



STAFF REPORT

MEETING DATE: April 10, 2023

PRESENTER: Jesus R. Orozco, Community Development Director

SUBJECT: An application for Conditional Use Permit 2023-01 to allow for the establishment of a second-hand store (Trini's Thrift Store), located at 311 S. Madera Ave., including adopting a finding of a Categorical Exemption pursuant to Section 15301 of the CEQA Guidelines. (Continued from March 13, 2023)

RECOMMENDATION: Staff recommends that the Planning Commission consider the revised conditions of approval and by motion adopt an updated resolution approving CUP 2023-01, to allow for the establishment of a second-hand store (Trini's Thrift Store), located at 311 S. Madera Ave., including adopting a finding of a Categorical Exemption pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines.

EXECUTIVE SUMMARY:

An application for Conditional Use Permit (CUP) 2023-01 was filed by Carmen Ceja (Applicant) on behalf of Fadi Abboud (Owner), to establish a second-hand store (Trini's Thrift Store) within an existing nonconforming building on a .38-acre parcel located at 311 S. Madera Ave. Kerman, CA (APN: 023-114-22S) in a CG (General Commercial) zone district. A public hearing was held and closed on March 13, 2023. The Planning Commission continued the item to the April 10, 2023 meeting, directed staff to prepare revised conditions of approval consistent with Planning Commission direction and facilitate a Spanish transcript of the meeting to the Project applicant. The staff report packet from the meeting of March 13, 2023 is attached. (See Attachment 4)

ANALYSIS

After closing the public hearing held on March 13, 2023, the Planning Commission directed City staff to come back with an additional conditional of approval that accounted for the outcome of the litigation regarding the Reciprocal Easement or Parking Agreement Notice, including withdrawal of the litigation. Staff have prepared a draft condition of approval (COA) 22(a) for the Planning Commission's consideration, which reads as follows:

22(a). By itself, the site does not have adequate parking even with the additional parking stalls. The City previously recognized an "Easement for Reciprocal Parking Agreement Between Valley Food Center, Inc. and David Joe" recorded on November 7, 2003 ("Reciprocal Easement") with the property at 415 South Madera located directly to the south. The Reciprocal Easement was previously used for parking for a second-hand store at the site before the use was discontinued, and would provide sufficient similar parking for this CUP, which also proposes the same type of use. However, there is currently a dispute between the two properties as to whether the Reciprocal Easement is still in effect, which has cumulated in litigation (*Fadi Abboud vs. Gary Yep*, Fresno Superior Court Case No. 22CECG03765) ("Litigation"). As a result, it is not clear to the City whether or not there is equivalent parking available on the

site consistent with its prior use until either the Litigation has been completed or the issue has been otherwise resolved by the parties at some future date. On the other hand, to delay approval until this occurs would not provide timely consideration of the proposed entitlement or certainty to the applicant. Likewise, to deny the project based on inadequate parking would not be appropriate if the Litigation were to subsequently confirm the validity of the Reciprocal Easement, which would mean that there is equivalent parking currently available for a similar type of use that was previously allowed on the site.

Under these circumstances, to address the uncertainty of the validity of the Reciprocal Easement the following condition of approval shall apply to this project:

If any of the following contingencies occur, applicant will have 180 days to secure other acceptable parking (as determined by the City's Community Development Director) to meet the required parking for the site:

- I. If there is an entry of a final, non-appealable, court judgement or settlement of the Litigation (based on the date of dismissal) that determines that the Reciprocal Easement is invalid, or any other final, non-appealable decision in litigation that determines that the site has no easement for use of the parking lot in the adjacent property described in the Reciprocal Easement whether by way of the Reciprocal Easement or otherwise; or
- II. The Litigation is dismissed and as of the date of dismissal the revocation of the Reciprocal Easement remains in effect without a recorded withdrawal or revocation by the recording party or successor in interest; or
- III. If there is a recorded agreement by all property owners of the property described in the Reciprocal Easement (recording parties or their successors in interest) that withdraws, revokes, or cancels the Reciprocal Easement.

If any contingency occurs and required parking is not secured within 180 days, then the approval of Conditional Use Permit No. 2023-1 shall be null and void. However, if none of the contingencies occur, then no additional on-site parking is required for Conditional Use Permit No. 2023-1 other than the spaces required by the parking plan.

