



**PLANNING COMMISSION OF THE CITY OF FOWLER
AGENDA
THURSDAY, JULY 7, 2022
6:30 P.M.
CITY COUNCIL CHAMBER
128 SOUTH 5TH STREET
FOWLER, CA 93625**

In compliance with the Americans with Disabilities Act, if you need assistance or accommodations to access the City Council Chambers or participate in this meeting, please contact the Planning Secretary at (559) 834-3113 x118. Notification at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

Planning Commission meetings are open to the public at the physical address listed above. There are numerous ways to participate in the Planning Commission meetings: you may attend in person, you may appear by telephone as described below, or you may submit written comments via email to maguilar@ci.fowler.ca.us. Please include your name and reference the agenda item you are commenting on, if any. Written comments received that do not specify an agenda item will be marked for the general public comment portion of the agenda. Emails received by 8:00 am on the date of the meeting will be provided to the Planning Commission at the meeting and made part of the record of proceedings but will not be read aloud.

Consistent with Government Code 54953 as amended by AB 361, and City Council Resolution No. 2522, this meeting may be accessed by members of the public or Planning Commission members via Zoom. The telephone number and Zoom.

En cumplimiento con la Acta de Americanos con Discapacidades si necesita asistencia o adaptaciones para acceder a las Cámaras del Concejo de la Ciudad o participar en esta reunión, comuníquese con el secretario de la ciudad al (559) 834-3113 x102. También puede ponerse en contacto con el secretario si necesita servicios de traducción. La notificación al menos 48 horas antes de la reunión permitirá a la Ciudad hacer arreglos razonables para garantizar la accesibilidad.

<https://us06web.zoom.us/j/88323215753?pwd=eFpXUIRXTXJvR05PSE1sZm02a1BsZz09>

Telephone Number: (253) 215-8782

Meeting ID: 883 2321 5753

Passcode: 418006

Persons accessing the meeting will have an opportunity to provide comments at appropriate times during the meeting. To speak during a public comment period, press *9 on your phone to raise your hand or click “raise hand” in the webinar. At the appropriate time, you will be prompted to unmute yourself, and asked to identify yourself when providing public comment.

Any writing or document that is a public record and provided to a majority of the Planning Commission regarding an open session item on the agenda will be made available for public inspection at City Hall, in the City Clerk's office, during normal business hours. In addition, such writings and documents may be posted on the City's website at www.fowlercity.org.

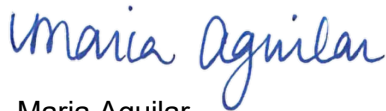
Resolutions and Ordinances - With respect to the approval of resolutions and ordinances, the reading of the title thereto shall be deemed a motion to waive a reading of the complete resolution or ordinance and unless there is a request by a Commissioner that the resolution or ordinance be read in full, further reading of the resolution or ordinance shall be deemed waived by unanimous consent of the Planning Commission.

1. Meeting Called to Order
2. Roll Call
3. Public Presentation – (This portion of the meeting reserved for persons desiring to address the Commission on any matter not on this agenda. Presentations are limited to five minutes per person and no more than 15 minutes per topic).
4. APPROVE Minutes of the June 2, 2022, Planning Commission Meeting
5. Actions Pertaining to Planning Case Number 22-0027 to amend Title 9, Chapter 5, Article 16 of the Fowler Municipal Code to amend the development standards and the reimbursement of open space.
 - 5.1. ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3).
 - 5.2. APPROVE Resolution No. 674 recommending City Council approve Zoning Text Amendment No. 22-02.
6. Actions Pertaining to Planning Case Number 22-0028 to repeal Title 9, Chapter 3 of the Fowler Municipal Code to consolidate and clarify zoning standards.
 - 6.1. ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3).

- 6.2. APPROVE Resolution No. 675 recommending City Council approve the repeal of Title 9, Chapter 3 of the Fowler Municipal Code to consolidate and clarify zoning standards.
7. Actions Pertaining to Variance Application No. 22-20, filed by Tawanda and Jennifer Mtunga, to construct a swimming pool within a rear and side yard setback at 991 East Boornazian Avenue (APN: 340-300-41).
 - 7.1. ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15303.
 - 7.2. APPROVE Resolution No. 676 approving Variance Application No. 22-20.
8. Commissioner Reports and Comments
9. Adjournment

Next Resolution No.: 677

CERTIFICATION: I, Maria Aguilar, Planning Secretary for the City of Fowler, California, hereby certify that the foregoing agenda was posted for public review on, Friday July 1, 2022.



