

**RESOLUTION NO. 2020- 63**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MERCED, CALIFORNIA,  
DENYING AN APPEAL BY CASEY STEED  
AND RICHARD HARRIMAN ON BEHALF  
OF MERCED SMART GROWTH  
ADVOCATES (MSGA) RELATED TO  
CONDITIONAL USE PERMIT #1238, SITE  
PLAN REVIEW PERMIT #455, MITIGATED  
NEGATIVE DECLARATION FOR  
CONDITIONAL USE PERMIT #1238,  
ENVIRONMENTAL DETERMINATION #20-  
05 (CEQA SECTION 15162) FOR SITE PLAN  
REVIEW PERMIT #455, AND APPROVING A  
MITIGATED NEGATIVE DECLARATION  
AND THE MITIGATION MONITORING  
REPORT AND PROGRAM FOR  
CONDITIONAL USE PERMIT #1238,  
APPROVING ENVIRONMENTAL  
DETERMINATION #20-05 (CEQA SECTION  
15162) FOR SITE PLAN REVIEW PERMIT  
#455, APPROVING CONDITIONAL USE  
PERMIT #1238, APPROVING SITE PLAN  
REVIEW PERMIT #455, AND MAKING  
CERTAIN FINDINGS AND IMPOSING  
CERTAIN CONDITIONS IN CONNECTION  
THEREWITH**

WHEREAS, the Planning Commission of the City of Merced (“Planning Commission”) at its meeting of January 22, 2020, held a public hearing and considered Conditional Use Permit #1238 to allow the construction of a mixed-use development consisting of 214 apartment units and approximately 37,000 square feet of commercial uses (retail and office) within four buildings (two two-story buildings and two three-story buildings) on approximately 5.94-acre parcel generally located at the southeast corner of Yosemite Avenue and McKee Road; and

WHEREAS, on January 22, 2020, the Planning Commission, after hearing all evidence and testimony and after exercising its independent judgment, adopted

Resolution #4035, approving Conditional Use Permit #1238, subject to the findings and conditions attached thereto; and

WHEREAS, the Planning Commission at its meeting of April 13, 2020, held a public hearing and considered Site Plan Review Permit #455 to allow the construction of a mixed-use development consisting of 214 apartment units and approximately 37,000 square feet of commercial uses (retail and office) within four buildings (two two-story buildings and two three-story buildings) on an approximately 5.94-acre parcel generally located at the southeast corner of Yosemite Avenue and McKee Road; and

WHEREAS, on April 13, 2020, the Planning Commission, after hearing all evidence and testimony and after exercising its independent judgment, adopted Resolution #4036, approving Site Plan Review #455 subject to the findings and conditions attached thereto; and

WHEREAS, the Appellants [Casey Steed and Richard Harriman on behalf of Merced Smart Growth Advocates (MSGAs)], appealed the Planning Commission decision to approve Conditional Use Permit #1238, Site Plan Review #455, the environmental determination to approve a Mitigated Negative Declaration for Conditional Use Permit #1238 and Environmental Review #20-05 (CEQA Section 15162) for Site Plan Review Permit #455; and

WHEREAS, On May 4, 2020, at a duly noticed public hearing, the City Council held a de novo review in accordance with Merced Municipal Code section 20.74.030(F)(1). All those interested in the matter were provided the opportunity to address the Council and to provide evidence and/or written or oral testimony regarding the application and appeal. After receiving all of the evidence submitted and hearing all testimony provided by any and all interested parties, the City Council closed the public hearing and began their deliberations; and

WHEREAS, during their deliberations the Council, on its own motion, decided to continue their deliberations to a future meeting; and

WHEREAS, The Council's further deliberations were scheduled for June 1, 2020. After receiving the staff report, members of the public were allowed to address the Council. Since the public hearing was closed on May 4, 2020, comments were received in accordance with the Brown Act. In addition, written correspondence was provided to the Council including communication from Ms. Paster, applicant's counsel. Ms. Paster requested a continuance. The Council

granted Ms. Paster's request and the matter was continued to the June 15, 2020, City Council meeting for further deliberations; and

WHEREAS, On June 15, 2020, after a presentation from staff and at the request of Ms. Paster, applicant's counsel, with the concurrence of Mr. Harriman, appellants counsel, the matter was continued to August 17, 2020 to re-open the public hearing and consider additional evidence related to the appeal; and

WHEREAS, On August 17, 2020, after staff presented a PowerPoint presentation to Council, the public hearing was re-opened, additional evidence was submitted by the applicant, appellant, and interested parties were heard or submitted written communication to the Council for consideration. After all evidence was submitted, the public hearing was closed and the Council began their deliberations; and

WHEREAS, the Project as proposed does not meet the objective building height standard of 35 feet for the Neighborhood Commercial (C-N) zone or the objective parking standard of 431 parking spaces required from the project based upon 200 residential units; and

WHEREAS, On August 17, 2020, after considering all the testimony and evidence presented to the Council during the course of the proceedings and although the project did not meet the objective building heights standard for Buildings 2 and 4 or the objective parking standard, in lieu of approving the appeal and denying the project, the Council exercised its discretion to approve the project with modifications and additional conditions; and

WHEREAS, The Site Plan Review Permit allows Buildings 2 and 4 to exceed the objective height standard of 35 feet in the C-N zone and approval of a parking demand study allows the parking standard to be reduced from 431 to 386; and

WHEREAS, With the approval of the Site Plan Review Permit and the parking demand study, the conditioned project meets the General Plan, Zoning Code, and Design Standards; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council approves and adopts a Mitigated Negative Declaration pursuant to the provisions of the California Environmental Quality Act and based upon the Initial Study/Environmental Review #19-37, and all attachment and appendices thereto including, but not limited to, the Mitigation Monitoring Program, which is also adopted by this action, Air Quality Analysis, Greenhouse Gas Analysis, and Traffic Analysis, Attachment 12 to the City Council Staff Report dated May 4, 2020, beginning at page 26 and concluding at page 250, and the analysis, findings, and determinations set forth therein including, but not limited, to the determination that there will not be a significant effect on the environment because revisions to the project have been made and have been agreed to by the project proponent that reduces any impact to less than significant.

In addition, the Council has considered the Internal Circulation Analysis dated July 20, 2020, prepared by K2 Traffic Engineering, Inc., Attachment 11 to Administrative Report dated August 17, 2020, the Ennis Consulting correspondence dated August 11, 2020, Attachment 12 to the Administrative Report dated August 17, 2020, the Burgess Engineering Group correspondence dated August 14, 2020, the correspondence from K2 Traffic Engineering Inc., dated August 14, 2020, which was submitted to the Council on August 17, 2020, and the information presented by staff on August 17, 2020, including the information contained in the PowerPoint presentation.

The Council finds that the Ennis Consulting correspondence makes the following comments regarding compliance with the California Environmental Quality Act and the City of Merced's approval of Site Plan Review Permit #455 only:

#### Traffic Study

1. UC Merced campus is nearly 3 miles away from the subject site and such trip reductions are typically valid when student housing is constructed at a closer distance.
2. The closest bus stop is a half mile away and the conditions of approval do not reflect that the local transit agency has agreed to placing a bus stop adjacent to the subject site.
3. The trip reduction for mass transit also appears unwarranted
4. Given the factors 1-3 above, the 20% trip reduction appears high.
5. The internal capture of 13% is on the higher threshold as Caltrans limits such reductions to no more than 5%. The 35% Pass by

Reduction should only be applied after the internal capture is applied, not cumulatively.

