



Board Agenda Item 8.1

DATE: December 14, 2021

TO: Board of Supervisors

SUBMITTED BY: Steve E. White, Director
Department of Public Works and Planning

SUBJECT: Appeal Planning Commission approval of Unclassified Conditional Use Permit No. 3680 (Applicant: Deepinder S. Grewal; Appellant: Chase, Inc. and J.S.T., LLC.)

RECOMMENDED ACTION(S):

1. **Consider appeal of Planning Commission's Approval of Unclassified Conditional Use Permit Application 3680 proposing to allow the development and operation of a restaurant, convenience store and gas station on a 2.62-acre parcel within the Interstate Freeway Interchange Area in the AE-40 (Exclusive Agricultural, 40-acre minimum parcel size) Zone District; and**
2. **If the Appeal is denied and the Planning Commission's approval of Unclassified Conditional Use Permit Application No. 3680 is upheld:**
 - a. **Adopt the Mitigation Negative Declaration and Mitigation Monitoring and Reporting Program prepared based on Initial Study No. 7877 with the recommended Mitigation Measures and Conditions of Approval, but without the additional condition imposed by the Planning Commission; and**
 - b. **Make the required findings specified in Section 873(F) for approval of Classified Conditional Use Permit Application 3680.**
 - c. **Adopt a Resolution approving Classified Conditional Use Permit Application 3680 to allow the development and operation of a restaurant, convenience store and gas station.**

The project site is located in the northwest quadrant of the Panoche Road and Interstate 5 Freeway Commercial Interchange Area, approximately 15 miles southwest of the City of Mendota (APN: 027-190-05S) (46272 W. Panoche Road).

This item was originally heard before your Board on November 2, 2021. At that hearing, after considering testimony provided by representatives of the Appellant, your Board voted unanimously (5 - 0) to continue the item to the regularly scheduled December 14, 2021 hearing to permit additional information and clarification is it relates to on-site parking.

The request before your Board is an appeal of the Planning Commission's approval of the subject application based on a motion to approve the item (6 to 0, three Commissioners absent) at its August 12, 2021 hearing. The Zoning Ordinance requires your Board to determine, independent from the decision of the Planning Commission, whether the application should be approved, approved with stated conditions, or

disapproved. A copy of the Planning Commission's action is included (Attachment A). This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

If your Board is unable to make the required Findings for granting the request, you may make a motion to uphold the appeal and overturn the Planning Commission's decision (stating the manner in which the Findings cannot be made).

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. Pursuant to the County's Master Schedule of Fees, the Applicant paid \$15,112.00 in land use processing fees for the CUP Application request. The Appellant paid \$508.00 in fees to appeal the Planning Commission's denial.

DISCUSSION:

Pursuant to Zoning Ordinance Section 873(F), to approve CUP 3680, the following Findings must be made:

1. *That the site for the propose use is adequate in size and shape to accommodate said use and all yards, spaces, wall and fences, parking, loading, landscaping and other features required by this Division, to adjust said use with land and uses in the neighborhood.*
2. *That the site for the proposed use related to streets and highways is adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.*
3. *That the proposed use will have no adverse impact on abutting property and surrounding neighborhood or permitted use thereof.*
4. *That the proposed development is consistent with the General Plan.*
5. *That the conditions stated in the resolution are deemed necessary to protect the public health, safety, and general welfare.*

The Planning Commission Staff Report dated August 12, 2021, (Attachment B) provides additional information on the basis for making the Findings for the proposed project.

Background

Approval of the application would allow the development and operation of a 9,681 square-foot restaurant and convenience store, within an existing building; and the installation and operation of a new gas station with six fuel pumps and 3,280 square-foot of canopy, on a 2.62-acre parcel in the AE-40 (Exclusive Agricultural, 40-acre minimum parcel size) Zone District. The project site is located in the northwest quadrant of the Interstate 5/Panoche Road freeway interchange, approximately 14 miles southwest of the City of Mendota.

The Panoche Road freeway interchange is one of four designated Major Interstate 5 Commercial Center interchange areas designated for commercial development in the County's General Plan and listed in the Fresno County Zoning Ordinance. Pursuant to Zoning Ordinance Section 860, development at these interchanges is permitted with approval of a Conditional Use Permit and updated Master Plan.

At its August 12, 2021 public hearing the Planning Commission considered staff's report to the Commission, staff's presentation, and testimony from the Applicant in favor of the proposal. At the hearing, there was also testimony from the Appellant's representative and one other individual in opposition to the project. During Commission discussion prior to the motions, one Commission member cited concerns with inadequate

parking raised in the testimony by the opposition. Staff indicated to the Commission that based on staff's evaluation, the project's allotted parking meets the County's parking standards.

After hearing public testimony, a motion was made to adopt the Mitigated Negative Declaration prepared for the project and approve the proposal with inclusion of an additional condition requiring that the project provide adequate parking to meet County parking requirements exclusive of the electric vehicle parking spaces. The motion passed on a vote of 6 to 0 with three Commissioners absent.