Maria Aguilar
Planning Secretary

MINUTES OF THE PLANNING COMMISSION OF THE CITY OF FOWLER
Thursday, June 2, 2022

Vice Chair Kandarian called the meeting to order at 6:33 PM. Roll call was taken.

Commissioners Present: Vice Chair Kandarian, Hammer, Prado, Rodriguez

Commissioners Absent: Chair Mellon

City Staff Present: Community Development Director Gaffery, City Attorney Lear, City Planner Marple, Planning Secretary Aguilar

3. Public Presentation

None

4. APPROVE Minutes of the March 3, 2022, Planning Commission Meeting

Commissioner Hammer made a motion to approve minutes of the March 3, 2022 meeting. Commissioner Prado seconded the motion.

Motion carried by roll call vote: Ayes: Kandarian, Hammer, Prado, Rodriguez.

5. Actions Pertaining to Conditional Use Permit Application No. 22-09, filed by Charlie Brown of Vigen, Inc., to establish a second drive-through use at 327 West Merced Street (APN: 343-340-11S).

Ms. Marple presented the item. On July 1, 2021, a text amendment was approved allowing dual drive-through signage. McDonald's has filed for this Conditional Use Permit (CUP) to install dual drive through lanes. Findings were presented by staff.

Staff recommended the approval of the listed actions.

Ms. Marple introduced Charlie Brown of Vigen Inc.

Commissioners asked questions. Ms. Marple and Mr. Gaffery provided responses.

5.1. ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301.

5.2. APPROVE Resolution No. 673 approving Conditional Use Permit (CUP) Application No. 22-09, subject to the Conditions of Approval.

Commissioner Rodriguez made a motion to approve the above action items.
Commissioner Hammer seconded the motion.

Motion carried by a roll call vote: Ayes: Kandarian, Hammer, Prado Rodriguez.

6. Commissioner Reports and Comments

No reports or comments.

7. Adjournment

Commissioner Hammer made a motion to adjourn. Commissioner Prado seconded the motion.
Motion carried by a voice vote and meeting was adjourned at 6:44 PM.



PLANNING COMMISSION OF THE CITY OF FOWLER

ITEM NO: 5

REPORT TO THE PLANNING COMMISSION

July 7, 2022

FROM: Dawn E. Marple, City Planner

SUBJECT

Actions Pertaining to proposed Planning Case Number 22-0027, a text amendment to amend Section 1605, of Chapter 5, of Title 9 of the Fowler Municipal Code regarding the development standards and the reimbursement of open space.

1. ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061, subdivision (b)(3).
2. APPROVE Resolution No. 674 recommending approval of Planning Case Number 22-0027, a text amendment to amend Section 1605, of Chapter 5, of Title 9 of the Fowler Municipal Code.

RECOMMENDATION

Staff recommend the Planning Commission adopt Resolution No. 674, recommending the City Council to adopt a Categorical Exemption pursuant to CEQA Guidelines Section 15061, subdivision (b)(3), and approve Resolution No. 674, recommending the City Council approve the proposed Ordinance, to amend Chapter 5, of Title 9 of the Fowler Municipal Code (or Article 16 of the Zoning Ordinance) to amend the provisions regarding development standards and the reimbursement of open space.

BACKGROUND

Staff has determined that the existing Zoning Ordinance is inconsistent with the Subdivision Ordinance and the General Plan, and recommends adopting a text amendment of the Zoning Ordinance to remove the inconsistency.

The City of Fowler Zoning Ordinance is designed to implement the goals, objectives, and policies of the Fowler General Plan. The General Plan seeks to develop 1 acre of community park space per 1,000 residents, and 2 acres of neighborhood park space per 1,000 residents.

The Zoning Ordinance requires residential subdivisions provide five percent of the developable area as open space. Open space is flexibly defined, and includes parks. Additionally, the Zoning Ordinance

allows single-family residential developers to seek reimbursement of up to fifty (50) percent of the open space value. The typical result seen are neighborhood parks whose construction value is double the amount of the City's Park and Recreation Impact Fees that would be collected by a subdivision. As such open space is currently reimbursed at 50% of the cost, no Park Impact Fees are collected and thus no funding goes towards the acquisition and construction of regional community parks. This frustrates the objectives of the General Plan.

The Subdivision Ordinance already has provisions to accommodate necessary Quimby Act reimbursements in compliance with California Government Code, such as when development is proposed on land designated for a Community Park. Additionally, the City's Parks and Recreation Facilities Impact Fee is intended to fund the acquisition and development of community park space.

