

CITY OF MERCED
Planning Commission

Resolution #4036

WHEREAS, the Merced City Planning Commission at a special meeting (held via teleconference) on Monday, April 13, 2020, held a public hearing and considered **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)); also known as Assessor's Parcel Numbers (APN) 008-310-053 and 008-310-038; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through C (Exhibit B) of Staff Report #20-03; and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for Site Plan Review Permits in Merced Municipal Code Section 20.68.050 (F) and other Considerations as outlined in Exhibit B; and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby find that the previous environmental review (Initial Study #19-37 for Conditional Use Permit #1238) remains sufficient and no further documentation is required (CEQA Section 15162 Findings), and approve Site Plan Review Permit #455, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner RASHE, seconded by Commissioner DELGADILLO, and carried by the following vote:

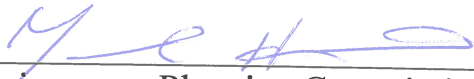
AYES: Commissioners Butticci, Camper, Delgadillo, Dylina, Rashe, White,
and Chairperson Harris
NOES: None
ABSENT: None
ABSTAIN: None

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April 13, 2020

Adopted this 13th day of April 2020



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Findings

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Conditions of Approval
Planning Commission Resolution # 4036
Site Plan Review #455

1. The proposed project shall be constructed/designed in substantial compliance with the Site Plan, Floor Plan, Elevations, and Renderings (Attachments B, C, D, and E of Planning Commission Staff Report #20-01, Attachment D of Planning Commission Staff Report #20-03), except as modified by the 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

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4036

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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".

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OF PLANNING COMMISSION RESOLUTION #4036

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Findings and Considerations
Planning Commission Resolution # 4036
Site Plan Review #455

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed mixed-use project complies with the General Plan designation of Neighborhood Commercial (CN) and the Zoning classification of Neighborhood Commercial (C-N). The proposed commercial uses comply with the General Plan designation of Neighborhood Commercial (CN). Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project. The *Merced Vision 2030 General Plan* includes two classifications for higher density residential uses – High-Medium Density (HMD) and High Density (HD). The High-Medium designation allows 12 to 24 units per acre, while the High Density designation allows 24 to 36 units per acre. The proposed project 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

EXHIBIT B

OF PLANNING COMMISSION RESOLUTION #4036

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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.

Environmental Clearance

- C) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and concluded that Environmental Review #20-05 is a second tier environmental document, based upon the City's determination that the proposed development remains consistent with the current general plan and provision of CEQA Guidelines, Section 15162 (Initial Study #19-37 for CUP #1238). A Copy of the Section 15162 Findings can be found at Attachment I of Planning Commission Staff Report #20-03.

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