This draft condition was provided to the Project applicant, as well as the attorney for the owner(s) of the property on their behalf. The Project applicant has not responded regarding proposed COA 22(a). However, the attorney for the property owner(s) has not agreed to the condition, and has instead proposed alternative language. (See Attachment 3) The attorney also objects to conditions of approval number 20-22.

As also requested at the prior meeting, a transcript of the prior Planning Commission hearing was prepared and translated into Spanish. Both the English and Spanish versions of the transcript were provided to the Project applicant. The English version of the transcript, along with the offer of a Spanish version, were provide to the attorney for the owner of the property on his behalf.

If the Planning Commission determines to deny the application, it should articulate reasons so that an appropriate resolution can be prepared for consideration at a subsequent meeting.

Planning Commission Action:

The Commission will be acting on CUP 2023-01 and determine whether to adopt a motion as follows:

Motion 1: Adopt the updated resolution approving CUP 2023-01, with the addition of Condition of Approval 22(a) to allow for the establishment of a second-hand store at 311 S. Madera Ave., including adopting a finding of a Categorical Exemption pursuant to Section 15301 of the CEQA Guidelines.

OR

Motion 2: Move to direct staff to return with an updated resolution with appropriate findings for denial of the application(s).

Any action taken by the Commission approving or denying the application(s) is subject to appeal to the City Council by the Applicant no later than ten (10) working days after the day on which the decision was made.

Attachments

1. Resolution w/ Exhibits (including updated COA 22(a))
2. Aerial Photo/Site Photos
3. Alternative Condition (proposed by Attorney for Property Owner)
4. Staff Report Packet of March 13, 2023

Attachment 1
Resolution No. 2023-__

A RESOLUTION OF THE CITY OF KERMAN PLANNING COMMISSION APPROVING CONDITIONAL USE PERMIT 2023-01, TO ALLOW FOR THE ESTABLISHMENT OF A SECOND-HAND STORE (THRIFT STORE), LOCATED AT 311 SOUTH MADERA AVENUE, IN KERMAN, CA (APN: 023-114-22S).

WHEREAS, the Planning Commission considered a request for a conditional use permit (Conditional Use Permit 2023-01) filed by Carmen Ceja (applicant) on behalf of Fadi Elyas Abboud (property owner) for the establishment of a second-hand store (thrift store), located at 311 S. Madera Ave., in Kerman, CA (APN: 023-114-22s) ("project"); and

WHEREAS, a public notice for the February 13, 2023 meeting of the Planning Commission to consider the project was circulated to adjacent properties within a 300-foot radius of the project site and published in the local newspaper at least 10 days prior to the meeting as required by law; and

WHEREAS, the Planning Commission continued consideration of the matter to the next regular meeting on March 13, 2023; and

WHEREAS, a written report was prepared by staff, which included a recommendation for approval of Conditional Use Permit 2023-01, and was made available for public review at least 72 hours prior to the public hearing on the matter; and

WHEREAS, the project was assessed under the California Environmental Quality Act (CEQA); and

WHEREAS, on March 13, 2023, the Planning Commission conducted a public hearing on the project, closed the public hearing, and deliberated on the matter; and

WHEREAS, the Planning Commission directed staff to facilitate a Spanish transcript of the meeting to the Project applicant; and

WHEREAS, the Planning Commission also directed staff prepare revised condition(s) of approval consistent with initial Planning Commission direction to address parking issues for the project including the issue of litigation as to a parking easement, to return with the same for Planning Commission consideration, and then continued the matter to the next meeting on April 10, 2023; and

WHEREAS, City staff implemented the Planning Commission's direction; and

WHEREAS, after having conducted a public hearing, receiving all evidence on this matter, and after due deliberation of all items before it (including the updated conditions of approval), the Planning Commission now desires to approve Conditional Use Permit 2023-01 subject to findings and conditions of approval, and adopt a finding of a Class 1 Categorical Exemption (Existing Facilities) pursuant to CEQA Guidelines Section 15301 for the project.

NOW, THEREFORE, BE IT RESOLVED by the City of Kerman Planning Commission as follows:

- 1) Recitals: The above recitals are true and correct and are incorporated herein:
- 2) CEQA: The Planning Commission finds and determines that a Class 1 Categorical Exemption (Existing Facilities) set forth in CEQA Guidelines Section 15301 applies to this Project as it consists of the use of an

existing private facility on an existing site, to provide use as a thrift store (second-hand store) at a location previously used as a thrift store. No expansion of the building is proposed, and any maintenance or minor alternations of the building would be negligible, and would not result in a significant, adverse impact to the environment. Furthermore, none of the exceptions set forth in CEQA Guidelines Section 15300.2 apply to this Project.