### Sewer Generation and Disposal

1. At no time has the firm ever heard or witnessed a proposal to mitigate the lack of existing sewer infrastructure by constructing an on-site sewer holding tank system.
2. It is doubtful that Department of Public Health or the Regional Water Quality Control Board will allow parking to occur on top of this buried tank.

The Council finds that the correspondence submitted by Ennis Consulting and specifically the comments set forth therein are mere arguments, speculation, unsubstantiated opinion and/or narrative evidence which is clearly inaccurate or erroneous. The comments lack facts, reasonable assumption predicated upon the facts, or expert opinion supported by facts.

Based upon the foregoing, the Council finds that based upon the administrative record of the proceedings, including the Ennis correspondence, there is no substantial evidence in the administrative record supporting a fair argument that the project may have a significant adverse impact on the environment.

The Council finds based upon the CEQA documents set forth in Section 1, paragraph 1, the mitigation measures set forth in the CEQA documents, and conditions of approval for Conditional Use Permit #1238 and Site Plan Review Permit #455 are adequate and the project as revised and/or mitigated does not have an adverse effect on the environment.

Therefore, the Council approves and adopts the Mitigated Negative Declaration and Mitigation and Monitoring Program for Conditional Use Permit #1238, and Environmental Determination #20-05 (CEQA 15162) for Site Plan Review Permit #455.

SECTION 2. CONSIDERATION. The City Council has considered all of the evidence submitted into the administrative record including, but not limited to:

- A. A location map of the proposed premises at the southeast corner of Yosemite Avenue and McKee Road

- B. An aerial map of the proposed premises
- C. A proposed site plan and floor plans
- D. Proposed elevations
- E. Planning Commission Resolution #4035, approving Conditional Use Permit #1238
- F. Casey Steed's Appeal of City of Merced Planning Commission Resolution #4035 approving Conditional Use Permit #1238
- G. Planning Commission Resolution #4036 approving Site Plan Review #455
- H. Casey Steed's and Richard Harriman's (on behalf of Merced Smart Growth Advocates (MSGA) and the San Joaquin Valley Environmental Defense Center) appeal of Merced City Planning Commission Resolution #4036 approving Site Plan Review #455
- I. Environmental Review #19-37 (Mitigated Negative Declaration) including all appendices and attachment thereto
- J. Administrative Report #20-087 for the May 4, 2020, City Council meeting, attachments thereto, staff presentation and the evidence and written and oral communications presented to the Council during the proceedings.
- K. Administrative Report #20-238 for the June 1, 2020, City Council meeting, attachments thereto, staff presentation and the evidence and written and oral communications presented to the Council during the proceedings.
- L. Administrative Report #20-303 for the June 15, 2020, City Council meeting, attachments thereto, staff presentation, and the evidence and written and oral communications presented to the Council during the proceedings.
- M. Administrative Report #20-358 for the August 17, 2020, City Council meeting, attachments thereto, staff presentation, and the evidence and

written and oral communications presented to the Council during the proceedings.

- N. Correspondence from Elisa Paster of Glaser Weil, attorney for the project applicant dated June 1, 2020, Jun 11, 2020, and June 12, 2020
- O. Revised plans submitted June 12, 2020, and prepared by Ferrier Architecture Studio which reflect changes to the Project with respect to the bus stop, ride share, additional seating, and roof deck (decrease in size, location, canopy and seating capacity)
- P. Casey Steeds letter dated January 29, 2020, requesting an appeal hearing of the Planning Commissions decisions related to Conditional Use Permit #1238, Initial Study 19-37, and other related actions
- Q. Correspondence from Richard Harriman, attorney for appellant, dated April 20, 2020, June 15, 2020, and June 23, 2020
- R. K2 Traffic Engineering Internal Circulation Analysis dated July 20, 2020
- S. Correspondence from Ennis Consulting on behalf of the appellant dated August 11, 2020
- T. Correspondence from Burgess Engineering Group dated August 14, 2020
- U. Correspondence from K2 Traffic Engineering Inc., dated August 14, 2020

**SECTION 3. FINDINGS.** In view of all of the record evidence including, but not limited to, the administrative reports and attachments thereto, presentations, comments, written and oral testimony, the actions and decision of the Planning Commission and other information and evidence presented during the Public Hearings and Public Meetings, the City Council, having conducted a de novo review, finds the Project as proposed does not meet the objective building height standard of 35 feet for the C-N zone or the objective parking standard of 431 parking spaces.

In lieu of approving the appeal and denying the project, the Council exercising its discretion, independent judgment and making its own decision has determined to deny the appeals and approve Conditional Use Permit #1238 and Site Plan Review Permit #455, which allows the building height of buildings 2 and 4 to exceed the objective height standard of 35 feet in the C-N zone, approve the reduction of parking spaces in accordance with the approval of a parking demand study, the approved parking demand study allows the objective parking standard of 431 space to be reduced to 386, and set the numerical limit of residential units at 200 all in accordance with the General Plan, the Zoning Code and the Findings and Conditions set forth in Exhibits “A” and “B”, attached.

SECTION 4. DETERMINATION. The City Council determines that the evidence in the record constitutes substantial evidence to support the actions taken and the findings made in this Resolution. The City Council further determines that the facts stated in this Resolution are supported by substantial evidence in the record including, but not limited to, the administrative reports and attachments thereto, presentations, comments, written and oral testimony, the actions and decision of the Planning Commission and other information and evidence presented during the Public Hearings. There is no substantial evidence, nor other facts that detract from the findings made in this Resolution and the City Council expressly declares that it considered all evidence presented and reached these findings after due consideration of all evidence presented to it.

SECTION 5. CONDITIONAL USE PERMIT. The City Council hereby approves Conditional Use Permit #1238 based up on the findings set forth above and the Findings and Conditions attached as Exhibit “A” and incorporated herein by this reference.

SECTION 6. SITE PLAN REVIEW. The City Council hereby approves Site Plan Review Permit #455 based up on the findings set forth above and the Findings and Conditions attached as Exhibit “B” and incorporated herein by this reference.

SECTION 7. JUDICIAL REVIEW. The time in which to seek judicial review of this decision shall be governed by Code of Civil Procedure Section 1094.6. The City Clerk shall certify to the adoption of this Resolution, transmit copies of the same to the applicant, appellant and their respective counsel, if any, together with a proof of mailing in the form required by law and shall enter a certified copy of this Resolution in the Book of Resolutions of the City.



PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the 21st day of September 2020, by the following vote:

AYES: 4                      Council Members: MARTINEZ, MCLEOD, SERRATTO, SHELTON

NOES: 2                      Council Members: ECHEVARRIA, MURPHY

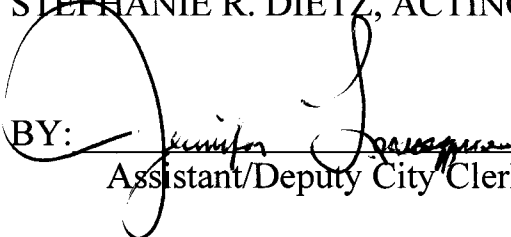
ABSENT: 0                      Council Members: NONE

ABSTAIN: 1                      Council Members: BLAKE

APPROVED:

  
\_\_\_\_\_  
Mayor


ATTEST:  
STEPHANIE R. DIETZ, ACTING CITY CLERK

BY:   
\_\_\_\_\_  
Assistant/Deputy City Clerk

(SEAL)



APPROVED AS TO FORM:

 9-15-2020  
\_\_\_\_\_  
City Attorney                      Date

**Findings and Considerations  
Conditional Use Permit #1238**

**FINDINGS/CONSIDERATIONS:**

**General Plan Compliance and Policies Related to This Application**

- A) The proposed mixed-use project complies with the General Plan designation of Neighborhood Commercial (CN) and the Zoning classification of Neighborhood Commercial (C-N). The proposed commercial uses comply with the General Plan designation of Neighborhood Commercial (CN). Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project. The *Merced Vision 2030 General Plan* includes two classifications for higher density residential uses – High-Medium Density (HMD) and High Density (HD). The High-Medium designation allows 12 to 24 units per acre, while the High Density designation allows 24 to 36 units per acre. The proposed project, at 200 units, has a density of 34 units per acre. Therefore, because there is no definitive designation for a mixed use project and there are General Plan policies that encourage higher density and alternate housing types (see below), the City Council has set the numeric limit on residential units at 200 for this project. Based on this designation, the proposed multi-family portion of the project would comply with the General Plan under the High Density designation.

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting affordable housing, mixed-use development, and higher densities.

**Policy H-1.1**      *Support Increased in Residential Zoning Districts*

Although the proposed project would not be located within a residential zone, it does provide an opportunity for a higher density project to provide needed housing within the City.

**Policy H 1.1.c**      *Encourage Mixed Use Development*

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and the multi-family dwelling units.

Policy 1.1.e      *Encourage Alternate Housing Types*

The proposed project would include one, two, and three-bedroom apartments. The units range in size from 276 square feet for a one-bedroom unit with a balcony, to 876 square feet for a 3 bedroom unit. This mixture provides a variety of different housing types to meet the growing need of housing within the community and supports this policy of providing alternate housing types.

Policy 1.8b      *Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.*

The proposed project is on an in-fill site and meets the density requirements of the City's highest density classification.

The following are Land Use Policies and Implementing Actions of the General Plan that could be met with the proposed project.

Policy L-1.1      *Promote Balanced Development Which Provides Jobs, Services, and Housing.*

*Implementing Action 1.1.a: Promote mixed use development combining compatible employment, service and residential elements.*

*Implementing Action 1.1.c: Determine the types of housing opportunities needed for the type of employment opportunities being created in the City.*

The Zoning Ordinance does not specify a density for multi-family housing allowed within a C-N zone, it merely states that multi-family uses are allowed within the C-N zone as a Conditional Use. Therefore, approval of the proposed Conditional Use Permit would bring the project into compliance with the Zoning Ordinance.

**Zoning Ordinance Compliance – Conditional Use Permit Required Findings**

B) Section 20.68.020 sets forth specific Findings that must be made in order for the City Council to approve a Conditional Use Permit. These Findings are provided below.

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

The purpose of a Neighborhood Commercial (C-N) zone is to provide areas for shopping centers and other commercial uses that serve the day-to-day needs of a residential neighborhood. The C-N zone allows a variety of commercial uses and residential uses, subject to approval of a Conditional Use Permit. The proposed project would provide a variety of retail and restaurant uses to serve the tenants of the project as well as the surrounding neighborhood. With the approval of the requested Conditional Use Permit, the project would comply with the requirements and purpose of the C-N Zone.

As described in Finding A above, the project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

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.*

As described above, the commercial uses are allowed within a C-N zone. The proposed multi-family component of the project is a conditional use. The developer has revised the project to address some of the concerns expressed with the previously proposed project. The building heights have been reduced for the buildings on the east and west side of the site closest to the existing residential uses. The setbacks have been increased for those buildings as well in an effort to reduce impacts on the surrounding neighborhood. The site is surrounded by residential uses and a church to the north. Therefore, residential uses are common in this area. Another apartment complex is currently under construction east of this site at the corner of Yosemite and Lake Road, in the same general vicinity, which provides a mixture of housing units for the area. Given the proximity to the UC, multi-family uses are appropriate for this area. Therefore, through the implementation of the conditions of approval, the proposed apartment project (as part of the overall mixed-use project) would be compatible with the existing and future land uses in the vicinity.

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

The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. The project would be required to annex to the City's Community Facilities District to pay for costs related to police and fire safety. Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the 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 project site is an in-fill site near the edge of the City's eastern boundary, surrounded by residential uses. The project would be adequately served by the City's water system. Through the implementation of the conditions of approval, the project would be adequately served by the City's sewer and storm water systems. Additionally, the project would be required to pay Public Facilities Impact Fees to help pay for future improvements needed to the City's infrastructure.

### **Traffic/Circulation**

- C) The project site is located at the southeast corner of Yosemite Avenue and McKee Road. Yosemite Avenue, east of Parsons Avenue is designated as a "Special Street Section" in the *Merced Vision 2030 General Plan*. As such, the ultimate right-of-way for this road is 94 feet. McKee Road is a Collector Road with an ultimate right of way of 74 feet. The project would have access from Yosemite Avenue (right-in/right-out only) and McKee Road (full access). Both the intersections of Yosemite Avenue and McKee Road and Yosemite Avenue and Via Moraga (approximately 0.3 miles east of McKee Road) are signalized.

#### **Yosemite Avenue Access**

The primary access on Yosemite Avenue would be a driveway that is located approximately 320 feet east of the intersection of Yosemite Avenue and McKee Road (refer to the Site Plan at Attachment B of Planning Commission Staff Report #20-01). This driveway would provide right in/right out access only. The existing median in Yosemite Avenue would remain unchanged along the project site frontage. No other access to the site would be provided on Yosemite

Avenue.

#### McKee Road Access

The primary access on McKee Road would be through a driveway located approximately 195 feet south of the intersection of Yosemite Avenue and McKee Road. This driveway would allow both left and right turning movements.

#### Whitewater Way

No access is proposed to Whitewater Way from the project site, unless the Fire Department requires an emergency access per Condition #22 of the Conditional Use Permit Conditions.

