



STAFF REPORT

MEETING DATE: August 14, 2023

PRESENTER: Manuel Campos, Assistant Planner

SUBJECT: Public hearing regarding Conditional Use Permit 2023-08 to allow for the continued operation of second-hand good sales within an existing home décor store, located at 720 S. Madera Ave., including adopting a finding of a Categorical Exemption pursuant to Section 15301 of the CEQA Guidelines. (MC)

RECOMMENDATION: Planning Commission conduct a public hearing, deliberate, and by motion adopt a resolution approving CUP 2023-08, to allow for the continued operation of second-hand goods sales within an existing home décor store located at 720 S. Madera Ave., including adopting a finding of a Categorical Exemption pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines.

EXECUTIVE SUMMARY:

Conditional Use Permit (CUP) 2023-08 was filed by Lucia Rodriguez (applicant) on behalf of Roxie Bold (property owner), to allow for the continued operation of second-hand goods sales within an existing home décor store (Lucy's Home Décor) located at 720 S. Madera Ave. Kerman, CA (APN: 023-181-09S). A Categorical Exemption pursuant to section 15301 of CEQA Guidelines will be considered for the project. The site is zoned CG (General Commercial) with a GC (General Commercial) General Plan land use designation. The sale of second-hand goods is permitted in the CG (General Commercial) zone district subject to the approval of CUP by the Planning Commission (Commission). Approval of this CUP would allow the applicant to sell second-hand goods, in addition to the home décor items.

APPLICABLE CODES AND PROCEDURES:

KMC 17.12 – Conditional Use Permits

KMC 17.48 – General Commercial District

KMC 17.78 – Development Standards

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 finding for the use permit shall be made available to the Commission, interested agencies, and the public.

If the Commission cannot make the appropriate findings, the use should be denied. 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

Prior Action

As indicated by City records the building’s construction occurred sometime before 1969. The building has historically operated as a retail business. In 2016 the applicant was issued a business license for a home décor store (Lucy’s Home Décor). It was recently discovered through a site visit that the business was conducting second-hand sales.

Project Proposal

The project proposal includes an application for a conditional use permit (CUP 2023-08) to allow for the continued operation of second-hand goods sales within an existing business (Lucy’s Home Décor) at 720. S Madera Ave. The applicant is proposing to operate five (5) days out of the week from 10 AM to 6 PM. The home décor store will be owner-operated. Donations of goods are not proposed at this time. The applicant’s leasable area includes approximately 750 sq. ft. of retail space. No interior or exterior structural alterations are proposed to the building at this time. Currently, the applicant is permitted to sell home-related products such as furniture, ornaments, bedding, and kitchenware. Approval of CUP 2023-08 would allow the applicant to continue selling used clothing, furniture, and other household items as part of the business. The home décor sales component of the business would not be impacted by the denial of the CUP.

Site and Surrounding Land Uses and Setting

The site was developed with one (1) shell building encompassing approximately 2,250 sq. ft. that is divided into three (3) individual suites. The site was developed without parking, however, the site can accommodate ample parking to the rear of the building. In the event that parking becomes an issue, the use may be scheduled for review and modification to determine parking requirements for the site.

The site is surrounded by developed land. As described in **Table 1.**, the site is surrounded by a financial institution (Bank of America) to the north, multi-family units to the east, a bakery (Callejas Cakes) to the south, and a public street (Madera Ave.) to the west. Uses in the surrounding vicinity will be negligibly affected by the introduction of second-hand goods sales within the project building.

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

Location	Existing Land Use	General Plan Designation	Zone District
North	Financial Institution	General Commercial	CG – General Commercial
East	Multi-Family Units	Office	R-2 – Two Family Residential
South	Bakery	General Commercial	CG – General Commercial
West	Public Street	N/A	N/A

Zoning & General Plan

The site is zoned CG (General Commercial) with a GC (General Commercial) General Plan land use designation. The CG zone district allows for a wide range of by-right retail uses. A home décor store is a permitted use, however, the sale of second-hand goods, is subject to conditional approval. Approval of the sale of second-hand goods will be consistent with the zone district and the General Plan land use designation.

Analysis of the Use

The sale of second-hand goods will not impact the site any greater than the currently permitted home décor component of the business. To that end, the proposed second-hand goods sales within an existing home décor business are similar in building occupancy and operating nature as other by-right uses generally permitted in the zone district. As an example, a business with second-hand good sales is a Mercantile (M) building occupancy classification, the same as i) art, antique, gift, novelty, and souvenir stores; and ii) apparel and shoe stores, shoe repair, and tailor and dress shops. Businesses with second-hand goods sales share similar operating characteristics to those of apparel and shoe stores, shoe repair, and tailor and dress shops. For that reason, businesses with second-hand goods sales could include the sale of used antiques, souvenirs, apparel, shoes, dresses, and other used household items.

As previously analyzed in CUP 2021-03 (Good Junk Thrift Store) and CUP 2023-01 (Trini's Thrift Store) businesses with second-hand goods sales within the CG zone district operate at a level that is consistent with zone district requirements and with the General Plan's goals, policies, and objectives.

Other Department Comments

The project proposal was reviewed by other City departments and affected outside agencies. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report. If approved, the project site will be subject to a final occupancy inspection by the North Central Fire Prevention District (NCFPD) and the City's Building Division.

