



Legislation Details (With Text)

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**File created:** 1/31/2020      **In control:** City Council/Public Finance and Economic Development Authority/Parking Authority  
**On agenda:** 5/4/2020      **Final action:** 5/4/2020  
**Title:** SUBJECT: Appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455 Which Would Allow the Construction of a Mixed-Use Development, Including 218 Apartments, Approximately 22,000 s.f. of Retail Commercial Space, and Approximately 14,000 s.f. of Office Space on a 5.94-Acre Parcel Generally Located at the Southeast Corner of Yosemite Avenue and McKee Road

REPORT IN BRIEF

Considers an appeal of the Planning Commission’s approval of Conditional Use Permit (CUP #1238) and Site Plan Review #455.

RECOMMENDATION

City Council - Adopt a motion:

- A. Open the Public Hearing and hear all testimony regarding the appeal; and,
- B. Close the Public Hearing; and,
- C. Provide direction to staff regarding findings to grant or deny the appeal, with or without prejudice.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Location Map.pdf, 2. Site plan.pdf, 3. Appeal Letter from Casey Steed (CUP #1238).pdf, 4. Appeal Letter from Richard Harriman (SP #455), 5. Building Floor Plans.pdf, 6. Elevations.pdf, 7. Apartment Floor Plans, 8. Roof-top Deck.pdf, 9. Distance Comparison of Surrounding Uses, 10. Planning Commission Resolution #4035 (CUP #1238), 11. Planning Commission Minute Excerpt for 1-22-20 (CUP #1238), 12. Planning Commission Staff Report #20-01(CUP #1238), 13. Planning Commission Resolution #4036 (SP #455), 14. Draft Planning Commission Minute Excerpt for 4-13-20(SP #455), 15. Planning Commission Staff Report #20-03-Addendum (SP #455), 16. The HUB 2.0 Comparison, 17. Correspondence Received re SP #455.pdf, 18. Memo regarding state housing laws, 19. Draft Presentation.pdf

Date	Ver.	Action By	Action	Result
5/4/2020	1	City Council/Public Finance and Economic Development Authority/Parking Authority	approved	Pass

*Report Prepared by: Julie Nelson, Associate Planner, Planning Department*

**SUBJECT: Appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455 Which Would Allow the Construction of a Mixed-Use Development, Including 218 Apartments, Approximately 22,000 s.f. of Retail Commercial Space, and Approximately 14,000 s.f. of Office Space on a 5.94-Acre Parcel Generally Located at the Southeast Corner of Yosemite Avenue and McKee Road**

## REPORT IN BRIEF

Considers an appeal of the Planning Commission's approval of Conditional Use Permit (CUP #1238) and Site Plan Review #455.

## RECOMMENDATION

**City Council** - Adopt a motion:

- A. Open the Public Hearing and hear all testimony regarding the appeal; and,
- B. Close the Public Hearing; and,
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## ALTERNATIVES

1. Continue the public hearing to a future meeting (date and item to be specified in the motion).

## AUTHORITY

City of Merced Zoning Ordinance Section 20.74 - Appeals addresses the procedure for appealing a decision made by the Planning Commission.

## DISCUSSION

### Appeal

Conditional Use Permit #1238 was approved by the Planning Commission on January 22, 2020, to allow the construction of a mixed-use development with 214 apartment units and approximately 37,117 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 (refer to the Location Map at Attachment 1 and the Site Plan at Attachment 2).

On April 13, 2020, the Planning Commission held a special meeting via teleconference and considered Site Plan Review #455 to review the proposed project in relation to the City's Interface Regulations found in Section 20.32 of the City of Merced Zoning Ordinance. The Planning Commission unanimously approved Site Plan Review #455.

In compliance with Section 20.74 - Appeals of the City's Zoning Ordinance, Casey Steed filed an appeal of the Planning Commission's approval of Conditional Use Permit (CUP) #1238 on January 29, 2020. Mr. Steed submitted the information provided at Attachment 3 outlining the reasons for his appeal.

On April 20, 2020, Richard Harriman, on behalf of Casey Steed, filed an appeal of Site Plan Review #455. This appeal is provided at Attachment 4.

The following information will provide the City Council with details regarding the project, background on the project site, compliance with the General Plan and Zoning Ordinance (including the specific findings necessary to approve a Conditional Use Permit and Site Plan Review), information regarding the traffic generated by the proposed project, sewer capacity, and Neighborhood Impact/Interface.

