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STAFF REPORT **Item # 7**

To: Lemoore Planning Commission
From: Holly Smyth, Planning Director and Gloria Hobbs, Assistant Planner
Review Date: January 14, 2013
Subject: Conditional Use Permit #2012-04/ Public Convenience or Necessity #2012-01/ Minor Site Plan and Architectural Review #2012-12 Applications by George Meyer of Farmer's Fury Winery to Locate a "Wine Tasting Room" at 358 West "D" Street

A. General Information:

1.	Applicant:	George Meyer Farmer's Fury Winery 21274 20 ½ Avenue Stratford, Ca. 93266
2.	Property Owner:	Kenneth Johnson 358 West "D" Street Lemoore, Ca 93245 (559)
3.	Site Location:	358 West "D" Street Northeast corner of West "D" and Fox Streets
5.	Property Description:	Assessor Parcel #020-054-019
6.	Site Area:	Parcel is 50' x 150' (7,500 square feet), entire building is approximately 994 square feet
7.	Existing General Plan Designation:	Mixed Use
8.	Existing Zone District:	DMX-1
9.	Existing Use:	Attorney office for past few months & vacant building space (Prior to law office, building was used for storage for more than five years)
10.	Proposed Use:	Wine Tasting Room

B. Project Location & Description:

George Meyer of Farmer's Fury Winery has submitted Conditional Use Permit, Public Convenience or Necessity and Minor Site Plan and Architectural Review applications to open a Wine Tasting Room and have an outdoor gated seating area in the front of the building to help market their wines at 358 West "D" Street. Additionally, other merchandise sold will be shirts, hats, wine racks, wine bottle holders, and other items along with cheeses and olive oil and small appetizer type food. The building is on the northeast corner of Fox and West "D" Streets described as Assessor Parcel #020-054-019. The entire building is approximately 994 square feet in size on a 7,500 square foot parcel with a portion of the building currently housing an attorney office. Surrounding uses include the Valero Gas Station to the north, offices and a restaurant to the south and southwest are, to the east is the Zenny's Restaurant and to the west is the Lemoore Flower Shop. Onsite parking for the tenant space is in back of the building and includes seven (7) parking spaces. Additional on-street parking is also available along "D" and Fox Streets adjacent to the building. ADA compliant parking is not shown on site parking lot or on the street and may need to be addressed as determined by the Building Department. Public access into the building will be from the main entrance which faces both "D" and Fox Streets and a rear entrance onto the parking lot on the northside of the building. A parking space is being used for staging on the onsite refuse container.

Per the submitted application and email, the applicant intends to sell only their wine which could be purchased by the glass or the bottle to be consumed on the premise but most wine purchases will be bought and consumed off premise. Other merchandise sold will be shirts, hats, wine racks, wine bottle holders, and other items along with cheeses and olive oil and small appetizer type food. The applicant is also requesting to have a gated seating area in the front of the building for his clientele. A draft layout has been outlined by the applicant, but may potentially be modified by ABC in Fresno with the issuance of the alcohol sales permit

C. General Plan and Zoning:

The site is designated Mixed Use in the 2030 General Plan and is zoned DMX-1. According to the Zoning Ordinance, the DMX-1 zone district "comprises the historic center of the downtown. The district is designated for retail, commercial, professional office, second-story residential, public, and institutional uses. Retail and restaurant uses are generally the primary use at the site. Where there is residential development, densities range between twelve (12) and twenty (20) units per gross acre." Additionally, zoning states that the DMX-1 zone building designs "emulate the historic styles of the older buildings but in less elaborate ways. The buildings are oriented toward the pedestrian, with buildings constructed directly abutting and facing the public sidewalk. Vehicle parking is generally found on-street, at city operated facilities, or at the rear of lots (when provided on-site)."

Per the Zoning Code Section 9-4D-2 Alcoholic Beverage Sales, "any business selling alcoholic beverage when not associated with eating places (e.g., restaurants) are only allowed after the issuance of a conditional use permit for both on-site and off-site consumption in compliance with permit requirements."