This proposed amendment to the Zoning Ordinance will clarify the amount of open space required to be implemented in single-family residential subdivisions by specifying the amount desired by the General Plan. Additionally, it removes the reimbursement provision. Below is a table that describes the typical open space and parks cost differences between the existing provisions of the Zoning Ordinance, and that which is proposed.

Typical Effects of a 100-lot Subdivision

	Existing	Proposed
Parks Impact Fees Generated ¹	\$309,157	\$309,157
Open Space Construction Cost	\$618,314	\$309,157
Open Space Cost Reimbursed ²	\$309,157	\$0
Total Developer Cost	\$309,157	\$309,157
Total Parks Impact Fees Collected	\$0	\$309,157
¹ \$3,091.57 per dwelling unit		
² 50% of open space value		

In summary, the existing Zoning Ordinance is inconsistent with the Subdivision Ordinance and frustrates the objectives of the General Plan. The proposed ordinance would remove inconsistencies with the Subdivision Ordinance and align with the following General Plan policies of the Land Use Element:

- Section 4.3, Residential Land Use, Policy 16: All residential projects shall provide usable open space within the boundaries of the development. This open space shall be in addition to any development fees paid for neighborhood or community park space.
 - b. Within single family projects, either attached or detached, a minimum of 5% of the project site shall be developed with usable open space which could include common recreation areas, mini-parks, common green belts/recreation trails, and landscaping. Such open space shall be maintained by assessment district, landscape/lighting district, homeowners' association, or other appropriate maintenance entity.
- Section 4.7, Open Space, Public, and Institutional Land Use, Policy 10: Develop park space based on a standard of 3.0 acres/1,000 residents (2.0 acres for neighborhood parks and 1.0 acre for community parks).

ENVIRONMENTAL REVIEW

Planning Case Number 22-0027 has been reviewed pursuant to the California Environmental Quality Act (CEQA) and has been determined to be exempt from environmental review pursuant to CEQA Guidelines Section 15061, subdivision (b)(3).

FISCAL IMPACT

Adopting this ordinance would result in a net increase to fees collected for the purposes of acquiring and developing community park space.

Not adopting this ordinance would likely result in no fees collected for the purpose of acquiring and developing community park space.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments:

- Resolution No. 674
- Proposed Ordinance

RESOLUTION NO. 674

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FOWLER COUNTY OF FRESNO, STATE OF CALIFORNIA RECOMMENDING APPROVAL OF PLANNING CASE NUMBER 22-0027 AMENDING SECTION 1605, OF CHAPTER 5, OF TITLE 9 OF THE FOWLER MUNICIPAL CODE TO CLARIFY SINGLE-FAMILY RESIDENTIAL OPEN SPACE AND REIMBURSEMENT STANDARDS, AND TO ADOPT AN EXEMPTION UNDER CEQA GUIDELINES SECTION 15061, SUBDIVISION (B)(3).

WHEREAS, on February 3, 2009, the City Council of the City of Fowler voted to adopt Ordinance Bill No. 2009-01, amending Chapter 5, of Title 9 of the Fowler Municipal Code, which was a comprehensive update to the City's Zoning Ordinance and is referred to as the "Zoning Ordinance";

WHEREAS, the City of Fowler has established a General Plan policy to develop three (3) acres of park space for every 1,000 residents;

WHEREAS, the City of Fowler designates one (1) acre of park space for every 1,000 residents for community park purposes;

WHEREAS, the existing zoning ordinance has resulted in the non-collection of impact fees towards the acquisition and development of community parks;

WHEREAS, Fowler Municipal Code Section 9-5.421 authorizes the Planning Commission to initiate a text amendment of the Zoning Ordinance by conducting a public hearing and making a recommendation by resolution to the City Council regarding the text amendment;

WHEREAS, the Proposed Ordinance is attached hereto as **Exhibit A**, and is incorporated by this reference;

WHEREAS, Section 15061, subdivision (b)(3), of the CEQA Guidelines describes the so-called "Common Sense Exemption", which exempts projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Fowler, based upon the entire record of proceedings, hereby finds and recommends to the City Council:

1. That adoption of the Proposed Ordinance, a text amendment to amend Section 1605, of Chapter 5, of Title 9 of the Fowler Municipal Code, is exempt from CEQA pursuant to Section 15061, subdivision (b)(3), of the CEQA Guidelines.
2. That the Proposed Ordinance is consistent with the Fowler General Plan.

3. That adopting the Proposed Ordinance is in the best interest of the City of Fowler.
4. That the Proposed Ordinance should be adopted.

