

CITY OF MERCED
Planning Commission

Resolution #4055

WHEREAS, the Merced City Planning Commission at its regular meeting (held via teleconference) of January 20, 2021, held a public hearing and considered **Conditional Use Permit #1251**, submitted by Tait & Associates, on behalf of Yosemite & G, LLC, property owner. This application involves a request to sell beer, wine, and distilled spirits for off-site consumption for a new gas station (7-Eleven), generally located at the northeast corner of Yosemite Avenue and G Street (3600 G Street), within a zoning classification of Planned Development (P-D) #72, and a General Plan designation of Neighborhood Commercial (CN); said property being more particularly described as “Remainder C” of Final Map No. 5233, amended map for Mansionette Estates Unit 1, according to the map filed July 13, 2000 in Book 52, Pages 31, 32, and 33 of Official Plats, Merced Country Records; also known as Assessor’s Parcel Number (APN) 231-040-004 and APN 231-040-005.

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through F (Exhibit B) of Staff Report #20-796; and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for Conditional Use Permits in Merced Municipal Code Section 20.68.020 (E), and other Considerations as outlined in Exhibit B; 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 find that the previous environmental review (Initial Study #19-28 for General Plan Amendment #19-03 and Site Utilization Plan Revision #3 for Planned Development #72) remains sufficient and no further documentation is required (CEQA Section 15162 Findings) and approve Conditional Use Permit #1251, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by reference.

Upon motion by Commissioner Camper, seconded by Commissioner White, and carried by the following vote:

- AYES: Commissioners Butticci, Camper, Delgadillo, Dylina, White, and Chairperson Harris
NOES: None
ABSENT: None
ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4055

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January 20, 2021

Adopted this 20th day of January, 2021

Michael Harris

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachments:

Exhibit A - Conditions of Approval

Exhibit B - Findings

Conditions of Approval
Planning Commission Resolution #4055
Conditional Use Permit #1251

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment E of Staff Report #20-796, 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 superseded by Code) shall apply.
3. The Project shall comply with the conditions set forth in General Plan Amendment #19-03, Site Utilization Plan Revision #3 to Planned Development #72, and Conditional Use Permit #1241 for a master sign program, all previously approved for this development.
4. 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, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City’s attorney’s fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the

City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment. 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.

5. 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.
6. Sufficient lighting shall be provided throughout the site to provide a safe environment for employees and patrons of the business.
7. All landscaping shall be kept healthy and maintained in good condition and any damaged or missing landscaping shall be replaced immediately.
8. The premises shall remain clean and free of debris and graffiti at all times. Any damaged materials shall be replaced by matching materials.
9. A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.
10. No beer shall be displayed or stored outside of the cooler areas.
11. No display or sale of beer or wine shall be made from an ice tub.
12. Employees shall be at least 21 years old to sell alcohol.
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 area within the convenience market dedicated to the display and sale of beer, wine, and distilled spirits shall not exceed the amount shown at Attachment E of Staff Report #20-796.
15. The City reserves the right to periodically review the area for potential problems. If in the opinion of the Police Chief, 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 in conformance with the procedures outlined in the Merced Municipal Code.

16. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine cooler containers shall be sold as part of a pack or carton. However, wine bottles or cartons of sizes 750 ml or larger may be sold as single-serving containers.
17. No alcohol shall be displayed within five feet of the cash register or the front door.
18. No advertisement of alcoholic beverages shall be displayed on motor fuel islands, in landscaped areas, or outside the buildings or windows.
19. No self-illuminated advertising for alcoholic beverages shall be located on buildings or windows.
20. No sale of alcoholic beverages shall be made from a drive-up window.
21. The business shall comply with all applicable requirements from the Merced County Health Department.
22. 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.
23. A permanent tamper-proof outdoor trash receptacle shall be installed near the main entrance to the convenience market.
24. A Finding of Public Convenience or Necessity must be obtained from the City Council for this use.
25. In the site's current configuration, the sale of tobacco is prohibited per MMC 20.44.160, as the subject site is currently located within 1,000 feet of a school. Should the in-process Final Map Application be approved, if the distance of the newly created parcel which this project is sited on is greater than 1,000 feet from any school, not including Merced College, the sale of tobacco would no longer be prohibited.

