



CITY OF MERCED

City Council Chamber
Merced Civic Center
678 W. 18th Street
Merced, CA 95340

Minutes Planning Commission

Wednesday, June 21, 2023

7:00 PM

A. CALL TO ORDER

Chairperson HARRIS called the Regular Meeting to order at 7:00 PM.

A.1. Moment of Silence

A.2. Pledge of Allegiance to the Flag

Commissioner GREGGAINS led the Pledge of Allegiance to the Flag.

B. ROLL CALL

Clerk's Note: Commissioner GONZALEZ and Vice Chair CAMPER were absent, excused. The Planning Commission has 1 vacancy at this time.

Present: 4 - Chairperson Michael Harris, Member Dorothea White, Member Jose Delgadillo, and Member Jeremiah Greggains

Absent: 2 - Vice Chair Mary Camper, and Member Anthony Gonzalez

C. ORAL COMMUNICATIONS

There were no public comments.

D. CONSENT CALENDAR

D.1 **SUBJECT:** Planning Commission Minutes of June 7, 2023

ACTION:

Approving and filing the Planning Commission Minutes of June 7, 2023

A motion was made by Member Greggains, seconded by Member Delgadillo and carried by the following vote, to approve the Consent Agenda.

Aye: 4 - Chairperson Harris
Member White
Member Delgadillo
Member Greggains

No: 0

Absent: 2 - Vice Chair Camper
Member Gonzalez

E. PUBLIC HEARINGS AND ACTION ITEMS

E.1

SUBJECT: Design Review #23-01 and Conditional Use Permit #1271, initiated by Jasmeet, LLC, on behalf of Gurdial Singh and Balbir Kaur, property owners. This application involves a request for a proposed remodel and expansion of a gas station (6 pump fuel island) and convenience market (3,800 square feet), and a request for alcohol sales (beer and wine) for off-site consumption at 1480 W. 16th Street, generally located at the southeast corner of V Street and 16th Street, within a Zoning classification of Thoroughfare Commercial (C-T), with a General Plan designation of Thoroughfare Commercial (CT)
PUBLIC HEARING

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #23-11 (*Categorical Exemption*)
- 2) Design Review Permit #23-01
- 3) Conditional Use Permit #1271

SUMMARY

Jasmeet, LLC, is requesting approval to remodel and expand a gas station (6 pump fuel island) and a convenience market (3,800 square feet) with a request for alcohol sales (beer and wine) for off-site consumption at 1480 W. 16th Street (Attachment B). The subject site is within the City's Design Review District and requires design review approval for the remodel/expansion per Merced Municipal Code 20.68.030 - Design Review Permit. A conditional use permit is required to approve the sale of alcohol for off-site consumption (for buildings under 20,000 square feet) per Merced Municipal Code Section 20.44.070 - Gas and Service Stations. Staff is recommending approval of this application subject to the conditions contained in the Staff Report.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #23-11 (*Categorical Exemption*), Design Review Permit #23-01, and Conditional Use Permit #1271, including the adoption of the Draft Resolution at Attachment A subject to the conditions in Exhibit A and the findings/considerations in Exhibit B.

Associate Planner MENDOZA-GONZALEZ reviewed the report on this item. For further information, refer to Staff Report #23-490.

Public Testimony was opened at 7:20 PM.

Speaker from the Audience in Favor

RICHARD MARCHINI, On behalf of the Applicant, Merced, CA

There were no speakers in opposition to the project.

Public Testimony was closed at 7:22 PM.

A motion was made by Member Greggains, seconded by Member White and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #23-11, and approve Design Review #23-01 and Conditional Use Permit #1271, subject to the Findings and thirty-eight (38) Conditions set forth in Staff Report #23-490 (RESOLUTION #4115).

Aye: 4 - Chairperson Harris
Member White
Member Delgadillo
Member Greggains

No: 0

Absent: 2 - Vice Chair Camper
Member Gonzalez

E.2

SUBJECT: Conditional Use Permit #1273 initiated by Raj Joshi, on behalf of Merced Holdings, LP, property owner. This application involves a request to allow the on-site consumption of alcoholic beverages including beer, wine, and spirits within a restaurant to be generally located at the southeast corner of Yosemite Avenue and McKee Road (2272 E. Yosemite Avenue). The site has a General Plan designation of Neighborhood Commercial (CN) and is zoned Neighborhood Commercial (C-N) **PUBLIC HEARING**

ACTION: Approve/Disapprove/Modify
1) Environmental Review #23-20 (*Categorical Exemption*)
2) Conditional Use Permit #1273

SUMMARY

A new restaurant is proposed at 2272 East Yosemite Avenue within the Hub Development at the southeast corner of Yosemite Avenue and McKee Road. The proposed restaurant (the Wet Whistle) would be a full-service restaurant with a British Pub setting serving beer, wine, and liquor for on-site consumption. The Conditions of Approval for the Hub development requires restaurants selling alcohol for on-site consumption obtain a Conditional Use Permit prior to selling alcohol.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #23-20 (*Categorical Exemption - 15162 Findings*) and Conditional Use Permit #1273, including the adoption of the Draft Resolution at Attachment A subject to the conditions in Exhibit A and the findings/considerations in Exhibit B of the Draft Resolution at Attachment A.