The Appellant filed an appeal of the Planning Commission's decision on August 27, 2021. The appeal asserts that the project site does not provide an adequate number of parking spaces for the proposed use and that the number of required spaces was incorrectly calculated. The appeal also objected to staff's counting of electric vehicle charging station spaces towards required parking. Staff disagrees with the Appellant's statement that asserts the required parking is calculated based on parking stall dimensions only and did not include required back up space. Further, as staff and counsel learned after the Planning Commission hearing, the recently passed California Vehicle Code § 22511.2 requires charging station spaces to be counted towards required spaces. It should be noted that the County has not adopted an ordinance prohibiting vehicles from parking in charging spaces. Customers could park in either of these spaces regardless of vehicle type.

As originally proposed, the project provided for 93 spaces total comprised of 69 spaces of electric charging spaces and 24 noncharging spaces. Staff, using standard calculation practices, determined that the project requires a total of 64 spaces, 50 parking spaces for the restaurant and 14 for the convenience store. The Planning Commission noted concern regarding the number of charging spaces. In response, the Applicant indicated that he had an undeveloped area on the site to which he could add additional parking. In its motion to approve the project, the Planning Commission added an additional condition that the 64 required spaces be met excluding electrical charging spaces. Hence, if the Planning Commission's condition remains, the applicant would have to convert 15 charging stations to non-charging spaces to meet the condition. That additional condition would be in violation of the newly adopted Vehicle Code §22511.2. Thus, should your Board be inclined to deny the appeal (and allow the development), staff requests the Board remove the Planning Commission's added condition.

Additional Information Subsequent to the November 2, 2021 Hearing

At the November 2, 2021 hearing, your Board heard testimony from individuals representing the Appellant raising concerns about parking adequacy and the number of spaces identified for electric vehicle charging. These concerns centered mainly on staff's methodology for calculating on-site parking and the large percentage of spaces made available for electric vehicle charging on site. Counsel for the Appellant specifically raised issue with Vehicle Code (VC) §22511.1(a) which states: "*A person shall not park or leave standing a vehicle in a stall or space designated pursuant to Section 22511 unless the vehicle is connected for electric charging purposes*". Your Board continued the item to consider the matter in greater detail.

After the hearing, staff researched the VC and found a provision in VC §22511.1 that only permits a local government agency and property owner from prohibiting parking of non-electric vehicles in spaces available for electric vehicle charging if: 1) the jurisdiction (in this case the County) has adopted an ordinance specifically prohibiting parking of non-electric vehicles in designated stalls or spaces for electric charging purposes; and 2) the property owner has appropriately posted the stall or parking area with signage in compliance with Vehicle Code §22511.1(d)(1) and such signage includes language stating "*Unauthorized vehicles not connected for electric charging purposes will be towed at the owner's expense*".

As the County of Fresno does not have an adopted ordinance prohibiting parking of non-electric vehicles in stalls made available for electric vehicle charging, the prohibitions of VC §22511.1(a) are not applicable. Such spaces may be occupied by either electric or non-electric vehicles. This supports staff's determination that the site has excess parking for the uses proposed.

As noted by staff at the November 2, 2021 hearing, the Applicant had offered additional parking beyond that which is proposed in the CUP. However, the Applicant did not have the opportunity to speak at the hearing. On November 29, 2021, Department staff received a revised site plan/parking layout from the Project Applicant illustrating additional parking for non-electric vehicles (Attachment D). The revised layout provides for a total of 137 spaces, 74 of which are available for electric vehicle charging and 63 spaces which are shown as non-charging spaces. This includes 12 spaces under the fueling island canopy, which is permissible under standard County practice to be counted towards on-site parking. The total of 137 combined spaces well-exceed the required 64 spaces for the proposed use. Staff has added color coding to the Project Applicant's parking layout to aid in better visualizing the types and location of parking spaces on site. This graphic has been included as Attachment E. Department staff also notes that the 56 spaces shown for Tesla charging have already been constructed and are operational.

Conclusion

If your Board is able to determine that the required Findings for granting approval of CUP No. 3680 can be made, your Board may adopt the draft resolution on file with the Clerk approving Conditional Use Permit No. 3680 subject to the Conditions of Approval as included in Attachment F, which omits the additional parking condition added by the Planning Commission in its August 12, 2021 action, and adopt the Proposed Mitigated Negative Declaration (Attachment C).

Your Board, in its approval action, may also stipulate that site development shall be based on the Applicant's revised site plan included as Attachment D, which illustrates a total of 137 parking spaces.

Finally, staff recommends your Board include an additional Condition of Approval requiring that:

The Applicant shall enter into an agreement indemnifying the County for all legal costs associated with its approval of IS No. 7877 and CUP No. 3680 and provide security in an amount determined by the County for any such legal costs incurred. The agreement and payment of security shall be due unless the litigation period has expired, in which case the requirements for the indemnification agreement and security shall be considered null and void.

If your Board is unable to make the required findings for granting CUP No. 3680, stating which finding(s) cannot be made and the basis for not making the finding(s), your Board may make a motion to grant the appeal and overturn the Planning Commission's approval of Conditional Use Permit Application No. 3680.

REFERENCE MATERIAL:

BAI #9, November 2, 2021

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - F
On file with Clerk - Resolution

CAO ANALYST:

Ron Alexander