

**RESOLUTION NO. 2015-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING ENVIRONMENTAL REVIEW #15-07  
(CEQA SECTION 15162 FINDINGS) AND  
DENYING AN APPEAL BY B.P. INVESTORS, L.P.,  
CONCERNING THE ACTION OF THE PLANNING  
COMMISSION RESULTING IN THE DENIAL OF  
CONDITIONAL USE PERMIT #1200 AND  
THEREBY DENYING CONDITIONAL USE  
PERMIT #1200**

WHEREAS, the Planning Commission of the City of Merced ("Planning Commission") at its regular meeting of May 20, 2015, held a public hearing, and considered Conditional Use Permit #1200 ("CUP #1200") to allow the construction of a 216 unit apartment complex on a 9.8 acre parcel generally located on the north side of Merrill Place (extended), approximately 1,200 feet east of G Street; said property being more particularly described in Exhibit "A" attached hereto; and

WHEREAS, after hearing all of the evidence and testimony and after exercising its independent judgment and review, the Planning Commission continued the public hearing to June 17, 2015, to allow staff to prepare Findings and a resolution for denial of CUP #1200; and

WHEREAS, on June 17, 2015, the Planning Commission re-opened the public hearing. After hearing all evidence and testimony and after exercising its independent judgment, the Planning Commission adopted Resolution #3051 denying CUP #1200; and

WHEREAS, the Applicant (B.P. Investors, L.P.) appealed the Planning Commission decision to deny Conditional Use Permit #1200; and

WHEREAS, the City Council held a noticed public hearing on August 3, 2015, at which time all those interested in the matter were provided the opportunity to speak or to provide written or oral testimony regarding the application.

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.  
Based upon the evidence and testimony in the record at the City Council public hearing, the City Council exercising its independent judgment and review, hereby adopts Environmental Review #15-07 (CEQA Section 15162 Findings), pursuant to the provisions of the California Environmental Quality Act.

SECTION 2. CONDITIONAL USE PERMIT. Based upon the evidence and testimony in the record at the City Council public hearing, the City Council exercising its independent judgment and review, hereby rejects the appeal and adopts the Findings for Denial described in Exhibit "B" attached hereto, thereby upholding the Planning Commission's denial of CUP #1200.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2015, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

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Mayor

ATTEST:  
JOHN M. BRAMBLE, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

Ken Lytle 7/14/11  
City Attorney Date

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Parcel 4, as shown on that certain map entitled “Parcel Map for Benber Property” recorded in Book 97, Page 17, of Merced County Records; also known as Assessor’s Parcel Number (APN) 060-030-039.



**FINDINGS FOR DENIAL  
CONDITIONAL USE PERMIT (CUP) #1200**

**Land Use/Density Issues (Finding for Denial)**

- A) The project site is designated for Village Residential uses which allow a minimum of 7 dwelling units per acre and a maximum of 30 dwelling units per acre. The proposed project is at the upper end of the density range, providing 22 dwelling units per acre. Because this project would be primarily to provide student housing for UC Merced, the number of people within the complex would most likely be higher than that typically found in an apartment complex rented primarily to families. The project would provide a total of 678 bedrooms which could result in an overall occupancy of 678 people if the units are occupied by one person per bedroom or possibly, up to 1,354 people if each unit was occupied by two people per bedroom.

Although this density is within the range for property with a Village Residential designation, there are an additional 87 acres (approximately) of land designated as Village Residential within 1,000 feet of the site which would allow additional multi-family units to be constructed in the area (Attachment D of Planning Commission Staff Report #15-11-Addendum). Given this and the fact that the number of occupants for this project would most likely be well above the typical occupancy for a project with this density, the project would have a greater likelihood of introducing problems within the area and future residential neighborhoods, such as excessive on-street parking in the area, increased police calls, increased noise, and other nuisances. As such, a project within the lower density range for the Village Residential designation would be more compatible with the future neighborhood, specifically the single-family residences proposed to the west, and not create a concentrated area of such a large number of people.

