



Board Agenda Item 9

DATE: November 2, 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).

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 proposed the project provides 93 spaces total with 69 spaces being 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.

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 shown in the Planning Commission Resolution included in Attachment A, which contains the additional condition that 64 parking spaces excluding charging spaces be required; along with adopting the Proposed Mitigated Negative Declaration (Attachment C).

Additionally, staff recommends inclusion of a Condition 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.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - C
On file with Clerk - Resolution

CAO ANALYST:

Ron Alexander