- 3) Conditional Use Permit: The Planning Commission has determined that all findings required for approval of Conditional Use Permit 2023-01 can be made, including those required by the City of Kerman Municipal Code Section 17.12.040 (C) as follows:

- A. That the proposed establishment, maintenance, and operations of the use applied for will not be detrimental to the public health, safety, and welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the city;

Finding A (1). The project will not be detrimental to the public health, safety, or welfare. It is located in a designated general commercial area with hours of operation and conditions of approval which minimize any potential negative impacts to adjacent land uses. The conditions of approval (**Exhibit 'A'**) limit types of uses that may be objectionable or detrimental to other permitted uses or adverse to the public interest health, safety, convenience, or welfare of the City.

- B. That the proposed use is substantially consistent with the Kerman General Plan;

Finding B (1). A second-hand store is a permitted use subject to a conditional use permit in the (CG General Commercial), which is a consistent zone with the General Plan GC (General Commercial) land use designation. The project is consistent with the General Plan, including General Plan objectives ED-1.1, ED-1.4, LU-3.6, CIRC-4.1.

Finding B (2). The Project is located along a general commercial corridor suitable for many retail, business professional, service commercial, and other similar activities and uses.

Finding B (3). The conditions of approval preserve the integrity and character of the zone district and ensure compliance with the General Plan and Zoning Ordinance.

- C. That the environmental document is prepared as per the California Environmental Quality Act (CEQA).

Finding C (1). As described in greater detail, above, a preliminary environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The project falls within Categorical Exemption per CEQA Guidelines Section 15301 (Existing Facilities) as the project is characterized as a use occupying an existing structure within a developed site and meets the required conditions described in said section. There are no project-specific significant effects on the project or the site which would require additional environmental review.

- D. That the site for the proposed is adequate in size, shape, and location to accommodate the use as it relates to the district for which the use is proposed.

Finding D (1). The location of the Project is within the CG - General Commercial zone district which is located along a commercial corridor suited for retail, office, commercial services, and other similar activities and uses along the Madera Avenue corridor in a developed parcel of land. Even though the use will occupy a nonconforming site, the second-hand store's operations do not necessitate or

warrant any major building alterations to adequately and safely operate. Additionally, the second-hand store will be less than or of equal intensity to the previously established second-hand store, and other similar by-right permitted uses under the same building occupancy type in the CG zone district.

4. Conditions of Approval: Given the foregoing, the Planning Commission approves Conditional Use Permit 2023-01, subject to the conditions of approval attached herein as **Exhibit "A"**.
5. Effective Date: This Resolution shall take into effect immediately.

I HEREBY CERTIFY that the foregoing Resolution was approved at a regular meeting of the Planning Commission of the City of Kerman on the 10th day of April 2023, and was fully adopted at the said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

Scott Bishop
Chairperson

ATTEST:

Jesus R. Orozco
Planning Commission Secretary

Exhibit 'A'
Conditions of Approval
Trini's Thrift Store – CUP 2023-01
April 10, 2023

Notice to Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to validity of conditions of approval must occur within ninety (90) calendar days after the date of this decision. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

IMPORTANT: PLEASE READ CAREFULLY

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through conditional use permit review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would on the whole enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for CUP 2023-01 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) working days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval for this entitlement, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed (including its identification number) and specific reasons why you believe the decision or action appealed should not be upheld, and the identity of the appellant.

Approval of this conditional use permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this conditional use permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this use permit, the zoning ordinance, and all City standards and specifications. This use permit and site plan review is granted, and the conditions imposed, based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this use permit. Unless the conditions of approval specifically require operation inconsistent with the application, a new or revised use permit is required if the operation of this establishment changes or becomes inconsistent with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the use permit, or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the use permit review process, or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this use permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the use permit as delineated herein and are not

conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

These conditions are applicable to any person or entity making use of this use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, leasee, operator, or any other person or entity making use of this use permit.