D. Public Convenience or Necessity and Special Use Standards:

The applicant is applying to ABC for a Type "02 – Winegrower" alcohol sales permit within Census Tract 4.04. Under Section 9-2B-17 of the Lemoore Municipal Code, the City outlines the procedure to consider requests for "public convenience or necessity" determinations for certain alcoholic beverage sales licenses. A City Determination that public convenience or necessity would be served must be made if ABC has determined that "undue concentrations" of "On-Sale" or "Off-Sale" type licenses have been issued within the Census Tract for the proposed "On-Sale" or "Off-Sale" use type.

George Meyer has submitted an application to determine "public convenience or necessity" for the proposed wine tasting at the northeast corner of Fox and "D" Street for Farmer's Fury in Census Tract 4.04 for a Type 02-Winegrowers permit (referred to as a duplicate permit by ABC as he currently has his primary permit in Paso Robles). The primary purpose of the 994 square foot building will be the wine tasting with a portion of the building currently being used for attorney space. According to the

application, the wine tasting room is anticipated to be open 4:00 to 9:00 p.m. daily, serving the Farmer's Fury Wines. Staff verbally asked if there might be special occasions or events where the business would like to be open later, similar to Lush in Hanford, and the applicant stated they would like the ability to occasionally be open till midnight for special events/occasions.

According to ABC's website statistics, the following chart summarizes the number of "on-sale" and "off-sale" licenses currently issued verses the identified limit of licenses that would be allowed to not constitute an "undue concentration" as it relates to the population size within the Census Tract. A type 02 Winegrowers permit is classified as an "on-sale" classification. As shown in the table below, as of the 2010 Census, ABC identifies that the total number of "on-sale" licenses should not exceed 6 within the tract, but there are currently 12 issued which would meet the definition of an undue concentration. Therefore, ABC will only issue additional "On-Sale" licenses within Census Tract 4.04 if 1) the City determines that the public convenience or necessity will be served by the issuance or 2) a license is bought out from another location or 3) license has been gained through the ABC lottery.

Census Breakdown of Alcohol Permits

Area	Number of "On-Sale" Licenses Allowed	# of "On-Sale" Licenses Issued	Number of "off-Sale" Licenses Allowed	# of "Off-Sale" Licenses Issued
Census Tract 2	1	1	1	1
Census Tract 4.02	2	3	4	2
Census Tract 4.03	3	3	4	4
Census Tract 4.04 (project site)	6	12	8	11
Census Tract 4.05	4	5	5	4
Total	**16**	**24**	**22**	**22**

The attached information sheets and Census Tract printouts from ABC show the basis of the above summary chart and includes a listing of all alcohol permits issued in the City Limits of Lemoore. A copy of the license definitions from ABC to explain the codes used in their reports is also included for reference.

According to the Special Use Standards in Lemoore Municipal Code Section 9-4D-2 Alcoholic Beverage Sales, any sale of alcoholic beverage for on-site sonsumption when not associated with eating places (e.g., restaurants) and for off-site consumption "shall only be allowed after issuance of a conditional use permit". Additionally, this Section outlines the following applicable three (3) Development Standards for non-restaurant businesses selling alcoholic beverages:

1) *No establishment shall be within 1,000' of a church, school, or park.* As can be seen in the below in the Proximity Uses Table, there are 4 churches, no schools and 3 parks within 1,000 of the project.
2) *There shall be no more than 1 establishment within any single shopping center.* The Municipal Code does not define a "shopping center", but "A Planners Dictionary" defines as a group of retail and other commercial establishments that is planned, owned and managed as a single property with on-site parking provided. Based on this definition, the project site is not part of a shopping center and therefore this standard is not applicable.
3) *No more than 2 establishments shall be located within 1,000 of a major roadway intersection.* The Municipal Code nor "A Planner Dictionary" did not define a "major roadway intersection". It could be construed that a major roadway intersection would likely be at the crossroads of two Arterial streets. The General Plan defines Fox Street as a Collector Street and "D" Street as an Arterial Street. The nearest "major roadway intersection" from the project site is "D" Street and Lemoore Avenue which is just over 1,000' away as shown on the ABC GIS map with radius circles and therefore this standard is not applicable.

