance of a certificate of occupancy for any building.
11. The developer shall install a new traffic signal at the southwest corner of Martin Luther King, Jr. Way and 16th Street. The traffic signal shall be

installed per City Standards and may be eligible for up to 50% reimbursement through the City's Public Facilities Impact Fee Program.

12. The developer shall reconstruct the sidewalk at the corner of 16th Street and Martin Luther King, Jr. Way to allow a wider turning radius and to provide a handicap accessible ramp at the corner. The developer shall also install any other missing public improvements, including, but not limited to, sidewalk, curb, and gutters. All public improvements shall be constructed per City Standards.
13. The developer shall work with the City Engineer to determine the requirements for storm drainage on the site. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. If it is determined that a storm drain system with "interruptible discharge" is necessary, the storm drainage system shall be designed per City Standards for "Interruptible Discharge" (SD-15).
14. If separate parcels are created, a Lot Split shall be required. Cross access easements shall be required between all parcels in order to ensure adequate access to each building.
15. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department access.
16. In accordance with the bicycle parking guidelines set forth in the 2008 Merced Bicycle Plan for commercial developments, the site plan shall provide a minimum of one bicycle parking space for public use (minimum 5% of all vehicle spaces), plus one space for each ten estimated employees on the largest working shift. The applicant shall install the bike rack(s) in an area that 1) has sufficient space to accommodate the placement and removal of bicycles (including tandem bicycles or bicycles with trailers); 2) that is closely located to the entrance(s) of the building; and 3) provides proper ADA-accessible pedestrian clearances around the rack when it is at full capacity. The bike parking area shall be shaded/sheltered from sun and rain, if possible, and the rack itself shall be designed with at least two, preferably three, contact points on at least one wheel and the bicycle frame to provide stability to the parked bicycle, such as the "inverted-U" rack design.
17. No sales of alcoholic beverages shall be allowed between the hours of 2:00 a.m. and 6:00 a.m.
18. No beer or wine shall be displayed or stored outside of the cooler area and shall not be displayed within 5-feet of the cash register or front door.

19. The proprietor and/or successors in interest and management shall be prohibited from advertising or promoting beer & wine and/or distilled spirits on the motor fuel islands and no advertising, signs, or banners for beer or wine shall be located on the building, in the windows, or visible from any public right-of-way. No free-standing advertising signs (sandwich boards, A-frames, etc.) for beer and wine or distilled spirits are allowed on site.
20. No display or sale of beer or wine shall be made from an ice tub.
21. Any employee authorized to sell alcoholic beverages shall be at least 21 years of age or, if under the age of 21, the employee must be under the continuous supervision of an employee who is at least 21 years of age in compliance with the California Alcoholic Beverage Control (ABC) regulations.
22. 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.
23. Prior to obtaining a license from the Alcoholic Beverage Control to sell alcohol, each business shall obtain approval for a Finding of Public Convenience or Necessity from the Merced City Council.
24. The project shall comply with the 16th Street Design Guidelines.
25. 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.
26. “No Loitering” signs shall be placed on the building along the sides and the front of both the 7-Eleven and Family Dollar store.
27. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), City of Merced, and other regulatory agencies.
28. 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.

29. Any signage shall comply with the requirements of the City's Sign Ordinance. Temporary banners shall be properly approved by Planning staff for increments not longer than thirty days, whereby re-application is required. However, in no event shall temporary banners be displayed for more than 120 days per calendar year. Prohibited signs, including moving, moveable, flashing, or other such signs, shall not be permitted at any time and shall be subject to immediate removal by the City of Merced Development Services Director or his designee.
30. Any business determined to be a drive-in or drive-through restaurant shall obtain Site Plan Review approval prior to opening.
31. Sufficient lighting shall be provided throughout the site to provide a safe environment for patrons of all businesses.
32. All existing or proposed landscaping shall be kept healthy and maintained, and any damaged or missing landscaping shall be repaired immediately.
33. The premises shall remain clean and free of debris and graffiti at all times.

