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**Planning Department**

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**STAFF REPORT**

**Item # 5**

**To:** Lemoore Planning Commission  
**From:** Holly Smyth, Planning Director and Gloria Hobbs, Assistant Planner  
**Review Date:** November 26, 2012  
**Subject:** Conditional Use Permit #2012-03 Application by Gurpreet Singh Manger and Hardeep Kaur to Locate a "Smoke Shop" at 1150 W. Bush Street

**A. General Information:**

1. Applicant: Gurpreet Singh Manger and Hardeep Kaur  
990 Fox Street, Apt. #114  
Lemoore, California 93245  
(559) 933-4738  
(559) 836-3386  
Email: gurpreetmanger@yahoo.com
2. Property Owner: Tim and Louise Lee  
295 Lombardy Lane  
Lemoore, Ca. 93245
3. Site Location: 1150 West Bush Street
5. Property Description: Portion of Assessor Parcel #020-221-031
6. Site Area: Approximately 28' x 34' (952 sq. ft.)
7. Existing General Plan Designation: Neighborhood Commercial
8. Existing Zone District: NC (Neighborhood Commercial)
9. Existing Use: Vacant Building
10. Proposed Use: Smoke Shop

"In God We Trust"

**PLANNING COMMISSIONERS**

*Chairperson* – Ronald E. Meade, *Vice-Chair* Jeffrey Garcia  
David Brown, Bob Clement, Calvin Monreal, Jim Marvin, Bill Wynne

**B. Project Location & Description:**

Gurpreet Singh Manger and Hardeep Kaur have submitted a Conditional Use Permit application to open a new “Smoke Shop” at 1150 West Bush Street. The building is a complex with Boston House of Pizza and a chiropractor business. The building is on the northeast corner of 19<sup>th</sup> Avenue and Bush Street and is approximately 28’ x 34’ (952 sq. ft) in size. It is on the north side of West Bush Street and described as Assessor Parcel #020-221-031. To the north are apartment complexes, to the south is the Lincoln Market Center/Best Buy, east are apartments and to the west are single family homes. Parking for the tenant space is in the front of the complex and includes 10 parking spaces due south of the building shared for all the businesses with one being ADA compliant and and additional 10 spaces to the west of the building. Access into the store is from Bush Street with a back door located to the north of the building. A trash enclosure for the tenant space is located on the west side of the building as shown in the attached site plan for all tenants on the site.

Per the submitted application, the applicant proposes to “sell cigarettes, cigars, tobacco paraphernalia and convenience store items like party stuff”.

**C. General Plan and Zoning:**

The site is designated Neighborhood Commercial in the 2030 General Plan and is zoned NC (Neighborhood Commercial) which allows “Smoke Shops” with an approved Conditional Use Permit.

Neighborhood Commercial zone district are “designated for small scale commercial uses that primarily provide convenience, personal services, and social services such as small scale retail, eating and drinking establishments, commercial recreation, and professional office as a secondary use. It is designed to foster a pedestrian setting along public streets.”

**D. Conditional Use Criteria:**

Conditional Use Permits, as defined in Section of the 9-2B-14E of the zoning regulations, are for the individual review of uses, typically having unique or unusual site development features or operating characteristics. A use permit is intended to ensure compatibility with surrounding areas and uses where such uses are deemed essential or desirable to the various elements or objectives of the General Plan. The approving authority, which in this case in the Planning Commission, may only grant a conditional use permit only when it is determined that the proposed use or activity complies with all four of the following findings:

**Criteria 1: The proposed use is consistent with the general plan, any applicable specific plans, and all applicable provisions of this title (referring to the Zoning Ordinance) so long as the City standards not being met are followed as outlined below:**

