



## Legislation Text

---

**File #:** 20-358, **Version:** 1

---

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

**SUBJECT:** Reopened Public Hearing - To Consider Appeal of the Environmental Determination to Adopt a Mitigated Negative Declaration for Conditional Use Permit #1238 and Environmental Review #20-05 (CEQA Section 15162 Findings) for Site Plan #455 and to Consider the Appeal of the 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 Environmental Review #19-37 (Mitigated Negative Declaration for CUP #1238 and Environmental Review #20-05 (CEQA Section 15162 Findings) for SP #455; and,
- D. Provide direction to staff regarding the findings to grant or deny the appeal, with or without prejudice.

### 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.

On June 23, 2020, the City received a letter from Richard Harriman stating the Board of Directors of the San Joaquin Valley Environmental Defense Center has withdrawn from the appeal. This letter may be found at Attachment 5.

#### Past City Council Action

On May 4, 2020, the City Council held a public hearing via teleconference regarding the appeal of Conditional Use Permit #1238 and Site Plan Review #455. At that time, the City Council heard testimony from Richard Harriman on behalf of the appellants and Raj Joshi and Joe Englanoff on behalf of the project applicant. There were two e-mails and one voicemail received and entered into the record. One e-mail and the voicemail were opposed to the project and one e-mail was supportive of the project if modifications were made. After hearing all the testimony, the City Council closed the public hearing and voted to continue the matter to June 1, 2020, to allow time for the parties to work together on a resolution to their differences.

At the City Council meeting of June 1, 2020, additional testimony was heard. The public hearing was not re-opened, but the public was allowed to speak as allowed on any item being considered by the City Council. The City Council heard comments from Mr. Joshi on behalf of the applicant and Mr. Harriman on behalf of the appellant. Additionally, there was one additional speaker in opposition to the project at the meeting and one e-mail recommending changes to the project read into the record. A letter from the applicant's attorney, Elisa Paster, was provided to the Council (Attachment 6). The City Council voted again to continue the City Council's deliberations to June 15, 2020, to allow additional time for the applicant and appellants to work out these issues and come to a compromise on the project.

On June 15, 2020, the City Council received an update from Scott McBride, Director of Development Services, explaining the correspondence received from the applicant's new attorney and some clarifications on the plans that had been provided. Testimony was heard from Mr. Harriman and Elisa Paster on behalf of the applicant. Ms. Paster requested via a letter dated June 11, 2020, and during her testimony, to re-open the public hearing (refer to the letter at Attachment 7). After considering the

information provided, the City Council voted to re-notice the public hearing and continue the item to August 17, 2020.

All previous reports regarding this item are provided as Attachment 8, with the report from May 4, 2020, first. All written correspondence has been excerpted from the reports and is compiled in Attachment 9.

### Revised Plans

On June 12, 2020, the applicant's attorney, Elisa Paster, submitted a letter and revised plans (Attachment 10) which included the changes and/or clarifications listed. The revised plans are in many ways just clarifications of items previously shown on the plans or mentioned in the project description. The proposed revisions do not change the site uses, increase the intensity or density of the project or affect the setbacks, or building heights. The proposed changes also do not affect the required Findings for approval of a Conditional Use Permit or Site Plan Review.

Bus Stop: The bus stop turnout was added on Yosemite Ave.

Ride Share: The Ubler/Lyft Ride Share drop off location is shown on the plans.

Additional Seating: Additional seating was added to the promenade area.

Roof Deck: The following changes were made to the roof deck:

- Size of roof deck was decreased;
- Location moved south away from the residences to the north;
- Screening added to north side of deck to help reduce impacts to the residences to the north;
- Canopy added;
- Seating Capacity noted on plans.

The letter from Ms. Paster and revised plans were presented to the City Council at their meeting on June 15, 2020. The information was also sent via e-mail to Mr. Harriman, attorney for the appellant on June 15, 2020.

On July 30, 2020, the applicant submitted an Internal Circulation analysis prepared by K2 Traffic Engineering, Inc. This analysis recommended that "Stop" signs and pavement markings be installed at the junctions near both entrances for outbound traffic. Refer to page 3 of the analysis at Attachment 11 for recommended location of the "Stop" signs.

### 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.

#### Additional Correspondence

On Tuesday, August 11, 2020, at 3:45 p.m., a letter was received from Mr. Harriman (Attachment 12) providing information from Ennis Consulting. Staff did not have an opportunity to review and analyze the information provided due to the deadlines for publishing the City Council Agenda packet. However, staff will be available to answer any questions related to this letter at the City Council meeting on August 17, 2020.

#### 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. The City Council should also specify whether their direction is based on the original plans or on the plans submitted on June 12, 2020, (Attachment 10) that include minor changes and clarifications, as well as the Internal Circulation Analysis submitted on July 30, 2020 (Attachment 11).

- 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 all contained in Planning Commission Resolutions #4035 and #4036 (Attachments 13 and 14, respectively) 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. Letter of withdrawal from San Joaquin Valley Environmental Defense Center
6. Letter from Glaser Weil dated June 1, 2020
7. Letter from Glaser Weil dated June 11, 2020
8. Administrative Reports
9. Correspondence
10. Letter and Revised Plans Submitted June 12, 2020
11. Internal Circulation Analysis
12. Letter from Ennis Consulting dated August 11, 2020
13. Planning Commission Resolution #4035 for CUP #1238
14. Planning Commission Resolution #4036 for Site Plan Review #455
15. Draft Presentation