n:shared:planning:PC Resolutions:CUP#1173 Exhibit A

**CITY OF MERCED
Planning Commission**

Amended by PC on
12/5/2012 See pages 3-4

Resolution #2949

Amended by PC on
10/19/2011 See page 3

WHEREAS, the Merced City Planning Commission at its regular meeting of April 8, 2009, held a public hearing and considered **General Plan Amendment #09-01, and Site Utilization Plan Revision #3 to Planned Development (P-D) #9**, initiated by Golden Valley Engineering & Surveying, applicant for L. J. Steiner, LLC, property owner. This application involves a change in the *Merced Vision 2015 General Plan* land use designation for Building #1 only from “Business Park” (BP) to “Neighborhood Commercial” (CN), and a change in the Site Utilization Plan for Planned Development (P-D) #9 for Building #1 to allow those uses permitted in the C-N Zone (but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors), and a Site Utilization Plan Revision for Buildings #2 and #3 to allow up to 10,000-square-feet of Building #3 for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent that takes a minimum of three hours or more per patient visit, but specifically excluding medical and dental offices and clinics and/or medical and dental laboratories), with all other uses for Buildings #2 and #3 being principally-permitted uses in the City’s Light Industrial/General Commercial Zones; and a request for a 15% reduction for parking space calculation for Building #1 (excluding food services), and a 50% reduction in parking for the proposed dialysis center in Building #3. The property is 7.93 acres and is generally located at the southeast corner of State Hwy. 59 and Buena Vista Drive within Planned Development (P-D) #9; also known as Assessor’s Parcel No. 058-020-058; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through O of Staff Report #09-05; and,

WHEREAS, after reviewing the City’s Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Mitigated Negative Declaration regarding

PLANNING COMMISSION RESOLUTION #2949

Page 2 of 4

April 8, 2009/October 19, 2011/December 5, 2012

Environmental Review #09-03, and approval of General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development (P-D) #9, subject to the Conditions and Mitigation Measures set forth in Exhibit A attached hereto.

Upon motion by Commissioner Cervantes, seconded by Commissioner Williams, and carried by the following vote:

AYES: Commissioner(s) Shankland, Williams, Cervantes, and McCoy

NOES: Commissioner(s) Ward, Amey, and Chairman Acheson

ABSENT: Commissioner(s) None.

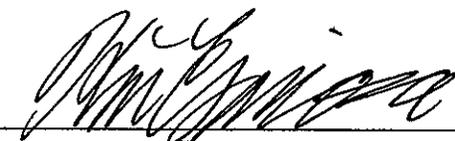
ABSTAIN: Commissioner(s) None.

Adopted this 8th day of April 2009



Chairman, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

n:\shared\planning\PC Resolutions\GPA#09-01 & SUP REV#3 TO PD#9 Steiner

PLANNING COMMISSION RESOLUTION #2949

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April 8, 2009/October 19, 2011/December 5, 2012

October 19, 2011: At their regularly scheduled meeting of October 19, 2011, the Merced City Planning Commission considered General Plan Amendment #11-03 and Site Utilization Plan Revision #4 to Planned Development (P-D) #9.

WHEREAS, the Merced City Planning Commission concurs with Findings A through O of Staff Report #11-13; and,

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend Adoption of Environmental Review #11-19 (Mitigated Negative Declaration); and Approval of General Plan Amendment #11-03 and Site Utilization of Plan Revision #4 to Planned Development (P-D) #9, and Modification of Conditions #1, #3, #8, #11, #12, and #14 (Resolution #2949 for General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development [P-D] #9); and the addition of Mitigation Measures M-3 and M-4 as shown on Exhibit A.

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

AYES: Commissioners McCoy, Colby, Ward, Amey, and Chairperson Cervantes

NOES: None

ABSENT: Commissioners Madayag and Acheson

ABSTAIN: None

December 5, 2012: At their regularly scheduled meeting of December 5, 2012, the Merced City Planning Commission considered General Plan Amendment #12-01 and Site Utilization Plan Revision #5 to Planned Development (P-D) #9.

WHEREAS, the Merced City Planning Commission concurs with Findings A through K of Staff Report #12-20 - Addendum; and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced

PLANNING COMMISSION RESOLUTION #2949

Page 4 of 4

April 8, 2009/October 19, 2011/December 5, 2012

City Planning Commission does resolve to hereby recommend to City Council that they find that the previous environmental review [Mitigated Negative Declaration for Environmental Review #11-19 for General Plan Amendment #11-03 and Site Utilization of Plan Revision #4 to Planned Development (P-D) #9] remains sufficient and no further documentation is required (Section 15162 Findings); and recommend approval of General Plan Amendment #12-01 and Site Utilization of Plan Revision #5 to Planned Development (P-D) #9, Modification of Conditions #1, #8, #14, the addition of Condition #17, and the Modification of Mitigation Measure M-3 as set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner McCoy, seconded by Commissioner Madayag, and carried by the following vote:

AYES: Commissioners McCoy, Williams, Madayag, Amey, and Chairperson Colby

NOES: None

ABSENT: None (two vacancies)

ABSTAIN: None

Mitigation Measures and Conditions of Approval
Planning Commission Resolution #2949
General Plan Amendment #09-01 and Site Utilization Plan Revision #3
to Planned Development #9

(New language double-underlined, deleted language ~~strike through~~.)