#### Traffic Impact Analysis

A traffic analysis was prepared for the proposed project by K2 Traffic Engineering, Inc. This analysis studied the following roadway segments:

1. Yosemite Avenue between Parsons Avenue and McKee Road.
2. McKee Road between Yosemite Avenue and Silverado Road.

The following intersections were also studied:

1. Yosemite Avenue at Parsons Avenue/Gardner Avenue
2. Yosemite Avenue at McKee Road
3. Yosemite Avenue at Hatch Road
4. McKee Road at Olive Avenue

The analysis looked at six different scenarios to determine the impact of the project. The scenarios included:

1. Existing Conditions
2. Existing Conditions plus Project
3. Existing plus Approved Conditions
4. Existing plus Approved Conditions, plus Project
5. Cumulative Year (2035) without Project Conditions
6. Cumulative Year (2035) with Project Conditions

The traffic analysis determined that the proposed project would generate a total of 1,876 Average Daily Trips (ADT's). After standard reductions are given for transit and bicycle use, pass-by traffic, and internal capture, the total net ADT's are 1,184. The trip generation numbers are provided on page 13 of the traffic analysis (Appendix D of the Initial Study at Attachment K of Planning

Commission Staff Report #20-01)

The *Merced Vision 2030 General Plan* establishes an acceptable Level of Service (LOS) as LOS D for intersection and roadway operations. The traffic study found that, under existing conditions, the LOS for the intersection at Yosemite Avenue and Parsons/Gardner Avenue currently operates at an LOS F for AM Peak Hour traffic and an LOS E for PM Peak Hour traffic. Additionally, the intersection of McKee Road and Olive Avenue operate at an LOS E and LOS D, respectively. The other two intersections studied (Yosemite Avenue at McKee Road and Yosemite Avenue at Hatch Road) operate at acceptable levels of service (LOS B or better).

With the addition of the proposed project, the intersection at Yosemite Avenue and Parsons/Gardner Avenue, the level of service would be reduced to LOS F and LOS E for the AM and PM peak hours, respectively. The level of service for McKee Road and Olive Avenue would remain an LOS E for the AM peak hour traffic. All other intersections would retain an LOS D or better rating. Under the Cumulative 2035 with project scenario, these same intersections are reduced to an LOS F for both AM and PM peak hours.

The traffic study also conducted a Peak Hour Signal Warrant Analysis and found that signal warrants are satisfied for signals at the intersections of Yosemite Avenue and Parsons/Gardner Avenue and McKee Road and Olive Avenue.

The traffic study recommended the following mitigation measures:

**TRA-01** Pay a proportionate share of the cost of the traffic signal at the intersection of Yosemite Avenue and Parsons/Gardner Avenue.

**TRA-02** Pay a proportionate share of the cost of the traffic signal at the intersection of McKee Road and Olive Avenue.

Because these intersections are currently operating at a level of service below LOS D (the standard established by the General Plan), and the project impacts are not the cause of the existing problems with these intersections, the project would only be required to contribute a fair share to the cost of the traffic signals. The fair share contribution is based on the projects impacts, which in this case would be 2.4% of the cost of the traffic signal at Yosemite Avenue and Parsons/Gardner Avenue and 1.4% of the cost of the signal at McKee Road and Olive

Avenue. The applicants would be eligible for reimbursement for up to 100% of the cost for the Yosemite Avenue and Parsons/Gardner Avenue traffic signal, which is an arterial/arterial intersection, through the City's Public Facilities Financing Program (PFFP). The McKee Road and Olive Avenue intersection would be eligible for up to 50% reimbursement through the PFFP as an arterial/collector intersection. The other 50% would be reimbursed if the owners of the 4 corners do any improvements that would require them to provide mitigation. The City would collect the money for reimbursement for up to 15 years.

The project has been conditioned to require widening of McKee Road to its fullest width per the General Plan Circulation Element for the entire project frontage.

In addition to contributing to the cost of the traffic signals, the project would be providing access to alternate forms of transportation to reduce the impacts from the project. The developer would provide on-site pick-up/drop-off areas for Uber and Lyft, provide bicycles for tenants to use, and possibly provide Zip cars and/or scooters that could be used by the tenants.

In comparison to the previously proposed mixed-use project, the ADT's are reduced from 2,215 ADT's to 1,876 ADT's (gross, with no reductions given) and 1,146 net. It should also be noted that this amount is less than the estimated traffic generation for the proposed shopping center that was approved for this site in 2014.

Additional mitigation measures were adopted with the General Plan Amendment and Zone Change approved in 2019. The development would be required to comply with the applicable mitigation measures as determined by the City Engineer.

### **Parking**

- D) The Zoning Ordinance requires 1.75 spaces of parking for each multi-family unit up to 30 units, plus an additional 1.5 spaces for each unit over 30. There is also an increase in the number of spaces required based on the number of bedrooms and bathrooms in a unit. Based on this calculation, the residential portion of this project (200 units) would require 318 parking spaces.

Parking for the commercial portion of the project would be based on the actual uses. When the parking requirements are based on the



square footage of the tenant space, the Zoning Ordinance allows a reduction in the floor area for non-public space. In this case, a standard 15% reduction was applied when calculating the parking requirements for the office and retail portions of the project. General office uses require one parking space for every 250 square feet of floor area and retail spaces generally require one space for every 300 square feet of floor area (not including restaurant uses). Based on these requirements, the required parking for the office portion would be 49 spaces and for the retail portion, 64 spaces. This brings the total number of required parking spaces to 431. The project as proposed does not comply with objective parking standards. In lieu of granting the appeal and denying the project, the City Council, in the exercise of its discretion, approved the reduction in parking spaces subject to approval of a parking demand study by the Director of Development Services prior to building permit issuance.

The project site provides a total of 386 parking spaces which includes 25 motorcycle parking stalls. In addition, the project provides 70 bicycle parking spaces. Although the total number of spaces required is 431, the Zoning Ordinance allows reductions based on certain criteria. If the project site is located within 400 feet of an approved bus stop, a 5% reduction may be given. Up to a 30% reduction may be given for mixed use developments with the approval of a parking demand study approved by the Director of Development Services. Based on the current design and number of parking spaces provided, the project would need the 5% reduction for a transit stop and a 15% reduction for the mixed-uses granted to comply with the parking requirements. However, it should be noted that through the building permit process, the number of stalls may change given the need to provide trash enclosures and other possible minor site modifications, which could increase the reduction amount. In no case would the reduction allow for less than 386 parking spaces.

The developer will be working with UC Merced to move the bus stop near Yosemite Avenue and Via Moraga closer to their site, so they could qualify for the 5% reduction previously described. In addition, the developer will be providing pick-up/drop-off locations for Uber and Lyft to encourage ride sharing, offering bicycles, and possibly Zip cars and scooters for their tenants to use to reduce the actual number of parking spaces needed. Also, because this is a mixed-use project, it is likely there would be commercial uses that would not

need parking in the evenings, which would leave additional spaces open for the other uses during these hours. Condition #30 requires the developer to provide a parking demand analysis demonstrating that a reduction is warranted prior to the issuance of a building permit.

As previously mentioned, the project will also provide indoor bicycle storage facilities as well as bicycle parking for the commercial uses. The site has easy access to the bicycle trail system which could encourage the use of bicycles rather than cars.

Although the Zoning Ordinance allows for parking reductions, it is important that sufficient parking still be maintained on the site to prevent parking from spilling out into the adjacent neighborhoods.

### **Public Improvements/City Services**

#### **E) Water**

There is a 16-inch water line in Yosemite Avenue and another 16-inch line in McKee Road to serve the project site. The City's water supply would be sufficient to serve the proposed project.