Senior Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #23-499.

Public Testimony was opened at 7:37 PM.

Staff received 5 emails in favor from ATHENA HENRI, ERIK EKIZIAN, KEVIN PHAM, STITONA DHILLON, and TERRY RUSCOE. Staff also received 1 neutral email from DAN HICKS. These emails were provided to the Planning Commission via email prior to the meeting and posted to the City's website. Members of the public were given the opportunity to leave voice mail messages prior to the meeting. One voice mail was received by DELIA NEAR and was played for the Commission at the meeting.

Speakers from the Audience in Favor

RAJ JOSHI, Applicant, Los Angeles, CA

ROBERT DYLINEA, Resident, Merced, CA

There were no speakers in opposition to the project.

Public Testimony was closed at 7:50 PM.

A motion was made by Chairperson Harris, seconded by Member Greggains and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #23-20 and approve Conditional Use Permit #1273, subject to the Findings and fourteen (14) Conditions set forth in Staff Report #23-499 (RESOLUTION #4116).

Aye: 4 - Chairperson Harris
 Member White
 Member Delgadillo
 Member Greggains

No: 0

Absent: 2 - Vice Chair Camper
 Member Gonzalez

F. INFORMATION ITEMS

F.1 **SUBJECT:** Report by Director of Development Services of Upcoming Agenda Items

ACTION

Information only.

Director of Development Services MCBRIDE went over items for the next several Planning Commission meetings.

F.2 **SUBJECT:** Calendar of Meetings/Events

- | | | |
|--------|----|---|
| June | 20 | City Council, 6:00 p.m. (Tuesday) |
| | 21 | Planning Commission, 7:00 p.m. |
| | 27 | Bicycle and Pedestrian Advisory Commission, 4:00 p.m. |
| July | 3 | City Council, 6:00 p.m. |
| | 5 | Planning Commission, 7:00 p.m. |
| | 17 | City Council, 6:00 p.m. |
| | 19 | Planning Commission, 7:00 p.m. |
| August | 7 | City Council, 6:00 p.m. |
| | 9 | Planning Commission, 7:00 p.m. |
| | 21 | City Council, 6:00 p.m. |
| | 22 | Bicycle and Pedestrian Advisory Commission, 4:00 p.m. |
| | 23 | Planning Commission, 7:00 p.m. |

G. ADJOURNMENT

Clerk's Note: The Regular Meeting adjourned at 7:56 PM.

A motion was made by Member Greggains, seconded by Member White and carried by the following vote, to adjourn the Regular Meeting.

Aye: 4 - Chairperson Harris
 Member White
 Member Delgadillo
 Member Greggains

No: 0

Absent: 2 - Vice Chair Camper
 Member Gonzalez

BY:



SCOTT MCBRIDE, SECRETARY
MERCED CITY PLANNING COMMISSION

APPROVED:

MICHAEL HARRIS, CHAIRPERSON
MERCED CITY PLANNING COMMISSION

CITY OF MERCED
Planning Commission

Resolution #4115

WHEREAS, the Merced City Planning Commission at its regular meeting of June 21, 2023, held a public hearing and considered **Design Review #23-01 and Conditional Use Permit #1271**, initiated by Jasmeet, LLC, on behalf of Gurdial Singh and Balbir Kaur, property owners. This application involves a request for a proposed remodel and expansion of a gas station (6 pump fuel island) and convenience market (3,800 square feet), and a request for alcohol sales (beer and wine) for off-site consumption at 1480 W. 16th Street, generally located at the southeast corner of V Street and 16th Street, within a Zoning classification of Thoroughfare Commercial (C-T), with a General Plan designation of Thoroughfare Commercial (CT). The subject site is more particularly described as a portion of Lot 1 on Recorded Map entitled “Town of Merced,” recorded in Volume 2, Page 12, in Merced County Records; also known as a portion of Assessor’s Parcel Number (APN) 031-172-001; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through O (Exhibit B) of Staff Report #23-490; 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 Design Review Permits in Merced Municipal Code Section 20.68.030 (H), 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 adopt a Categorical Exemption regarding Environmental Review #23-11, and approve Design Review #23-01, and Conditional Use Permit #1271, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by reference.

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

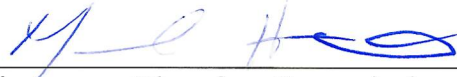
AYES: Commissioners Greggains, Delgadillo, White, and Chairperson Harris
NOES: None
ABSENT: Commissioners Camper and Gonzalez
ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4115

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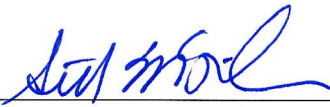
June 21, 2023

Adopted this 21st day of June 2023



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 #4115
Design Review Permit #23-01, Conditional Use Permit #1271

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan/floor plan/elevations) -- Attachment C of Staff Report #23-490 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 proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including the Post Construction Standards for Storm Water that became effective July 1, 2015.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, 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.