Mitigation Measures

M-1: The requested changes in allowable land uses on the Property may trigger Owner's payment of additional fees and/or assessments including, but not limited to, the City's Public Facilities Impact Fee and the Regional Transportation Impact Fee, based upon a change in use. The additional fees and/or assessments shall be calculated based upon the pro-rata difference in fees and/or assessments originally paid by Owner in 2006 for the light industrial use as compared to the then current applicable fees and/or assessments for the use(s) that are being proposed for each separate tenant unit or units on the Property. Whether there is a change of use in a specific tenant unit or units shall be determined by the City based upon (i) the specific use(s) proposed for the tenant unit(s); (ii) the specific building, plumbing, mechanical, or electrical permits, conditional use permits, or certificates of occupancy obtained for the tenant unit(s); (iii) the specific tenant improvements proposed for the tenant unit(s); and/or (iv) the business license obtained by the tenant for the tenant unit(s).

M-2: The applicant will monitor each tenant improvement for required parking based on land use throughout the project's development, and if it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City.

~~M-3: Parking needs to be accommodated for all land uses at Fahrens Park Plaza based on the formulas provided under the Merced Municipal Code Section 20.58. Until such time as parking can be provided (on-site or off site), the Remainder of Building #3 (approximately 11,909 square feet) is to remain as General Commercial (C-G) / Light Industrial (I-L) where the use does not exceed the need for more than 4 parking spaces. The applicant will monitor each tenant improvement for required parking based on land use throughout the project's development and provide this information to the City with~~

Modified
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M-3 on
page 6

each tenant improvement. If it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City. [Note: Certain uses will increase the requirement for more parking (i.e., restaurant or food services, medical/non-medical offices, hair salon, or fitness gym, dry cleaners, etc.)].

M-4 (MM AQ-1) The project shall implement the following measures, to the satisfaction of the City of Merced:

- Any new lighting installed or replaced as part of the project shall be energy efficient.
- Any bathrooms or bathroom features installed or replaced as part of the project shall utilize water efficient toilets and sinks.
- The project applicant shall ensure that the project is provided with recycling services. The applicant shall ensure that there is sufficient storage space onsite for recycling.

Conditions of Approval

1. ~~The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) — Attachments 2 and 3 of Staff Report #09-05, except as modified by the conditions; and be constructed/designed as shown on Exhibit 3 (site plan) and Exhibit 4 (elevations) — Attachments B and C of Staff Report #11-13, except as modified and approved on October 19, 2011.~~
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. The Project shall comply with applicable conditions (unless modified by this Resolution) set forth in Planning Commission Resolution #2819 for General Plan Amendment #05-05 and Site Utilization Plan Revision #1 to Planned Development (P-D) #9; Planning Commission Resolution #2897 for Conditional Use Permit Application #1099; and Resolution #2942 for Conditional Use Permit #1125 (for signage); and Planning Commission Resolution #2949 for General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development (P-D) #9 (Attachment H of Staff Report #11-13) previously approved for this project.

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Condition
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4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. Approval of the *General Plan Amendment/Site Utilization Plan Revision* is subject to the applicants entering into a written (developer) agreement that they agree to all the conditions and shall pay all City, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and/or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action (Attachment K of Staff Report #09-05).
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 (with counsel selected by the City), 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 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. ~~Allowed Land Uses are as follows: Building #1 and Building #2 is are allowed those uses permitted in the Neighborhood Commercial (C-N) Zone as defined in Merced Municipal Code (MMC) 20.22 (Attachment D of Staff Report #09-05) and Attachment D of Staff Report #11-13 respectively, but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors. Conditional Use Permit approval would still be needed for any uses defined in MMC 20.22.050. Up to 10,000 square feet of Building #3 is allowed for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent that takes a minimum of three hours or more per patient visit, but specifically excluding medical and dental offices and clinics and/or medical, optical, and dental laboratories that involve patients and/or customers coming to and from the facility). All other uses for Buildings #2 and #3 shall be limited to principally permitted uses in the City's Light Industrial (I-L) and General Commercial (C-G) Zones as defined in MMC 20.34.020 and 20.28.020 respectively (Attachments E and F of Staff Report #09-05); but shall be limited to a maximum of 4 employees for parking purposes (note: parking is based on 1 space for each 2 employees on the largest shift — estimated at 4 employees).~~

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Condition
#8 on
pages 6-7

9. If, in the future the owner/applicant requests land uses other than as specified in Condition #8 above (i.e., exceeding 40.52% retail, 10,000-square-foot of procedural medical use, etc.), further California Environmental Quality Act (CEQA) review is required including, but not limited to, traffic and air quality studies with possible improvements to Buena Vista Drive and State Hwy. 59.