#### **Sewer**

A 6-inch sewer force main line exists in Yosemite Avenue which flows to G Street, then continues out to the Waste Water Treatment Plant. There is no sewer line in McKee Road. Due to constrictions in the Yosemite Avenue line, the project site is limited to discharging a maximum of 8,000 gallons per day of wastewater during peak hours. Additional wastewater shall be contained onsite and discharged at off-peak hours (refer to Conditions #9 and #10). This condition also requires a monitoring system to allow the City to monitor the flow and requires the developer to ensure the onsite storage tank doesn't emit objectionable odors. There is an existing sanitary sewer pump station near the southeast corner of the project site. The bottom of that pump station is about 30 feet below the existing ground surface. The project will locate required on-site sewage storage tanks that may be required in close proximity to the existing pump stations so that the on-site tank may empty by gravity into the wet well of the existing City sewer pump station. The tank will be constructed to meet the requirements of Titles 22 & 23 of the California Code of Regulations and the applicable provisions of the California Building Code, and be similar to the City's existing lift stations.

### Stormwater

An 18-inch storm drain exists in Yosemite Avenue. The project would be required to comply with the State Post Construction Standards and to retain storm water on-site and meter it into the City's system (Conditions #17 and 18).

### **Building Design**

- F) The proposed building designs would be similar to the style of the buildings at UC Merced. The buildings would have clean lines and use a variety of building materials to provide interest. The balconies on the upper floors are staggered to add additional interest. Buildings 1 and 3 are two-story buildings and Buildings 2 and 4 are three-story buildings. The elevations are provided at Attachment D of Planning Commission Staff Report #20-01.

The development would have 77 - 1 bedroom/1bath units, 105 - 2 bedroom/2 bath units, and 18 - 3 bedroom/3 bath units. The one-bedroom units would vary in size depending on whether the unit includes a balcony. A one-bedroom unit with a balcony would have 276 square feet and without a balcony it would have 300 square feet. The two-bedroom units would be 576 square feet with a 24-square-foot balcony, and the three bedroom units would be 876 square feet with a 24-square-foot balcony. Access to all the units would be through an interior corridor, which would increase safety for the tenants.

Building 1 is a two-story building with residential units on both floors. Buildings 2 and 4 are three-story buildings with commercial space and common areas for the residential tenants on the first floor and residential units on the second and third floors. Building 3 is a two-story building with office space on the first floor and residential units on the second floor.

The floor plans for each building are provided at Attachment C of Planning Commission Staff Report #20-01. These plans show the residential units as well as the areas for commercial uses and common/community areas for the residential tenants. The floor plans at Attachment E of Planning Commission Staff Report #20-01 show the layout of each of the different unit types.

The common/community areas in Buildings 2 and 4 would include amenities such as a gym, a kitchen/community area for gatherings and

events, a meditation room, a study area, a media room, indoor bike storage area, laundry facilities, and a management office, mailroom, and office center for tenants. Building 2 also provides a roof-top deck area to provide additional outdoor open space for the tenants (Attachment 10, Page 13 of Administrative Report #20-358). This area would provide an additional outdoor area for tenants to lounge and socialize. The lounge area would be located near the center of the roof and would include tables, chairs, etc. for the tenants to use while in this area. There would be a 42-inch-high railing around the lounge area separating it from the rest of the roof-top area for safety purposes.

### Security

The building and the site have been designed to incorporate security features for the safety of the tenants and the surrounding area. The buildings have been designed with linear hallways to ensure line of sight as residents enter and exit their units. Access to the buildings and individual units would be through a key-fob security system. Each tenant on the lease would be issued a key-fob. This key-fob would not only allow access to the buildings and individual units, but would also have to be in the unit in order for the power to come on. This means of access and security helps to ensure only the tenants listed on the lease are staying in the units and also provides security against unwanted guests. There will be emergency call boxes placed throughout the site that will connect directly to the Police Department in case of emergency. There will also be an on-site manager to deal with emergency and security issues.

### Site Design

- G) The project site is located at the southeast corner of Yosemite Avenue and McKee Road. The site is designed to keep the buildings near the center of the site away from the residential uses. The front building (Building 2) is set back approximately 75 feet from Yosemite Avenue. Building 1 is approximately 85 feet from McKee Road (increased from approximately 50 feet in the previous design), Building 3 is approximately 82 feet from the eastern property line near Whitewater Way (an increase from 55 feet), and Building 4 is approximately 125 feet from the southern property line.

Parking is provided around the perimeter of the site and between the buildings. Bicycle parking is provided inside Building 4.

A promenade area is provided between Buildings 2 and 4 (refer to the Site Plan at Attachment B of Planning Commission Staff Report #20-01) which will include landscaping, tables, and chairs/benches to provide an open space area for the tenants and customers of the commercial uses. The developers envision this area would be used by customers of the food establishments and other retail uses as well as the residential tenants.

A minimum eight-foot tall block wall would separate the project from the residential uses to the south of the site (Condition #32).

#### Distance to Adjacent Residential Uses

The previous project design included all three-story buildings. The applicant has revised the design and reduced Buildings 1 and 3 to two-story buildings. The two-story buildings would have a height of approximately 26 feet. Buildings 2 and 4 are three-story buildings and would have a height of approximately 34 feet. On the roof of each of the buildings there would be an elevator shaft and screening for the mechanical equipment that would extend above the roof line. The homes on the west side of McKee Road are approximately 75 feet from the western property line of the project site. Building 1 is located closest to McKee Road and would be set back approximately 85 feet from the western property line of the project site, making the closest home approximately 160 feet away from Building 1. Refer to Attachment I of Planning Commission Staff Report #20-01.

The nearest home across Yosemite Avenue is approximately 180 feet from the project site. The distance from Building 2 to the nearest home across Yosemite Avenue would be approximately 370 feet and from Building 3 it would be approximately 300 feet.

The homes to the east across Whitewater Way are approximately 40 feet from the project site. Building 3 would be approximately 125 feet from these homes.

The nearest home to the south is located approximately 40 feet from the southern property line of the project site. The proposed site design has been considerate of the proximity of this home and includes a larger landscape buffer in the area immediately adjacent to this home. The nearest building to this home would be Building 1 which would be approximately 140 feet away. It should be noted that the owner of the property to the south recently sold the developer approximately ½ acre of land in order for this development to expand to the south. This

½ acre was the subject of the recent General Plan Amendment and Zone Change approved in October 2019.

For context, the block where City Hall is located between M and N Streets is approximately 400 feet long. The distance from the corner of 18<sup>th</sup> and M Streets to the edge of the alley between 18<sup>th</sup> Street and Main Street is approximately 150 feet. Therefore, the nearest home across McKee Road would be approximately equal to the distance from the corner of 18<sup>th</sup> Street and M Street to the northern edge of the alley. The nearest home across Yosemite Avenue would be over half a City Block from the nearest building on the site. The homes on Whitewater Way would be close to the distance between City Hall and the UC Merced Building across 18<sup>th</sup> Street (refer to Page 2 of Attachment I).

As described below in the Landscaping Section (Finding H), the site would be provided with dense landscaping to help buffer the surrounding uses from noise and lights and to help provide privacy between the uses.

### **Landscaping**

- H) As shown on the site plan at Attachment B of Planning Commission Staff Report #20-01, a 15-foot landscape area is provided along Yosemite Avenue. The landscape area along McKee Road is over 14 feet wide and along Whitewater Way, the landscape area is approximately 7.5 feet wide. The landscape area along the southern property line is 5 feet wide, but would also have a concrete block wall to provide a separation from the adjacent residential uses.

As described above, the promenade area between Buildings 2 and 4 has been increased from 11,300 square feet to 28,500 square feet. This area would be landscaped to create a welcoming outdoor area. Parking lot trees would be provided throughout the site in compliance with the City's Parking Lot Landscape Standards.