Proximity Uses Table

Area	Existing "On-Sale" Licenses	Existing "Off-Sale" Licenses	Schools	Churches	Youth Activity Areas (Parks)	Other "establishments" within any single shopping center	More than 2 "establishments" located within 1,000 of major roadway
Within 500'	4	2	0	0	2	N/A	N/A
Within 1,000'	5	3	0	4	3	N/A	N/A
Within 1,500'	5	4	1	5	3	N/A	N/A

Establishments subject to Section 9-4D-2 Alcoholic Beverage Sales Development Standards "may be allowed to deviate" from these above Development standards if the approving authority (which is the Planning Commission) makes all of the following findings:

1) The location of the use will not result in adverse impacts on park facilities, school facilities, existing religious land uses, and/or existing residential land uses.
2) The traffic increases associated with the use will not result in potential hazards to existing pedestrian and/or vehicular traffic.
3) The development conforms to all applicable provisions of the zoning code.

Discussion on Deviation Criteria 1: Lemoore does not currently have any wine tasting rooms to compare potential impacts on the adjacent uses. In talking with the City of Hanford Community Development Department, they have a similar more intensive business next to the Fox Theater called Lush that contains indoor and outdoor seating, provides wine as well as beer tasting with light snacks. The business is open from 2-8pm Tuesday-Thursday, Friday 2-11:30 pm and Saturday 5-11:30 pm. According to Hanford staff, they have not had any complaints to the code enforcement officer about the business and it has brought in a new clientele.

In looking at the proximity of other uses in relation to the project site, by opening after 4pm, most of the regular after school foot traffic would have dissipated and therefore should not have any impact on the local schools. The proposed business hours do not generally coincide with any church services and the 4 churches that are within 1,000 of the business, are all at least 500' away and therefore should not create any impact to the churches. Both Rotary Skate Park and Plaza Park are located within 500' of the site. The ABC 02 type alcohol permit would allow minors on the premises without accompanying parent, however, the law still does not allow those under the age of 21 to drink alcohol, and therefore should not negatively affect nearby parks. In relation to the site, the closest residentially zoned properties are located over 370' to the west, more than 700' away to the north, over 580' to the south, and over 1,000' to the east. Based on the great distance to residential land uses, the project should not have any impact on residential properties. Notice was sent to property owners within a 300' radius from the project site and no comments have been received to date, therefore it is assumed that the adjacent property owners do not have any issues with the proposed wine tasting room. Lastly, the Lemoore Chief of Police has verbally stated that he is not opposed to the proposed project.

Based on the above information (given the proposed operating hours and special event/occasion hours), the proposed use should not cause adverse impacts on park facilities, school facilities, existing religious land uses, and/or existing residential land uses.

Discussion on Deviation Criteria 2: In regards to traffic, given the general 4-9pm daily operating hours, with occasional operations until midnight for special events/occasions, and the hours of operation of existing uses, there should not be a negative impact on the amount of traffic as many adjacent businesses are closed when the proposed use would be opened.

Discussion on Deviation Criteria 3: The below table summarizes the applicable zoning provisions, the City standard, what is in place or requested of the project, and what is needed to met the standards. The proposed development will conform to all applicable provisions of the zoning code, so long as the project meets the City standards discussed below and reiterated in the conditions of the draft Resolution.

Applicable Site Development & Operational Zoning Provisions in DMX-1 (Downtown)