Project Description

As shown on the Site Plan Attachment 2, the proposed project includes four buildings. Building 1 is a two-story building containing a total of 49 apartment units. Building 2 is a three-story building with a combination of community space for the residential tenants and retail space on the first floor and a total of 67 apartment units on the second and third floors. Building 3 is a two-story building with office space on the first floor and 29 apartments on the second floor. Building 4 is a three-story building with a combination of community space and retail space on the first floor and 69 apartments on the second and third floors. 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 floor plans for each building are provided at Attachment 5. The elevations and renderings are provided at Attachment 6.

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 floor plans for each unit type are provided at Attachment 7. The table below provides an overview of the proposed buildings.

<b>BUILDING DETAILS</b>						
<b>Building No.</b>	<b>Stories</b>	<b>1<sup>st</sup> Floor</b>	<b>2<sup>nd</sup> Floor</b>	<b>3<sup>rd</sup> Floor</b>	<b>Total Square Feet</b>	<b>Height (to top of parapet)</b>
1	2	22 units	27 units	n/a	30,456	26' 1-1/8"
2	3	Retail/Resid Space	34 units	33 units	57,622	35' 7-7/8"
3	2	Office	29 units	n/a	30,533	26' 1-1/8"
4	3	Retail/Resid Space	34 units	35 units	58,262	35' 7-7/8"
<b>TOTAL UNITS</b>		214			176,873	

The project site is zoned Neighborhood Commercial (C-N). Per Table 20.10-1 of the Zoning Ordinance, commercial uses are allowed in a C-N zone and multi-family uses are allowed with the approval of a Conditional Use Permit. The zoning ordinance does not specifically address mixed-use developments within a C-N zone, but because both commercial and residential uses are allowed in the C-N zone, they may be combined into one project.

The General Plan envisions mixed-use development in newer growth areas, however, it is not precluded from existing areas. The General Plan states that application of mixed-use, pedestrian-

and transit-friendly design principles will be encouraged in all new growth areas of the City and that these same principles can also be applied to developed areas, as feasible, when new development or redevelopment is proposed.

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 (Attachment 5). 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 has been working with UC Merced to occupy the office space. They have received a letter of interest from the UC and talks are ongoing regarding the UC occupying the office space. The developer is also in talks with UC Merced regarding using at least a portion of the residential units to provide off-campus housing for Graduate and Post-Graduate students.

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.

The common/community areas in Buildings 2 and 4 would include amenities such as a gym, a kitchen/community area for gatherings and events, a meditation room, a study area, a media room, indoor bike storage area, laundry facilities, and a management office, mailroom, and office center for tenants. Building 2 also provides a roof-top deck area to provide additional outdoor open space for the tenants (Attachment 8). This area would provide an additional outdoor area for tenants to lounge and socialize. The lounge area would be located near the center of the roof and would include tables, chairs, etc. for the tenants to use while in this area. There would be a 42-inch-high railing around the lounge area separating it from the rest of the roof-top area for safety purposes. Condition #37 of Planning Commission Resolution #4035 restricts the hours of operation for the roof-top deck to 7:00 a.m. to 10:00 p.m. daily.

The site design places parking around the perimeter of the site with the building concentrated near the middle of the site with a promenade area between the buildings (refer to the Site Plan at Attachment 2).

The front building (Building 2) is set back approximately 75 feet from Yosemite Avenue. Building 1 is approximately 85 feet from McKee Road (increased from approximately 50 feet in the previous design), Building 3 is approximately 82 feet from the eastern property line near Whitewater Way (an increase from 55 feet), and Building 4 is approximately 125 feet from the southern property line. A minimum eight-foot tall block wall would separate the project from the residential uses to the south of the site (Condition #32 of Planning Commission Resolution #4035).

### *Distance to Adjacent Residential Uses*

As previously discussed, the project would contain two and three-story buildings. The two-story buildings would have a height of approximately 26 feet. Buildings 2 and 4 are three-story buildings and would have a height of just over 35 feet (35' 7-7/8"). On the roof of each of the buildings there would be an elevator shaft and screening for the mechanical equipment that would extend above the

roof line.

The table below shows the setback of each building and the distance from each building to the nearest home. The site itself would be closer than the distances shown. The measurements shown are an approximate distance from the proposed buildings to the existing homes. Refer to Attachment 9 for an aerial photo showing the approximate distances.

