



CITY of CLOVIS

AGENDA • CLOVIS CITY COUNCIL

Council Chamber, 1033 Fifth Street, Clovis, CA 93612 (559) 324-2060

www.cityofclovis.com

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SPECIAL MEETING

June 25, 2018

6:00 PM

Council Chamber

Meeting called to order by Mayor Pro Tem Bessinger
Flag salute led by Councilmember Mouanoutoua

ROLL CALL

1. PUBLIC HEARINGS

- A. Consider actions related to CUP2018-03, a request to approve a conditional use permit for a proposed 28 bed memory care and 80 unit assisted senior living facility on approximately 3.57 acres located at 587 & 637 W. Nees Avenues. O'Brien Development, LLC, owner/applicant; The Taylor Group Architects, representative. (Staff: Orlando Ramirez) (Continued from the June 18, 2018 Council Meeting)

1. Consider Approval - Res. 18-____, a Resolution of the City Council of the City of Clovis Denying Conditional Use Permit CUP2018-03, for an Assisted Senior Living Facility on Property Located at 587 And 637 W. Nees Avenue, and making findings with respect thereto.

2. CLOSED SESSION

- A. Government Code Section 54956.9
CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant Exposure to Litigation Pursuant to Paragraph (2) or (3) of
Subdivision (d) of Section 54956.9
One Case (March 14, 2018 U.S. Department of Justice Letter)

ADJOURNMENT



AGENDA ITEM NO: **1-A-1**

City Manager: 

CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: June 25, 2018

SUBJECT: Consider actions related to CUP2018-03, a request to approve a conditional use permit for a proposed 28 bed memory care and 80 unit assisted senior living facility on approximately 3.57 acres located at 587 & 637 W. Nees Avenues. O'Brien Development, LLC, owner/applicant; The Taylor Group Architects, representative. (Staff: Orlando Ramirez) (Continued from the June 18, 2018 Council Meeting)

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ATTACHMENT: Resolution

CONFLICT OF INTEREST

Councilmember Whalen lives in the neighborhood across the street from the Project (within 500 feet). Therefore, he is required to abstain from participating on this item.

RECOMMENDATION

Per Council direction from the June 18, 2018 meeting, staff recommends approval of the attached Resolution denying the CUP for the Project.

EXECUTIVE SUMMARY

On June 18, 2018, following a lengthy public hearing, the Council provided direction that it intended to deny approval of a Conditional Use Permit ("CUP") for the construction of a 28 bed memory care and 80 unit assisted senior living facility on approximately 3.57 acres located at 587 & 637 W. Nees Avenue ("Project"). The Council based its decision on the overwhelming evidence and testimony in the record of the negative impacts the Project would

have. The Council also questioned the applicant's basis or need for a reasonable accommodation of such a large Project on the site under the Federal Fair Housing Act ("FHA") and Title II of the Americans with Disabilities Act ("ADA"). The Council continued the item so that staff and the City Attorney's office could prepare the necessary resolution and findings for the Council's decision.

BACKGROUND

The Council is directed to the staff report from June 18, 2018, for a full background of the proposed Project.

PROPOSAL AND ANALYSIS

After a lengthy public hearing on June 18, 2018, the Council closed the public hearing on the proposed CUP. After deliberating, the Council expressed significant concerns with the Project and their intent to deny the CUP. On the direction of the City Attorney, the Council continued the item so that staff and the City Attorney's office could prepare the necessary resolution and findings for the Council's decision. That resolution is attached.

Since this is the first time the public has seen the resolution, pursuant to due process principles and the Brown Act, the Council should allow limited public comment on the Resolution. However, since the Council closed the public hearing, no new evidence will be accepted and comments should be limited to the resolution and findings.

FISCAL IMPACT

None.

REASONS FOR RECOMMENDATION

Approval of the resolution will memorialize the Council's decision.

ACTIONS FOLLOWING APPROVAL

None.

Prepared by: Orlando Ramirez, Senior Planner

Submitted by: Dwight Kroll, AICP
Director of Planning and
Development Services



RESOLUTION 18-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS DENYING CONDITIONAL USE PERMIT CUP2018-03 FOR A 28 BED MEMORY CARE COMPONENT AND 80 UNIT SENIOR ASSISTED LIVING FACILITY ON THE PROPERTY LOCATED AT 587 AND 637 W. NEES AVENUE, AND MAKING FINDINGS WITH RESPECT THERETO

WHEREAS, in 2014, O'Brien Development, LLC ("Applicant"), P.O. Box 9155, Rancho Santa Fe, CA 92067, applied for conditional use permit ("CUP") for a 28 bed memory care component and 80 unit senior assisted living facility on the Northeast corner of Nees and Timmy Avenues, in the City of Clovis, County of Fresno ("Project"); and

WHEREAS, on December 18, 2014, the Planning Commission considered and approved the Project; and