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. Appropriate turning radii shall be provided within the parking areas to allow for Fire engine and refuse truck access.
8. The developer shall work with the City Engineer to determine the requirements for storm drainage on the site. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards and state regulations.
9. Merced Municipal Code Section 20.38.080 -Bicycle Parking identifies Gas and Service Stations as being exempt from installing short term and long-term bicycle parking. However, bicycle parking spaces may still be required per the California Green Code during the building permit stage.
10. A grease interceptor may be required. This will be determined at the building permit stage based on the type of food prepared and served and waste generated.
11. Any missing or damaged improvements along the property frontage shall be installed/repared to meet City Standards. Any improvements that don't meet current City Standards shall be replaced to meet all applicable standards.
12. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
13. The applicant shall work with the City's Refuse Department to determine the proper location for a trash enclosure and if a recycling container will

be required to comply with AB 341. The container(s) shall be enclosed within a refuse enclosure built to City Standards.

14. Sufficient lighting shall be provided throughout the site to provide a safe environment for employees and patrons of the business.
15. All mechanical equipment shall be screened from public view.
16. Full public improvements shall be installed/repared if the permit value of the project exceeds \$100,000.00. Public improvements may include, but not be limited to, installing traffic calming measures, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
17. The western driveway along 16th Street shall be eliminated. The eastern driveway along 16th Street may be retained and widened, as allowed by City Engineering standards. Details to be worked out with the City Engineer or their designee.
18. The parking lot layout shall comply with all applicable City Standards. Parking lot trees shall be provided at a ratio of one tree for every six parking spaces. These trees shall be installed per the City's Parking Lot Landscape Standards, 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).
19. All landscaping in the public right-of-way shall comply with State Water Resources Control Board Resolution No. 2015-0032 "To Adopt an Emergency Regulation for Statewide Urban Water Conservation" and the City's Water Conservation Ordinance (Merced Municipal Code Section 15.42). Xeriscape or artificial turf shall be used in place of natural sod or other living ground cover. If turf is proposed to be installed in park-strips or on-site, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees, parking lot trees, or other landscaping shall be provided with a drip irrigation or micro-spray system.
20. All landscaping shall be kept healthy and maintained in good condition and any damaged or missing landscaping shall be replaced immediately.

21. All on-site landscaping shall comply with the 16th Street Design Guidelines. Detailed landscape plans, including irrigation plans, shall be submitted at the building permit stage.
22. The proposal shall comply with the City's 16th Street Design Guidelines shown at Attachment F of Planning Commission Staff Report #23-490.
23. It is recommended that the exterior building walls be treated with an anti-graffiti coating to make graffiti removal easier. In any case, graffiti removal shall take place within 24 hours of appearing and shall be painted over with a paint color that matches the existing color of the building wall.
24. 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.
25. All signs shall comply with the City's Sign Ordinance. Freestanding signs shall be located outside of the 10-foot visual corner at the driveway entrances on V Street and 16th Street and shall maintain a minimum 3-foot setback from all property lines
26. Future signage (including gas price signs), parking lot lights, and building lights shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots or be a nuisance to adjacent residential properties. This shall be done in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent parcels.
27. Business signage and the design of the fuel island shall be reviewed with a staff level design review permit. Signage shall comply with Merced Municipal Code Section 17.36 (Article IV) – Regulations for Downtown.
28. No beer or wine shall be displayed or stored outside of the cooler areas.
29. The proprietor and/or successors in interest and management shall be prohibited from advertising or promoting beer & wine and/or distilled spirits on the motor fuel islands and no self-illuminated advertising for beer or wine shall be located on the building or in the windows.
30. No sale of alcoholic beverages shall be made from a drive-in window.
31. No display or sale of beer or wine shall be made from an ice tub.
32. Employees on duty between the hours of 10 p.m. and 2 a.m. shall be at least 21 years of age to sell beer and wine.

33. 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.
34. The area within the convenience market dedicated to the display and sale of alcoholic beverages (beer and wine) shall not be more than 550 square feet as shown in the floor plan at Attachment C of Staff Report #23-490.
35. The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) arise as determined by the Police Chief 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.
36. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine containers shall be sold as part of a pack or carton, except for wine bottles at or over 750 ml.
37. Approval of CUP #1271 is contingent upon the City Council approval of a Finding of Public Convenience or Necessity. Prior to obtaining a license from the Alcoholic Beverage Control to sell alcohol, the business (for the convenience market) shall obtain approval for a Finding of Public Convenience or Necessity from the Merced City Council.
38. 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.