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant’s signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
2. Any intensification or expansion of the use beyond its approval shall be cause for review and modification of the use permit to be approved by the Commission.
3. Any proposed future modifications to the site not specifically contemplated by CUP 2023-01, including but not limited to, the building exterior, parking/loading areas, fences/walls, new buildings, or landscaping shall require an amendment to CUP 2023-01.
4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statute.
5. It shall be the responsibility of the property owner and/or developer to ensure that any required permits, inspections, and approval from any regulatory agency are obtained from the concerned agency prior to any building permit final occupancy issuance.
6. Failure to comply with the conditions of approval contained herein shall be cause for review and possibly modification or revocation to CUP 2023-01.
7. Approval of CUP 2023-01 is for the benefit of the applicant. The submittal of application(s) by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Kerman and its agents, officers, consultants, independent contractors, and employees (“City”) from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorneys fees, and damages arising therefrom (collectively “claim”). The City shall promptly notify the applicant of any claim.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim, the applicant shall be responsible for City’s attorneys’ fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record. Should the City decide to independently defend any claim, the applicant shall not be required to pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

Building Division

8. A building permit shall be required for all tenant and site improvements as required by the California Building Code, California Fire Code, and Americans with Disability Act (ADA) prior to occupancy.

9. The developer and/or property owner shall submit plans consistent with California Building Standards Code, to include site development and ADA accessibility based upon the codes in effect at the time of plan check submittal.
10. The Owner / Applicant shall also submit an application for a Construction and Demolition (C&D) permit per the City of Kerman Ordinance Chapter 8.12 and required permits from other enforcement agencies including but not limited to the following: North Central Fire Protection District.
11. The developer and/or property owner shall pay for all applicable building permits prior to the issuance of a building permit.
12. Prior to the commencement of any work within the City of Kerman, the general contractor and all sub-contractors shall obtain a City business license.
13. Construction, repair, and/or remodeling shall be permitted to occur between the hours of 7:00 a.m. and 10:00 p.m., consistent with 9.26.020 of the KMC.

North Central Fire Protection District

14. Requirements for this project may include but are not limited to the following: water flow requirements, road access, fire hydrants, premises identification, and NCFPD Ordinance 2022-01.
15. Please contact the NCFPD by email at Fire.Prevention@NorthCentralFire.org or by phone at (559) 878-4560 to schedule an over-the-counter meeting to receive your specific requirements for your project. Failure to schedule an appointment with the NCFPD will affect your ability to obtain final approval for your project.

Planning Division

General

16. On-site vandalism or graffiti shall be corrected per the KMC, Chapter 9.09 – Abatement of Graffiti Nuisances.
17. The business and/or property owner shall keep the property clear of all trash, rubbish, and debris at all times. Dumping of refuse shall be restricted to the refuse containers scheduled to service the site.
18. The business and/or property owner shall comply with all applicable federal, state, or local laws, rules, and regulations. Material violations of said laws, rules, and regulations may be cause for review and possible revocation of the use permit.
19. Business owner(s) shall be responsible for securing a business license from the Finance Department before the commencement of any commercial activity.

Parking

20. A parking plan of the site depicting existing parking stalls and additional parking stalls to be located to the rear of the site shall be submitted to the Planning Division no later than thirty (30) calendar days after approval. The parking plan shall include no less than three (3) new parking stalls, to the extent possible, to be reviewed and approved by the Planning Division.
21. The outdoor storage area located to the rear of the project shall be cleared to accommodate additional parking stalls. The storage area shall be cleared no later than six (6) months from this approval.

22. The additional parking stalls shall be completed within twelve (12) months after approval of the CUP. A final inspection can be scheduled with the Planning Division at (559) 846-6121.

22(a). By itself, the site does not have adequate parking even with the additional parking stalls. The City previously recognized an "Easement for Reciprocal Parking Agreement Between Valley Food Center, Inc. and David Joe" recorded on November 7, 2003 ("Reciprocal Easement") with the property at 415 South Madera located directly to the south. The Reciprocal Easement was previously used for parking for a second-hand store at the site before the use was discontinued, and would provide sufficient similar parking for this CUP, which also proposes the same type of use. However, there is currently a dispute between the two properties as to whether the Reciprocal Easement is still in effect, which has cumulated in litigation (*Fadi Abboud vs. Gary Yep*, Fresno Superior Court Case No. 22CECG03765) ("Litigation"). As a result, it is not clear to the City whether or not there is equivalent parking available on the site consistent with its prior use until either the Litigation has been completed or the issue has been otherwise resolved by the parties at some future date. On the other hand, to delay approval until this occurs would not provide timely consideration of the proposed entitlement or certainty to the applicant. Likewise, to deny the project based on inadequate parking would not be appropriate if the Litigation were to subsequently confirm the validity of the Reciprocal Easement, which would mean that there is equivalent parking currently available for a similar type of use that was previously allowed on the site.

