

**CITY OF MERCED**  
**Planning & Permitting Division**

**STAFF REPORT:** #20-03 -Addendum

**AGENDA ITEM:** 4.1

**FROM:** Kim Espinosa,  
Planning Manager

**PLANNING COMMISSION**  
**MEETING DATE:** April 13, 2020

**PREPARED BY:** Julie Nelson,  
Associate Planner

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**SUBJECT:** **Site Plan Review #455**, initiated by Merced Holdings, LP, property owner. This application is a review of Interface Regulations found in Section 20.32 of the City of Merced Zoning Ordinance as they relate to the proposed project approved by Conditional Use Permit #1238. The project is a mixed-use development with 214 apartment units and approximately 37,000 square feet of commercial uses within four buildings (two 2-story buildings and two 3-story buildings) on an approximately 5.94-acre parcel, generally located at the southeast corner of Yosemite Avenue and McKee Road. The property 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 #20-05 (CEQA Section 15162 Findings)
- 2) Site Plan Review #455

**SUMMARY**

The information provided in this report is basically the same as what was provided prior to the March 18, 2020, Planning Commission meeting. That meeting was cancelled due to the Covid-19 situation. There have been a few changes to the report since that time. Those changes have been underlined to make it easier to see the changes.

The proposed project is located at the southeast corner of Yosemite Avenue and McKee Road (Attachment A). The applicant received Conditional Use Permit approval for a mixed-use project consisting of 214 dwelling units and approximately 37,117 square feet of commercial space (retail and office uses) on January 22, 2020. The Site Plan approved with CUP #1238 is provided at Attachment B. Planning Commission Resolution #4035 approving CUP #1238 is provided at Attachment C and Planning Commission Staff Report #20-01 for CUP #1238 is provided at Attachment D.

Although The Planning Commission reviewed and approved Conditional Use Permit (CUP) #1238, it has since been determined that a Site Plan Review Permit is also required to address the interface regulations established in Merced Municipal Code (MMC) Section 20.32 (Attachment E).

The purpose of MMC Section 20.32 – Interface, is to review projects proposed near existing land

uses that might be negatively impacted by the new use. The interface regulations are intended to protect existing residential neighborhood and to ensure that development is designed in a manner to minimize negative impacts on nearby uses. There are no specific findings required by this section, but this section does require a Site Plan Review Permit to approve the interface regulations. Planning Commission Staff Report #20-01 for CUP #1238 addressed these regulations, but the findings required by MMC 20.68.050(F) were not included in the staff report or Planning Commission Resolution #4035.

Traditionally, Planning Staff has relied on MMC Section 20.66.040 (C) (Attachment F) to combine the review of the interface regulations with the CUP review. This section states: “If a proposed project requires multiple permit approvals by both the Planning Commission and the Development Services Department, the Planning Commission shall act upon all required permits as part of a single application.” However, it has been determined that this is not sufficient and the Site Plan Review Permit is required along with the findings established by MMC Section 20.68.050 (F) (Attachment G).

Typically, a Site Plan Review application is reviewed by the Site Plan Review Committee which is comprised of the Director of Development Services, the Chief Building Official, and the City Engineer (or their designees). However, because MMC Section 20.66.040 (C) states that applications requiring multiple permit approvals shall be acted upon by the Planning Commission, Site Plan Review #455 is being referred to the Planning Commission for action. Additionally, there has been a lot of concern from the surrounding neighborhood and City staff wants to ensure the neighbors have an opportunity to voice their concerns at a public hearing.

A summary of the description of the project as it was approved by Conditional Use Permit (CUP) #1238 is provided in the “Project Description” section of this report. The Findings required for the approval of a Site Plan Review application are found in the “Findings” section of the report. The Planning Commission’s review is limited to the interface regulations and the findings required by MMC Section 20.68.050 (F).

An appeal of the Planning Commission’s approval of CUP #1238 was filed by Casey Steed on January 29, 2020. This appeal is tentatively scheduled to be heard by the City Council on April 20, 2020. The Planning Commission’s action on Site Plan Review #455 may also be appealed in accordance with MMC Section 20.74 – Appeals. Any appeal of Site Plan Review #455 shall be made within 5 business days of the Planning Commission’s action (excluding official City holidays).

Planning Staff has determined that the project complies with the Findings of Section 20.68.050 (F) and recommends approval of the project subject to the conditions below.

### **RECOMMENDATION**

Planning staff recommends that the Planning Commission approve Environmental Review #20-05 (CEQA Section 15162 Findings) and Site Plan Review #455, subject to the following conditions (and the Draft Resolution at Attachment J of Planning Commission Staff Report #20-03):

- \*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 conditions.

- \*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 – 35' 7 -7/8"; top of mechanical enclosure – 37' 1-7/8"; top of roof access – 43' 5".

(\*) Denotes non-discretionary conditions.