Findings and Considerations
Planning Commission Resolution #4115
Design Review Permit #23-01 and Conditional Use Permit #1271

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Thoroughfare Commercial (CT) and the zoning designation of Thoroughfare Commercial (C-T) with approval of a Conditional Use Permit and Design Review Permit. Gas Stations with alcohol sales for off-site consumption require a conditional use permit per MMC 20.44.070 - Gas and Service Stations. A Design Review Permit is required as the site is within the City's Design Review Boundary per Merced Municipal Code (MMC) 20.68.030 - Design Review Permit.

Design Review Considerations

- B) The Zoning Ordinance does not contain any specific design review standards requiring particular architectural styles, materials, or colors. Proposals are assessed on a project basis to confirm the proposed design is of high architectural quality. Design elements to consider are outlined under MMC Section 20.68.030 (F) Design Review Permit – Features to Consider are shown at Attachment G of Planning Commission Staff Report #23-490. Said elements to consider include design compatibility with surrounding uses, design of circulation, colors, architecture style, etc. In addition, MMC 20.68.030 – Design Review Principles (Attachment G of Planning Commission Staff Report #23-490, outlines various design review principles to consider. Because the project site fronts 16th Street it is also required to comply with the City's 16th Street Design Guidelines shown at Attachment F of Planning Commission Staff Report #23-490 which has standards regarding setbacks, landscaping, exterior color palettes (light Mediterranean required, which this proposal complies with), etc.

Traffic/Circulation

- C) The subject site is located at the southeast corner of V Street and 16th Street. Vehicle access is currently available from multiple locations - 1 driveway from V Street and 2 driveways from 16th Street. 16th Street is a 4-lane arterial road, traversing along an east/west axis. Arterial roads are intended to carry large volumes of traffic and are considered primary

corridors that carry vehicles across the community. Arterial roads generally intersect with other arterial roads, or second tier streets known as collector roads, such as V Street, that help alleviate traffic congestion and eventually branch out to local roads that lead to residential subdivisions and other low density uses with lower traffic counts. The site has historically been used for a gas station so having a larger convenience market and an additional 2 fuel pumps would have minimal impact on traffic patterns in this area. As such, staff anticipates that the existing City streets and traffic system can adequately serve this Project.

To improve vehicle safety and vehicle circulation between this site and City roads, staff is including Conditions #17 of Planning Commission Staff Report #23-490 to eliminate the westerly driveway along 16th Street. There is another driveway along 16th Street, on the eastern side of the parcel, further from the intersection along 16th Street and V Street that could possibly be widened to provide more space for vehicles entering and existing the subject site.

Public Improvements/City Services

- D) Any damaged or missing public improvements shall be repaired if the permit value of the project exceeds \$100,000.00. The need for repairs or replacement of any missing improvements would be evaluated at the building permit stage by the City's Engineering Department (Condition #16 of Staff Report #23-490).

Parking

- E) The parking requirement for a gas station convenience market is 3 parking spaces plus 1 parking space for every 250 square feet of sales floor area. The proposed convenience market is 3,800 square feet, but as shown on the floor plan at Attachment C Planning Commission Staff Report #23-490, the subject site would have 1,750 square of retail sales space. Based on the sales floor area the subject site would be required to have at least 10 parking stalls. The proposed parking exceeds the required parking plan of 10 stalls, by providing 12 parking stalls (along the northern and western elevations of the convenience market).

Site Design

- F) The subject site is located at the southeast corner of 16th Street and V Street at 1480 W. 16th Street. The subject site is a rectangular 0.69-acre parcel that has been used as a gas station (Smiley's Gas & Snacks) and used car dealership (Smiley's Used Cars) for several decades. The site plan would be updated to include a new fuel island (6 pumps), 3,800-square-foot convenience market, and new parking stalls (12 parking stalls). The fuel island would be located on the northern portion of the parcel, the convenience market would be located near the southeast corner of the parcel, and parking (12 stalls) would be located along the northern and western elevations of the convenience market. The refuse enclosure would be located near the northwest corner of the convenience market.

Although the site currently has three driveways into the site (1 on V Street and 2 on 16th Street), Condition #17 requires that the western driveway be closed. Refer to Finding C for additional information on the driveways.

Building Elevations

- G) The proposed 3,800-square-foot building (for the convenience market) has a contemporary design with a stucco finish and storefront windows along the northern elevation (refer to the elevations at Attachment C of Planning Commission Staff Report #23-490). There are three towers over 20 feet tall at the center and edges of the building, creating architectural focal points. Stone veneers would be placed below storefront windows and along the tower columns to add architectural interest. There is no maximum building height in the C-T Zone, unless a site is adjacent to a residential zone which is not the case in this situation. Due to this there are no zoning conflicts with the proposed maximum building height at 23 feet. The surrounding buildings are all approximately 20 feet tall. The proposed building heights would not be of an unusual scale to the neighborhood.