Building	Setback from Nearest Property Line	Distance to Nearest Existing Home
1	85'	160'
2	75'	370'
3	82'	125'
4	125'	197'

For context, page 2 of Attachment 9 shows the distances around the block where City Hall is located.

As described in the Finding H of the Planning Commission Staff Report #20-01 (Attachment 12), the site would be provided with dense landscaping to help buffer the surrounding uses from noise and lights and to help provide privacy between the uses.

### 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 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 November 25, 2019, the owner submitted a revised project for the site. The revised project remained a mixed-use development, but reduced the number of units to 214 units, added office space, reduced the building heights, and increased the setbacks. The Planning Commission considered this application (CUP #1238) on January 22, 2020, and voted unanimously to approved CUP #1238 (refer to Planning Commission Resolution #4035 at Attachment 10). An excerpt from the Planning Commission minutes of January 22, 2020, are provided at Attachment 11 and Planning Commission Staff Report #20-01 is provided at Attachment 12.

Subsequent to the Planning Commission meeting of January 22, 2020, it was determined that in order to comply with the Interface Regulations of Section 20.32, the required findings for a Site Plan Review must be made. Because the Planning Commission had already acted on the Conditional Use Permit, staff felt it best to have the Planning Commission act on the Site Plan Review application as well. Therefore, the Planning Commission held a special meeting on April 13, 2020, to consider Site Plan Review #455. The Planning Commission voted unanimously to approve Site Plan #455 (refer to Attachment 13 for Planning Commission Resolution #4036). An excerpt of the Draft Planning Commission Minutes for April 13, 2020, is available at Attachment 14 and Planning Commission Staff #20-03-Addendum is provided at Attachment 15.

## Findings

Below are the required Findings made by the Planning Commission to approve Conditional Use Permit #1238 and Site Plan Review #455 in compliance with Zoning Ordinance Sections 20.68.020 and 20.68.050.

### General Plan Compliance

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). The CN designation is intended to provide shopping areas and services to serve residential neighborhoods. As demonstrated by the policies below, mixed-use development is encouraged by the General Plan and providing housing above retail uses is specifically stated by Implementing Action 1.2.b.

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. The General Plan Land-Use section also has policies to encourage mixed-use development. The proposed project would meet the following goals and policies of the Land Use and Housing Elements of the *Merced Vision 2030 General Plan*:

Land Use Policy

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.

Policy L-1.2 Encourage a Diversity of Building Types, Ownership, Prices, Designs, and Site Plans For Residential Areas Throughout The City.

Implementing Action 1.2.b Encourage residential and/or office above retail in the downtown area and in neighborhood commercial cores.

Policy L3.2 Encourage In-fill Development and a Compact Urban Form

Implementing Action 3.2.a: Encourage infill of vacant parcels.

Implementing Action 3.2.b: Encourage projects that increase pedestrian activity and mixed-uses.

Housing Element Policy

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.

### Zoning Ordinance Compliance - Conditional Use Permit Required Findings

Section 20.68.020 sets forth specific Findings that must be made for the Planning Commission or City Council (on appeal) to approve a Conditional Use Permit. The Planning Commission agreed with the Findings as outlined below and therefore, approved Conditional Use Permit #1238.

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

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

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

2. *The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.*

As previously stated, the commercial uses are allowed within a C-N zone. The proposed multi-family component of the project is a conditional use. The developer has revised the project to address some of the concerns expressed with the previously proposed project. The building heights have been reduced for the buildings on the east and west side of the site closest to the existing residential uses. Buildings 1 and 3 are 26' 1-1/2" tall to the top of the parapet and Buildings 2 and 4 are 35' 7-7/8" tall to the top of the parapet. The maximum height limit within the C-N zone when adjacent to a residential zone is 35', unless otherwise approved through a Site Plan Review process (Table 20.10-2, footnote 3). The Planning Commission considered the height of Buildings 2 and 4 when they considered the projects compliance with the Interface Regulations at a special meeting on April 13, 2020 and approved the height of Buildings 2 and 4 as proposed.

The setbacks have been increased for those buildings as well in an effort to reduce impacts on the surrounding neighborhood. The site is surrounded by residential uses and a church to the north. Therefore, residential uses are common in this area. Another apartment complex is currently under construction east of this site at the corner of Yosemite and Lake Road, in the same general vicinity, which provides a mixture of housing units for the area. Given the proximity to the UC, multi-family uses are appropriate for this area. Therefore, through the implementation of the conditions of approval, the proposed apartment project (as part of the overall mixed-use project) would be compatible with the existing and future land uses in the vicinity.