**Site, Development & Operational Zoning Provisions in Neighborhood Commercial**

<b>City Issues</b>	<b>City Standard</b>	<b>Project Characteristic</b>	<b>Standard Met?</b>
Noise (Section 9-5A-4B)	65 dB CNEL exterior noise as it is adjacent from residential uses	- The building has previously contained an insurance business and the proposed retail use should not create any additional noise.	-Need to meet standard continually
Odor/particulate Matter/Air Contaminants (Section 9-5A-4C)	-No obnoxious odor or fumes shall be emitted that are perceptible without instruments by a reasonable person at the property line of the site.	-Do not believe that the use will involve any discharges into the air	-By code, smoking is not allowed within 25’ of an entry or exist door of a public establishment, therefore smoking will not be allowed anywhere on site and therefore should not cause an odor problem to the adjacent residential uses.
Parking (9-5E-4-A1) (9-5E-4F-3)	-4 stalls/ 1,000 sq.ft.Smoke shop -10 stalls/ 2,000 sq ft. Restaurant -4 stalls/ 1,000 sq. ft. Medical “Existing parking shall not be reduced below the minimum requirements of this section	Currently there 20 parking spaces, including one ADA stall to accommodate parking for all three businesses.	Yes, however the parking stalls need to be restripped as the stalls are almost no longer visible

<b>City Issues</b>	<b>City Standard</b>	<b>Project Characteristic</b>	<b>Standard Met?</b>
Bicycle Parking (Section 9-5E-7)	-10% of total vehicle parking provided, but no less than 2 bike stalls for all “developments”	-No new development involved	-Not applicable
Signs (Section 9-5F)	See entire chapter for sign regulations	-One 24 square foot wall sign is proposed to be placed using an existing legal non-conforming sign structure	-Approved as proposed within the existing legal non-conforming sign structure as a one year non-use has not occurred. Must continue to meet sign regulations.
Trash Collection	-Must be fully screened from view	- Existing single trash enclosure is located on the west side of the building for the entire complex. One blue trash bin is located adjacent to the enclosure area and takes up one parking space.	Comments from Public Works are that -All recycling boxes must be broken down -Share refuse and recycling area with other tenants
Building and Fire Code Items related to occupancy type	-ADA compliant restrooms -Maximum Occupancy to be set by the Fire Marshall based on interior site characteristics, ingress/egress, and the like	-No changes to restrooms were proposed -A back door is shown on the site plan at the northwest side of the building.	-Potential ADA bathroom or occupancy related improvements may be needed per building codes as determined by Building Dept. -Should later food conveniences be provided onsite, they will need to conform to requirements of the Kings County Environmental Health Dept.

**Criteria 2: The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood of such use or the general welfare of the City:**

According to the Zoning Code, a “Smoke Shop” is defined as an establishment that either devotes more than fifteen percent (15%) of its total floor area to smoking, drug, and/or tobacco paraphernalia, or devotes more than a ten foot (10’) by five foot (5’) (two feet 2’) in depth maximum) section of shelf space for display for sale of smoking, drug, and/or tobacco paraphernalia. The Smoke Shop is proposed to be located in an existing 952 square foot building and will use more then 15% of this square footage for is displays. There is no indication of the hours the smoke shop will be open. The described project on the CUP application states “cigarettes, cigars, tobacco paraphenalia (convenience store items like party stuff).” There is no indication if paraphenalia will include hookah type pipes or other items but are allowed under the Smoke Shop use definition.

The Kings County Environmental Health Department commented that a tobacco store operator “Must comply with the following California code and regulatory sections which prohibit tobacco and related sales to minors, and specify required in-store signage: Health & Safety Code 119405; Penal Code 308(a) and (c); Business & Professions Code 22952 and 22957 (“Stake Act”), and ; 17 CCR 6902(a)”. Therefore, the use will need to meet these code requirements and work with the Kings County Environmental Health Department to ensure conformity with the law and protect minors.

There is no indication that any sexually oriented products will be sold on the premises, however other smoke shops do sell sexually oriented products. If the business later sells goods and products of a sexually oriented nature, the code requires that those products not be displayed in the front of the store where visible to passersby nor are they to be immediately visible upon entering the store. No more than 15% of the gross floor area can contain sexually oriented products as it would be classified as a sexually oriented business which is not allowed in this zone district. Given the close proximity to the Safe Routes to school path, no types of immoral materials or products should be displayed in the windows.