WHEREAS, on April 6, 2015, the City Council denied the Project, finding that the intensity of the development impaired the integrity and character of the subject zoning district, and further finding that significant noise, traffic, or other conditions were objectionable or detrimental to other allowed uses operating nearby the Site, and adverse to the public interest, health, safety, convenience, or welfare of the City; and

WHEREAS, on August 15, 2015, the Fresno County Superior Court issued an order finding that there was substantial evidence in the administrative record supporting the City Council's decision to deny the Project; and

WHEREAS, on April 18, 2018, the Applicant submitted a new application for the Project, which was accompanied by a request for a "reasonable accommodation" under the Federal Fair Housing Act ("FHA") and Title II of the Americans with Disabilities Act ("ADA"); and

WHEREAS, a "reasonable accommodation" under the FHA and ADA, in the land use context, means that the requested accommodation is reasonable and necessary for persons with disabilities to have an equal opportunity to housing, and that the accommodation does not impose an undue financial, administrative, or enforcement burden on the City, or require a fundamental alteration in the nature of the City's land use program and zoning; and

WHEREAS, the City Attorney held multiple conversations with the Applicant, as well as United States Department of Justice ("DOJ") attorneys, regarding what "reasonable accommodation" meant in the context of this Project; and

WHEREAS, once the City received the reasonable accommodation request, it was the City Attorney's job to interpret applicable Federal and State law, and the City's Municipal Code, and make them all work together. In that regard, the City Attorney's office developed the reasonable accommodation procedures set forth in Attachment 5 to the Council staff report; and

WHEREAS, the size and scope of the new Project submitted by the Applicant, in terms of the number of units, the sizes of the buildings on the Site, and the relevant traffic configurations, did not materially change from the previous Project; and

WHEREAS, on May 31, 2018, the Planning Commission held a duly-noticed Public Hearing on the Project, and after hearing comments in support from the Applicant and comments from area residents opposed to the Project, the Planning Commission approved the Project; and

WHEREAS, pursuant to the City's Municipal Code, staff scheduled the CUP to be heard by the City Council. In that regard, the City published notice of the hearing before the City Council in the Fresno Business Journal, mailed notice to area residents of the property boundaries, and otherwise posted notice of the public hearing according to applicable law; and

WHEREAS, the City Council held the Public Hearing on June 18, 2018, at which time the Council considered testimony and information received at the public hearing and the oral and written reports from City staff, as well as other documents contained in the record of proceedings relating to the Project ("Administrative Record"), which are maintained at the offices of the City of Clovis Department of Planning and Development Services; and

WHEREAS, following a lengthy public hearing, the City Council deliberated and expressed significant concerns with the Project, and after closing the public hearing provided direction that it intended to deny approval of the CUP; and

WHEREAS, the City Council based its decision on the overwhelming evidence and testimony in the record of the negative impacts the Project would have on the community, and further based its decision on the lack of evidence supporting the Applicant's basis or need for a reasonable accommodation of such a large Project on the site under the FHA or ADA; and

WHEREAS, on the direction of the City Attorney, the City Council continued the item to June 25, 2018 so that staff and the City Attorney's office could prepare the necessary resolution and findings for the Council's decision.

NOW, THEREFORE, the City Council of the City of Clovis finds and resolves as follows:

1. With respect to the reasonable accommodation request, the Council finds that the Project as currently proposed will result in a fundamental alteration in the nature of the City's land use program and zoning:
 - a. Although the subject zoning district is residential and the Project would be residential in nature and serve persons with disabilities, the integrity and character of the R-1 zoning district would be impaired because the Project is 700% more dense than the surrounding neighborhood.
 - b. The immediate area surrounding the Project is comprised of single-story single-family residences. The businesses on West Nees Avenue are also single-story. The main building of the Project is a two story 75,353 square foot building.
 - c. Additional findings relating to the reasonable accommodation request are set forth below.
2. With respect to the CUP, the Council finds: there is compelling evidence in the Administrative Record that the Project will create significant noise, traffic or other conditions that would be considered a nuisance to neighboring properties; there is compelling evidence in the Administrative Record that the Site is not physically suitable in size and shape for the type and density/intensity of use being proposed; and that therefore the CUP must be denied:
 - a. The Project fails to ensure safe paths for pedestrian and bicycle travel, as increased traffic related to the Project will affect those pedestrians and bicyclists traversing along West Nees Avenue.