10. The developer shall be responsible for providing a parking analysis that shows that adequate parking exists on-site for all users as part of subsequent building permit or business license applications. This could include the addition of parking spaces being provided where previous roll-up doors were located. If it is found that there is inadequate parking for the uses proposed, future tenants may be denied.
11. The applicant shall comply with the current 2007 California Codes including, but not limited to, exiting, access, fire sprinklers, parking, modification of exterior elevations where roll-up doors are affected, kitchen use (where applicable), etc. A landscape/sprinkler plan will also be required for the area around the tenant spaces as they are submitted for building permits.
12. A 15% reduction for parking space calculation for Building #1, Building #2, and the remainder of Building #3 (approximately 11,909 square feet), (excluding food services) per MMC 20.58.410, and a 50% reduction in parking for the proposed dialysis center in Building #3, and a joint use of parking facilities between businesses open from 8:00 a.m. – 5:00 p.m. (i.e., proposed offices in Bldg. #2) and uses with businesses having extended hours (Brenda Athletics, DiCicco’s, etc.) are approved as proposed, contingent on City Council approval of the General Plan Amendment/Site Utilization Plan Revision.
13. Access and circulation shall not be blocked by idling or parked vehicles waiting to drop off or pick up patients in connection with the medical procedural use in Building #3.
- ~~14. Additional Parking Lot Trees are required at one tree for each six parking spaces. As such, with 271 307 parking spaces proposed, 45 51 parking lot trees are required. If parking spaces are provided as a result of eliminating roll-up doors, additional parking lot trees will be required accordingly.~~
15. Signage shall be limited to that signage approved under Conditional Use Permit #1125 (Planning Commission Resolution #2942) and shall comply with all applicable provisions of the North Merced Sign Ordinance.

Modified Condition #14 on page 7

16. All landscaping along the west side of Building #1 shall be installed within 6 months of this approval whether or not all tenant spaces have been filled.

n:shared:planning:PC Resolutions:GPA#09-01 & SUP REV#3 to PD #9 Exhibit A

As Modified by the Planning Commission on December 5, 2012

Modified Mitigation Measure

M-3: Parking needs to be accommodated for all land uses at Fahrens Park Plaza based on the formulas provided under the Merced Municipal Code Section 20.58. The applicant will monitor each tenant improvement for required parking based on land use throughout the project's development and provide this information to the City with each tenant improvement. If it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City. [Note: Certain uses will increase the requirement for more parking (i.e., restaurant or food services, medical/non-medical offices, hair salon, or fitness gym, dry cleaners, etc.)].

Modified Conditions of Approval

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) -- Attachments 2 and 3 of Staff Report #09-05, except as modified by the conditions; and be constructed/designed as shown on Exhibit 3 (site plan) and Exhibit 4 (elevations) – Attachments B and C of Staff Report #11-13, except as modified and approved on October 19, 2011, and be constructed/designed as shown on Exhibit 5 (site plan) – Attachment B of Staff Report #12-20, except as modified and approved on December 5, 2012.
8. Allowed Land Uses are as follows: Building #1, Building #2, and Building #3 are allowed those uses permitted in the Neighborhood Commercial (C-N) Zone as defined in Merced Municipal Code (MMC) 20.22 (Attachment D of Staff Report #09-05) and Attachment D of Staff Report #11-13 respectively), but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors. Conditional Use Permit approval would

still be needed for any uses defined in MMC 20.22.050. Up to 10,000-square-feet of Building #3 is allowed for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent that takes a minimum of three hours or more per patient visit, but specifically excluding medical and dental offices and clinics and/or medical, optical, and dental laboratories that involve patients and/or customers coming to and from the facility).

14. Additional Parking Lot Trees are required at one tree for each six parking spaces. As such, with 355 parking spaces proposed, 59 parking lot trees are required. If parking spaces are provided as a result of eliminating roll-up doors, additional parking lot trees will be required accordingly.

New Condition of Approval

17. Prior to the issuance of a certificate of occupancy for any space within Building #3, the existing modular building located near the northeast corner of the site shall be removed.