### **PROJECT DESCRIPTION**

The proposed project would be located on a 5.94-acre parcel at the southeast corner of Yosemite Avenue and McKee Road (Attachment A). The project is a mixed-use project consisting of 214 dwelling units and approximately 37,117 square feet of commercial space (retail and office). These uses would be contained within four separate buildings on the site (refer to the Site Plan at Attachment B). This number was reduced from 224 units subsequent to the public hearing notice for the project being published. Buildings 1 and 3 would be 2-story buildings and Buildings 2 and 4 would be 3-story buildings. Building 1 would contain residential units on both floors of the building. Buildings 2 and 4 would have a combination of retail space and common area for the residents. Building 3 would have office uses on the first floor and residential uses on the second floor. The project would provide a total of 127,206 square feet of residential living space, 12,544 square feet of community space for the residential tenants, 12,255 square feet of office space, and 22,672 square feet of retail commercial space.

The residential units would include one, two, and three bedroom units. The development would have 82 - 1 bedroom/1bath units; 112 - 2 bedroom/2 bath units; and, 20 - 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.

The apartment complex would have an on-site manager and would use a key-fob entry system to increase security and allow better monitoring of the number of tenants residing in the complex. Each apartment would be issued a certain number of key-fobs which would give them access to the buildings, their apartment, and the common areas. The key-fobs would also be required to enable power to the units which would make it more difficult for an unregistered tenant to stay in the unit.

No specific tenants have been identified for the retail portions of the project located within Buildings 2 and 4. However, the Floor Plans for Buildings 2 and 4 identify the types of tenants the developer envisions for this project. These uses could include service related uses such as barbershops and nail salons, general retail uses, and restaurant/food uses. The first floor of Building 3 is designated for office space. The developer is currently working with UC Merced to occupy the office space and some of the residential units for grad-student housing. Planning Commission Staff Report #20-01 included a reference to a Letter of Intent (LOI) from UC Merced

regarding their interest in occupying a portion of this project. The letter provided by UC Merced was not a Letter of Intent, but a letter of interest. This letter is provided at Attachment G of Staff Report #20-01.

**Surrounding Uses**  
Attachment A

<b>Surrounding Land</b>	<b>Existing Use of Land</b>	<b>Zoning Designation</b>	<b>City General Plan Land Use Designation</b>
North	Single-Family Residential/Church/School (across Yosemite Avenue)	County	Rural Residential (RR)
South	Single-Family Residential	R-1-6	Low Density Residential (LD)
East	Single-Family Residential (across Whitewater Way)	P-D #52	Low Density Residential (LD)
West	Single-Family Residential (across McKee Road)	R-1-6	Low Density Residential (LD)

**BACKGROUND**

The project site was annexed to the City in 2003 as part of the Hunt Farms Annexation. The project site is currently vacant, but was previously occupied by two single-family dwellings (these were demolished in 2017). The site is currently zoned Neighborhood Commercial (C-N). The subject site consists of two individual lots [Assessor's Parcel Numbers (APN's): 008-310-053 and -038 totaling 5.94 acres]. Recently, 22,670 square feet of lot area was acquired from the neighboring property to the south. On October 7, 2019, the City Council approved a General Plan and Zone Change changing the land use designation for this newly acquired area consistent with the rest of the site (C-N).

In 2014, the owner applied for a General Plan Amendment and Zone Change to change the entire site from Low Density Residential (LD) and R-1-6 to Neighborhood Commercial (CN). At that time, the owner proposed the construction of a 62,000-square-foot retail commercial center that would have included a small grocery store, a fast-food restaurant (with a drive-through), and other retail uses appropriate to the Neighborhood Commercial (C-N) zone. The City Council approved the General Plan Amendment and Zone Change to Neighborhood Commercial in 2015.

When the General Plan Amendment and Zone Change were approved in 2015, the City Council had two options for the Shopping Center design on the project site. One option included providing direct access to Whitewater Way from Yosemite Avenue, and the other option did not provide access other than an entrance-only service road to serve commercial uses proposed on the site. The City Council voted to prohibit direct access from Yosemite Avenue to Whitewater Way and instead, approved the option with an entrance-only service road.

When the City Council approved the General Plan Amendment and Zone Change on October 7, 2019, they also considered the appeal of the Planning Commission's denial of Conditional Use Permit (CUP) #1231 to allow a mixed-use project consisting of 428 Efficiency Dwelling Units and approximately 18,000 square feet of retail commercial space. The City Council upheld the

Planning Commission's denial of CUP #1231 based on density, traffic congestion, and concerns regarding sewer capacity.

On January 22, 2020, the Planning Commission held a public hearing and considered Conditional Use Permit (CUP) #1238 to allow the construction of a mixed-use development that included 214 apartment units and over 37,000 square feet of commercial space. At this meeting, the Planning Commission unanimously voted to approve CUP #1238. Planning Commission Resolution #4035 approving CUP #1238 is provided at Attachment C. The minutes from the Planning Commission meeting of January 22, 2020 are provided at Attachment H and Staff Report #20-01 is provided at Attachment D.

## **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 has a density of 36 units per acre, which is consistent with the High Density (HD) designations. 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 has relied upon the High Density designation to determine compliance with the General Plan. Based on this designation, the proposed multi-family portion of the project would comply with the General Plan.