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

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

4. *The proposed use is properly located within the City and adequately served by existing or planned services and infrastructure.*

The project site is an in-fill site near the edge of the City's eastern boundary, surrounded by residential uses. The project would be adequately served by the City's water system. Through the implementation of the conditions of approval, the project would be adequately served by the City's sewer and storm water systems. Additionally, the project would be required to pay Public Facilities Impact Fees to help pay for future improvements needed to the City's infrastructure.

Zoning Ordinance Compliance - Mandatory Site Plan Review Findings

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 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 (or City Council on appeal) 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. On April 13, 2020, the Planning Commission approved the following findings.

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 of Planning Commission Staff Report #20-03-Addendum and under the "General Plan Compliance" section of Administrative Report #20-087, 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. The level of detail provided at the entitlement stage of a project is much less than would be required at the construction phase. Such things as trash enclosure details, landscape and sprinkler plans, and

addressing are part of the Standards that will be reviewed at the building permit phase. Condition # 9 of Planning Commission Resolution #4036 (Attachment 13) requires the project to comply with all applicable design standards listed in these sections. Planning Staff will ensure the standards are met through the building permit review process.

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, and the Site Plan Permit on April 13, 2020. Approval of the 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 2, 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 (per Table 20.10-2, footnote 3). 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. The Planning Commission approved the additional height for Buildings 2 and 4 through Condition #11 of Planning Commission Resolution #4036 (Attachment 13).

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 includes 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 of Planning Commission Resolution #4036 (Attachment 13) 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 (Attachment 10) 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.

### Traffic and Circulation

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

#### *Yosemite Avenue Access*

The primary access on Yosemite Avenue would be a driveway that is located approximately 320 feet east of the intersection of Yosemite Avenue and McKee Road (refer to the Site Plan at Attachment 2). This driveway would provide right in/right out access only. The existing median in Yosemite Avenue would remain unchanged along the project site frontage. No other access to the site would be provided on Yosemite Avenue.

#### *McKee Road Access*

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

#### *Whitewater Way*

No access is proposed to Whitewater Way from the project site, unless the Fire Department requires an emergency access per Condition #22 of Planning Commission Resolution #4035.

#### *Traffic Impact Analysis*

A traffic analysis was prepared for the proposed project by K2 Traffic Engineering, Inc. The traffic

analysis determined that the proposed project would generate a total of 1,876 Average Daily Trips (ADT's). After standard reductions are given for transit and bicycle use, pass-by traffic, and internal capture, the total net ADT's are 1,184. The trip generation numbers are provided on page 13 of the traffic analysis (Appendix D of the Initial Study at Attachment K of Planning Commission Staff Report #20-01-Attachment 12)

Based on the analysis of impacts on the roadways and intersections, the traffic study recommended the following mitigation measures:

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

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

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

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

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

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

### Parking

Based on the ratios required in the Zoning Ordinance, the residential portion of this project would require 339 parking spaces, the office portion would require 49 spaces, and the retail 64 spaces, for a total of 452.

The project site provides a total of 386 parking spaces which includes 25 motorcycle parking stalls. In addition, the project provides 70 bicycle parking spaces. Although the total number of spaces required is 452, the Zoning Ordinance allows reductions based on certain criteria. If the project site is located within 400 feet of an approved bus stop, a 5% reduction may be given. Up to a 30% reduction may be given for mixed use developments with the approval of a parking demand study approved by the Director of Development Services. Based on the current design and number of parking spaces provided, the project would need the 5% reduction for a transit stop and a 15% reduction for the mixed-uses granted to comply with the parking requirements.

The developer will be working with UC Merced to move the bus stop near Yosemite Avenue and Via

Moraga closer to their site, so they could qualify for the 5% reduction previously described. In addition, the developer will be providing pick-up/drop-off locations for Uber and Lyft to encourage ride sharing, offering bicycles, and possibly Zip cars and scooters for their tenants to use to reduce the actual number of parking spaces needed. Also, because this is a mixed-use project, it is likely there would be commercial uses that would not need parking in the evenings, which would leave additional spaces open for the other uses during these hours. Condition #30 of Planning Commission Resolution #4035 requires the developer to provide a parking demand analysis demonstrating that a reduction is warranted prior to the issuance of a building permit. The developer submitted this analysis and it is currently being reviewed by staff. Without the approval of the parking analysis, the project would not meet the parking requirements. The review of the parking analysis would be completed prior to the building permit phase as allowed by the Zoning Code.