26. The signage as currently proposed is not approved. All signage shall comply with the Master Sign Program for this site approved in Conditional Use Permit #1241 and the City's Sign Ordinance.

**Findings and Considerations
Planning Commission Resolution #4055
Conditional Use Permit #1251**

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Neighborhood Commercial (CN) and the zoning classification of Planned Development (P-D) #72 with approval of a Conditional Use Permit.

Alcohol Sales

- B) This request requires a Conditional Use Permit because 7-Eleven will be less than 20,000 square feet in size. In order for the Planning Commission to approve or deny a request for the sale of alcoholic beverages for off-site consumption, it must consider the following criteria and make findings to support or deny each criterion per MMC 20.44.010:

Criteria #1

The proposed use will not result in an "undue concentration" of establishments dispensing alcoholic beverages as defined by Section 23958 and 23958.4 of the California Business and Professional Code and giving consideration to the California Department of Alcoholic Beverage Control's guidelines related to number and proximity of such establishments within a 500-foot radius of the site.

Finding #1:

The subject site is located within Alcoholic Beverage Control Census Tract #11.01. In checking with the State of California Alcoholic Beverage Control, this census tract is over concentrated with business selling alcohol as 5 licenses are allowed outright, but there are currently 10 active sites. The City Council will need to approve a Finding of Public Convenience or Necessity for this use (Condition #24 of Planning Commission Resolution #4055).

Criteria #2

The proposed use will not adversely affect the economic and societal welfare of the pertinent community or residentially-zoned community in the area of the City involved, after giving consideration to the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds, and other similar uses; and other establishments dispensing, for sale or other considerations, alcoholic beverages including beer and wine.

Finding #2:

The nearest residential uses (single-family homes) are located approximately 80 feet east of the subject site, across the proposed extension of Sandpiper Avenue. (Attachment B of Staff Report #20-796). The nearest sensitive use (besides residential properties) is Cruickshank Middle School, which is located approximately 960 feet away from the subject site with the main entrance to the school being

approximately 1,288 feet away from the subject site, at the northeast corner intersection of Dominican Drive and Mercy Avenue. The approved Vesting Tentative Subdivision Map and pending Final Map application would modify the site such that it sits on a parcel that is approximately 375 feet away from the residential properties to the east, approximately 1,800 feet from the property line of Cruickshank Middle School, and over 2,000 feet from the main entrance to the school building.

Criteria #3

The crime rate in the area of the proposed site with particular attention given to those crimes involving public intoxication, the illegal sale of narcotics, disturbing the peace, and disorderly conduct.

Finding #3:

Between December 1, 2019, and November 30, 2020, the Merced Police Department recorded 369 incidents within a 500-foot radius of the subject site. The table below shows the number of incidents within that area involving public intoxication, assaults, MMC violations, and narcotics violations (totaling 88 incidents during the 12-month period). As shown on the attached Incident Map (Attachment J of Staff Report #20-796), the majority of those incidents occurred at the intersection of Yosemite Avenue and G Street (most of which were traffic related incidents), or in the parking lot of the shopping center across Yosemite Avenue to the south. The number of incidents reported City-wide for the same time period was 72,743. Based on the total number of calls within the City, the 88 calls to this area equals 0.1% of the overall calls for service within the City.

Incidents and Cases Reported (December 1, 2019 – November 30, 2020)

Incident/Case Type	Number of Incidents
Public Intoxication	1
Assault	1
MMC*	35
Narcotics violations	1
Disturbance	46
Drunk Driver**	4

*Municipal Code Violations regarding open containers, drinking in public, etc.

**MMC 20.44.010(B)(3) does not specify drunk driving as an item of particular attention, though it is similar enough to a listed item of particular attention, “public drunkenness”, that it is presented here for consideration.

Planning staff consulted with the Merced Police Department regarding alcohol sales at this location; the Police Department did not have any significant concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales for off-site consumption. Based on the information provided by the Police Department, staff does not anticipate that the approval of this request would adversely affect the economic and social welfare of the surrounding area.