Floor Plan

- H) The floor plan (Attachment C of Planning Commission Staff Report #23-490) shows the proposed layout for the building which includes main access from the north elevation, and an additional exit on the south

elevation through the employee storage room. The floor plan features open space for snacks and goods, a kitchen, walk-in coolers, restrooms, a storage room, and a cashier area. The beer selection would be stocked within the beer cave (191 s.f.), a refrigerator (248 s.f.), and the wine selection would be displayed within racks (100 s.f.) located near the beer within the southeast quadrant of the building, as shown on the floor plan at Attachment C of Planning Commission Staff Report #23-490.

Neighborhood Impact

- I) The subject site is surrounded by light and heavy commercial uses with the nearest residential zone being over 1,000 feet north at the intersection of V Street and W. 19th Street. However, across 16th Street there are several active motels. Although this development provides many conveniences for these residents and is consistent with the General Plan and Zoning designations for the site (refer to Finding A), some conditions are being included to reduce potential impacts regarding lighting.

Lighting-related impacts may be reduced by requiring that parking lot lighting/signage be shielded or oriented in a way that does not spill-over to adjacent parcels (Condition #26 of Staff Report #23-490) and by prohibiting internal illumination on signs facing the motels (indirect illumination may be allowed), unless documentation is submitting showing illumination would not be intense enough to impact the nearby hotels. 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 has not received any comments or concerns from the public about this request.

Signage

- J) The applicant has yet to determine the official locations of signs, and type of signs they would install on either the convenience market or fuel pump canopy. The elevations at Attachment C of Planning Commission Staff Report #23-490 show the conceptual location of signage for the convenience market, which are proposed on the tower's north elevation facing 16th Street. Staff will review signs during the building permit stage to ensure compliance with the City's Sign Ordinance, Building Codes, and to ensure that signage facing residential properties is non-illuminated

(except with indirect illumination or direct lighting with documentation provided showing illuminated signs would not impact motel occupants across 16th Street – Condition #26). The convenience market shall be prohibited from advertising or promoting alcohol on the motor fuel island and from using illuminated signs (promoting alcohol) on building elevations or windows (Condition #29 of Staff Report #23-490). A digital LED gas price sign may be allowed, but shall be designed, located, and illuminated in a way that does not significantly impact the nearby motels

Landscaping

- K) The proposal does not include an official landscape plan, but landscaping for mulch, shrubs, turf, or trees should be drought tolerant and all irrigation systems must comply with the latest requirements for water conservation (Condition #19 of Staff Report #23-490). In addition, parking lot trees shall be installed as required by the City’s Parking Lot Landscape Standards at a minimum ratio of one tree for every six parking spaces. Parking lot trees shall be selected from the City’s approved tree list, providing a 30-foot minimum canopy at maturity (Condition #18 of Staff Report #23-490). Street trees shall also be installed along V Street and 16th Street as required by City standards. All trees shall be planted away from the City’s 10-foot visual corner triangle area. All on-site landscaping is required to comply with the 16th Street Design Guidelines (Condition #21) (refer to Attachment F of Planning Commission Staff Report #23-490).

Mandatory Findings – Design Review Permit

- L) Per Merced Municipal Code Section 20.68.030 (H) Design Review Permit, the review authority may approve an application for a Design Review Permit application only if all of the following findings can be made:
- a. The proposed project is consistent with the General Plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

As shown under Finding A, the proposed project is consistent with the General Plan designation, and Zoning classification for this site.

With the approval of the conditions found within this resolution, the project would comply with the 16th Street Design Guidelines (Attachment F of Planning Commission Staff Report #23-490).

- b. The proposed project complies with all applicable provisions of the zoning ordinance and Municipal Code.*

With approval of the conditions found within this resolution, the proposal would comply with all applicable provisions of the Zoning Ordinance and Municipal Code.

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

With approval of the conditions found within this resolution, the building design and layout described under Findings F,G, and H, and shown at Attachment C of Planning Commission Staff Report #23-490 would not interfere with the enjoyment of existing and future neighboring properties and structures.

- d. 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 proposal meets City standards with approval of this permit and the conditions found within this resolution. The proposed project would 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.

Alcohol Sales

- M) The Merced Municipal Code requires a Conditional Use Permit for alcohol sales for gas station convenience markets under 20,000 square feet [(MMC 20.44.070 (B))]. In addition, alcohol sales shall require a Finding of Public Convenience or Necessity from City Council, because Merced is listed as a Moratorium City for Type 20 alcohol licenses by the Department of Alcoholic Beverage Control. In addition, the census tract in which the site is located is considered to be overconcentrated with licenses for off-site consumption.

In order for the Planning Commission to approve or deny a request for the sale of alcoholic beverages for off-site consumption, they must consider the following criteria and make findings to support or deny each criteria 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 1,000-foot radius of the site.

