



## STAFF REPORT

**MEETING DATE:** April 8, 2024

**PRESENTER:** Manuel Campos, Assistant Planner

**SUBJECT:** Public hearing regarding Conditional Use Permit 2024-03 to allow for a Type 41 (On-sale Beer & Wine) ABC license and a request for a parking reduction from the off-street parking requirements for the project located at 753 S. Madera Ave., including adopting a finding of a Categorical Exemption for the Project. (MC)

**RECOMMENDATION:** Commission conduct a public hearing, deliberate, and by motion adopt a resolution approving Conditional Use Permit 2024-03 to allow for a Type 41 (On-sale Beer & Wine) alcohol license and a request for a parking reduction from the off-street parking requirements for the project located at 753 S. Madera Ave., including adopting a finding of a Categorical Exemption for the Project pursuant to Sections 15301 of the CEQA guidelines.

**EXECUTIVE SUMMARY:** Conditional Use Permit (CUP) 2024-03 was filed by The American Rhino, applicant; on behalf of Gurbir Sapraj, property owner; requesting approval of a CUP to allow for a Type 41 (On-sale Beer & Wine) alcohol license and a request for a parking reduction from the off-street parking requirements for the project located at 753 S. Madera Ave., located on the northwest corner of S. Madera Ave. and W. D St., in Kerman, CA, zoned CG (General Commercial) with a GC (General Commercial) General Plan land use designation (APN: 023-174-06S). A Categorical Exemption pursuant to section 15301 of CEQA Guidelines will be considered for the project.

### APPLICABLE CODES AND PROCEDURES:

KMC 17.12 – Conditional Use Permits

KMC 17.48 – General Commercial District

KMC 17.64 – Nonconforming Uses, Buildings & Structures

KMC 17.74 – Parking (17.74.140, 17.74.130, and 17.74.150)

KMC 17.100 – Alcohol Beverage Sales

Public Resource Code – CEQA 15301 Existing Facilities

The Kerman Municipal Code (KMC) allows the Commission to grant or deny approval of a conditional use permit provided that a public hearing is held on the proposed use to review and consider any public testimony. Prior to the public hearing, a staff report, environmental determination, and general plan findings for the use permit must be made available to the Commission, interested agencies, and the public.

The use should be denied if the Commission cannot make the appropriate findings. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered, and site improvements may be required to make the project compatible with nearby uses. In addition, the application may be subject to future review, modification, or revocation by the Commission, as deemed necessary.

## **ANALYSIS**

### Background Information

The project site has been developed with a multi-tenant building including six tenant suites that encompass approximately 9,000 square feet (sq. ft.). According to city records, said building was constructed sometime in 1974. The subject address is located within a tenant space that encompasses approximately 1,800 sq. ft. and was previously occupied by a barber shop (Final Touch Studio). Final Touch Studio ceased business operations in 2022.

### Project Proposal

The project proposal includes an application for CUP 2024-03 to allow for the on-site sale and consumption of beer and wine. Said type of alcohol sales requires a Type 41 (On-sale Beer and Wine) license from the State Department of Alcoholic Beverage Control. The applicant proposes to open a full-service restaurant with business hours from 7 AM to 11 PM, Monday through Sunday. Alcohol sales are being proposed from 11 AM to 11 PM, during the same days. Alcohol storage is being proposed in a storage room within the kitchen. This storage location will only be accessible to restaurant staff. Alcohol sales would be an ancillary component of the restaurant. The restaurant anticipates hiring four to five people to fully staff the business. The project does not include an expansion of the building's footprint.

### Site and Surrounding Land Uses and Setting

As mentioned earlier the project site has been developed with a multi-tenant building including six tenants encompassing approximately 9,000 sq. ft. and twenty-five (25) parking stalls. A considerable amount of patrons utilize the on-street parking on S. Madera Ave. when visiting the site. The project tenant space will consist of a single dining area with dining booths and tables, restroom facilities, and a kitchen.

The interior of the project tenant space will require substantial improvements. The applicant will need to apply for a tenant improvement (TI) permit from the City's Building Division. A TI permit is required as The American Rhino will be making the necessary interior alterations or additions to use the existing commercial space as a restaurant. Besides the Building Division's review, all TI work will also need to be reviewed by the North Central Fire Protection District (NCFPD) and the Fresno County Environmental Health Division. All TI permit work will need to be completed prior to the issuance of a business license by the City's Finance Department.