Neighborhood Impact/Interface

- C) The subject site is surrounded by retail uses to the south, Merced College to the west, vacant land and the Mercy Medical Center to the north, and residential uses to the east. Residential uses (single-family homes) are located 80 feet east of the subject site (Attachment B of Staff Report #20-796). The nearest sensitive use (besides residential properties) is Cruickshank Middle School, which is located approximately 960 feet away from the subject site with the main entrance to the school being approximately 1,288 feet away from the subject site, at the northeast corner intersection of Dominican Drive and Mercy Avenue. The approved Vesting Tentative Subdivision Map and pending Final Map application would modify the site such that it sits on a parcel that is approximately 375 feet away from the residential properties to the east, approximately 1,800 feet from the property line of Cruickshank Middle School, and over 2,000 feet from the main entrance to the school building. The subject site is surrounded by vacant parcels, arterial roads, and a proposed extension of Sandpiper Avenue. These barriers would reduce the impact that this development would have on the neighborhood. Given the context of the site, the approved Vesting Tentative Subdivision Map and the pending application for a Final Map which would increase the distance between the boundaries of the parcel on which the proposed activities will take place and surrounding/sensitive uses, staff believes that approval of this request should not have a significant impact in the surrounding area.

A public hearing notice was circulated in the Merced County Times and mailed to property owners within 300 feet of the subject site three weeks prior to this public hearing. As of the date that this report was prepared, staff did not receive any comments from the community about this project.

Signage

- D) The applicant has proposed signage as part of their application. As proposed, the monument sign does not meet the criteria outlined in the approved master sign program, including dimensions, materials, and layout, for this site (Conditional Use Permit #1241). Additionally, the proposed illuminated window sign for an Automated Teller Machine is not one of the approved signs in the master sign program. Furthermore, the master sign program specifies a number of approved types, each of which includes channel lettering. Staff is not recommending approval of these signs as presented and all signage must comply with the approved master sign program. Staff is also recommending that certain restrictions regarding the advertisement of alcohol be included with this permit. Said restrictions would prohibit the advertisement of beer, wine, and distilled spirits on the building walls, windows, and in the parking lot (Conditions #18 and #19 of Planning Commission Resolution #4055). A formal request for permanent signage shall be reviewed by staff with a building permit application and shall require compliance with the North Merced Sign Ordinance.

Conditional Use Permit Findings

- E) In order for the Planning Commission to approve or deny a conditional use permit,

EXHIBIT B

OF PLANNING COMMISSION RESOLUTION #4055

they must consider the following criteria and make findings to support or deny each criteria per MMC 20.68.020 (E) – Findings for Approval.

1. *The proposed use is consistent with the purpose and standards of zoning district, the general plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

The proposed project complies with the General Plan designation of Neighborhood Commercial (CN) and the zoning designation of Planned Development (P-D) #72 with approval of this conditional use permit.

2. *The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.*

The site plan for this site was approved as a part of General Plan Amendment #19-03 and Site Utilization Plan #3 to Planned Development #72 for the Yosemite Crossing Development in January 2020. The proposed use fits within the character and design of that site plan. Staff does not anticipate that the approval of this proposal would significantly change the character of the neighborhood or create any unusual circumstance for the surrounding area.

3. *The proposed use will not be detrimental to the public health, safety, and welfare of the city.*

As shown under Finding B, staff does not anticipate that this proposal would be detrimental to the public health, safety, and welfare of the City. Planning staff consulted with the Merced Police Department regarding alcohol sales at this location; the Police Department did not have any significant concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales for off-site consumption. Based on the information provided by the Police Department, staff does not anticipate that the approval of this request would adversely affect the public health, safety, and welfare of the City.

4. *The proposed use is properly located within the City and adequately served by existing or planned services and infrastructure.*

The subject site is properly located within the City and can be served by existing or planned services and infrastructure.

Environmental Clearance

- F) Planning staff has conducted an environmental review (Environmental Review #20-40) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and recommends that the previous environmental review (Initial Study #19-28 for General Plan Amendment #19-03 and Site Utilization Plan Revision #3 for Planned Development #72) remains sufficient and no further documentation is required (CEQA Section 15162 Findings) (Attachment I of Staff Report #20-796).