According to Table 20.36-1 of the Zoning Ordinance, the site is required to provide a minimum landscape area equal to 15% of the project site. Landscaping and irrigation shall be required to meet the City's Water Efficient Landscape Ordinance. Compliance with these requirements is also included in Condition #11.

### **Neighborhood Impact/Interface**

- I) As previously described, the project site is surrounded by residential uses as well as Yosemite Church and Providence School to the north across Yosemite Avenue. The developer held two neighborhood meetings on January 14, 2020, at Yosemite Church. The afternoon (3:00 p.m.) meeting was attended by approximately 10 people and the evening meeting (6:00 p.m.) was attended by approximately 25-30 people.

The neighbors had questions regarding the on-site sewer storage, the density, the parking, the tenants expected for the retail portion of the project, whether the units would be for college students, and traffic impacts.

Raj Joshi, the developer's representative, addressed the questions and explained that they are looking to develop this site in order to serve the UC and are working with the UC on an agreement to house graduate, doctorate, and post-doctorate students. He explained that this site is the closest vacant site to the UC that has access to City facilities, (i.e., sewer and water). He further explained that he has been working with the City's Public Works Director, Ken Elwin, on the sewer capacity and on-site storage issues. Mr. Joshi pointed out the incentives they would be implementing to reduce the need for vehicles such as providing bicycles and bicycle parking, providing Uber and Lyft drop-off/pick-up areas, installing a bus stop in front of their site, and possibly providing Zip cars for the tenants. In addition, there could be a reduction in rent if the tenant agrees not to have a vehicle. He explained that the traffic study done for this project recommended that this project pay a proportionate share of the cost of traffic signals at Yosemite Avenue & Parsons/Gardner Avenue and Olive Avenue and McKee Road. Additionally, they would be required to modify the striping at these intersections to help with the existing congestion at in these areas. It should be noted that a development is only required to mitigate the impacts related to their project. The existing conditions are not the responsibility of the development.

During the review process for the previous proposal, the neighborhood voiced concerns regarding having bars and nightclubs in this project. The developer agreed that they would not allow bars and/or nightclubs to be located within their project. Refer to

Condition #33 for the restrictions placed on the uses selling alcoholic beverages.

Public hearing notices are typically sent to all property owners within 300 feet of the project site. In this case, notices were sent to all property owners within 500 feet of the site as well as an extended area on McKee and Hatch Roads. To date, staff has not had any comments other than those heard at the community meetings held by the developer.

### **Signage**

- J) All signs on the site would be required to comply with the North Merced Sign Ordinance and the Neighborhood Commercial sign regulations. As such, with illuminated signs may be required to shut off at 10:00 p.m. (Condition #12 of Staff Report #20-01).

### **Land Use/Density Issues**

- K) The project proposes to construct a mixed-use project with the City Council setting the numeric limit at 200 multi-family residential dwelling units and approximately 37,117 square feet of commercial space (retail and office). As described in Finding A, the proposed land uses are allowable under the current Zoning designation of Neighborhood Commercial, with the residential portion requiring Conditional Use Permit approval. The residential portion of the project has a density of 34 units per acre. This density is consistent with the General Plan designation of High Density Residential (HD) which allows 24 to 36 units per acre. The density of the project is consistent with the density requirements of the High Density Residential (HD) designation which allows 24 to 36 units per acre.

The Neighborhood Commercial (C-N) zone allows a variety of commercial uses. The table at Attachment J of Planning Commission Staff Report #20-01 provides a list of the types of uses allowed. As mentioned above in the Neighborhood Impact section, the developer has agreed to limitations on the types of uses.

### **Environmental Clearance**

- L) The Planning staff has conducted an environmental review (Initial Study # 19-37) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Mitigated Negative Declaration (i.e., no significant effects in this case



because of the mitigation measures and/or modifications described in Initial Study #19-37) is being recommended (Attachment K of Planning Commission Staff Report #20-01).

**Conditions of Approval**  
**Conditional Use Permit #1238**

1. The proposed project shall be constructed/designed in substantial compliance with the Site Plan, Floor Plan, Elevations, and Renderings (Attachments B, C, D, and E of Planning Commission Staff Report #20-01) except as modified by the revised plans presented to the City Council on June 15, 2020, and attached to the Administrative Report dated August 17, 2020, Attachment 10, prepared by Ferrier Architecture Studio which reflect changes to the Project with respect to the bus stop, ride share, additional seating, and roof deck (decrease in size, location, canopy and seating capacity) and conditions imposed by the City Council.
2. 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 the applicable conditions set forth in Planning Commission Resolution #3049 for General Plan Amendment #14-06 and Zone Change #421 and Planning Commission Resolution #4025 for General Plan Amendment #19-02 and Zone Change #426 previously approved for this site.
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 (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.

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. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval or issuance of a building permit, whichever comes first. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
8. The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #19-37 (Exhibit B of Planning Commission Resolution #4035 - Attachment K of Planning Commission Staff Report #20-01) and all applicable mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #14-32 (Appendix A of Initial Study #19-37, Attachment K of Staff Report #20-01).
9. Due to constraints in the existing sewer collection system, the project shall be allowed to release wastewater into the City's system at a rate of 8,000 gallons per day (gpd) during peak hours. All wastewater in excess of this amount shall be stored on-site in an approved wastewater storage tank or other method approved by the Public Works Director and/or City Engineer to be released during off-peak hours. A flow monitor shall be installed with a telemetry or SCADA

system approved by the Public Works Director and/or City Engineer to monitor the flow and ensure compliance with this requirement. The City shall periodically monitor the flow. Should the flow exceed 8,000 gpd during peak hours, the City may use any legal remedies available to gain compliance with this condition.

10. The developer shall provide an operations and maintenance plan for the on-site wastewater storage tank to address the timing of the off-peak discharge, emergency procedures for breakdowns and repairs, and odor control. The plan shall include steps to ensure ongoing objectionable odors do not affect the site or surrounding area. The operations and maintenance plan shall be approved by the City Public Works Director and/or City Engineer.
11. A minimum of 15% of the site shall be covered with landscaping as required by Section 20.36 (Table 20.36-1) of the Zoning Ordinance. Landscaping and irrigation shall be required to meet the City's Water Efficient Landscape Ordinance and the requirements of Zoning Ordinance Section 20.36.040.
12. All signs shall comply with the North Merced Sign Ordinance and Section 20.62.040 (B)(2) of the City's Zoning Ordinance for signs in a Neighborhood Commercial (C-N) zone. Illuminated signs may be illuminated until 10:00 p.m. or the end of the business day, whichever is later.
13. The applicant shall construct all missing improvements along the property frontage on Yosemite Avenue and McKee Road including, but not limited to, sidewalk, curb, gutter, street lights, and street trees. Any existing improvements that are damaged or that do not meet current standards shall be repaired or replaced as required by the City Engineer.
14. All necessary right-of-way along the property frontage, including Yosemite Avenue, McKee Road, and Whitewater Way, needed for public improvements shall be dedicated prior to the issuance of the first building permit.
15. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
16. Parking lot trees shall be installed per City Parking Lot Landscape Standards and Section 20.38.070 (F). At a minimum, parking lot trees shall be provided at a ratio of one tree for every six parking spaces.

Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list).

17. All projects on this site shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
18. All storm water shall be contained on-site for a minimum of 48 hours, then released into the City's storm water system at a rate not to exceed the 2-year pre-development flow or as approved by the City Engineer.
19. Prior to issuance of the first grading/building permit for any project on the site, the applicant shall demonstrate compliance with San Joaquin Valley Air Pollution Control District Rule 9510 to the Planning Department. Changes to the site plan resulting from compliance with Rule 9510 are subject to review by City Staff or the Planning Commission, as determined by the Director of Development Services.
20. Bicycle parking for all projects on the site shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.
21. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
22. If it is determined by the Fire Department that emergency vehicle access to Whitewater Way is needed to adequately serve the site or the surrounding area, the developer shall work with the City to provide such access, including an emergency gate with appropriate knock boxes, etc. as required by the Fire Department.
23. For buildings over 30 feet tall, a minimum 26-foot-wide drive aisle shall be provided for emergency vehicle access. The developer shall work with the Fire Department to determine the areas that need the 26-foot-wide drive aisle.
24. A fire control room may be required for the buildings on the site. The applicant shall work with the Fire Department to determine the location of the fire control room. Additional fire control rooms may be required at the discretion of the Fire Chief.

25. Each building shall be provided with a Fire Department Connection.
26. Buildings that do not provide an elevator (other than a freight elevator) shall be provided with an additional exit. The developer shall work with the Chief Building Official to determine the number of exits required for each building.
27. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.
28. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
29. All parking lot and other exterior lighting shall be oriented in such a way so that it does not spill over onto adjacent properties.
30. In order to comply with the parking requirements for this project, a parking demand analysis would be required in order for the project to qualify for the mixed-use reduction allowed by Section 20.38.050 (F). This study shall be provided at the time of building permit submittal and shall be approved by the Director of Development Services. In no case shall the reduction be greater than 30% as allowed by the Zoning Ordinance.
31. Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall be constructed to meet City Standards. At the Building Permit stage, the developer shall work with the City Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks as well as the number of containers needed to adequately serve the site. Use of a trash compactor should be considered to reduce the number of pick-ups per week.
32. A minimum 8-foot high concrete block wall shall be installed along the southern property line. A minimum five-foot wide landscaping area adjacent to the wall shall be provided to allow for the planting of vines or other appropriate landscape material.
33. Drive-thru uses, bars, nightclubs, and large convenience markets similar to a 7-Eleven type store are not allowed. Small convenience markets intended to serve the tenants or the immediate neighborhood could be allowed. Restaurants serving alcohol could be allowed with

Conditional Use Permit approval.

34. All construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.
35. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.
36. All mechanical equipment shall be screened from public view.
37. Hours for use of the rooftop deck shall be limited to from 7:00 a.m. to 10:00 p.m. daily.
38. The numeric residential units shall be set at 200. The number of one bedroom units shall be 77, the number of two bedroom units shall be 105, the number of three bedroom units shall be 18.
39. McKee Road shall be widened to its full width as required by the General Plan Circulation Element for the entire Project frontage.
40. With the approval of the parking demand study by the Director of Development Services, the parking may be reduced to 386 parking spaces.

**Findings and Considerations  
Site Plan Review #455**

**FINDINGS/CONSIDERATIONS:**

**General Plan Compliance and Policies Related to This Application**

- A) The proposed mixed-use project complies with the General Plan designation of Neighborhood Commercial (CN) and the Zoning classification of Neighborhood Commercial (C-N). The proposed commercial uses comply with the General Plan designation of Neighborhood Commercial (CN). Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project. The *Merced Vision 2030 General Plan* includes two classifications for higher density residential uses – High-Medium Density (HMD) and High Density (HD). The High-Medium designation allows 12 to 24 units per acre, while the High Density designation allows 24 to 36 units per acre. The proposed project at 200 units has a density of 34 units per acre. Therefore, because there is no definitive designation for a mixed use project and there are General Plan policies that encourage higher density and alternate housing types (see below), the City Council has set the numeric limit on residential units at 200 for this project. . Based on this designation, the proposed multi-family portion of the project would comply with the General Plan under the High Density designation.

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting affordable housing, mixed-use development, and higher densities.

**Policy H-1.1**      *Support Increased in Residential Zoning Districts*

Although the proposed project would not be located within a residential zone, it does provide an opportunity for a higher density project to provide needed housing within the City.

**Policy H 1.1.c**      *Encourage Mixed Use Development*

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and the multi-family dwelling units.



Policy 1.1.e      *Encourage Alternate Housing Types*

The proposed project would include one, two, and three-bedroom apartments. The units range in size from 276 square feet for a one-bedroom unit with a balcony, to 876 square feet for a 3 bedroom unit. This mixture provides a variety of different housing types to meet the growing need of housing within the community and supports this policy of providing alternate housing types.

Policy 1.8b      *Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.*

The proposed project is on an in-fill site and meets the density requirements of the City's highest density classification.

The following are Land Use Policies and Implementing Actions of the General Plan that could be met with the proposed project.

Policy L-1.1      *Promote Balanced Development Which Provides Jobs, Services, and Housing.*

*Implementing Action 1.1.a: Promote mixed use development combining compatible employment, service and residential elements.*

*Implementing Action 1.1.c: Determine the types of housing opportunities needed for the type of employment opportunities being created in the City.*

The Zoning Ordinance does not specify a density for multi-family housing allowed within a C-N zone, it merely states that multi-family uses are allowed within the C-N zone as a Conditional Use. Therefore, the approval of the CUP #1238 satisfied this requirement. The Zoning Ordinance requires a Site Plan Review permit to address interface requirements. The approval of Site Plan Review #455 would bring the project into compliance with the Zoning Ordinance.

**Zoning Ordinance Compliance – Mandatory Site Plan Review Findings**

- B) The proposed project is subject to MMC Section 20.32 – Interface Regulations. As such, a Site Plan Review Permit is required for this project. MMC Section 20.32 does not specify particular findings be made regarding interface, but MMC Section 20.68.050 (F) requires specific findings for a Site Plan Review Permit to be approved. The

Findings required by MMC Section 20.68.050 (F) “Findings for Approval for Site Plan Review Permits” are provided below along with recommended reasons to support each finding.

1. *The proposed project is consistent with the General Plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

As described in Finding A above, the project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

2. *The proposed project complies with all applicable provisions of the Zoning Ordinance and Municipal Code.*

Merced Municipal Code Section 20.46.030 provides general design standards for multi-family dwellings. Section 20.46.040 provides specific standards for multi-family dwellings. Planning staff has reviewed the proposed project with both sets of standards and found it to be in compliance with the majority of these standards. However, to ensure compliance, Condition # 9 requires the project to comply with all applicable design standards listed in these sections.

As described above, the proposed mixed-use project is subject to the approval of a Conditional Use Permit and a Site Plan Review Permit. Approval of Conditional Use Permit #1238 and approval of Site Plan Review Permit and implementation of the conditions of approval for CUP #1238 and Site Plan Review Permit #455 would bring the project into compliance with the applicable provisions of the Zoning Ordinance and Municipal Code.