The site is surrounded by developed land. As described in Table 1., the site is surrounded by a salon to the north (Cristal Beauty Salon), a parking lot to the east across S. Madera Ave., an employment agency (Hall AG Enterprises) to the south across W. D St., and two single-family

homes and a vacant parcel to the west across a public alley. As conditioned nearby uses will be negligibly impacted by the allowance of alcohol sales.

**Table 1. Existing Uses, General Plan Designations, and Zone Districts of Surrounding Properties**

Location	Existing Land Use	General Plan Designation	Zone District
North	Salon	GC – General Commercial	CG – General Commercial
East	Parking Lot	GC – General Commercial	CG – General Commercial
South	Employment Agency	GC – General Commercial	CG – General Commercial
West	Two Single-family Homes and a Vacant Parcel	O – Office	PA – Professional Administration District

#### Zoning & General Plan

The site is zoned CG (General Commercial) with a GC (General Commercial) General Plan land use designation. The CG Zone district is intended to allow for a wide range of commercial and office uses that are diverse, visually pleasing, convenient in terms of parking and access, attractive, and used by the citizens of Kerman as well as visitors to the area. A restaurant is a permitted “by right” use, however, alcohol sales are subject to a conditional use permit. Approval of CUP 2024-03 will be consistent with the zone district and the General Plan land use designation. Denial of the CUP would prevent the sale of alcohol, however, the applicant may still continue with establishing a restaurant; subject to meeting all applicable standards.

#### Nonconforming Status

As mentioned earlier the project building’s construction occurred sometime during 1974 as indicated by city records. Thereby the building pre-dates the current development standards of the GC zone district. As a result, development on the site is considered existing nonconforming, or “grandfathered.” As stated under section 17.64.020 of the KMC, a nonconforming building is defined as a “lawfully established and maintained prior to the adoption of the ordinance codified in this title, but under this title does not conform with the development standards, including lot coverage, height, setback, etc., of the district in which it is located.” Under the current development standards of the CG zone district, the building does not conform to the required off-street parking requirements. The building with current tenants and the proposed restaurant would need to provide at least forty-three (43) parking stalls per current requirements.

#### Parking Analysis

Tenant	Floor Area	Use Type	Parking
Tenant A – The American Rhino	1,800 sq. ft.	On-site dining   1 p.s. / 4 seats.	11

	50 seats		
Tenant B – Corona Real Bakery	1,800 sq. ft.	Retail Use   4.5 p.s. /1,000 sq. ft.	8
Tenant C - Vacant	1,800 sq. ft.	Retail Use   4.5 p.s. /1,000 sq. ft.	8
Tenant D – K Town Smokeshop	900 sq. ft.	Retail Use   4.5 p.s. /1,000 sq. ft.	4
Tenant E – Studio 22	900 sq. ft.	Retail Use   4.5 p.s. /1,000 sq. ft.	4
Tenant F – So Fresh Cuts	1,800 sq. ft.	Retail Use   4.5 p.s. /1,000 sq. ft.	8
<b>Total required parking stalls</b>			<b>43</b>
<b>Total parking stalls provided</b>			<b>25</b>
<b>Parking stall difference</b>			<b>18</b>

The proposed use will require alterations as necessary to comply with building and fire codes. Additionally, the proposed use is a change in occupancy from the previous tenant (barber shop). As shown in the table above the proposed restaurant would require additional parking stalls on the site. At present the site is unable to accommodate additional parking stalls. As allowed under KMC 17.74.130 (C) an applicant may submit a request for a parking reduction. Additionally, under KMC 17.14.150, the Commission may waive the additional required number of parking spaces for existing facilities (buildings) if the applicant provides evidence that he/she has exhausted all opportunities for providing the necessary parking [when] any change of use in an existing building or lot requires more parking spaces.

#### Parking Reduction Request Analysis

The applicant has submitted a parking reduction letter consistent with KMC 17.14.130 (C) (Attachment 4) for the Commission's consideration.