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

### Sewer

A 6-inch sewer force main line exists in Yosemite Avenue which flows to G Street, then continues out to the Waste Water Treatment Plant. There is no sewer line in McKee Road. Due to constrictions in the Yosemite Avenue line, the project site is limited to discharging a maximum of 8,000 gallons per day of wastewater during peak hours. Additional wastewater shall be contained onsite and discharged at off-peak hours (refer to Conditions #9 and #10 of Planning Commission Resolution #4035 - Attachment 10). Condition #10 of Planning Commission Resolution #4035 also requires a monitoring system to allow the City to monitor the flow and requires the developer to ensure the onsite storage tank doesn't emit objectionable odors.

At the Planning Commission meeting of January 22, 2020, the Public Works Director explained to the Planning Commission that although specific plans have not been approved for the proposed on-site storage, the concept is acceptable and would work. He further explained that the City would review and approve the final proposal prior to installation of the tank and construction of the project. While this is a new concept for the City, it is a creative way to address the issue of sewer capacity for this project and is similar in concept to a City pump station.

### Neighborhood Impact

The project site is surrounded by residential uses to the east, west, and south. There are additional residential uses to the north across Yosemite Avenue as well as Yosemite Church and Providence School (refer to the location map at Attachment 1).

As previously described in this report, the setbacks for the project have been increased and the building heights lowered from the original project to reduce the impacts on the surrounding neighborhood.

As described in the traffic section of this report, the developers will have to implement some mitigation measures to address the projects impacts. However, it should be noted that the proposed project cannot be held accountable for the existing traffic conditions. A project can only be made to mitigate any additional impacts caused by the project itself. Based on the traffic study, the traffic generated by this project would be less than what was estimated for the shopping center proposed at

this site in 2014. It should also be noted that automobile delay may not be treated as a significant environmental impact. According to a recent court ruling in the case of Citizens for Positive Growth & Preservation v. City of Sacramento (2019), the court ruled that in regard to CEQA Guidelines Section 15064.3. Level of Service (LOS) which measures traffic congestion could not constitute a significant environmental impact.

On January 14, 2020, the developer held community outreach meetings to provide information to the neighborhood about the project and give the neighborhood a chance to voice their concerns.

On January 22, 2020, the Planning Commission held a public hearing on this matter. At that time, there were a total of 15 speakers opposed to the project and 4 speakers, including the two applicants in favor of the project. Additionally, prior to the meeting 4 letters/emails were received in opposition of the project and 1 letter of support were received (Attachment 17). The speakers opposed to the project cited the following reasons:

- Too many apartments;
- Traffic is already bad in this area; the addition of apartments would make it worse;
- Not enough parking;
- Noise and parties;
- Don't want people on the roof-top deck seeing into their backyards;
- Uncomfortable with the proposed on-site sewer retention, could cause possible odors or other problems;
- Prefer the originally proposed shopping center on this site;
- No way to be sure only students would live in the apartments.

The developer has tried to address some of the neighborhoods concerns by reducing the number of units from the original proposal, increasing the setbacks, adding office space instead of all retail, and increasing the amount of open space and promenade area. A side-by-side comparison of the previous project and the project currently being proposed is provided at Attachment 16. Additionally, the Planning Commission added a condition limiting the hours the roof-top deck could be used.

On April 13, 2020, the Planning Commission held a special meeting to consider Site Plan Review #455 to address Interface Regulations as required by Zoning Ordinance Section 20.32. Prior to that hearing, staff received two e-mails and a letter in opposition to the project. At the time of the public hearing one person, Richard Harriman spoke in opposition to the Site Plan Review. All correspondence was provided to the Planning Commission for consideration and is provided at Attachment 17 of this report. After the public hearing, the Planning Commission voted unanimously to approve Site Plan Review #455.

### Environmental Review

The Planning staff has conducted an environmental review (Initial Study # 19-37) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Mitigated Negative Declaration (i.e., no significant effects in this case because of the mitigation measures and/or modifications described in Initial Study #19-37) is being recommended (Attachment K of Planning Commission Staff Report #20-01 - Attachment 12).

### State Housing Laws

The state of California has passed a series of laws that limits a City's ability to deny a housing project. The information at Attachment 18 provides information on the laws specific to the approval or denial of housing projects. This information was provided to the Planning Commission prior to their meeting on December 4, 2019, in preparation for training on the objective standards for reviewing housing projects. The information was not part of the official record for the review of Conditional Use Permit #1238 or Site Plan Review #455. At the Planning Commission meeting of December 4, 2019, the City Attorney's office provided training to the Planning Commission members regarding this legislation as well as the specific findings necessary to approve a Conditional Use Permit.