PASSED, APPROVED AND ADOPTED this 7th day of July 2022, at a regular meeting of the Planning Commission of the City of Fowler by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Craig Mellon, Chair

ATTEST:

Maria Aguilar, Secretary of the Planning Commission

EXHIBIT A
PROPOSED ORDINANCE

ORDINANCE NO. 2022-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOWLER AMENDING SECTION 1605, OF CHAPTER 5, OF TITLE 9 OF THE FOWLER MUNICIPAL CODE, TO AMEND THE DEVELOPMENT AND REIMBURSEMENTS STANDARDS OF OPEN SPACE, AND TO ADOPT AN EXEMPTION UNDER CEQA GUIDELINES SECTION 15061, SUBDIVISION (B)(3).

WHEREAS, on February 3, 2009, the City Council of the City of Fowler voted to adopt Ordinance Bill No. 2009-01, amending Chapter 5, of Title 9 of the Fowler Municipal Code, which was a comprehensive update to the City's Zoning Ordinance and is referred to as the "Zoning Ordinance";

WHEREAS, the City of Fowler has established a General Plan policy to develop three (3) acres of park space for every 1,000 residents;

WHEREAS, the City of Fowler designates one (1) acre of park space for every 1,000 residents for community park purposes;

WHEREAS, the existing Zoning Ordinance has resulted in the non-collection of impact fees towards the acquisition and development of community parks;

WHEREAS, the Planning Commission adopted Resolution No. 674, on July 7, 2022, recommending that the City Council adopt an ordinance to amend Section 1605, of Chapter 5, of Title 9 of the Fowler Municipal Code; and

WHEREAS, the City Council desires to amend Section 9-5.1605 of the Zoning Ordinance to ensure the development of Community Park space.

THE CITY COUNCIL OF THE CITY OF FOWLER DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 1605, of Chapter 5, of Title 9 of the Fowler Municipal Code is hereby amended as follows:

K. Open Space. All residential subdivisions shall provide usable open space within the boundaries of the development. ~~A maximum of fifty (50) percent of the cost of the open space facility may be in lieu of required park fees.~~

1. Within single-family projects, either attached or detached, ~~a portion~~ five percent of the site shall be developed with usable open space such as common recreation areas, mini-parks, green belts/trails, and landscaping. This usable open space shall ~~to be~~ maintained by a landscape/lighting district, homeowners' association, or other appropriate maintenance entity.

SECTION 2. The City Council has determined that the Project is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15061, subdivision (b)(3) (Common Sense Exemption).

SECTION 3. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 4. The City Clerk is further directed to cause this ordinance or a summary of this ordinance to be published once in a newspaper of general circulation published and circulated within the City of Fowler, within fifteen (15) days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five

(5) days prior to the City Council meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The summary shall be approved by the City Attorney.

* * * * *

The foregoing ordinance was introduced at a regular meeting of the City Council held on _____, 2022, and was adopted at a regular meeting of said Council held on _____, 2022, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Mark Rodriquez, Mayor Pro-Tem

ATTEST:

Angela Vasquez, Deputy City Clerk



PLANNING COMMISSION OF THE CITY OF FOWLER

ITEM NO: 6

REPORT TO THE PLANNING COMMISSION

July 7, 2022

FROM DAWN E. MARPLE, City Planner

SUBJECT

Actions Pertaining to Planning Case Number 22-0028, a text amendment to repeal Chapter 3, of Title 9 ("Setback Law") of the Fowler Municipal Code, to consolidate and clarify the City's zoning standards.

1. ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061, subdivision (b)(3).
2. APPROVE Resolution No. 675, recommending approval of Planning Case Number 22-0028, a text amendment repealing Chapter 3, of Title 9 of the Fowler Municipal Code to consolidate and clarify setback standards.

RECOMMENDATION

Staff recommend the Planning Commission adopt a resolution recommending the City Council to adopt a Categorical Exemption pursuant to CEQA Guidelines section 15061, subdivision (b)(3), and to approve the proposed Ordinance repealing Chapter 3, of Title 9 of the Fowler Municipal Code, to remove conflicting zoning standards.

BACKGROUND

Chapter 5, of Title 9 of the Fowler Municipal Code, adopted in 2009, is known as the City's Zoning Ordinance. It contains the necessary regulations to ensure that the City grows in an orderly manner. Chapter 3, of Title 9 of the Fowler Municipal Code, adopted in 1951, is part of the Planning and Zoning Title, but contains provisions that conflict with Chapter 5, which was adopted many years later.

Chapter 3 defines a "structure" as one that includes, among other things, fences and swimming pools. Therefore, fences and swimming could not be located within front and rear yards, respectively, which conflicts with both the standards within Chapter 5 and the legislative body's intent.