- b. The Project does not discourage non-local traffic from traversing the surrounding neighborhoods on local streets. Visitors, and even staff, may need to park in the adjacent neighborhood.
- c. The Project's size, shape, and density is contrary to the goal of an orderly transition of land uses in the area along West Nees Avenue between the Fresno-Clovis Rail Trail and Peach Avenue, in that it would insert another land use differing from the zoning designation in the area.
- d. The exclusive driveway for the Valley Crescent Charter School is only approximately twenty feet away from the main driveway for the Project, which would be utilized by staff, visitors, and service vehicles. This situation would create backed up traffic and increased danger to pedestrians and bicyclists, especially during peak hours when the sidewalk is utilized by schoolchildren traversing to and from both Valley Crescent Charter School and the nearby Buchanan Education Center. The City Engineer expressed that several hundred feet is the desired separation of driveways along arterial streets, such as Nees Avenue.
- e. Due to the limited amount of parking on site, staff and visitors to the Project's facilities might need to park in the adjacent neighborhood. The parking count did not take into account shift changes and there is strong evidence in the record that the Applicant undercounted the number of employees who would be working at the facility. This would cause significant traffic impacts to the neighborhood's narrow streets.
- f. Increased traffic related to the Project would make it more dangerous for vehicles taking a left turn (east) from Timmy Avenue to West Nees Avenue. Such danger would compel persons to turn right (west) and take U-turn at Chapel Hill Avenue intersection, which creates even more traffic conflicts and congestion.
- g. Vehicles, including service vehicles, approaching the Project site driving eastbound on West Nees Avenue would not have a direct left turn lane into the site, and thus would have to make a U-turn at either Sylmar Avenue or Peach Avenue, creating more traffic conflicts and congestion.
- h. The Project would necessitate the use of narrow residential streets for emergency and utility vehicles, which would cause traffic and noise impacts to the adjacent residential neighborhood. Also, depending on the situation on West Nees Avenue, emergency vehicles approaching the Project site from Teague Avenue might need to utilize Timmy Avenue to reach the site.
- i. The Project would be in operation for 24-hours a day and seven days a week, and as such, there would be associated noise at all hours related to staff shift changes, deliveries, emergency vehicles, and utility trucks. Such noise impacts would unduly interfere with the adjacent residences.

- j. The Project's 24-hour a day operation would necessitate lighting that would be different than the lighting normally generated within the zoning district, and would interfere with the adjacent residences.
 - k. The density of Project is far more intense than any other in the surrounding area, including the adjacent charter school and nearby commercial areas. The Project would house 80 seniors and 28 memory-care patients, and there would be staff, visitors, and service providers 24-hours a day. The increase in density for the Project would exceed 700%.
 - l. The main building of the Project is a large 2-story building that is completely different in size and shape than the single-story single-family residences adjacent to the Project.
3. With respect to the Applicant's request for a "reasonable accommodation", since the Applicant made no specific request of how the Project should be accommodated except to state that the accommodation equated with approval regardless of the size or effect of the Project, additional discussion and findings are warranted, and the City Council of the City of Clovis further finds as follows:
- a. The requested accommodation is not reasonable, and is not necessary for persons with disabilities to have an equal opportunity to housing.
 - b. At the hearing, the Applicant reaffirmed that the accommodation he was requesting was approval of the Project as submitted. As set forth above in the CUP findings, the Project does not meet the requirements under the Clovis Municipal Code for a CUP in the applicable zoning district. Thus, the City Council understands the accommodation request to be the approval of the Project in contravention of the City's land use program, including the zoning code.
 - c. Municipalities are not required to make accommodations related to developer profits, and unrelated to the needs of disabled persons. The Applicant submitted the same sized Project as he did in 2014-2015; however, the Applicant did not submit sufficient evidence showing that the size of the Project was related to its economic viability. Thus, the Applicant has failed to demonstrate that in order to provide housing in the area for seniors who require assisted living, it is necessary to approve a project of the intensity of the Project submitted by the Applicant.
 - d. Based on the City's past approvals of facilities for seniors, including those for congregate care, extended care, and assisted living, and evidence in the record related to occupancy rates for such facilities, the need for market-rate senior assisted living housing in the City is not such that the City Council would be compelled to approve a project of the intensity of this Project, in contravention of the City's land use program.
 - e. Approving the Project would be a fundamental and unreasonable change in the applicable zoning, and overall land use program because the Project would be 700% more dense than the zoning density of the surrounding neighborhood.

- f. Approving the Project would result in a disorderly transition of land uses in the area.
- g. Approving the Project would result in undesirable and unwarranted traffic (including pedestrian safety), noise, and lighting impacts.
- h. The Applicant never proposed a reduced scope Project that would not fundamentally alter the City's land use program and zoning.

NOW, THEREFORE, based upon the foregoing findings, the City Council of the City of Clovis further finds and resolves as follows:

- 1. Applicant's accommodation request is unreasonable and unnecessary.
- 2. The CUP is denied.
- 3. CEQA does not apply to projects which are rejected or disapproved. (CEQA Guidelines § 15270.) Therefore, the Council makes no findings with respect to whether the Project is exempt from CEQA review.

* * * * *

The foregoing resolution was introduced and adopted at a meeting of the City Council of the City of Clovis held on June 25, 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: June 25, 2018

Mayor Pro Tem

City Clerk