City Issues	*City Standard*	*Project Characteristic*	*Standard Met?*
Noise (Section 9-5A-4B)	70 dB CNEL exterior noise for Commercial Use per Table 9-5A-4-B1 in the Zoning Code. 70 decibel noise level would equate to a freight car at 100' or a pneumatic drill at 50' away.	-Their will be some outdoor activity, but it is highly doubtful that it would exceed this standard.	-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.	-Does not seam to currently involve any discharges into the air.	-Need to meet standard continually
Parking (Section 9-6-3C)	-0 stalls required for change in use only (no new construction).	-7 stalls available on site plus in street parking available on Fox and "D" Streets.	-Yes
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
Encroachment (Section 9-6-3D)	8' over right-of-way allowed, so long as 8' minimum vertical clear area above sidewalk. -Maintenance standards	-None of the current facilities or proposed fencing will be located in the right-of-way.	-Not applicable -Public Works commented that raised or damaged curb, gutter, or sidewalk around property be replaced as it is affecting storm water flow in the street.
Signs (Section See 9-6-3E & Section 9-5F)	Long section predominately in Section 9-6-3E Signs in Downtown	-No new signage has proposed at this time -3 existing non-conforming signs are located onsite, with code enforcement letters sent to property owner for over 1 year.	-Three (3) non-conforming freestanding signs need to be removed to conform to Sections 9-6-3E-5c as discussed below under Criteria #4 of the Conditional Use Permit discussion. -Permanent signage will need approval in conformity with the Zoning Ordinance prior to installing signs.
Downtown Development Standards related to exterior site developments (9-6-3C -parking, 9-6-3E - signs, 9-6-4E – lighting, 9-6-4H – Walls and fences, 9-6-6C, 9-6-7, 9-5D1-2-landscaping standards	-City Street trees to be planted with minimum 15 gallon tree, every 30' on center (no further apart than mature diameter of species), with bubbler irrigation and landscape. - Screen vehicles in parking areas. -Fencing 2½'-6' tall if primarily open made of decorative wrought iron, picket fence, or similar with pilasters with caps at the corners and pedestrian entrances. -Onsite lighting to enhance architectural details of building.	-Have submitted changes to exterior of the previously approved site plan to change front hardscape and landscape areas, remove 6 trees and replant 3 trees, keep 2 trees in ROW & add fencing as shown on Site Plan -Verbally, discussed putting up a type of permeable picket fencing, with location and height to meet ABC requirements. -No lighting proposed.	- Five (5) new Street trees are required along the property frontage (at least 2 adjacent to parking with bubbler irrigation) -Need to replant shrubs to screen parking area within planter areas. -Fencing to meet ABC requirements for outdoor alcohol serving and if over 30" must be substantially open view and meet City code. -Should additional onsite lighting be added, it needs to meet requirements of Section 9-6-4E.
Trash Collection (Sections 9-6-7, 9-5A-9 Screening & Section 4-1-4)	-Design and location of trash collection areas trigger with new development. -Must be fully screened from public view and adjoining public streets and rights-of-way and residential zoned areas.	-No screening or enclosure currently in place around refuse container.	-No "new development" involved and therefore, not applicable.
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 -Interior tenant improvements may require a building permit.	-No changes to the existing restrooms or kitchen were proposed -Snack bar may initially just contain prepackaged goods	-Building Department will need to confirm that the building meets ADA and Fire Codes. -Fire Marshall determined maximum occupancy is limited to 48, tables cannot block any door passage ways, and a fire extinguisher needs to be provided. -Need to contact Kings County Health Dept. to ensure that facility conforms to California Retail Food Code.

Applicable Site Development & Operational Zoning Provisions in DMX-1 (Downtown) cont.

City Issues (cont.)	*City Standard (cont.)*	*Project Characteristic*	*Standard Met?*
Section 9-4D-2 Alcoholic Beverage Sales Development Standards	-Shall not be located within 1,000 of a church, school, or park. -Shall be no more than 1 establishment within any single shopping center -No more than 2 establishments located within 1,000' of a major roadway intersection	-Within 1,000 of 4 churches and 2 parks -Not in a shopping center -Not located within 1,000' of a major roadway intersection	-No. May deviate from standards if the 3 above discussed findings are made by the decision making body. -N/A -N/A

Even though there are multiple business nearby that sell alcohol for onsite consumption, there are no wine tasting businesses in town. Additionally, the only place that sells Farmers Fury wine in town is at the Vineyard Inn. Based on the above discussion and attached draft Resolution, the proposed use could be considered a public convenience as it will help market a local winery and could potentially provide tasting of other wines in limited quantities per ABC rules. Additionally, the project could meet the three Deviations criteria listed in Section 9-4E, so long as they meet the above listed standards in the table which are reiterated in the conditions of approval listed in the draft Resolution.