Finding #1

The subject site is located within Alcoholic Beverage Control Census Tract 13.01. In checking with the State of California Alcoholic Beverage Control District, this census tract is overconcentrated with alcohol licenses. In addition, Merced is listed as a Moratorium City for Type 20 alcohol licenses by the Department of Alcoholic Beverage Control. Due to this the applicant would need a Finding of Public Convenience or Necessity which the City of Merced requires be approved by the City Council. Approval of CUP #1271 is contingent upon City Council approval of a Finding of Public Convenience or Necessity (refer to Condition #37)

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:

Residential zones are not located within 1,000 feet of the subject site. There are a few motels located directly across 16th Street, however these sites are zoned Thoroughfare Commercial (C-T). The nearest residential zone is located approximately 1,100 feet north at the intersection of V Street and 19th Street. The nearest parks are the Dennis Chavez Park at 11th and W Streets and the Stephan Gray Park on West North Bear Creek Drive near SR Hwy 59. Both parks are approximately 1,840 feet from the subject site. The nearest schools to the site are John C. Fremont Elementary School located at the northwest corner of R Street and W. 20th Street and Gracey Elementary School on West Avenue, near Lopes Avenue. Both schools are over 2,000 feet from the subject site.

Criteria #3

The crime rate in the area of the proposed site. Particular attention shall be given to those crimes involving public drunkenness, the illegal sale of narcotics, disturbing the peace, and disorderly conduct.

Finding #3:

Between May 1, 2022, and May 26, 2023, the Merced Police Department recorded 437 incidents within a 500-foot radius of the subject site. The table on the next page shows the number of incidents within that area involving public intoxication, assaults, MMC violations, and narcotics violations (totaling 20 incidents during the 12-month period). As shown on the attached Incident Map (Attachment E of Staff Report #23-490), the majority of those incidents were traffic-related incidents at the intersection of V Street and 16th Street, and the rest were spread out within residential zones. The number of incidents reported City-wide for the same time period was approximately 80,000. Based on the total number of calls within the City, the 437 calls to this area equals 0.54% of the overall calls for service within the City. As shown on the attached Crime Hot Spot Map for the City of Merced (Attachment D of Staff Report #23-490), crime rates in this area are considered moderate compared to the rest of the City. However, most of the incidents surrounding the site were not related to alcohol. Alcohol sales for off-site

consumption should not have a significant impact on Police Department resources.

Incidents and Cases Reported (May 1, 2022 – May 26, 2023)

Incident/Case Type	Number of Incidents
Public Intoxication	0
Disturbance (assaults)	9
MMC*	11
Narcotics violations	0

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

Planning staff consulted with the Merced Police Department regarding alcohol sales at this location. The Police Department did not have 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.

Conditional Use Permit Findings

N) In order for the Planning Commission to approve or deny a conditional use permit, 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.*

As shown under Finding A, the proposed project complies with the General Plan designation of Thoroughfare Commercial (CT) and the zoning classification of Thoroughfare Commercial (C-T) with approval of this conditional use permit and design review 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.*

As shown under Finding F – Site Design , Finding G – Building Elevation, and Finding I -Neighborhood Impact, staff believes that the location, size, design, and operating characteristics of the proposal would be compatible 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.*

As shown under Finding M– Alcohol Sales, 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 proposed development is properly located within the City and adequately served by existing or planned services and infrastructure such was street access, sewer connections, water connections, and other utilities.

Environmental Clearance

- O) Planning staff conducted an environmental review (Environmental Review #23-11) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (no further environmental review is required) is being recommended (Attachment H of Staff Report #23-490).

CITY OF MERCED
Planning Commission

Resolution #4116

WHEREAS, the Merced City Planning Commission at its regular meeting of June 21, 2023, held a public hearing and considered **Conditional Use Permit #1273**, initiated by Raj Joshi, on behalf of Merced Holdings, LP, property owner. This application involves a request to allow the on-site consumption of alcoholic beverages including beer, wine, and spirits within a restaurant to be generally located at the southeast corner of Yosemite Avenue and McKee Road (2272 E. Yosemite Avenue). The site has a General Plan designation of Neighborhood Commercial (CN) and is zoned Neighborhood Commercial (C-N) Designation. The site is more particularly described as “New Parcel” as shown on the Certificate of Compliance for Voluntary Merger of Lots for Lot Combination #22-02, recorded as Document Number 2022-041271 in Merced County Records; also known as Assessor’s Parcel Number (APN): 008-520-020.

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through G of Staff Report #23-499 (Exhibit B); 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 adopt a Categorical Exemption regarding Environmental Review #23-20, and approve Conditional Use Permit #1273, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Chairperson Harris, seconded by Commissioner Greggains, and carried by the following vote:

- AYES: Commissioner Greggains, Delgadillo, White, and Chairperson Harris
- NOES: None
- ABSENT: Commissioners Camper and Gonzalez
- ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4116

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June 21, 2023

Adopted this 21st day of June 2023



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 #4116
Conditional Use Permit #1273

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (floor plan) - Attachments B and C of Staff Report #23-499.
2. All conditions contained in Resolution #1249 (“Standard Conditional Use Permit Conditions”) shall apply.
3. All previously approved conditions for Conditional Use Permit #1238 and Site Plan Review #455, including all mitigation measures for Environmental Review #19-37 shall apply.
4. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, 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.

