



Board Agenda Item 8

DATE: April 25, 2023

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 Application No. 4139
(Appellant/Applicant: Bret Giannetta)

RECOMMENDED ACTION(S):

Consider appeal of the Planning Commission's denial of Variance Application No. 4139 proposing to allow the creation of a 2.62-acre and a 30.86-acre parcel, from an existing 33.48-acre parcel (gross acreage), in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

The subject parcel is located on the east side of N. Highland Avenue, approximately 700 feet north of E. Clinton Avenue, approximately one-half mile south of the City of Clovis (APN: 309-200-47) (2768 N. Highland Avenue) (Sup. Dist. 5).

This item comes before your Board on appeal of the Planning Commission's denial of the subject application (four opposed, one in favor, with three Commissioners absent, one vacancy) at its February 23, 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. 4139, 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 paid \$508 in fees to appeal the Planning Commission's denial.

DISCUSSION:

The proposal is to allow the creation of a 2.62-acre and a 30.86-acre parcel, from an existing 33.48-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 February 23, 2023, includes background information about the proposal.

In order for your Board to approve VA No. 4139, 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 February 23, 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 all four required findings to recommend approval of the VA No. 4139. After the Planning Commission considered public testimony, a motion was made to deny the application based on the inability to make the required Findings.

An appeal of the Planning Commission's denial was filed by the Appellant on February 28, 2023. The appeal document (Attachment C) stated that the "Applicant Disagrees with Planning Commission decision that necessary findings for the request could not be made.

If your Board is able to make the required Findings for granting approval of VA No. 4139, 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. 4139 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. 4139, 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