Conclusion

Second-hand good sales do not necessitate or warrant any building alterations or site improvements at this time. Staff concludes that the continued operation of second-hand goods sales will not intensify the business's operation or foot traffic, and other by-right permitted uses under the same building occupancy type in the CG zone district.

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. The proposed use of a second-hand

store 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 performed a preliminary environmental assessment of this project under the California Environmental Quality Act (CEQA) and has determined that it falls within 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 second-hand goods sales as a home décor store at a location suited for such activities. 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.

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 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 consistent with the Kerman General Plan.

Finding B (1). Second-hand goods sales are 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). 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 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. The implementation of second-hand goods sales at an existing home décor store does not necessitate or warrant any major building alterations to adequately and safely operate. Additionally, the second-hand goods sales will not increase or surpass the operational intensity of a home décor store, and other similar by-right permitted uses under the same building occupancy type in the CG zone district.

Planning Commission Action:

The Commission will be acting on CUP 2023-08 and determine to either:

Motion 1: Adopt a resolution approving CUP 2023-08, to allow for the sale of second-hand goods at 720 S. Madera Ave., including adopting a finding of a Categorical Exemption pursuant to Section 15301 of the CEQA Guidelines.

Motion 2: Move to continue the public hearing on CUP 2023-08 to a later meeting; or

Motion 3: Move to continue applications for CUP 2023-08 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

- A. Resolution w/ Exhibits
- B. Aerial Photo
- C. Site Photos

Attachment 'A'
Resolution No. 2023-__

A RESOLUTION OF THE CITY OF KERMAN PLANNING COMMISSION APPROVING CONDITIONAL USE PERMIT 2023-08, TO ALLOW FOR THE OPERATION OF SECOND-HAND GOODS SALES WITHIN AN EXISTING HOME DÉCOR STORE LOCATED AT 720 SOUTH MADERA AVENUE, IN KERMAN, CA (APN: 023-181-09S).

WHEREAS, the Planning Commission considered a request for a conditional use permit filed by Lucia Rodriguez (applicant) on behalf of Roxie Bold (property owner) to allow for the continued operation of second-hand goods sales within an existing home decor store (Lucy's Home Décor) located at 720 S. Madera Ave., in Kerman, CA (APN: 023-181-09s); and

WHEREAS, a public notice 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, a written report was prepared by staff which included a recommendation for approval of Conditional Use Permit 2023-08 and was made available for public review at least 72 hours prior to the public hearing; and

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

WHEREAS, the Planning Commission, after hearing public testimony and deliberating, now desires to approve Conditional Use Permit 2023-08 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.

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 second-hand goods sales as a home décor store at a location suited for such activities. 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 2023-08 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 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). Second-hand goods sales are 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 (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. The implementation of second-hand goods sales at an existing home décor store does not necessitate or warrant any major building alterations to adequately and safely operate. Additionally, the second-hand goods sales will not increase or surpass the operational intensity of a home décor 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 2023-08, subject to the conditions of approval attached herein as **Exhibit "A"**.
5. Effective Date: This Resolution shall take effect immediately.

Signatures on the next page

I HEREBY CERTIFY that the foregoing Resolution was approved at a regular meeting of the Planning Commission of the City of Kerman on the 14th day of August 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
Lucy's Home Decor – CUP 2023-08
August 14, 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 the 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 2023-08 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, lessee, 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 2023-08, including but not limited to, the building exterior, parking/loading areas, fences/walls, new buildings, or landscaping shall require an amendment to CUP 2023-08.
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 2023-08.
7. Approval of CUP 2023-08 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, attorney’s 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 proposed or future tenant and site improvements as required by the California Building Code, California Fire Code, and Americans with Disability Act (ADA) prior to occupancy.

North Central Fire Protection District

9. Occupant shall maintain a clearance of 24-inches from the ceiling to the product on shelving, etc.
10. All aisles shall be maintained clear and unobstructed in accordance with the requirements of Chapter 10 of the CBC and CFC.
11. Floors shall be maintained from of tripping hazards.
12. Fire extinguishers shall be installed in approved locations, maintained free from obstructions, and serviced annually in accordance with Title 25 of the California Code of Regulations.
13. The building and/or suite shall be sufficiently identified (address and suite number) so that the responding apparatus can easily identify the building from the street.
14. The applicant shall be responsible for contacting NCFPD 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

15. On-site vandalism or graffiti shall be corrected per the KMC, Chapter 9.09 – Abatement of Graffiti Nuisances.
16. 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.
17. 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.
18. Business owner(s) shall be responsible for securing a business license from the Finance Department before the commencement of any commercial activity.

Conditional Use Permit 2023-08

19. Conditional Use Permit 2023-08 shall allow for the operation of second-hand goods sales within Lucy's Home Decor located at 720 S. Madera Ave.
20. The outdoor display and storage of merchandise shall not be allowed this includes the sidewalk between the building's frontage and Madera Ave.

Signage

21. All proposed and future permanent signage shall comply with KMC 17.76.050.
22. No signage shall be allowed on the public right of way in front of the business specifically a-frame, banner, and flag signs.
23. 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.
24. 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 for a promotional period.

End of Conditions

Attachment 'B'
Aerial Photo



Attachment 'C'
Site Photos