Under these circumstances, to address the uncertainty of the validity of the Reciprocal Easement the following condition of approval shall apply to this project:

If any of the following contingencies occur, applicant will have 180 days to secure other acceptable parking (as determined by the City's Community Development Director) to meet the required parking for the site:

- I. If there is an entry of a final, non-appealable, court judgement or settlement of the Litigation (based on the date of dismissal) that determines that the Reciprocal Easement is invalid, or any other final, non-appealable decision in litigation that determines that the site has no easement for use of the parking lot in the adjacent property described in the Reciprocal Easement whether by way of the Reciprocal Easement or otherwise; or
- II. The Litigation is dismissed and as of the date of dismissal the revocation of the Reciprocal Easement remains in effect without a recorded withdrawal or revocation by the recording party or successor in interest; or
- III. If there is a recorded agreement by all property owners of the property described in the Reciprocal Easement (recording parties or their successors in interest) that withdraws, revokes, or cancels the Reciprocal Easement.

If any contingency occurs and required parking is not secured within 180 days, then the approval of Conditional Use Permit No. 2023-1 shall be null and void. However, if none of the contingencies occur, then no additional on-site parking is required for Conditional Use Permit No. 2023-1 other than the spaces required by the parking plan.

Signage

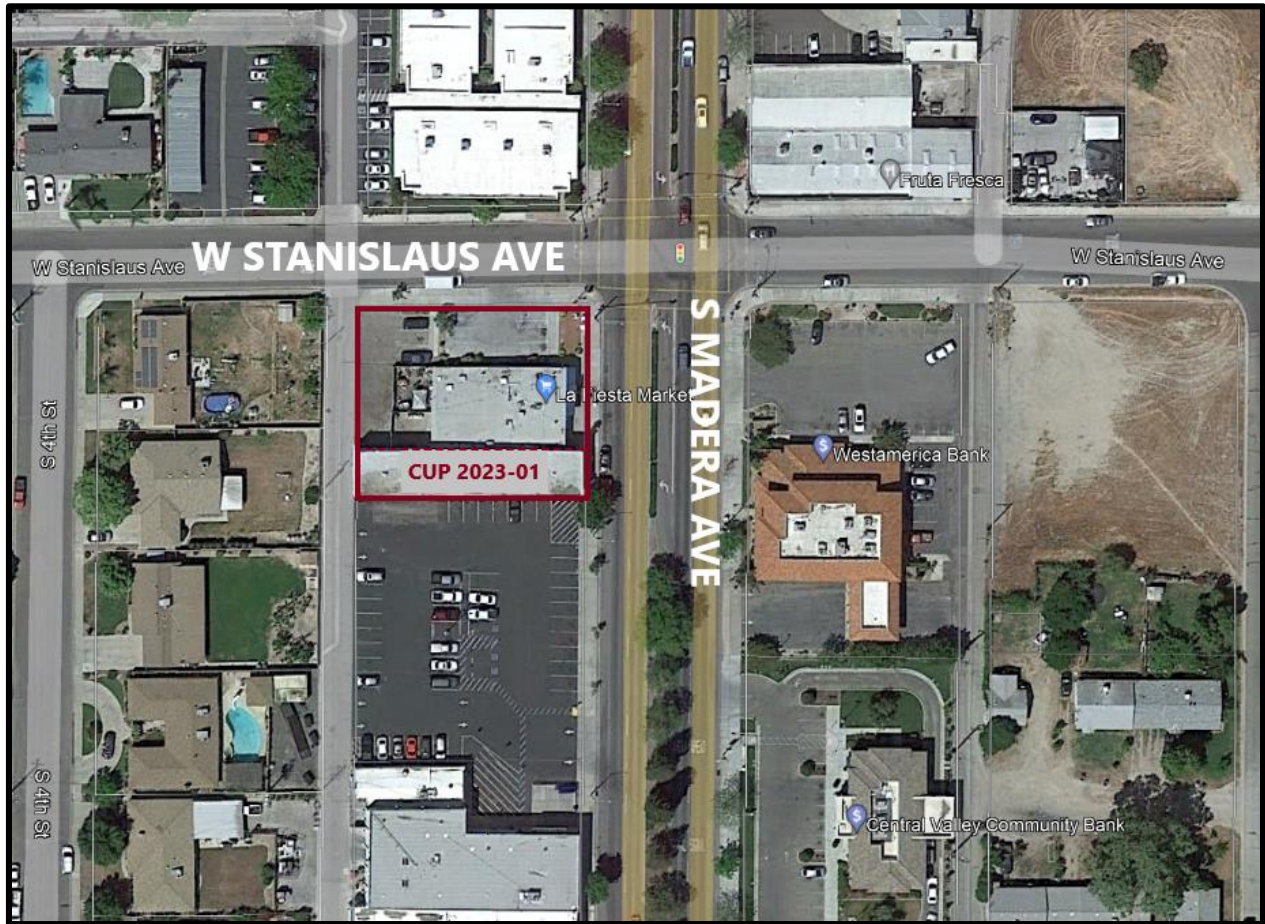
23. All proposed and future permanent signage shall comply with KMC 17.76.050.