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. Therefore, in order for the Planning Commission to approve or deny a site plan review permit, they must consider the following criteria and make findings to support or deny each criteria. 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. If the Planning Commission wishes to deny the Site Plan Review Permit, they will need to provide findings for denial and direct staff to prepare a resolution for denial to be adopted at a future meeting.

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. The Planning Commission approved the Conditional Use Permit on January 22, 2020. Approval of the proposed Site Plan Review Permit and implementation of the conditions of approval for CUP #1238 and Site Plan Review #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 residential component of the project was subject to Conditional Use Permit approval and received approval on January 22, 2020. 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. Through the CUP process there were several changes made to the plans and elevations. The plans provided in the staff report were the correct plans, but the information provided in the staff report was based on a previous version of the plans, which showed all buildings being less than 35 feet. Unfortunately, the final version of the plans had buildings heights that exceed 35 feet for Buildings 2 and 4. The building heights at the top of the building parapet for Buildings 2 and 4 are just over 35 feet at 35 feet, 7-7/8 inches. 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. If the Planning Commission wishes to approve the additional height for Buildings 2 and 4, Condition #11 has been added to allow the additional height.

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 25 feet from the north and south edges 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 than 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.

### **Public Comment**

The email found at Attachment K was received prior to the staff report going out. Other public comment will be heard at the time of the meeting. If additional written comments are received prior to the meeting, those will be provided to the Commissioner’s and read into the record at the meeting.

### **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.

### **Attachments:**

- A) Location Map
- B) Site Plan
- C) Planning Commission Resolution #4035
- D) Planning Commission Staff Report #20-01

- E) MMC Section 20.32
- F) MMC Section 20.66.040
- G) MMC Section 20.68.050
- H) Planning Commission Minutes Excerpt from January 22, 2020
- I) CEQA Section 15162 Findings
- J) Draft Planning Commission Resolution #4036
- K) Letter of Opposition from A. Kelley
- L) Presentation

Ref: N:\SHARED\PLANNING\STAFFREP\SR2020\SR 20-03- SP 455 (Yosemite & McKee).docx

Staff Report #20-03-Addendum Attachment	Administrative Report Attachment
Attachment A – Location Map	Attachment 1 – Location Map
Attachment B – Site Plan	Attachment 2 – Site Plan
Attachment C – Planning Commission Resolution #4035	Attachment 9 – Planning Commission Resolution #4035
Attachment D – Staff Report #20-01	Attachment 11 – Staff Report #20-01
Attachment H – Planning Commission Minute Excerpt for 1/22/2020	Attachment 10 – Planning Commission Minute Excerpt for 1/22/2020
Attachment J – Draft Planning Commission Resolution #4036	Attachment 12 – Planning Commission Resolution #4036

## Chapter 20.32 - INTERFACE REGULATIONS

### Sections:

#### 20.32.010 Purpose

#### 20.32.020 Definitions

#### 20.32.030 Site Plan Review

#### 20.32.040 Exceptions

#### 20.32.010 Purpose

This chapter establishes special permit requirements for projects proposed near to existing land uses that might be negatively impacted by the new use. These requirements are intended to protect existing residential neighborhoods and to ensure that new development is designed in a manner to minimize negative impacts on nearby uses to the greatest extent possible to promote harmonious and orderly development, and the stability of land values and investments.

#### 20.32.020 Definitions

The following terms when used in this chapter are defined as follows:

- A. A parcel is “abutting” another parcel if it is located immediately adjacent to another parcel and shares at least one property lot line.
- B. A parcel is “across from” another parcel if any of its property lines when extended across the street or alley touch the parcel on the other side of the street.
- C. A parcel is “developed” if there is a minimum of 20 percent lot coverage and the parcel contains a land use legally conforming to the zoning district within which it is located.

#### 20.32.030 Site Plan Review

- A. A proposed use in a “High Impact” zoning district shall require a Site Plan Review Permit if it is abutting or across from a developed parcel in a “Low Impact” zoning district. For example, if a proposed use is located in the R-3 zoning district and is abutting or across from a parcel in the R-1 zoning district, then a Site Plan Review Permit is required. Table 20.32-1 lists out all cases that require a Site Plan Review Permit pursuant to this chapter. Figure 20.32-1 illustrates the concept.

- B.** A Site Plan Review Permit (with a public hearing and public notice per Section 20.68.050.E and Chapter 20.70) shall also be required for a proposed use in a High Impact zoning district that is abutting or across from either:
1. A developed parcel that is zoned Planned Development with a use similar to a permitted use within the corresponding Low Impact zoning district; or,
  2. A parcel outside the Merced City limits with a use similar to a permitted use within the corresponding Low Impact zoning district.
- C.** The Director of Development Services may refer any application to the Planning Commission for review and final decision.

