



Planning Commission

Staff Report

January 8, 2020

PREPARED BY:
APPROVED BY:

BRODY PATTERSON, PROJECT PLANNER
MARK HENDRICKSON, DIRECTOR

ZONE VARIANCE APPLICATION No. ZV19-001 – Janice Sotelo - A request to vary from the minimum R-1 parcel area (from 6,000 square feet to approximately 5,130 square feet) and parcel width (from 60 feet to approximately 35 feet), facilitating a future Property Line Adjustment and construction of a single-family home. The project site is located on the north side of W. Lobo Avenue, 70 feet east of N. Beachwood Drive, identified as Assessor's Parcel Number (APN) 057-261-029. The property is designated Franklin-Beachwood Urban Community - Low Density Residential land use and zoned R-1 (Single-Family Residential). CEQA: Staff recommends that the Planning Commission find that the project is exempt from environmental review pursuant to Section 15305 - "Minor Alterations in Land Use Limitations" of the CEQA Guidelines. **BP**

SUPERVISORIAL DISTRICT: 3 – Daron McDaniel

RECOMMENDATION(S):

- 1) Open/close the public hearing;
- 2) Determine the project can be found exempt from environmental review pursuant to Section 15305 - "Minor Alterations in Land Use Limitations" of the CEQA Guidelines; and,
- 3) Approve Zone Variance No. ZV19-001 based on the findings identified in the Staff Report and subject to the recommended Conditions of Approval.

LOCATION MAP:



BACKGROUND:

Site Description

The applicant is proposing to vary from the minimum R-1 parcel area and parcel width on a property identified by Assessor’s Parcel Number (APN) 057-261-029, which will facilitate a future Property Line Adjustment and construction of a single-family residence. This Variance request is necessary because an existing single-family residence on the adjacent property to west (APN 057-261-033) is overlapping the shared property line, preventing a building permit from being issued on the project site parcel for a new residence (APN 057-261-029). Furthermore, the existing single-family residence is currently nonconforming as it overlaps the property line. Granting of this Variance and a subsequent Property Line Adjustment will allow the construction of a new single-family residence on APN 057-261-029 and will bring the existing residence on APN 057-261-033 into conformance. A Property Line Adjustment cannot be applied for unless this Variance is granted.

Both of these properties are currently owned by the project applicant. The nature of how the existing residence came to overlap the shared property line is unknown. Other than the overlapping single-family residence referenced above, the project site is currently vacant. A future single-family residence on the project site would be consistent with other properties in the vicinity, which are also characterized by single-family residences. The project site will have access to community water and sewer services for the future single-family residence, as indicated by Will-Serve letters from Franklin County Water District for sewer service and California American Water for water service. Should this Variance request be approved, the applicant will need to apply for and complete a Property Line Adjustment prior to the issuance of a building permit for a single-family residence.

Surrounding Uses

	General Plan	Zoning	Current Land Use
On-Site:	Low Density	R-1	Overlapping Residence/Vacant
North:	Low Density	R-1	Single-Family Residence
South:	Low Density	R-1	Single-Family Residence
East:	Low Density	R-1	Single-Family Residence
West:	Low Density	R-1	Single-Family Residence

Prior Actions/Entitlements

CC 86-21/ROS 3-5

ANALYSIS:

Project Description

To vary from the minimum R-1 parcel area and width, facilitating a future Property Line Adjustment and construction of a single-family residence.

Consistency with Adopted Plans and Policies

1. General Plan

The 2030 General Plan provides a set of guiding principles, goals, and policies that communicate the adopted philosophy of the County regarding growth, development and

sustainability. These statements, together with adopted diagrams, standards and analysis, provide the context under which specific land use proposals are reviewed. The 2030 General Plan is therefore considered the local "constitution" for planning and development and serves to direct the physical growth and development of the County for the long term.

The proposed Variance from the minimum R-1 parcel area and parcel width will not change the residential density in the project area, nor will it result in any other inconsistencies with the goals and policies of the 2030 General Plan.