3. *The design and layout of the proposed project will not interfere with the use and enjoyment of existing and future neighboring properties and structures.*

The project site is zoned Neighborhood Commercial (C-N) which is appropriate for the proposed mixed-use development. The City Council has approved the Conditional Use Permit required for the residential component of the project. The setbacks exceed the minimum standards of the C-N zone, which requires a minimum 20-foot setback from exterior property lines. As shown on the site plan at Attachment B, the

front building (Building 2) is set back approximately 75 feet from Yosemite Avenue. Building 1 is approximately 85 feet from McKee Road, Building 3 is approximately 82 feet from the eastern property line near Whitewater Way, and Building 4 is approximately 125 feet from the southern property line.

The maximum building height within the C-N zone is 35 feet when adjacent to a residential zone. However, through the Site Plan Review process, an exception may be granted to allow heights in excess of 35 feet. The building heights at the top of the building parapet for Buildings 2 and 4 are 33' 11" with a 42" high railing around the lounge area separating it from the rest of the roof top area for safety purposes. The height to the mechanical enclosure is 37 feet, 1-7/8 inches, and to the top of the roof-top access is 43 feet, 5 inches. It should also be noted that the roof deck for Building 2 is at a height of 32 feet 1-7/8 inches. This is the floor height for the roof-top deck tenant common area on the top of Building 2. There is approximately a 4-foot difference between the floor of the roof-top deck and the parapet as well as a set back of approximately 25 feet from the building edge to the roof-top tenant space. The roof-top access and mechanical enclosure are also set back from the building edge. Given the increased setback of the buildings (75 feet from Yosemite Avenue for Building 2 and 125 feet from the southern property line for Building 4), the fact that the highest point of the buildings are only a small area, not the entire building, and that the highest point would also be set back from the building edge, the additional height over 35 feet does not appear intrusive or an element that would prevent the adjacent neighbors from enjoying their property. Condition #11 has been added to allow the additional height for Buildings 2 and 4.

Buildings 1 and 3 are under 35 feet to the top of the parapet, the top of the mechanical enclosure, and the top of the roof-top access.

With the implementation of the proposed conditions of approval and the conditions approved with CUP #1238, the proposed project is in compliance with the design standards for multi-family dwellings (MMC Sections 20.46.030 and 20.46.040).

The project has been designed to have the retail uses mixed throughout Buildings 2, 3, and 4. The retail uses will provide services that will not only serve the residential tenants but will also serve the surrounding neighborhood.

Building 2 includes a roof-top deck to provide the tenants with additional outdoor space. This area would provide an additional outdoor area for tenants to lounge and socialize. The lounge area would be located near the center of the roof and would include tables, chairs, and landscaping, (including trees). The lounge area would be approximately 40 feet from the north edge and 15 feet from the south edge of the building and approximately 70 feet from the east and west areas. There would be a 42-inch-high railing around the lounge area separating it from the rest of the roof-top area for safety purposes. Conditions of approval adopted with CUP #1238 restrict access to the roof-top deck to 7:00 a.m. to 10:00 p.m. daily.

It should also be noted that the site is surrounded by residential uses and a church to the north. Therefore, residential uses are common in this area. Another apartment complex is currently under construction east of this site at the corner of Yosemite and Lake Road, in the same general vicinity, which provides a mixture of housing units for the area. Given the proximity to the UC, multi-family uses are appropriate for this area.

The proposed project meets the minimum design and zoning standards. Therefore, with the implementation of the conditions of approval, the proposed project would not interfere with the enjoyment of the existing and future land uses in the vicinity.

4. *The proposed architectural design makes use of appropriate materials, texture, and color, and will remain aesthetically appealing and appropriately maintained.*

The building design includes a mixture of materials, textures, and colors. The building façade would consist of composite cement panels, metal storefronts for buildings 2, 3, and 4, metal window frames for the residential units, and metal railings. The architecture of the buildings include clean lines with a modern flair. Although this style is different that the homes in the area,

it is consistent with the multi-family project currently under construction at Yosemite Avenue and Lake Road as well as Yosemite Church to the north across Yosemite Avenue. Condition #10 requires that the buildings be maintained to remain aesthetically appealing.

5. *Any proposed landscaping design, including color, location, size, texture, type, and coverage of plan materials, as well as provisions for irrigation, maintenance, and protection of landscaping elements, will complement structures and provide an attractive environment.*

The project includes approximately 29,500 square feet of outdoor greenspace and promenade area. As shown on the site plan, the four buildings would surround a large promenade area. This area would be used by customers of the commercial uses and the residential tenants. In addition, the project would be required to comply with the landscape standards called out in MMC Section 20.46.040 requiring 1 tree for each 3 units as well as “foundation plantings”, the parking lot landscape standards requiring 1 parking lot tree for each 6 parking spaces, and Condition #11 of Planning Commission Resolution #4035 requiring a minimum of 15% of the site to be covered with landscaping.

6. *The proposed design will not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity of the proposed project.*

The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. The project would be required to annex to the City’s Community Facilities District to pay for costs related to police and fire safety. Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health safety, and welfare of the City.

### **Environmental Clearance**

- C) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and concluded that Environmental Review #20-05 is a second tier environmental

document, based upon the City's determination that the proposed development remains consistent with the current general plan and provision of CEQA Guidelines, Section 15162 (Initial Study #19-37 for CUP #1238). A Copy of the Section 15162 Findings can be found at Attachment I of Planning Commission Staff Report #20-03.

**Conditions of Approval  
Site Plan Review #455**

1. The proposed project shall be constructed/designed in substantial compliance with the Site Plan, Floor Plan, Elevations, and Renderings (Attachments B, C, D, and E of Planning Commission Staff Report #20-01, Attachment D of Planning Commission Staff Report #20-03), except as modified by the revised plans presented to the City Council on June 15, 2020, and attached to the Administrative Report dated August 17, 2020, Attachment 10, prepared by Ferrier Architecture Studio which reflect changes to the Project with respect to the bus stop, ride share, additional seating, and roof deck (decrease in size, location, canopy and seating capacity) and conditions imposed by the City Council.
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 the applicable conditions set forth in Planning Commission Resolution #3049 for General Plan Amendment #14-06 and Zone Change #421, Planning Commission Resolution #4025 for General Plan Amendment #19-02 and Zone Change #426, and Planning Commission Resolution #4035 for Conditional Use Permit #1238 previously approved for this site.
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 (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.

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. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval or issuance of a building permit, whichever comes first. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
8. The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #19-37 (Exhibit B of Planning Commission Resolution #4035 - Attachment K of Planning Commission Staff Report #20-01) and all applicable mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #14-32 (Appendix A of Initial Study #19-37, Attachment K of Staff Report #20-01).
9. The project shall comply with all applicable Design Standards established by Merced Municipal Code (MMC) Sections 20.46.030 and 20.46.040.
10. All buildings shall be regularly maintained to keep the building finishes in good condition and aesthetically pleasing.
11. The building height for Buildings 2 and 4 are approved as follows: top of parapet – 33' 11" with a 42" high railing around the lounge area



separating it from the rest of the roof top area for safety purposes on Building 2; top of mechanical enclosure – 37' 1-7/8"; top of roof access – 43' 5".

12. The City Council has set the numeric limit on residential units at 200 for this project. This numeric limit falls within the allowed units per acre under the High Density designation.