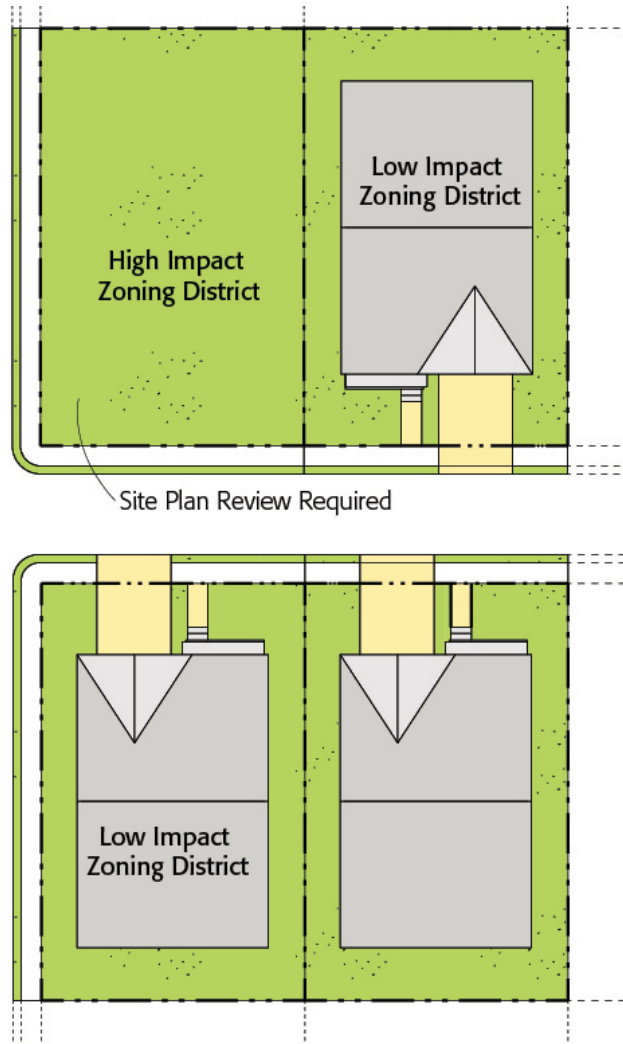
**TABLE 20.32-1 SITE PLAN REVIEW PERMIT REQUIRED**

		High Impact Zoning District													
		R-3	R-4	R-MH	C-N	C-SC	C-C	D-CM	C-O	C-T	C-G	B-P	I-L	I-H	A-G
Low Impact Zoning District	R-1	■	■	■	■	■	■	■	■	■	■	■	■	■	
	R-2				■	■	■	■	■	■	■	■	■	■	
	R-3										■		■	■	
	R-4										■		■	■	
	R-MH										■		■	■	
	C-O										■		■	■	
	A-G	■	■	■	■	■	■	■	■	■	■	■	■	■	

■	Site Plan Permit Required
	No Site Plan Permit Required



FIGURE 20.32-1 --SITE PLAN REVIEW REQUIREMENT



**20.32.040 Exceptions**

This section shall not apply to parcels across the street if the street is a proposed or existing arterial or higher order street as shown on the General Plan Circulation map.



## 20.66.040 Application Review

### A. Review for Completeness.

1. **Initial Review.** The Development Services Department (Planning Division) shall review each application for completeness and accuracy before it is accepted as being complete and officially filed.
2. **Basis for Determination.** The Development Services Department acceptance shall be based on the City's list of required application contents and any additional written instructions provided to the applicant in a pre-application conference or during the initial application review period.
3. **Notification of Applicant.** Within 30 calendar days of application acceptance, the Development Services Department shall inform the applicant in writing if the application is incomplete and that additional information is required. If no such written notice is issued, then the application is deemed to be complete.
4. **Submittal of Additional Information.** When the Development Services Department determines that an application is incomplete, the time used by the applicant to submit the required additional information shall not be considered part of the time within which the determination of completeness for resubmitted materials shall occur. The additional required information shall be submitted in writing or in a form deemed acceptable by the Planning Division.
5. **Environmental Information.** After the City has accepted an application as complete, the Development Services Department may require the applicant to submit additional information for the environmental review of the project in compliance with the California Environmental Quality Act (CEQA).

**B. Referral of Application.** At the discretion of the Development Services Department, or where otherwise required by the Zoning Code, State, or federal law, an application may be referred to any public agency that may have an interest in the proposed project.

**C. Multiple Applications.** If a proposed project requires multiple permit approvals by both the Planning Commission and the Development Services Department, the Planning Commission shall act upon all required permits as part of a single application.

**F. Findings for Approval.** To approve a Minor Modification application, the Director of Development Services shall make all of the following findings:



1. The modification will be compatible with adjacent structures and uses and is consistent with the character of the neighborhood or district where it is located.

2. The modification will not adversely impact neighboring properties or the community at large.

3. The modification is necessary due to unique characteristics of the subject property, structure, or use.

4. Unique characteristics necessitating the modification generally do not apply to other properties in the vicinity or in the same zoning district as the subject property.

5. There are no feasible design alternatives that meet the project objectives while eliminating the need for the requested modification.

6. The modification will be consistent with the purpose of the zoning district, the General Plan, and any adopted area, community, or neighborhood plan.