E. Conditional Use Permit:

Section 9-4D-2-B on the Lemoore Municipal code requires "sale of alcoholic beverages for on-site and off-site consumption shall only be allowed after issuance of a conditional use permit" (CUP). The City's requirement for a CUP is separate from any requirements that the State Department of Alcohol Beverage Control (ABC) may impose under Section 23958.4 of the Business and Professional Code for a letter of public convenience or necessity (which was discussed above). 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 the following 4 criteria and makes the findings within the approval resolution:

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:

The above "Applicable Site Development & Operational Zoning Provisions in DMX-1 (Downtown)" table summarizes the applicable provisions of the Zoning Code. So long as the business meets the Standards discussed within this table and reiterated in the conditions of approval contained in the draft Resolution, the proposed use would be consistent with the general plan, and all applicable provisions of the Zoning Ordinance.

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:

So long as the business meets the above listed City Standards which are reiterated in the conditions of approval of the draft resolution discussed above, the establishment, maintenance, and operation of the use applied for should not be detrimental to the health safety, peace, morals, comfort, or general welfare of the neighborhood.

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

Section 9-6-3 all proposed development of property within the downtown shall comply with the base development standards as listed in Table 9-6-3-A1 as well as standards listed in Section 9-4D-2. The applicable standards were discussed in the above table and needed conditions are listed in the attached Resolution.

Given the proposed use description, and the fact that long ago the building served as a bank and the surrounding available parking, the existing building is physically suitable for a Winetasting business so long as the standards and conditions contained in the Resolution are adhered to.

A response was received by the Kings County Environmental Health Department stating the facility as described in would require permitting by their Department as a food facility. During a verbal conversation follow up, City staff ascertained that if the business only served wine and crackers they would not need a food vending permit. However, serving other foods would require a food vending permit. The Health Department does provide onsite consultation on what could be allowed with the site as is and what would be needed for other food items to be distributed. The business will need to contact the Health Department for further information to conform to their applicable requirements and potential phasing that might be utilized.

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 is the proposed use and related structures compatible with other land uses, transportation, and service facilities in the vicinity:

The above discussion covers most of the standards that need to be incorporated on the site. In regards to compatibility with other land uses, the site is located in the heart of Downtown which is generally for commercial activity. Given the fact that the prior occupied use was a bank, open the same hours as adjacent businesses with a higher volume of traffic during the peak hours, the new use should be compatible as it is a less intensive use.

The area that is not discussed in detail above that may need further explanation is the issue of the three non-conforming freestanding signs located on the site. Over the last 15 months, the City has been sending Code Enforcement letters regarding the 3 freestanding signs. The building had been used for storage over five plus years with no open business. Because there was no onsite business, the Investor's Funding signs became classified as "non-conforming" signs after the building was vacant for more than one year.

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." Similar free standing sign removals have been required as projects have moved forward over the last several years including Valero gas, the old Stockman's Bank, and Kings Print Shop. In order to meet City Standards, these 3 non-conforming sign structures must be removed.

F. <u>Public Input:</u>

The Conditional Use Permit and Public Convenience or Necessity applications require 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 Hanford Sentinel on January 2, 2013 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.

G. Comments from Other Agencies/Departments:

Referrals were made to and received from the City Manager, Public Works Department, Fire Department, Police Department, and Kings County Environmental Health Department and have been incorporated into this report.

H. Recommendation:

After listening to the staff report and opening the public hearing to take public testimony, the Planning Commission should pass the attached Resolution #2012-20 (with or without modification as deemed appropriate) which makes a Determination of Public Convenience, makes the appropriate findings to allow Deviation from location standards contained in Section 9-4D-2, and makes the appropriate finding and approval for Conditional Use Permit #2012-04 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.

Within ten (10) days of the decision, the applicant or any other interested person may appeal to the decision to the City Council by any person affected by a determination or any person who presented testimony at a public hearing in connection with the decision being appealed, or who otherwise informed the city in writing of the nature of their concerns prior to the hearing.. As outlined in the Municipal Code Section 9-2A-8, an appeal must be filed with the City Clerk in writing and shall include the appellant's name, address and interest in the matter, and shall describe in reasonable detail how there was an error or abuse of the discretion of the City Staff or representative conducting the hearing, or how the decision is not supported by the evidence in the record and include a fee as set forth by resolution of the City Council.