**Parking (Finding for Denial)**

- B) The off-street parking space requirement for multiple-family dwellings is 1.75 spaces for each unit up to 30 units, and 1.5 spaces for each unit thereafter. Based on this formula, the project would be required to provide 233 spaces with Phase One and 99 spaces with Phase Two for a total of 332 parking spaces. The project proposes to construct 362 parking spaces which would meet the minimum requirements plus an additional 30 spaces.

Although the proposal includes on-site parking spaces that exceed City code requirements, the unique needs and parking demands of student housing are not addressed. The proposal provides 1.68 parking spaces per unit. As proposed the project consists of 1, 2, and 4 bedroom units with approximately 36% of the units being 4 bedroom/4 bath units (see table below).

**UNIT BREAKDOWN BY BEDROOM/BATH**

<b>Unit Type</b>	<b>Size</b>	<b>Phase 1 Units</b>	<b>Phase 2 Units</b>	<b>Total Units</b>	<b>Total Bedrooms</b>
1 Bedroom/1 Bath	542 s.f.	9	3	12	12
2 Bedroom/1 Bath	782 s.f.	24	3	27	54
2 Bedroom/2 Bath	916 s.f.	30	18	48	96
4 Bedroom/2 Bath	1,270 s.f.	36	15	51	204
4 Bedroom/4 Bath	1,339 s.f.	51	27	78	312
<b>TOTAL</b>		<b>150</b>	<b>66</b>	<b>216</b>	<b>678</b>

If each bedroom is occupied by a single occupant, the maximum number of people occupying the apartment complex in Phase One would be 465 people. Phase Two would add an additional 213 people for an overall total of 678 people. If each bedroom were occupied by 2 people, the total project occupancy could be up to 1,356 people. The proposal does not include any measures to limit the occupancy of rooms, which could lead to parking demands that exceed the spaces provided (362 spaces). This would lead to project occupants parking on the street and on the adjacent properties, including the streets within the future single-family residential development to the west and the other areas designated for residential uses within close proximity.

**Building Design (Finding for Denial)**

- C) The proposed height of each building would be 45 feet 3 inches tall (3 stories) (Attachment C of Planning Commission Staff Report #15-11-Addendum). The Pre-Annexation Development Agreement for this property allowed a 40-foot building height within the Village Residential areas, while Ordinance #2240 establishing Residential Planned Development (RP-D) #61 stated the maximum building height to be 35 feet. It is staff's opinion that the Pre-Annexation Development Agreement would control and the maximum height within the Village Residential area would be 40 feet.

Although the maximum height allowed would be 40 feet, the proposed buildings are 45 feet 3 inches tall (3 stories). This would exceed the allowable height limit within RP-D #61 by 5 feet 3 inches.

The single-family residential lots to the west of the site have a height limit of 2 ½ stories or 35 feet. The land to south would have a height limit of 35 feet as well. Therefore, at 45 feet 3 inches, this development would stand much taller than the surrounding uses and would look somewhat disproportional to the other future developments in the area.

In addition, as discussed in the Finding P below, the reduced setback for a building of that height would create an imposing presence on the streetscape. Such a tall building that close to the street could make the area feel crowded and less friendly to pedestrians. Such tall buildings close to the street are more typical in Downtown or dense urban areas.

**Site Design (Finding for Denial)**

- D) The buildings are situated toward the front of the property with the parking bordering the buildings on the north, west, and east (Attachment B of Planning Commission Staff Report #15-11-Addendum). Due to the varying depth of the buildings, the front setback along Merrill Place would vary from 17 to 25 feet.

The Design Standards for RP-D #61 require a 30-foot setback from the front property line. In addition, multi-family projects in Planned Developments are required to comply with Merced Municipal Code Section 20.54.290 (D) requires a 1:1 height/setback from an exterior property line, for more than 50% of the allowable building area at any established distance from the exterior property line. A 1:1 ratio would require the setback to be 45 feet for at least 50% of the building length.

The proposed setback of 17 to 25 feet does not meet either requirement described above. The proposed building height of 45 feet 3 inches would be as close as 17 feet from the sidewalk in some areas. For comparison, the Merced Civic Center (City Hall) is approximately 45 feet tall. A building with such mass would prevent the street scape from feeling like a residential neighborhood. It would instead have more of a commercial feel and be less inviting to pedestrians and members of the future surrounding neighborhoods.