7. The modification will not establish an undesirable precedent.

**G. Conditions of Approval.** The granting of a Minor Modification for approval by the Director of Development Services may include such conditions as deemed reasonable and necessary to carry out the intent of this chapter, the Zoning Code, Merced Municipal Code, and the General Plan.

#### **20.68.050 Site Plan Review Permit**

**A. Purpose.** A Site Plan Review Permit is a discretionary action that enables the City to determine a project's compliance with the Zoning Ordinance and ensure that it will not create negative impacts to adjacent properties or the general public.

**B. Applicability.** The following uses and structures require a Site Plan Review Permit:

1. All uses as shown in Part 2 (Zoning District Standards), and,
2. All proposed uses and structures within the Light Industrial (I-L) and Heavy Industrial (I-H) zoning districts.

**C. Review Authority.**

1. The Site Plan Review Committee shall take action on all Site Plan Review Permits.
2. The Site Plan Review Committee may refer any Site Plan Review Permit application to the Planning Commission for review and final decision.

**D. Application Submittal and Review.** Application for a Site Plan Review Permit shall be filed and reviewed in compliance with Chapter 20.66 (Permit Application and Review).

**E. Public Notice and Hearing.** No public notice and hearing for a Site Plan Review Permit shall be provided in compliance with Chapter 20.70 (Public Notice and Hearing), except for:

1. Those properties that are directly adjacent to any residentially zoned property in the City; or,

2. Site Plan Review Permits required for Interface (Chapter 20.32).

In those cases, public notice shall be given to those adjacent properties at least 10 days prior to the Site Plan Review Meeting.

**F. Findings for Approval.** The Site Plan Review Committee may approve an application for a Site Plan Review Permit only if all of the following findings can be made:

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

2. The proposed project complies with all 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.

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

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

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.

**G. Appeals.** Decisions on Site Plan Review Permits may be appealed as provided for in Chapter 20.74 (Appeals).

**H. Post-Decisions Procedures.** Procedures and requirements relating to effective dates, time limits, changes to approved projects, resubmittals, and permit revocation shall apply to Site Plan Review Permits as provided in Chapter 20.72 (Post-Decision Procedures).

**The California Environmental Quality Act  
(CEQA) Section 15162 Findings:**

**Application: Site Plan Review #455**

**Assessor Parcel Number or Location:** Assessor's Parcel Number (APN): 008-310-053 and -038

**Previous Initial Study/EIR Reference:** This site was previously reviewed through the Initial Study #19-37, resulting in a Mitigated Negative Declaration. The current proposal is to construct 214 apartment units on approximately 5.94 acres of land.

**Original Project Date:** Environmental Review #19-37 for Conditional Use Permit #1238, resulting in a Mitigated Negative Declaration, was adopted by the Merced City Planning Commission on January 22, 2020.

**Section A - Previous Studies**

- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
|  | <b>Yes</b>               | <b>No</b>                           |
| 1. Substantial changes are proposed in the project that will require major revisions of the previous project EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**Comment/Finding:** There are no changes to the project. This application is strictly to review the Interface Requirements of Section 20.32 of the City of Merced Zoning Ordinance.

- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
|  | <b>Yes</b>               | <b>No</b>                           |
| 2. Substantial changes have occurred with respect to the circumstances under which the project is undertaken that will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**Comment/Finding:** There have been no changes in the circumstances under which the project is undertaken that would require major revisions in the previous Mitigated Negative Declaration. There are no new significant environmental effects or substantial increases in the severity of previously identified environmental effects, and the area under consideration remains the same area previously evaluated. This application is strictly to review the Interface Requirements of Section 20.32 of the City of Merced Zoning Ordinance.

- |   |                          |                                     |
|---|--------------------------|-------------------------------------|
|   | <b>Yes</b>               | <b>No</b>                           |
| 3. New information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, has been revealed? (If "Yes" is checked, go to Section "B" below) | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**Comment/Finding:** There is no new information of substantial importance that was not known and could not have been known with the reasonable diligence at the time the previous Mitigated Negative Declaration was adopted. This application is strictly to review the Interface Requirements of Section 20.32 of the City of Merced Zoning Ordinance.

## Section B - New Information

A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration. 

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

B) Significant effects previously examined will be substantially more severe than shown in the previous EIR. 

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative. 

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. 

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>


**Comment/Finding:** All previously identified mitigation measures will be enforced with this project. Therefore, the resulting impacts are no greater than those previously analyzed and the previously imposed mitigation measures remain sufficient to address all impacts from this project.

### On the basis of this evaluation, in accordance with the requirements of Section 15162 of the CEQA Guidelines:

- |                                     |
|-------------------------------------|
| <input type="checkbox"/>            |
| <input type="checkbox"/>            |
| <input type="checkbox"/>            |
| <input checked="" type="checkbox"/> |
1. It is found that subsequent negative declaration will need to be prepared.
  2. It is found that an addendum Negative Declaration will need to be prepared.
  3. That a subsequent EIR will need to be prepared.
  4. No further documentation is required.