### Appeals - Zoning Ordinance Section 20.74.030 (F)

The Zoning Ordinance provides guidance on the review authority for an appeal of a Planning Commission Action. Zoning Ordinance Section 20.74.030 (F) states the following:

1. The review authority may take action on the specific basis for the appeal, or may reconsider the project in its entirety ("de novo" review). The review authority shall make its own decision supported by findings. In doing so, it may:
  - a. Affirm, affirm in part, or reverse the action that is the subject of the appeal; or,
  - b. Adopt additional conditions of approval that address the matter appealed; or,
  - c. Remand the appeal for further review, recommendation, or action to the previous review authority.
2. The review authority's action shall be based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal and verify the compliance of the subject of the appeal with the Zoning ordinance.
3. A matter being heard on appeal may be continued for good cause (e.g., additional CEQA review is required).
4. If the hearing body is unable to reach a decision on the matter appealed, the decision of the previous review authority shall remain in effect.

### Planning Commission Action

As described in the "Background" and "Neighborhood Impact" sections of this report, the Planning Commission held a duly noticed public hearing regarding Conditional Use Permit #1238. At that time, 15 people spoke in opposition to the project and 4 people spoke in support of the project. The Planning Commission voted unanimously to approve CUP #1238. Planning Commission Resolution #4035, a minute excerpt from the meeting, and Staff Report #20-01 are provided at Attachments 10, 11, and 12, respectively.

Also described in the previous sections, the Planning Commission held a special meeting on April 13<sup>th</sup> to hear and consider Site Plan Review #455. At that time, three pieces of written correspondence in opposition to the project were provided to the Commission and one person who submitted a letter in opposition, also spoke at the meeting. There was one person who spoke in favor of the project.

The Planning Commission voted unanimously to approve Site Plan Review #455. Planning Commission Resolution #4036, a draft minute excerpt from the meeting, and Staff Report #20-03-Addendum are provided at Attachments 13, 14, and 15, respectively.

### City Council Action

The City Council is asked to provide direction to staff, along with Findings to either approve or deny the appeal. Staff will prepare a Resolution based on that direction and Findings and return at a future Council meeting for Council to take final action on the appeal.

- Should the City Council provide direction to grant the appeal, thus over-turning the Planning Commission's decision on Conditional Use Permit #1238 and Site Plan Review #455, City Council should provide direction as to whether the approval is with or without prejudice.
  - If the decision is made with prejudice, the applicant would be precluded from re-applying for the same or similar project within one year of the decision.
  - If the decision is made without prejudice, the applicant could re-apply with no time limit.
- Should the City Council vote to deny the appeal, thus upholding the Planning Commission's approval of CUP #1238 and Site Plan Review #455, staff recommends City Council direction include the Findings for Conditional Use Permit approval per MMC 20.68.020, the Findings for Site Plan Review approval per MMC 20.68.050 and the Conditions of approval contained in Planning Commission Resolutions #4035 and #4036 along with any recommended changes to the findings and conditions.

### **IMPACT ON CITY RESOURCES**

The project would be required to annex into the City's Community Facilities District for Services and pay all required Public Facility Financing Program Impact Fees. Payment of these fees and ongoing payment of the CFD taxes would mitigate any expected impacts on City resources.

### **ATTACHMENTS**

1. Location Map
2. Site Plan
3. Appeal Letter from Casey Steed (CUP #1238)
4. Appeal Letter from Richard Harriman (SP #455)
5. Building Floor Plans
6. Elevations
7. Apartment Floor Plans
8. Roof-top Deck
9. Distance Comparison of Surrounding Uses
10. Planning Commission Resolution #4035 (CUP #1238)
11. Planning Commission Minute Excerpt for 1-22-20 (CUP #1238)
12. Planning Commission Staff Report #20-01(CUP #1238)
13. Planning Commission Resolution #4036 (SP #455)
14. Draft Planning Commission Minute Excerpt for 4-13-20(SP #455)
15. Planning Commission Staff Report #20-03-Addendum (SP #455)
16. The HUB 2.0 Comparison
17. Correspondence Received re: SP #455

- 18. Memo regarding state housing laws
- 19. Draft Presentation