7. The restaurant shall meet all applicable Merced County Health Department requirements.
8. The restaurant shall meet all applicable Alcoholic Beverage Control requirements.
9. Alcoholic beverages shall not be allowed outside the building, unless otherwise approved by the California Department of Alcoholic Beverage Control and the City of Merced Site Plan Review Committee.
10. This approval is for alcohol sales as an ancillary use to the primary restaurant only.
11. A nightclub, bar, or similar use is expressly prohibited by the Conditions of approval for CUP #1238.
12. The City reserves the right to periodically review the area for potential problems. Should excessive calls for service or violation of these conditions of approval occur, the City may consider revocation of the Conditional Use Permit (CUP) after a public hearing and following the procedures outlined in the Merced Municipal Code.
13. Alcohol sales shall cease at 11:00 p.m. Monday through Thursday and Sunday, and at 1:00 a.m. on Friday and Saturdays, regardless of the business hours for the restaurant.
14. All employees serving alcoholic beverages shall be a minimum of 21 years old.

**Findings and Considerations
Planning Commission Resolution #4116
Conditional Use Permit #1273**

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The project site has a General Plan designation of Neighborhood Commercial (CN). The proposed restaurant complies with this designation. A Conditional Use Permit is required to allow alcohol sales for on-site consumption. The Neighborhood Commercial designation is intended to provide for retail shopping areas, including eating and drinking establishments, commercial recreation and other similar uses to serve the neighborhood. With the approval of this Conditional Use Permit, the project would comply with the CN designation.

Mandatory Findings for Conditional Use Permits

- B) Merced Municipal Code (MMC) Section 20.68.020 requires that the following findings be made by the Planning Commission in order to approve a Conditional Use Permit:
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.*

As described in Finding A, the proposed land use is consistent with the General Plan designation of Neighborhood Commercial (CN). The Zoning Ordinance was updated in 2022, to allow restaurants selling alcoholic beverages for on-site consumption within a Neighborhood Commercial (C-N) zone to obtain a Site Plan Review Permit rather than a Conditional Use Permit. However, the conditions of approval for the Hub Project (Condition #33 of City Council Resolution #2020-63 – Attachment E of Planning Commission Staff Report #23-499) requires a Conditional Use Permit (CUP) for restaurants selling alcoholic beverages for on-site consumption. Therefore, it was determined by the City Attorney, that this request would be subject to that condition and must obtain a CUP rather than a Site Plan Review Permit.

If the CUP is approved, the project would comply with the Zoning district. There are no other adopted plans for this site.

- 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 indicated on the location map at Attachment B of Planning Commission Staff Report 23-499, the site is surrounded by residential uses on all sides. Additionally, a church is located across Yosemite Avenue to the north. The proposed restaurant is intended to be a family-oriented restaurant that will cater to patrons of all ages (refer to the Restaurant Description at Attachment D of Planning Commission Staff Report #23-499). To begin with, the restaurant hours would be Monday-Thursday 10:30 a.m. to 11:00 p.m., Friday 10:30 a.m. to 12:00 a.m., Saturday 9:00 a.m. to 12:00 a.m., and Sunday 9:00 a.m. to 11:00 p.m. However, the applicant would like to be able to adjust the hours as they see how the business progresses. If they see that customers prefer longer hours, they may want to extend their opening and/or closing time.

The sale of alcoholic beverages is ancillary to the restaurant. The applicant has applied for a Type 47 license from the California Department of Alcoholic Beverage Control (ABC). Per ABC requirements for a Type 47 license a full menu must be served and the premises must be maintained as a “bona fide eating place.” Minors are allowed on the premises.

The applicant envisions the restaurant to be a place that would serve the neighborhood as a walkable destination. The restaurant would be the closest dining destination for the apartments that share the site as well as the adjacent residential uses to the north, south, east, and west.

Therefore, the proposed use would be compatible with the surrounding land uses and future land uses and would provide a service that is not currently existing in the area.

- 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. Implementation of the conditions of approval and adherence to all applicable Building Codes, 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 located within a developed area that is adequately served by infrastructure. Through the building permit process, the project would pay all necessary fees to connect to the existing services in the area. In addition, the site was annexed into the City's Community Facilities District (CFD) which would help pay for police and fire services for the site.

Proximity to Residential Uses and Church

- C) The Zoning Ordinance does not establish a required distance for restaurants with alcohol sales from residential areas and churches. State law allows ABC to deny a license for projects located within 600 feet of schools, public playgrounds, and non-profit youth facilities. Generally, ABC will deny a license in the above situations when there is evidence that normal operation of the licensed premises will be contrary to public welfare and morals. Mere proximity by itself is not sufficient to deny a license. However, ABC will not license a new location within 100 feet of a residence unless the applicant can ensure that their operation will not interfere with the quiet enjoyment of the property by residents.