Date: February 24, 2020

Prepared By:

  
\_\_\_\_\_  
Julie Nelson,  
Associate Planner

**From:** [planningweb](#)  
**To:** [Nelson, Julie](#)  
**Subject:** FW: Oppose Site Plan Review #455  
**Date:** Friday, April 10, 2020 9:00:16 AM

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Here you go!

---

**From:** Ann Kelley [REDACTED]  
**Sent:** Friday, April 10, 2020 7:15 AM  
**To:** planningweb <planningweb@cityofmerced.org>  
**Subject:** Oppose Site Plan Review #455

Honorable Commissioners:

I have reviewed the information in the Notice for the above referenced public hearing and desire to voice my opposition of this project. There is already a traffic issue on Yosemite Avenue from McKee to G St. The intersection of Parsons and Yosemite is currently problematic with long lines of traffic on Yosemite Ave. Yosemite Avenue from G to McKee is in disrepair and has been for several years with no current plans to fix it. Yosemite Avenue from Parsons to McKee Ave, it is unclear if it is a 3 lane road or a 2 lane road, which causes confusion. McKee Ave from Yosemite Ave. to Olive Ave will also be negatively impacted by this project. In addition to traffic issues, there is an issue of water usage and sewage drainage which will be severely impacted upon the city. I am concerned as well about parking for the proposed tenants. 214 apartment units which will house up to 800 individuals and perhaps animals, dogs and cats, in a 2 or 3 story building on this size parcel is just TOO many. I oppose the proposed project.

However, if a smaller project might be more suitable for this parcel. I might also add that perhaps apartments for the UC Students be built much closer to the University, such as all that vacant land on Bellevue Rd.

Respectfully submitted,

Ann Kelley, J. D.

[REDACTED], Merced, CA.

**[NOTICE: This message originated outside of City of Merced -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]**

DRAFT

The Hub 2.0

# Site Plan Review #455



**SUBJECT  
SITE**

# Project & Site Details

- 5.94 Acre Parcel
- Neighborhood Commercial Zone
- Mixed Use Development (residential uses allowed with CUP)
- 214 Residential Units (mixture of 1, 2, and 3-Bedroom units)
- Density – 36 units/acre (consistent with High Density Residential/General Plan)
- 14,445 Square Feet of Office Space
- 22,672 Square Feet of Commercial Retail Space
- 386 Vehicle Parking Spaces
- 70 Bicycle Parking Spaces

# Background

- 2014 – Proposed 60,000 s.f. Shopping Center.
- 2019 – Proposed Mixed-Use Project with 428 residential units.
- 2019 – Denial of Mixed-Use Project (428 units).
- 2019 – Project redesigned and reduced to 214 units. Office space was added.
- Jan. 22, 2020 – Planning Commission approved CUP #1238 to allow the redesigned project.

# SITE PLAN APPROVED BY CUP #1238

BUILDING 1  
2 FLOORS OF RES.  
49 UNITS  
30,456 SF

BUILDING 2  
2 FLOORS OF RES.  
GROUND FLOOR COMMUNITY SPACE AND RETAIL  
67 UNITS  
57,622 SF

BUILDING 3  
1 FLOOR OF RES.  
GROUND FLOOR OFFICE  
29 UNITS  
30,533 SF

BUILDING 4  
2 FLOORS OF RES.  
GROUND FLOOR COMMUNITY SPACE AND RETAIL  
69 UNITS  
58,262 SF

# Why Site Plan Review?

## Interface Regulations – MMC Section 20.32

- Purpose of Interface Regulations:
  - Established to protect existing residential neighborhoods and to ensure that new development is designed in a manner to minimize negative impacts on nearby uses to the greatest extent possible to promote harmonious and orderly development, and the stability of land values and investments.
- Interface applies to the project site due to Residential Zones (Low Impact Zones) to the east, west, and south. Interface does not apply to parcels across the street if the street is an arterial (such as Yosemite Avenue).

**TABLE 20.32-1 SITE PLAN REVIEW PERMIT REQUIRED**

		High Impact Zoning District													
		R-3	R-4	R-MH	C-N	C-SC	C-C	D-CM	C-O	C-T	C-G	B-P	I-L	I-H	A-G
Low Impact Zoning District	R-1	■	■	■	■	■	■	■	■	■	■	■	■	■	■
	R-2	■	■	■	■	■	■	■	■	■	■	■	■	■	■
	R-3	■	■	■	■	■	■	■	■	■	■	■	■	■	■
	R-4	■	■	■	■	■	■	■	■	■	■	■	■	■	■
	R-MH	■	■	■	■	■	■	■	■	■	■	■	■	■	■
	C-O	■	■	■	■	■	■	■	■	■	■	■	■	■	■
	A-G	■	■	■	■	■	■	■	■	■	■	■	■	■	■

# Conditional Use Permit #1238

- CUP #1238 approved the proposed project, but did not address the necessary Findings for the Site Plan Review required by the Interface Regulations.
- The Staff Report addresses the required Findings for the Site Plan Review.
- There is no change in the project.