24. No sign shall interfere with a driver's or pedestrian's view of public right-of-way or in any other manner impair public safety or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.

25. Temporary signage shall be permitted for special events (i.e. grand opening, local, State, or Federal recognized holidays), to be displayed for thirty (30) days or less per year and advertise a grand opening or community affair.

End of Conditions

Attachment 2.01
Aerial Photo



Attachment 2.02
Site Photos



Attachment 3
Alternate Conditions of Approval
Provided by Applicant's Attorney

The following alternative language for Condition 22(a) was provided by Mr. Bruce Leichty, attorney for the property owner:

22(a). The site has adequate parking for CUP use as long as the City continues to recognize the previously recognized "Easement for Reciprocal Parking Agreement Between Valley Food Center, Inc. and David Joe" recorded 11/7/2003 ("Reciprocal Easement") extended by the property at 415 S. Madera, located to the south of the site. The City recognized this easement in connection with the granting of the prior thrift store CUP at the site in 200___. The easement has not been challenged in any court action and City has received no information that it has been dishonored in day to day observance by either party. In March 2022, four individuals claiming sole current ownership of the property at 415 S. Madera recorded a Notice signed only by them which declares that the Reciprocal Easement is of no effect ("Notice"). This followed an unsuccessful attempt by these four individuals, led by Gary Yep, to obtain signatures of both site owner Abboud and City on a "Cancelation" of the Reciprocal Easement. Neither Abboud or City ever signed anything purporting to vary the Agreement or its effect. Abboud has filed an action for Declaratory Relief in Fresno County Superior Court, No. 22CECG03765, seeking a declaration that the Reciprocal Easement continues in effect, which Abboud filed of his own volition. The Defendants in that action including Mr. Yep have not cross-claimed for any relief.

The City takes no position on the litigation, but has no lawful basis for determining based solely on the Notice that there has been a revocation of the bilateral Reciprocal Easement, and has no basis until and unless the Reciprocal Easement would be properly revoked or invalidated to alter its existing recognition of the parking easement. The City moreover recognizes that the existing litigation is not designed for the purpose of invalidating the easement and would not necessarily result in an invalidation, and indeed that Abboud was not required to file the existing Fresno County Superior Court case and may have a right to dismiss it. To delay or deny approval of the project for inadequate parking would not be appropriate based on the prima facie validity of the Easement and the inability of the 2022 recorded Notice to affect that as a matter of law, and the City's historic recognition that the site has adequate parking.

Under these circumstances, to address any lingering uncertainty regarding the current litigation and the prospect that the Reciprocal Easement could be invalidated, the following condition of approval shall apply to this project:

In the event that either of the following contingencies occur, the applicant will have 180 days to secure other acceptable parking (as determined by the Community Development Director for City) to meet parking requirements for the use:

- i. if there is entry of a final non-appealable court judgment or settlement of either the existing litigation or any other litigation by which it is determined that the site has no easement for use of the parking lot described in the Reciprocal Easement whether by way of the Reciprocal Easement or otherwise; or
- ii. if there is a recorded agreement by all property owners (recording parties or their successors in interest) based on demonstration of chain of title satisfactory to City showing that they have agreed that the Reciprocal Easement shall be withdrawn, revoked or canceled.

If either contingency occurs and the required parking is not thereafter obtained within 180 days, then the approval of Conditional Use Permit No. 2023-1 shall be null and void.

Attachment 4
Staff Report Packet of March 13, 2023