The parking, noise and traffic factor should not be an issue at this location, as the entire retail complex abuts an arterial roadway which produces far more noise impacts than the onsite parking stalls would. However, the use will still be subject to the overall noise standards discussed above.

The Building Department will have to determine if any improvements are needed to the bathrooms, doors, or the building so that it meets the building code requirements to be a safe building.

**Criteria 3: The proposed use is physically suitable for the type, density, and intensity of the use and related structures being proposed**

According to the applicant no changes to the structure are being proposed either on the exterior or interior of the building. If changes are to be made to the building, the applicant will need to contact the building department for any needed building permits that may be required.

**Criteria 4: The use will not be contrary to the specific intent clauses, development regulations, or performance standards established for the zoning district in which it is located and the proposed use and related structures are compatible with other land uses, transportation, and service facilities in the vicinity:**

The building may require fire, occupancy and ADA handicapped codes be met or additional improvements be made to the building. In order to ensure the new use is not detrimental to the health and safety, all building related codes will need to be met as determined separately by the Building Department and Fire Marshall.

Per section 9-5A-4 of the Lemoore Municipal regarding noise standards, "no use, activity, or process shall exceed the maximum allowable noise levels established", which in this area cannot exceed 65 db CNEL at the property line due to the adjacent residential uses (which is equivalent to a vacuum cleaner 10' away from the unit). "No person shall allow or cause the generation of any noise of a type, volume, pitch, tone, repetition, or duration that would be found to be a nuisance by a reasonable person beyond the boundaries of the property where the noise is generated." Given the proposed use, meeting these noise standards should not be a problem but will still apply to the project use.

The applicant is requesting to utilize the 24" x 144" legal non-conforming box sign structure for their permanent signage. Section 9-5F-2G states that "Abandoned Signs" shall be those signs left after the close of a business and which have not been updated upon occupancy of a new business at the same location. The standards include a sign that is maintained with blank copy shall only be allowed to remain for nine (9) months (for a total of twelve (12) months from business closure). At the conclusion of this time period, if a new business that utilizes the nonconforming sign structure has not been established, the sign shall be removed. Since the last business using the sign only closed in September 2012, there has not been a year gap, and therefore the sign structure can continue being used as it is still legal non-conforming. However, should the sign's use lapse for more than a year, the sign structure would need to be removed to conform to the sign standards for legal conforming signs.

Based on the primary building frontage calculation of 2 square feet of cumulative signage for every 1 lineal foot of building frontage (which there is 28.8'), a total of 57.6 square feet of cumulative signage is available for the business. With the building height at 13' in height, generally 10% of the height of the building can be allowed for signage or 1.3' in height which the existing sign structure does not conform with the Code. However, because the sign structure is a legal non-conforming use, the existing sign structure may continue to be used. After utilizing this signage, 33.6 square feet of signage area remains available for use onsite. Should window signage be used, only 25% of the glass area can be covered and all other temporary and permanent signage needs to be in conformity with the sign ordinance, with no special approvals needed for temporary signage.

**E. Public Input:**

The Conditional Use Permit application requires that a notice be sent to property owners with 300' radius of the proposed project and that a notice be published in the newspaper and that a public hearing be held. Notice was published in the newspaper and letters sent to adjacent property owners more than 10 days in advance of the scheduled public hearing. No public comments have been received to date.

**F. Comments from Other Agencies/Departments:**

Referrals were made to Public Works Department, Fire Department, Police Department, and Kings County Environmental Health Department. Comments received from Pulbic Works, Fire, and Health Departments have been incorporated in this report.

**G. Recommendation:**

After listening to the staff report and opening the public hearing to take public testimony, the Planning Commission should pass the attached Resolution #2012-16 (with or without modification as deemed appropriate) which makes the appropriate findings and approves Conditional Use Permit #2012-03 with the conditions stated therein. The approval will expire two years from the date of approval if the project is not complete by that time.