<b>Parking</b>		
<b>Tenant</b>	<b>Required</b>	<b>Realistic Needs</b>
Tenant A – The American Rhino	11	11
Tenant B – Corona Real Bakery	8	3
Tenant C - Vacant	8	5
Tenant D – K Town Smokeshop	4	4
Tenant E – Studio 22	4	2
Tenant F – So Fresh Cuts	8	6
<b>Totals</b>	<b>43</b>	<b>31</b>
<b>Difference</b>	<b>12 Parking Stalls</b>	

Tenant A (The American Rhino): Under the applicant's proposal, the project would be required to provide 11 parking stalls. As an alternative, by converting the tenant space's gross floor area using the retail parking formula, the project could be permitted to accommodate seating consistently with the requirements for 11 parking stalls. As with most restaurants, the anticipated peak hours of operation for The American Rhino are 11:30 AM to 1:30 PM (lunchtime) and 4:30 PM to 6:30 PM (dinnertime).

Tenant B (Corona Real Bakery): The tenant's normal hours of operation range between 4:30 AM and close as late as 5:30 PM, Sunday through Saturday. The peak hours of operation of the bakery (early morning) will not conflict with the proposed restaurant's hours. It should be noted that the majority of the floor area of the business is used for the preparation and baking of goods. Therefore, the tenant's gross floor area may demand a realistic parking need of three parking stalls (1 employee and 2 customers). Of note, most customers patronizing the business will use on-street parking via S. Madera Ave., generally spending no more than fifteen (15) minutes per customer. The employee of the business utilizes one parking stall that is located at the rear of the building.

Tenant C (Vacant): Traditionally this tenant space has been occupied by various forms of retail and service commercial business. While the required parking for this tenant space would be 9 parking stalls, at present, the tenant space would not utilize off-street parking. Future use of this tenant space may be subject to further review and possible parking plan, or additional parking requirements.

Tenant D (K-Town Smoke Shop): Based on staff's general knowledge of the business, its parking demands are similar to Tenant B. As noted in the applicant's parking reduction letter the business does not generate peak hours. As seen with tenant B, most customer's visits may range from ten (10) to twenty-five (25) minutes per customer. For this reason, the tenant was given a realistic parking need of four parking stalls (1 employee and 3 customers).

Tenant E (Studio 22): The tenant primarily functions as a drop-off and pick-up performance arts school for kids. Dance classes typically begin after 3 PM and end as late as 8:30 PM on weekdays. There is a constant flow of pick-ups and drop-offs occurring since on average most classes last one hour. The business usually only has one employee present, but occasionally has a second instructor present. For this reason, it was given a realistic parking need of two parking stalls. Most customers patronizing the business will use on-street parking via S. Madera Ave.

Tenant F (So Fresh Cuts Barbershop): The tenant is on an appointment-only basis and generally has at least six occupants (3 employees and 3 customers) present at any given time. For this reason, the barbershop was given a realistic parking need of six parking stalls.

Based on staff's analysis the site's current parking demands do not reflect the required number of parking stalls as required by code. However, there is an increase of eleven parking stalls in

addition to the existing twenty-five parking stalls. As previously noted the Commission may consider a reduction in parking when the request is for an existing facility. Should this request be granted, and the site's parking is impacted as a result of the restaurant, the CUP may be returned to the Commission for future review and possible modification or revocation of the use. A modification may include the creation of new parking stalls as allowed under KMC 17.74.140 "Commercial uses open to the public that require more than thirty parking spaces may be located on the premises, within three hundred feet of the premises, or a combination of both. The off-site spaces to be included in the total parking requirement shall be located off-street and shall meet the development standards for off-street parking established in Section 17.78.030."

#### Alcohol Sales

The site is located in Census Tract 40.03 which allows for four (4) on-sale alcohol licenses. Currently, there are three (3) on-sale alcohol licenses registered to three different businesses. The proposed Type 41 alcohol license would be the fourth on-sale ABC license in Census Tract 40.03, after Renos Place, Antojitos Guanacos Restaurant, and Kerman Country Cafe. Approval of CUP 2024-03 would not result in an over-concentration and will allow the applicant to continue with the State Department of Alcoholic Beverage Control application process. Furthermore, if the CUP is approved the applicant will need to comply with the requirements of chapter 17.100 of the KMC, some requirements include but are not limited to signage and operation requirements.