In this case, there would be apartments on the same site as the restaurant which would be within 100 feet of the restaurant. All the other residential uses in the area would be more than 100 feet away. The nearest homes (other than the apartments on site) would be to the east across Whitewater Way. These homes would be approximately 120-150 feet away. There would be no openings on the east side of the building. The entrance to the restaurant would be from the west side through the development's courtyard area (refer to the Site Plan at Attachment C of Planning Commission Staff Report #23-499).

Yosemite Church located at 2230 East Yosemite Avenue and Providence Christian School located at 2142 East Yosemite Avenue are both north of the site, across Yosemite Avenue. The parking lot of the church would be approximately 250 feet from the restaurant and the church office and sanctuary would be approximately 500 feet from the restaurant. The playground for the school would be approximately 550 feet from the restaurant and the nearest classroom would be approximately 580 feet away. The map at Attachment F of Planning Commission Staff Report #23-499 shows the proximity of the sensitive uses to the restaurant.

Given the nature of the restaurant, the orientation of the building, the fact that there is no outdoor seating or live music proposed, and the hours the church and school are in operation compared to the restaurant hours, the alcohol sales at the restaurant would not have a negative impact on the church and school.

For the same reasons, the impact on the residential uses would be minimal as well. The sale of alcoholic beverages would be limited to indoor sales and in order to comply with ABC regulations, the restaurant would be required to serve food during most business hours. The residents on the site may hear noises as customers come and go, but given this is a mixed-use development, a certain amount of noise is to be expected.

Parking

- D) Zoning Ordinance Section 20.38 sets forth the parking requirements for restaurants. Restaurants are required to have one parking space for each 2.5 seats in the restaurants or 1 space for every 100 square feet of floor seating area. Based on 100 seats, the minimum parking requirement is 40 spaces. This is greater than the parking requirement based on square feet.

The Hub project is a mixed-use project that includes multi-family, expected retail uses, restaurants, and office uses. The project provides approximately 386 parking spaces, which include 25 motorcycle parking spaces. There are also designated ride share locations for Uber and Lyft, bicycle parking, and the site is located near a transit stop. A parking reduction was given for the proximity to a bus stop and for a mixed-use development per MMC Section 20.38.050 (E) and (F). Given these reductions, the site provides sufficient parking for the apartments and the restaurant.

Merced Police Department

- E) Between 6/1/2022 and 6/1/23, the Merced Police Department recorded 34 incidents within a 500-foot radius of the subject site. For this time period, there were no incidents involving DUI's, public intoxication, assaults. There was one incident involving a MMC violations and one involving a disturbance. As shown on the attached Incident Map (Attachment H), most of the incidents occurred in the Moraga subdivision to the east of the site. There was one incident on the site involving a theft. However, it should be noted that the project site is still under construction. The number of incidents reported City-wide for the same time period was approximately 72,000. Based on the total number of calls within the City, the 30 calls to this area equals 0.04% of the overall crime within the City. As shown on the attached

Crime Hot Spot Map for City of Merced (Attachment I), crime rates in this area are considered low compared to the rest of the City and approval of this project should not overburden the Police Department with excessive calls related to alcohol.

Planning staff consulted with the Merced Police Department regarding the sale of alcohol as an ancillary use to the restaurant at this location. The Police Department did not have any concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales for on-site consumption. Based on the information provided by the Police Department, staff does not anticipate that the approval of alcohol service at this location would adversely affect the economic and public welfare of the surrounding area.

Neighborhood Impact/Interface

- F) As discussed in Finding C above, the site is surrounding be residential uses. However, the site itself is a mixed-use development that is approved to include both apartments and commercial uses such as retail, restaurants, and offices. The restaurant use is a permitted use. Only the alcohol sales require discretionary review and approval of a CUP. Because the alcohol sales would be ancillary to the restaurant, the impact to the neighborhood is expected to be minimal. Conditions have been added to help minimize any potential impacts. These conditions include, not selling alcohol later than 1:00 a.m. on Friday and Saturday nights, not alcoholic beverages to be served outside unless otherwise approved by the City and ABC., and a condition that allows the City the right to review the CUP if there are excessive calls for service by the Police Department or other problems arise (Conditions #13, #9, and #12 respectively). Additionally, Condition #11 prohibits a nightclub or bar per the Conditions of Approval for CUP #1238 previously approved for this site.

Environmental Clearance

- G) Planning staff has conducted an environmental review (Environmental Review #23-20) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and recommends a Categorical Exemption based on the previous environmental review (Initial Study #19-37 for CUP #1238) remains sufficient and no further documentation is required (CEQA Section 15162 Findings) (Attachment J of Planning Commission Staff Report #23-499).