Land Use Element

The Land Use Element of the 2030 General Plan provides the policy context for Merced County to achieve its vision for both rural and urban land use. The Agricultural land use designation is applied to much of the land within the County. It acknowledges the importance of agriculture and seeks to protect productive agricultural land, promote agricultural processing and support operations, and recognize and preserve valuable open space resources.

The following land use goals and policies are applicable to the present application:

Goal LU-1

Create countywide land use pattern that enhances the integrity of both urban and rural areas by focusing urban growth towards existing or suitably located new communities.

- **Policy LU-1.1: Countywide Development**
Direct urban development to areas within adopted urban boundaries of cities, Urban Communities, and Highway Interchange Centers in order to preserve productive agriculture, limit urban sprawl, and protect natural resources.
- **Policy LU-1.4: Urban Communities**
Continue to support compact Urban Communities through the efficient use of land to reduce conflicts with agricultural and open space areas, and minimize public service costs.

Goal LU-5.A

Preserve and enhance the character of Merced County by focusing future unincorporated development towards Urban Communities.

- **Policy LU-5.A.2: Public Sewer and Water**
Require all development within Urban Communities to be connected to public sewer and water systems where such systems exist.

The parcel for which this Variance is being requested is located within the Franklin-Beachwood Urban Community. The project site is surrounded by existing single-family residences on all sides. The parcel is currently undevelopable due to a structure on an adjacent parcel to the west overlapping the property line, preventing the issuance of a building permit. This Variance will facilitate a Property Line Adjustment that will rectify the issue, ultimately allowing construction of a single-family residence.

By allowing construction of a residence in an area where one would not have been allowed before due to a constraint, the proposal is consistent with Goal LU-1 and Goal

LU-5.A of the Land Use Element in that it facilitates the creation of housing opportunities within an established urbanized area.

Will-Serve letters for a future residence have been provided by the Franklin County Water District for sewer services and by California American Water for water services, consistent with Policy LU-5.A.2 of the Land Use Element.

2. Zoning Code

The project site is zoned R-1 (Single-Family Residential) per the Merced County Zoning map. The purpose of the R-1 Single-Family Residential Zone is to provide a full range of urban services and reserve appropriately located areas for single-family living with low population densities consistent with sound standards of public health, welfare, and safety. It is the intent of this zone to protect the residential characteristics of an area and to promote a suitable environment for family life. This zone implements the Very Low Density Residential (VLDR) and Low Density Residential (LDR) land use designations in the General Plan.

Section 18.12.030 of the Merced County Zoning Code specifies Development Standards in the R-1 zone. This application for Variance is requesting to vary from two of these standards: Parcel Area and Parcel Width. The Development Standards set the minimum R-1 parcel area at 6,000 square feet for an interior parcel. The Development Standards set the minimum R-1 Parcel Width at 60 feet for an interior parcel. The two Variance requests are:

1. To reduce the minimum R-1 parcel area, FROM 6,000 square feet TO 5,130 square feet; and,
2. To reduce the minimum R-1 parcel width, FROM 60 feet TO 35 feet.

This Variance is being proposed due to a residence on an adjacent parcel to the west of the project site overlapping the shared property line, preventing the issuance of a building permit for a new single-family residence. Based on the applicant's site plan for a new property line and single-family home, granting of the Variances detailed above will allow a Property Line Adjustment and subsequent construction of a single-family home while meeting all other applicable Development Standards in the Zoning Code. Furthermore, the overlapping residence on the adjacent parcel is currently nonconforming due to it overlapping a property line, and granting of this Variance and a subsequent Property Line Adjustment would bring that residence into conformance with the current Zoning Code.

Granting a Variance from the minimum R-1 parcel area and parcel width will not impact any of the other Development Standards in the Zoning Code, nor will it result in any other inconsistencies with the Zoning Code.