#### Other Department Comments

The project proposal was reviewed by various other City Departments and affected outside agencies. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report. Based on the provided application and the conditions imposed, the Police Chief has determined that the proposed use: (i) would not be detrimental to the public health, safety, comfort, or welfare of persons located within five hundred (500') feet of the site; and (ii) would not significantly increase the severity of existing law enforcement or public nuisance problems in the area (e.g. increase in service calls related public intoxication nuisance, vagrancy, or loitering).

#### Conclusion

The sale of alcohol is a permitted use subject to a CUP. Alcohol sales within Census Tract 40.03 have not been known to be a cause of nuisance for surrounding land uses. Consequently, it can be expected that approval of CUP 2024-03 will operate similarly to the restaurants in the Census Tract. No evidence suggests approval of the CUP would be detrimental to the public, health, safety, and welfare of those residing or working nearby. In order to ensure the continued compatibility of the site with surrounding uses, conditions of approval have been incorporated that address typical concerns associated with establishments that provide alcohol for on-site consumption

## APPLICABLE GENERAL PLAN POLICIES

The 2040 General Plan includes policy recommendations related to the various physical development aspects of the community. The policies are supported by a set of goals and objectives. The Planning Commission shall refer to the General Plan's policies, goals, and objectives when making a decision regarding this particular request.

Through the project and development review process and in collaboration with other City departments and outside agencies, the project has been designed to comply by in large with the City's General Plan goals, policies, and objectives. Approval of the Type 41 alcohol license will directly or indirectly provide compliance with the General Plan. Below is an excerpt from the General Plan that is germane to this conditional use permit request:

**ED-1.1 Increase Business:** The City shall strive to increase the number of businesses operating in Kerman to satisfy the routine needs and dining, services, and retail desires of residents while also increasing sales, property, business, and potential transient-occupancy taxes.

**ED-1.4 Downtown Shopping and Entertainment:** The City shall work with Downtown businesses, property owners and other agencies to improve circulation, parking, pedestrian facilities, and food service options to help promote increased shopping and entertainment opportunities.

## ENVIRONMENTAL REVIEW:

Staff recommends the Commission make findings and determine 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. No expansion of the building is proposed, and any maintenance or alteration of the building structure would be minor, and would not result in a significant, adverse impact on the environment. Furthermore, none of the exceptions set forth in CEQA Guidelines Section 15300.2 apply to this Project.

## PLANNING COMMISSION FINDINGS:

Due to operational characteristics, conditional use permits are required for certain uses within each zone district in order to minimize impacts upon surrounding uses. In considering a conditional use permit, the Planning Commission must make certain findings pursuant to Section 17.12.040 (C) of the KMC.

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 public health, safety, or welfare. It is located in a designated general commercial area with 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. The Planning Commission adopts the Police Chief's determination that the proposed use: (i) would not be detrimental to the public health, safety, comfort, or welfare of persons located within five hundred (500') feet of the site; and (ii) would not significantly increase the severity of existing law enforcement or public nuisance problems in the area (e.g. increase in service calls related public intoxication nuisance, vagrancy, or loitering).

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

Finding B (1). Alcoholic beverage sales for on-site consumption 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, and ED-1.4.

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.

Finding C (1). 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 a 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 use 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. Each tenant has different hours of operation and peak hours that will not conflict with the proposed restaurant's hours of operation. As seen with most businesses located in the downtown area patrons visiting the site utilize the off-street parking on S. Madera Ave. For this reason, most tenants' parking needs are lower

than their required parking needs as determined by the code. American Rhino will make the required modification to use the tenant space as a restaurant. Furthermore, no expansion of the existing building envelope of the site is required or proposed.

**Planning Commission Action:**

The Commission will be acting on CUP 2024-03 and determine to either:

**Motion 1:** Adopt a resolution approving Conditional Use Permit 2024-03 to allow for a Type 41 (On-sale Beer & Wine) alcohol license and a request for a parking reduction from the off-street parking requirements for the project located at 753 S. Madera Ave., including adopting a finding of a Categorical Exemption for the Project pursuant to Sections 15301 of the CEQA guidelines.

**Motion 2:** Move to continue the public hearing on CUP 2024-03 to a later meeting; or

**Motion 3:** Move to continue CUP 2024-03 to a later meeting, with direction to 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 no later than ten (10) working days after the day on which the decision was made.

**Attachments**

1. Resolution w/ Exhibits
2. Aerial Photo
3. Applicant's Parking Reduction Letter