Duplicative provisions include zoning violations, variances, zone map amendments, appeals, and nonconforming structures. Repealing Chapter 3 would ensure fewer conflicts and ensure that both City staff and the public can more easily understand, interpret, apply, and implement the City's Zoning regulations.

The table below provides a summary of each section in Chapter 3, with each corresponding section in Chapter 5.

Chapter 3 Section	Description	Chapter 5 Section
9-3.01	Introduces this Chapter as the "Setback Law of the City of Fowler"	9-5.102, Short Chapter
9-3.02	Allows for the adoption of a "precise plan" that limits where buildings and other improvements can be located.	Article 3, Establishment of Zoning Districts
9-3.03	Intention of Setback Law	9-5.101, Purpose
9-3.04	Defines terms used in Chapter 3. Defines "building" as including fences and swimming pools.	Article 2, Definitions
9-3.05	Allows for the adoption of setback lines and allows them to be modified	9-5.420, Amendment of Zoning Map and 9-5.421 and .422, Allows for zoning amendments
9-3.06	Grants authority of Variances to recommend by Planning Commission and approval by City Council	Article 27, Variances and Minor Deviations
9-3.07	Granting or denial criteria of Variances	
9-3.08	Variance procedures	
9-3.09	Legal nonconforming procedures	Article 29, Nonconforming Uses
9-3.10	Allows for amendments to Chapter 3	9-5.420, Amendment of Zoning Map and 9-5.421 and .422, Allows for zoning amendments
9-3.11	Appeal procedures	9-5.418 and .419, Appeals
9-3.12	Public nuisances	9-5.107, Code Enforcement, and 9-5.110, Penalties for Violation

ENVIRONMENTAL FINDINGS

Planning Case Number 22-0028 has been reviewed pursuant to the California Environmental Quality Act (CEQA), and has been determined to be exempt pursuant from environmental review pursuant to CEQA Guidelines Section 15061(b)(3).

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments:

- Resolution No. 675
- Proposed Ordinance

RESOLUTION NO. 675

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA RECOMMENDING APPROVAL OF PROPOSED PLANNING CASE NUMBER 22-0028, A TEXT AMENDMENT REPEALING CHAPTER 3, OF TITLE 9 OF THE FOWLER MUNICIPAL CODE TO CONSOLIDATE AND CLARIFY SETBACK STANDARDS, AND TO ADOPT AN EXEMPTION UNDER CEQA GUIDELINES SECTION 15061, SUBDIVISION (B)(3).

WHEREAS, on February 3, 2009, the City Council of the City of Fowler voted to adopt Ordinance Bill No. 2009-01, amending Chapter 5, of Title 9 of the Fowler Municipal Code, which is a comprehensive update to the City's Zoning Ordinance and is referred to as the "Zoning Ordinance";

WHEREAS, the Chapter 3, of Title 9 of the Fowler Municipal Code, known as the City's "Setback Law", contains a conflicting definition of a "structure", resulting in conflicting interpretations within the Zoning Ordinance;

WHEREAS, Fowler Municipal Code Section 9-5.421 authorizes the Planning Commission to initiate a text amendment of the Zoning Ordinance by conducting a public hearing and making a recommendation by resolution to the City Council regarding the text amendment; and

WHEREAS, while repealing Chapter 3, of Title 9 of the Fowler Municipal Code is not a typical text amendment of the Zoning Ordinance, the Planning Commission recommends the City Council repeal Chapter 3, of Title 9 as necessary to properly interpret and implement the City's Zoning Ordinance;

WHEREAS, the Proposed Ordinance, is attached hereto as **Exhibit A**, and is incorporated by reference; and

WHEREAS, Section 15061, subdivision (b)(3), of the CEQA Guidelines describes the so-called "Common Sense Exemption", which exempts projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Fowler, based upon the entire record of proceedings, hereby finds and recommends to the City Council:

1. That adoption of the Proposed Ordinance, a text amendment to repeal Chapter 3, of Title 9 of the Fowler Municipal Code, is exempt from CEQA pursuant to Section 15061, subdivision (b)(3), of the CEQA Guidelines.
2. That the Proposed Ordinance is consistent with the Fowler General Plan.

3. That adopting the Proposed Ordinance is in the best interest of the City of Fowler.
4. That the Proposed Ordinance should be adopted.

PASSED, APPROVED AND ADOPTED this 7th day of July 2022, at a regular meeting of the Planning Commission of the City of Fowler by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Craig Mellon, Chair

ATTEST:

Maria Aguilar, