

**CITY OF MERCED
Planning Commission**

MINUTES

Merced City Council Chambers
Wednesday, March 20, 2013

Chairperson COLBY called the meeting to order at 7:02 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Dwight Amey, Carole McCoy, Peter Padilla, Nathan Mackin, Brandon Williams, and Chairperson Travis Colby

Commissioners Absent: Kimberly Madayag (excused)

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

1. **APPROVAL OF AGENDA**

M/S AMEY-MCCOY, and carried by unanimous voice vote (one absent), to approve the Agenda as submitted.

2. **MINUTES**

M/S AMEY-WILLIAMS, and carried by unanimous voice vote (one absent), to approve the Minutes of March 7, 2013, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Conditional Use Permit #1181, initiated by Loren Wright on behalf of Patricia Moss, Trustee, property owner. This application involves a request to allow a karaoke bar/nightclub to locate at 1111 Motel Drive, generally located approximately 170 feet west of the northwest corner of Motel Drive and Almond Avenue within a Thoroughfare Commercial (C-T) zone, and to allow an increase in maximum sign area from 250 square feet to 500 square feet for the site.

Associate Planner NELSON reviewed the project. Refer to Staff Report #13-07 for further information. Ms. NELSON noted that Staff distributed a memo to the Planning Commission prior to the meeting that recommended amending Condition #10 to align the language with the Merced Municipal Code, and Condition #18 at the request of the applicant.

Public testimony was opened at 7:19 p.m.

LOREN WRIGHT, Merced, the applicant, spoke in favor of the project.

There were no speakers from the audience in opposition to the project.

Public testimony was completed at 7:25 p.m.

M/S MCCOY-WILLIAMS, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #13-04, and approve Conditional Use Permit #1181, subject to the Findings and twenty-nine (29) Conditions set forth in Staff Report #13-07, amending Conditions #10 and #18 as follows (RESOLUTION #3018):

(Note: ~~Strikethrough~~ deleted language, underline added language.)

“10. No “adult entertainment” ~~uses~~ businesses” as defined in Merced Municipal Code (MMC) ~~Section~~ Chapter 20.90 shall be allowed on the premises.

“18. The applicant shall provide 1 security guard for each entrance/exit, 1 security guard to patrol the outside area, and 1 security guard per each 50 people inside ~~during nightclub hours~~ if the number of patrons exceeds 50. All security guards shall be hired from a company that has been approved by the Merced City Council and properly licensed through the City of Merced. All security guards are subject to approval of the Merced Police Department. If the number of patrons is less than 50, the applicant shall have a designated employee responsible for security. This employee shall be dedicated solely to providing security and shall be required to monitor all entrances and exits at all times. If problems arise (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, lewd and/or disorderly conduct, and disturbing the peace, etc., the Merced Police Department must be notified immediately and additional security personnel shall be provided, during nightclub hours, as deemed necessary by the Police Chief or his designee. The Police Chief or his designee shall also have the right to require additional security upon his/her determination that problems are occurring on-site or within the immediate area. It shall be the owner’s responsibility to appropriately plan to provide the required number of security personnel at all times.”

AYES: Commissioners McCoy, Padilla, Mackin, Williams, and Chairperson Colby

NOES: Commissioner Amey

ABSENT: Commissioner Madayag

- 4.2 General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan, initiated by Golden Valley Engineering, applicant for V &S Real Estate Investments, LLC, property owner. This application involves a request to amend the General Plan land use designation from Low-Density (LD) Residential to Commercial Office (CO), a request for Zone Change from Low Density Residential (R-1-6) to Commercial Office (C-O), with an option to prohibit R-4 residential uses, mortuaries, and bail bonds businesses, and a request to change the land use designation in the Northeast Yosemite Specific Plan from Low-Density Residential to Commercial Office to allow the construction of an approximately 117,800-square-foot office complex consisting of three two-story buildings and one single-story building on an approximately 7.5-acre parcel located on the south side of Mercy Avenue between the future Sandpiper Avenue and Mansionette Drive.

Secretary's Note: Commissioners MCCOY and PADILLA noted for the record that they had received a call from one of the area residents regarding the project. In response to questions from Chairperson COLBY, both stated that they had not made a decision and would hear the presentation and consider public testimony before making a recommendation on the project.

Associate Planner NELSON reviewed the staff report on this item. For further information, refer to Staff Report #13-08.

Ms. NELSON noted that Condition #11 included two options regarding the timing of the completion of Sandpiper Avenue and the Commission's recommendation would need to specify which option they were recommending. Also, the applicant has agreed to Conditional Zoning to prohibit certain uses and Condition #18 would need to be deleted if the Commission decides not to recommend to City Council approval of the Conditional Zoning.

Public testimony was opened at 7:58 p.m.

Speakers from the Audience in Favor:

DUANE ANDREWS, Golden Valley Engineering, on behalf of the applicant

BILL SPRIGGS, Merced

Speakers from the Audience in Opposition:

GENE STAMM, Merced City School District

KATHY AQUINO, Merced

DESMOND NAVARES, Merced

ROBERT PARKER, Merced

RENEE DAVENPORT, Merced

BRUCE ANDERS, Merced

ROMULO ARAICA, Merced

TONI FIORENZA, Merced

EILEEN PARKER, Merced

JOANIE GARGES, Merced

VAL FOGELBERG, Merced

JOHN CARLISLE, Merced

CASEY STEED, Merced

Neutral speaker from the Audience:

KEVIN SMITH, Merced

Secretary's Note: Prior to the start of the meeting, the Merced City School District representative submitted several photos depicting traffic near the school. The photos were distributed to the Planning Commission.

Speakers in favor of the project pointed out the positive aspects of the project and that the location across from the hospital was ideal for the uses proposed. They also noted the changes to the project that lessen the impact on the surrounding residential neighborhoods. It was also noted that the traffic problems in the area currently are generated by school traffic and that the school needs to provide adequate off-site drop-off and pick-up areas and that the traffic generated by the project would mostly occur while classes are in session.

Speakers in opposition to the project focused on the traffic impacts to the neighborhood and specifically to the safety of the school children and that the traffic study was inadequate and should be redone when El Capitan High School opened and its traffic impacts could be part of the study. Speakers also noted that they felt the project was not in the right location, there was no need for additional medical offices due to office vacancies elsewhere in the City, and the project would have a negative impact on residential property values.

The neutral speaker had a question regarding circulation and asked if it was possible to have Mansionette Drive terminate at Mercy Avenue so that there was only east-west traffic and no three-way stop or stacking lane.

Staff explained that Mansionette Drive acts as a collector to serve the neighborhood and bring traffic to the arterial (Yosemite Avenue). In order to change the Circulation Element, there would need to be a traffic study, but the change and study would not be a part of this project.

Public testimony was completed at 8:56 p.m.

Commissioner AMEY stated that he agreed with the neighborhood residents that they invested in their homes based on the existing zoning and it shouldn't be changed.

Commissioner MACKIN said there was a need to discuss the public necessity for medical offices in the area of the hospital and that he would like to see this type of project at a location that does not interfere with a neighborhood. He said that the City should look at the property to the north of the hospital as more fitting for this type of development. Commissioner PADILLA concurred and said that they should make decisions based on what the citizens want and not what the developer wants.

Commissioner WILLIAMS agreed that they should listen to what the citizens want, but must also think of the community as a whole. He said that this was a good project in the right location.

Chairperson COLBY said that he travels through the area daily and there were traffic problems before and after school, but aside from those two times, the traffic was very moderate. He said the City is growing and is constantly in a state of flux as times and the economy change. He said that the project provides a nice blending from residential uses to the hospital site and that he strongly supports the project.

M/S COLBY-WILLIAMS, to continue the public hearing to the Planning Commission meeting of April 3, 2013, so that all Commissioners could be present to hear the item and make a recommendation.