Required Findings for Variance

Pursuant to both Section 18.126.050 – Findings and Decision of the Merced County Zoning Code and Government Code Section 65906, findings are required to approve a Variance or Minor Deviation. The Review Authority, which in this case is the Planning Commission, may approve a Variance or Minor Deviation application only after first making all of the following findings:

1. There are special circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;
2. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other property in the vicinity and under an identical zoning classification;
3. Approving the Variance or Minor Deviation would not constitute a grant of special privilege inconsistent with the limitations on other properties in the same vicinity and zone in which the subject property is situated; and,
4. The requested Variance or Minor Deviation would not allow a use or activity that is not otherwise expressly authorized by the regulations governing the subject parcel.

The project site is surrounded by R-1 zoned parcels in all directions, and the general project vicinity consists of properties zoned R-1. The special circumstance constituting this Variance is the existing single-family residence which overlaps the shared west property line of the project site. The background as to why this existing residence overlaps the property line is unknown, but the current configuration of the overlapping residence sets the baseline for the project site's current condition. As such, this overlapping residence serves as a special circumstance that does not generally apply to other properties in the vicinity under the R-1 zoning classification.

Strict compliance with Zoning Code requirements would deprive the subject property of the ability to construct a single-family residence, a by-right use in the R-1 zone. By granting a Variance from R-1 parcel area and parcel width requirements, it will allow the applicant to undergo a Property Line Adjustment to avoid the overlapping residence and ultimately allow construction of a single-family home, a use that is allowed by-right in the R-1 zone. Furthermore, the overlapping residence on the adjacent parcel is currently nonconforming due to it overlapping a property line, and granting of this Variance and a subsequent Property Line Adjustment would bring that residence into conformance with the requirements of the current Zoning Code.

Approval of the Variance would not constitute a grant of special privilege, as other properties in the project vicinity which are zoned R-1 are allowed a single-family residence by-right. Most of these other nearby properties are already developed with single-family residences. This Variance will facilitate a Property Line Adjustment that will ultimately allow the construction of a single-family residence, consistent with the existing single-family dwellings in the project vicinity.

The requested Variance would not allow a use or activity that is not otherwise expressly authorized by the regulations governing the subject parcel, as all applicable Residential Zone Land Uses and Permit Requirements would still apply to the project parcel (pursuant to Section 18.12.020 of the Merced County Zoning Code).

California Environmental Quality Act (CEQA)

Staff has determined that this project can be found exempt from CEQA review under Section 15305 - "Minor Alterations in Land Use Limitations", which states:

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

- a) *Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;*

- b) *Issuance of minor encroachment permits;*
- c) *Reversion to acreage in accordance with the Subdivision Map Act.*

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

The proposed Variance does not result in the creation of any new parcel, and the site has an average slope of less than 20%. The proposed Variance will not result in any changes in land use, as a single-family residence is a use that is currently permitted by-right in the R-1 zone. This Variance will alleviate a constraint to development on the project parcel by allowing a future Property Line Adjustment that will rectify the issue of an existing residence overlapping the west property line. No changes in density will result from this Variance, as the project area will still maintain the same density as previously allowed with construction of a single-family residence in the R-1 zone.

Community Engagement

The project application was routed to applicable County departments as well as the Franklin County Water District and California American Water for comment. A Preliminary Application Review (PAR) meeting was scheduled for this project on December 19th, 2019, but due to a lack of agency comments, the project was not heard at the PAR meeting. No comments were received from County Departments or outside agencies for this project.

Notice of the public hearing was mailed to all owners of property located within 300 feet of the project site on **December 27th, 2019** and published in the Merced Sun-Star on **December 27th, 2019**. No written or verbal comments were received by staff prior to the completion of this staff report.

CONCLUSION:

The analysis provided in this Staff Report finds the proposed Zone Variance to be consistent with all applicable provisions of the 2030 Merced County General Plan and the Merced County Zoning Code, with the exception of the two Development Standards (Parcel Area and Parcel Width) for which this Variance is being requested. Furthermore, the analysis provided in this Staff Report supports the required findings to approve a Variance pursuant to Merced County Zoning Code Section 18.126.050 and Government Code Section 65906.

Staff recommends that the Planning Commission approve Zone Variance No. ZV19-001 based upon the findings in this Staff Report and subject to the recommended Conditions of Approval provided in **Exhibit A**.

RECOMMENDED PLANNING COMMISSION ACTION:

A. CEQA Determination

MOTION: Determine the project can be found exempt from environmental review pursuant to Section 15305 - "Minor Alterations in Land Use Limitations" of the CEQA Guidelines.

CEQA Findings:

1. The proposed Variance does not result in the creation of any new parcel.

2. The project site has an average slope of less than 20%.
3. The proposed Variance will not result in any changes to land use or density.
4. The determination that the application is exempt from CEQA review reflects the independent judgment of the County.

B. Project Determination

MOTION: Approve Zone Variance No. ZV19-001 based on the findings included in the Staff Report and subject to the recommended Conditions of Approval.

Project Findings:

1. Zone Variance No. ZV19-001 proposes to vary from the minimum R-1 parcel area (from 6,000 square feet to approximately 5,130 square feet) and parcel width (from 60 feet to approximately 35 feet). The project site is located on the north side of W. Lobo Avenue, 70 feet east of N. Beachwood Drive in the Franklin-Beachwood Urban Community, identified as Assessor's Parcel Number (APN) 057-261-029.
2. The property is designated Franklin-Beachwood Urban Community - Low Density Residential land use.
3. The property is zoned R-1 (Single-Family Residential).
4. The proposal is consistent with applicable provisions of the 2030 Merced County General Plan.
5. The proposal is consistent with applicable provisions of the Merced County Zoning Code that have not been superseded through adoption of the 2030 Merced County General Plan, with exception of the development standards for which this Variance is being granted (parcel area and parcel width).
6. The four required findings for Variance have all been met pursuant to Merced County Zoning Code Section 18.126.050 and Government Code Section 65906.
7. The project has been reviewed by the Department of Public Health Environmental Health Division, Department of Public Works Building and Safety Division, Department of Public Works Roads Division, the Fire Department, the Franklin County Water District, and California American Water.
8. The proposed Zone Variance is compatible with adjacent uses and properties, and will not be a nuisance or detrimental to the public health, safety or general welfare.

9. The project is subject to all applicable Local, State, and Federal regulations.
10. Notice of the application and Planning Commission hearing was published in the Merced Sun-Star and mailed to property owners within 300 feet of the project site.

EXHIBITS:

- A. Recommended Conditions of Approval
- B. Site Plan for Future Property Line Adjustment and Residence
- C. Will-Serve Letters

cc:
Property Owner(s) – Janice Sotelo
Engineer – Daniel Sotelo



**COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT**

Mark J. Hendrickson
Director

Steve Maxey
Deputy Director

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ZV19-001 CONDITIONS OF APPROVAL

Equal Opportunity Employer

Merced County Community and Economic Development Department

1. Zone Variance No. ZV19-001 shall only grant a variance from the minimum R-1 parcel area (from 6,000 square feet to approximately 5,130 square feet) and parcel width (from 60 feet to approximately 35 feet) on the property identified as Assessor's Parcel Number (APN) 057-261-029.
2. Any future projects located on the parcel for which this Variance is being granted (APN 057-261-029) shall comply with all other applicable Development Standards, unless a separate Variance or Minor Deviation is granted.
3. The Variance shall be exercised within two (2) years of the approval date, as required by Section 18.126.100 of the Merced County Zoning Code.
4. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.
5. The applicant shall comply with all applicable Local, State and Federal regulations.

County Counsel

6. INDEMNITY AND HOLD HARMLESS AGREEMENT:

JANICE SOTELO has the contracted duty (hereinafter "the duty") to defend, indemnify and hold harmless the County of Merced, its Board of Supervisors, commissions, officers, employees, agents, and assigns (hereinafter "COUNTY") from any claim, action, or proceeding arising out of, or in connection with the COUNTY's approval of the project including, but not limited to, COUNTY's actions regarding related environmental determinations. This obligation shall extend to any such claim, action, or proceeding against COUNTY to attack, set aside, void, or annul, an approval by COUNTY. This duty shall arise at the first claim, action, or proceeding against COUNTY. In the event that a claim, action, or proceeding is brought, COUNTY shall promptly notify the applicant and cooperate fully in the defense. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

EXHIBIT C

**FRANKLIN COUNTY WATER DISTRICT
2126 N. DRAKE AVENUE
MERCED, CA 95348
209-723-1353/Fax 209-297-4238**

Can and Will Serve

July 6, 2019

Re: Service for 2276 Lobo Avenue, Merced, CA 95348 (Sotelo)
APN# 057-261-029

To whom it may concern:

Franklin County Water District can and will provide waste water services for the above referenced owner at the above parcel, subject to the following conditions:

1. This letter is valid for waste water treatment services only.
2. This letter is subject to approval of all applicable regulatory agencies.
3. The time and conditions required by any agency for approval are beyond the control of Franklin County Water District Company. Franklin County Water District Company accepts no responsibility for any approvals or lack of therefore, and accepts no responsibility for making any changes or improvements to its system and distribution network.
4. All proposals will be subject to on-going review at all planning stages of those items which affect Franklin County Water District Company.
5. This letter is valid for a period of one year during the planning process but can and will be renewed as required if there are no material changes.

Sincerely,



Michael Dorigi
Board President

ZONE VARIANCE 19001



July 10, 2019

Janice Sotelo
PO Box 3692
Merced, CA 95344

SUBJECT: REQUEST FOR WATER SERVICE – CONDITIONAL WILL SERVE LETTER

**2270 Lobo Avenue
Meadowbrook, District**

Dear Ms. Sotelo:

This letter responds to your request for new water service and describes the requirements and process to establish new water service connections. This letter also serves as notice that the area planned to be developed at ~~2270~~ Lobo Ave., Merced County, is within the service area of the Meadowbrook, system of California American Water (“CAW”), a public utility operating under the jurisdiction of the California Public Utilities Commission (“CPUC”).

Water service will be furnished to this project in accordance with CPUC rules and regulations and CAW tariffs on file with the CPUC. A copy of CAW’s Service Installation Rule 16 (“Rule 16”) filed with the CPUC is enclosed. This Rule calls for the cost of water facilities to be contributed to CAW.

Every project will have specific fees or infrastructure requirements necessary to provide adequate water service. Designs must be in accordance with CAW standards and specifications, and in accordance with state, local codes, CPUC regulations and other requirements. Based on the project water demand requirements and the preliminary design documents, CAW’s Engineering and Operations staff will review the project and identify the extent of the required water system improvements necessary to serve the project.

Be advised that facilities associated with the water service, installed downstream of the water meter or the property line are the responsibility of the property owner, not CAW. Any and all costs of initial construction and continued maintenance of such facilities are the responsibility of the property owner.

To protect the public water supply, installation of a CAW approved backflow prevention device may be required, prior to activating water service. In these cases, prior to service activation, the applicant will be required to: (a) furnish certification from the California Department of Water Resources and/or the Merced County Health Department that any privately owned well has been

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EXHIBIT C

properly abandoned; or (b) install a CAW approved and Merced County Certified backflow prevention device at the applicant's expense.

Upon the completion of the final walk-through inspection by CAW, you will be billed for all new water service installations within the project boundary in accordance with the current CAW tariff. The applicant is responsible for notifying CAW of any change in the party to be billed due to transfer of ownership or occupancy.

Additional project related design and processing requirements are outlined in the attached Information Sheet for your reference. This conditional Will Serve Letter is valid for one (1) year from issuance.

CAW looks forward to being the water service provider for the proposed project and will work with you to make the project a success. Upon receipt of the required submittals, CAW will assign the project to appropriate staff and begin assisting with identification of the necessary water facilities through the design review process. If we can be of further assistance, please call Spencer Phillips at (916) 568-4210.

Sincerely,

CALIFORNIA-AMERICAN WATER COMPANY



S. Audie Foster
Director of Operations
Northern Division

Enclosure: CPUC Rule 16

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