



County of Fresno

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Legislation Text

File #: 17-0728, **Version:** 1

DATE: July 11, 2017

TO: Board of Supervisors

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

SUBJECT: Variance Application No. 4016 (Appellant: Mark Yang)

RECOMMENDED ACTION(S):

Consider appeal of the Planning Commission's denial of Variance Application No. 4016 proposing the creation of two parcels (2.35-acre and 2.42-acre) with 160 feet of public road frontage (165 minimum required) from an existing 4.77-acre parcel, and proposing a 15-foot side yard setback (20 feet required) to accommodate an existing single family residence on the proposed 2.35-acre parcel in the RR-5 (Rural Residential, five-acre minimum parcel size) Zone District.

The subject property is located on the south side of Herndon Avenue, between McCall and Del Rey Avenues, approximately two miles northeast of the nearest city limits of the City of Clovis (10495 E. Herndon Avenue, 10499 E. Herndon Avenue) (SUP. DIST. 5) (APN 308-240-03).

This item comes before the Board on appeal of the Planning Commission's denial of the subject application (3 to 2, with four Commissioners absent) at its May 18, 2017 Planning Commission Hearing. Staff notes that the Zoning Ordinance requires the 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 attached as Exhibit A.

ALTERNATIVE ACTION(S):

If the Board is able to make the required findings for granting Variance No. 4016, a motion to uphold the appeal and overturn the Planning Commission's decision, stating the basis for making the findings and articulating the manner in which each of the Findings can be made, would be appropriate.

FISCAL IMPACT:

Pursuant to the County's Master Schedule of Fees, the Applicant has paid \$6,673 in land use processing fees to the County for the processing of the Variance Request. The Applicant also paid \$508 in fees to appeal the Planning Commission's denial.

DISCUSSION:

This proposal involves a variance request with three components: 1) a request to permit the creation of a 2.42-acre parcel and a 2.35-acre parcel from an existing 4.77-acre parcel (five-acre minimum parcel size is required); 2) each proposed parcel would have 160 feet of road frontage (minimum 165 feet of road frontage is required by Ordinance); and 3) permit an existing single-family residence located on the proposed 2.35-acre parcel to encroach five feet into a required 20 foot side-yard setback. According to the Applicant's submitted

Variance Findings the request is to create separate parcels for each of the existing single-family residences for estate planning purposes.

Pages 4 and 5 of the Planning Commission Staff Report dated May 18, 2017 (attached as Exhibit B) includes a discussion of rezoning activity related to the subject property and additional history regarding variances approved within the vicinity. Also, as indicated on page 5 the Staff Report, Director Review and Approval Application No. 3562 was approved on August 11, 2004, to permit a second residence on the subject property. That approved residence was constructed and represents one of the project site's two existing residences.

Staff received late correspondence prior to the Planning Commission Hearing in opposition to the application. That correspondence is attached as Exhibit C.

In order for the Board to approve Variance No. 4016, 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 hearing of May 18, 2017, the Planning Commission considered staff's presentation and testimony from the property owner. A motion was made to approve the application by the Chairman of the Planning Commission, stating that Findings 1 and 2 could be made, as the subject parcel is approximately five acres amongst parcels that are approximately two to two-and-a-half acres in size, and approval would provide a substantial property right in that the property could be passed down to family members, but the motion failed to pass on a vote of 2 to 3.

A second motion was then made to deny the application, stating that Finding 1 could not be made based on the information provided in the Planning Commission staff report. That motion was seconded and approved on a vote of 3 to 2.

An appeal was filed on June 1, 2017. The appeal document stated that creation of the 2.42 and 2.35-acre parcels will allow the existing homes to be located on separate properties, allowing for separate property tax liability for each household, freedom for each household to make home improvements that could raise property values, and allow one of the houses to be given to a sibling with no legal and financial complications.

If the Board is able to make the required findings for granting approval of Variance Application No. 4016, a motion to uphold the appeal and approve the project would be appropriate stating in its motion to approve the manner in which the four required Variance Findings can be made subject to the conditions listed in the Staff Report and any additional conditions the Board determines appropriate. For reference a copy of the conditions of approval are also attached as Exhibit D to this Agenda Item.

If the Board is unable to make the required Variance Findings for granting Variance Application No. 4016, a motion to deny the appeal and deny the project would be appropriate.

On June 26, 2017 the Applicant provided to County staff four support letters from neighboring property owners and a letter withdrawing prior opposition to his proposal. Copies of these letters have been attached as Exhibit E.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibits A - E

CAO ANALYST:

John Hays