AYES: Commissioner Williams and Chairperson Colby
NOES: Commissioners Amey, McCoy, Padilla, and Mackin
ABSENT: Commissioner Madayag

The motion failed.

M/S AMEY-MACKIN, to recommend to City Council denial of the project, finding that the community has spoken in opposition to the project, and that the City Council had denied the applicant's previously proposed project.

AYES: Commissioners Amey, Padilla, and Mackin
NOES: Commissioner Williams and Chairperson Colby
ABSTAIN: Commissioner McCoy
ABSENT: Commissioner Madayag

The motion failed due to the lack of a majority vote.

M/S COLBY-WILLIAMS, to recommend to City Council adoption of a Mitigated Negative Declaration regarding Initial Study #12-35,

and approval of General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan, subject to the Findings and thirty-four (34) conditions set forth in Staff Report #13-08, with Option 2 of Condition #11, and including Condition #18 regarding Conditional Zoning:

AYES: Commissioners McCoy, Williams, and Chairperson Colby

NOES: Commissioners Amey, Padilla, and Mackin

ABSENT: Commissioner Madayag

The motion failed due to the lack of a majority vote.

Secretary's Note: Due to the fact that the motions failed to receive four affirmative votes, the item will be presented to the City Council with no Planning Commission recommendation.

4.3 2012-2013 Annual Attendance Report

M/S COLBY-MACKIN, and carried by unanimous voice vote (one absent), to approve the Annual Attendance Report as submitted.

4.4 Cancellation of April 3 and 17, 2013, Planning Commission Meetings due to Lack of Items.

M/S AMEY-MCCOY, and carried by unanimous voice vote (one absent), to cancel the Planning Commission meetings of April 3 and 17, 2013.

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

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

6. **ADJOURNMENT**

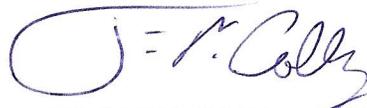
There being no further business, Chairperson COLBY adjourned the meeting at 9:23 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson
Merced City Planning Commission

CITY OF MERCED
Planning Commission

Resolution #3018

WHEREAS, the Merced City Planning Commission at its regular meeting of March 20, 2013, held a public hearing and considered **Conditional Use Permit #1181**, initiated by Loren Wright on behalf of Patricia Moss, Trustee, property owner. This application involves a request to allow a karaoke bar/nightclub to locate at 1111 Motel Drive, generally located approximately 170 feet west of the northwest corner of Motel Drive and Almond Avenue within a Thoroughfare Commercial (C-T) zone, and to allow an increase in maximum sign area from 250 square feet to 500 square feet for the site; also known as Assessor's Parcel No. 035-101-004; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through K of Staff Report #13-07; 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 #13-04, and approve Conditional Use Permit #1181, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioners Mackin, McCoy, Padilla, Williams, and
Chairperson Colby

NOES: Commissioner Amey

ABSENT: Commissioner Madayag

ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3018

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March 20, 2013

Adopted this 20th day of March 2013



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:CUP#1181 Wright Nightclub

Conditions of Approval
Planning Commission Resolution #3018
Conditional Use Permit #1181

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) – Attachment B of Staff Report #13-07, 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. Prior to opening the bar/nightclub, the owner shall submit a floor plan with clearly marked dimensions to the Inspection Services Department for evaluation of the allowable occupant load. The owner shall comply with all applicable requirements of the Building and Fire Codes for the occupant loads determined from this evaluation.
8. Prior to opening the restaurant for food service or offering food cooked on-site, a grease interceptor shall be installed per City Standards. Prior to installing a grease interceptor, only pre-packaged foods shall be provided.
9. In accordance with state law, all alcohol sales shall end at 2:00 a.m.
10. No “adult entertainment businesses” as defined in Merced Municipal Code (MMC) Chapter 20.90 shall be allowed on the premises.
11. The business owner shall contact the Merced County Health Department and comply with all requirements for this type of establishment prior to opening for business.
12. The City reserves the right to periodically review the operation 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, lewd and/or disorderly conduct, and disturbing the peace result from the proposed land use, etc., the conditional use permit may be subject to review and revocation by the City of Merced per the procedures in the Merced Municipal Code.
13. The business shall be closed between the hours of 2:00 a.m. and 6:00 a.m.
14. 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.
15. Between the hours of 10:00 p.m. and 2:00 a.m., all nightclub patrons must be at least 21-years old.
16. Noise levels generated by the nightclub/entertainment venue shall be kept to a level not creating a public nuisance to the surrounding residential uses,