# Site Plan Review Findings

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

*The commercial aspect of the mixed-use project complies with the Neighborhood Commercial General Plan land use designation.*

*The General Plan encourages mixed-used developments, but does not specify a density for the residential component of a mixed-use development.*

*The Residential component of the development complies with the High Density land use designation at 36 units/acre.*

*The project satisfies several policies in the General Plan as described beginning on page 6 of the Staff Report.*

## Determination:

The project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

# Site Plan Review Findings

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

*The Neighborhood Commercial (C-N) zone allows mixed-use development, subject to Conditional Use Permit approval.*

*Interface Requirements apply which require Site Plan Review.*

*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.*

## Determination:

Approval of the proposed Site Plan Review Permit and implementation of the conditions of approval for CUP #1238 and Site Plan Review #455 would bring the project into compliance with the applicable provisions of the Zoning Ordinance and Municipal Code.

# Site Plan Review Findings

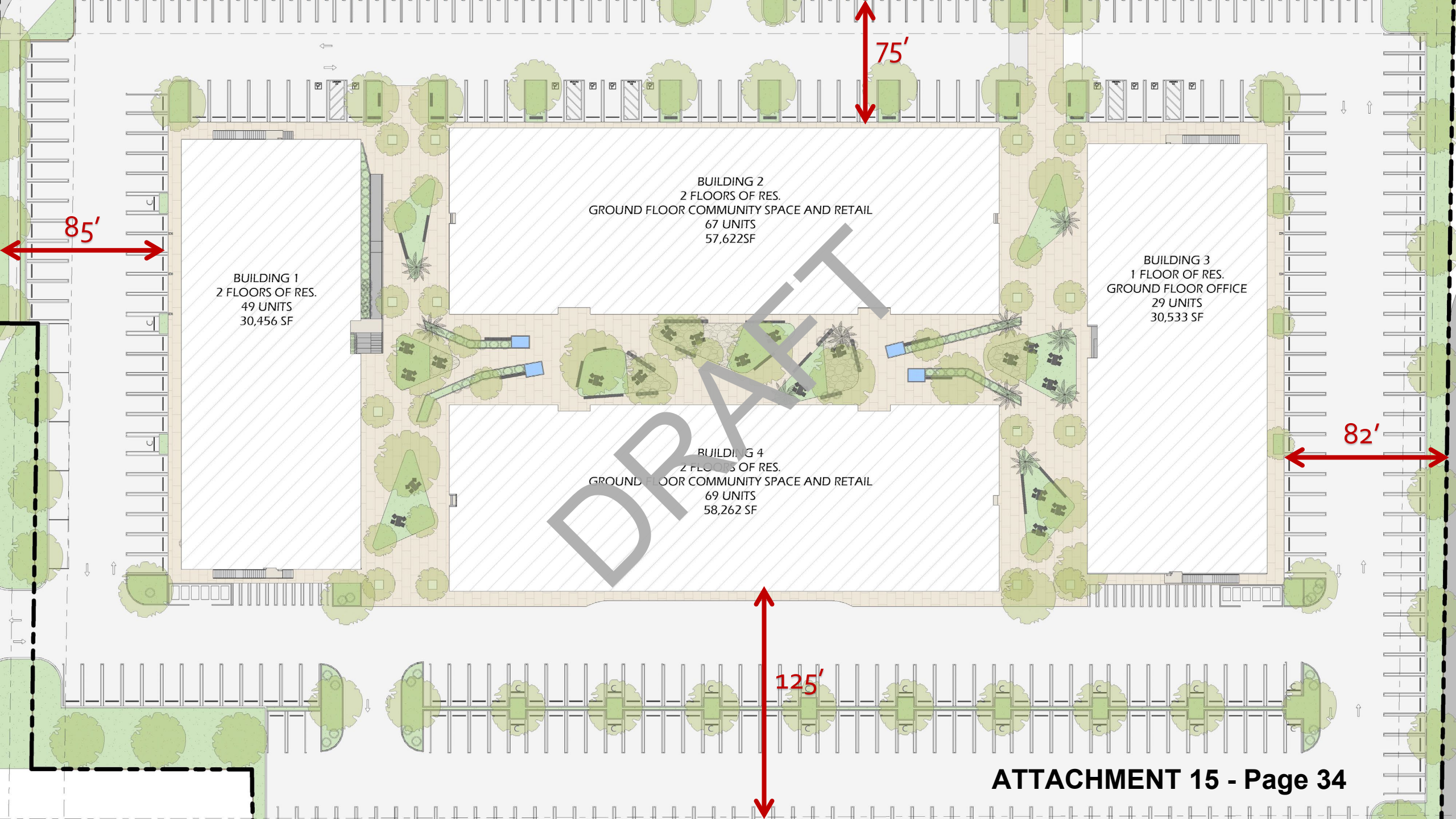
3. The design and layout of the proposed project will not interfere with the use and enjoyment of existing and future neighboring properties and structures.

## Setbacks

*The setbacks exceed the minimum standards of the C-M zone, which requires a minimum 20-foot setback from exterior property lines.*

*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.*

Refer to the Site Plan at Attachment B of the Staff Report.



