



# Board Agenda Item 12

DATE: March 19, 2024

TO: Board of Supervisors

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

SUBJECT: Appeal of Planning Commission's denial of Variance No. 4153  
(Appellant/Applicant/Owner: James Maxey)

RECOMMENDED ACTION(S):

**Consider appeal of the Planning Commission's denial of Variance No. 4153 proposing to allow the creation of two substandard parcels, a 7.64-acre parcel and a 13.87-acre parcel, from an existing 21.51-acre parcel and waive development standards to allow for 12-foot side yard setbacks where 20-foot side yard setbacks are required within the AE-20 (Exclusive Agricultural, 20-acre minimum) Zone District.**

**The subject parcel is located on the north side of King Canyon Road, approximately 1.7-miles from the City of Sanger. (APN: 314-120-52) (10386 E. Kings Canyon Road) (Sup. Dist. 5).**

This item comes before your board on appeal of the Planning Commission's unanimous denial of the subject application (5 to 0, with three Commissioners absent, and one Commission vacancy) at its December 14, 2023, hearing. Department Staff notes that 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 denied. A copy of the Planning Commission's action is included as Attachment A. This item pertains to a location in District 5.

ALTERNATIVE ACTION(S):

If your Board is able to make the required Findings for granting Variance Application (VA) No. 4153, a motion to uphold the appeal and overturn the Planning Commission's decision, stating the basis for making the Findings would be appropriate.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. Pursuant to the County's Master Schedule of Fees, the Applicant/Owner has paid \$6,460 in land use processing fees to the County for the processing of the Variance Request. The Appellant/Applicant/Owner paid \$508 in fees to appeal the Planning Commission's denial.

DISCUSSION:

The Variance application is being requested to allow the creation of two substandard parcels, a 7.64-acre parcel and a 13.87-acre parcel, from an existing 21.51-acre parcel (gross acreage), in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

The Planning Commission Staff Report (Attachment B) dated December 14, 2023, includes background information about the proposal.

In order for your Board to approve VA No. 4153, the following findings must be made:

1. *There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other property in the vicinity having the identical zoning classification; and*
2. *Such Variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity having the identical zoning classification.*
3. *The granting of a Variance will not be materially detrimental to the public welfare or injurious to property and improvement in the vicinity in which the property is located.*
4. *The granting of such a Variance will not be contrary to the objectives of the General Plan.*

At its December 14, 2023, hearing, the Planning Commission considered the Department's staff report, presentation, and testimony from the Applicant/Owner's representative. It should be noted that staff, in its recommendation to the Commission, was unable to make three of the four required findings to recommend approval of VA No. 4153. After considering testimony, the Planning Commission made a motion to deny the application due to the inability to make Finding Nos. 1,2, and 4.

An appeal of the Planning Commission's denial was filed by the Owner on December 21, 2023. The appeal document (Attachment C) states in part that "there are already many parcels in the area that are smaller than what we want, and the three adjacent properties all show to have been split with smaller than 20 acre pieces".

If your Board can make the required Findings for granting approval of VA No. 4153, a motion to uphold the appeal and approve the variance would be appropriate (stating in its motion the manner in which the four required Findings can be made) subject to the recommended Conditions of Approval (Attachment D) and any additional conditions your Board determines appropriate.

Additionally, staff recommends your Board include the following additional Condition of Approval for indemnification:

*The Applicant shall enter into an agreement indemnifying the County for all legal costs associated with its approval of VA No. 4153 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.*

Staff also notes that should the Variance be approved; the Variance will expire one year from the date of the Board's approval unless a mapping application to create the parcel is filed. Where circumstances beyond the control of the applicant cause delays, the Commission may grant a maximum of two one (1)-year extensions of time.

If your Board is unable to make the required Findings for granting VA No. 4153, a motion to deny the appeal and deny the variance would be appropriate.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - D

CAO ANALYST:

Salvador Espino