business establishments, and/or immediate area. If noise-related complaints are received by the City of Merced, the conditional use permit may be subject to review and possible revocation by the Planning Commission per the procedures in the Merced Municipal Code.

17. To prevent noise from carrying throughout the area, and especially to the nearby residential uses, the doors shall be kept closed except as patrons enter and exit. The doors shall not be propped open during business hours.
18. The applicant shall provide 1 security guard for each entrance/exit, 1 security guard to patrol the outside area, and 1 security guard per each 50 people inside if the number of patrons exceeds 50. All security guards shall be hired from a company that has been approved by the Merced City Council and properly licensed through the City of Merced. All security guards are subject to approval of the Merced Police Department. If the number of patrons is less than 50, the applicant shall have a designated employee responsible for security. This employee shall be dedicated solely to providing security and shall be required to monitor all entrances and exits at all times. If problems arise (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, lewd and/or disorderly conduct, and disturbing the peace, etc., the Merced Police Department must be notified immediately and additional security personnel shall be provided, during nightclub hours, as deemed necessary by the Police Chief or his designee. The Police Chief or his designee shall also have the right to require additional security upon his/her determination that problems are occurring on-site or within the immediate area. It shall be the owner's responsibility to appropriately plan to provide the required number of security personnel at all times.
19. If the bar/nightclub owner changes from the current owner(s), a new application shall be brought back to staff with possible referral to the Planning Commission for consideration.
20. If smoking is permitted outdoors, receptacles shall be available for ashes and cigarette butts and all applicable laws shall be enforced (i.e., distance from doorways, etc.). These receptacles shall not be located within the City right-of-way and shall be located as far away from the residential uses as possible.
21. The refuse container shall be located near the eastern property line close to the building behind the fenced area (refer to Attachment D of Staff Report #13-07). The business owner shall provide a security bar and lock for the refuse container to prevent scavenging through the trash. The security bar

shall meet the requirements of the City Refuse Department. The business owner shall be responsible for ensuring the container is locked nightly, but opened for refuse pick up.

22. “No Loitering” signs shall be placed on the building and within the parking lot area.
23. Sufficient lighting shall be provided throughout the site to provide a safe environment for patrons of all businesses. All lighting shall be directed downward to ensure the light does not spill over onto adjacent residential uses or onto the adjacent motel rooms.
24. The maximum amount of signing allowed on the site shall not exceed 500 square feet. Illuminated signs facing the adjacent residential uses shall be limited to an illumination level that does not spill over onto those uses. The applicant shall provide all dimensions of the existing and proposed signs, as well as the amount of illumination generated by each sign. The applicant shall obtain a building permit for any changes proposed to the signing.
25. Within one year of this approval, the owner shall repair the sidewalks (Attachment E of Staff Report #13-07) at the driveway entrances along Motel Drive. An encroachment permit shall be obtained and all work shall be done to meet City Standards.
26. All existing or proposed landscaping shall be kept healthy and maintained, and any damaged or missing landscaping shall be replaced immediately.
27. The premises shall remain clean and free of debris and graffiti at all times.
28. Within six months of this approval, the parking lot shall be re-striped to meet City Standards. The faded stripes that are no longer accurate should be removed to delineate the difference between the newly striped area and the area previously striped.
29. The fencing between this site and the adjacent property to the east shall be repaired and all missing pickets shall be replaced.

n:shared:planning:PC Resolutions:CUP#1181 Exhibit A