# Site Plan Review Findings

Finding 3 continued -

## Building Heights

*The maximum height allowed within a C-N zone, when adjacent to a residential zone, is 35 feet, unless approved with a Site Plan Review Permit.*

*Buildings 1 and 3 are below 35 feet.*

*Buildings 2 and 4 exceed the 35 feet height limit. Condition #11 allows the height in excess of 35' for Buildings 2 and 4.*

Refer to the Building Elevations at Attachment D of the Staff Report #20-01.

# Elevations

## BUILDINGS 2 & 4

37' 1-7/8"  
Mechanical  
Enclosure



NORTH  
ELEVATION

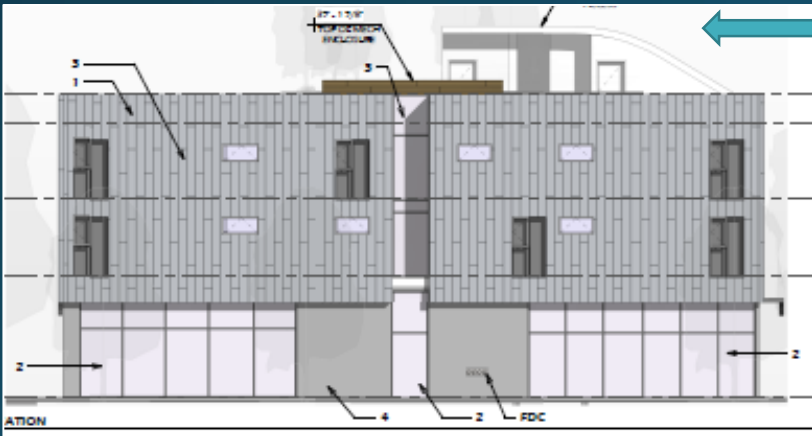
35' 7-7/8"  
Building Height

SOUTH  
ELEVATION

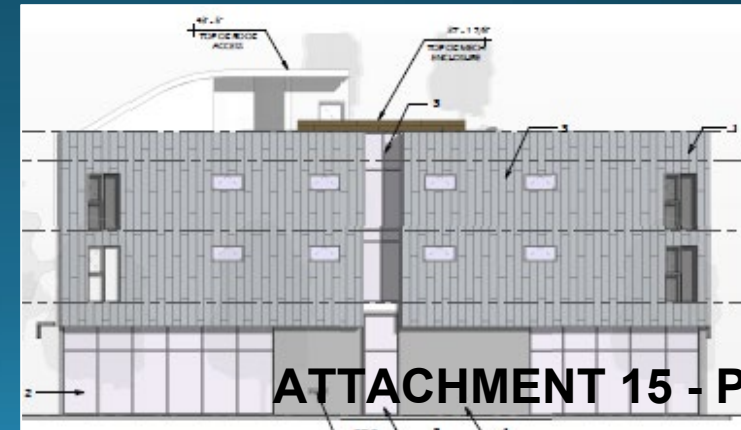


43' 5"  
Roof Top Access

WEST  
ELEVATION



EAST  
ELEVATION



# Site Plan Review Findings

## Finding 3 Continued -

### Surrounding Uses

The site is surrounded by residential uses and a church/school;

The retail uses would serve the neighborhood as well as on-site tenants.

### Determination:

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.

# Site Plan Review Findings

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 architecture of the buildings include clean lines with a modern flair. Although this style is different than 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.*

## Determination:

The proposed design and materials is appropriate for the area and will remain aesthetically appealing and appropriately maintained.

# Site Plan Review Findings

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

*Project includes over 29,000 s.f. of outdoor greenspace and promenade area to serve the residential tenants and commercial customers.*

*The project is required to comply with the Landscape Standards in the Municipal Code requiring one tree for each unit and "foundation plantings" around the perimeter of the buildings.*

*The project shall provide one parking lot tree for each six parking spaces.*

*Condition #11 for CUP #1238 requires 15% of the site to be covered with landscaping.*

## Determination:

The proposed landscaping and irrigation either meets with the requirements of the Merced Municipal Code or would do so with the implementation of Condition #11 for CUP #1238. The proposed landscaping would enhance the site and appearance of the buildings.

# Site Plan Review Findings

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.*

## Determination:

The proposed project does not include any uses that would be detrimental to the public health, safety, or welfare. The project would pay for impacts to the police and fire departments through the CFD program. Conditions of approval and compliance with all codes prevent any detrimental effect on the City.

# Environmental Review

- CEQA Section 15162 Determination
- Previous Initial Study #19-37 for CUP #1238 remains sufficient.
- Initial Study #19-37 resulted in a Mitigated Negative Declaration.

DRAFT

CEQA

# PLANNING COMMISSION ACTION

- APPROVE/DISAPPROVE/MODIFY
  - Environmental Review #20-05 (CEQA Section 15162 Findings)
  - Site Plan Review #455

Staff recommends approval subject to the Findings and Conditions outlined in Staff Report #20-03.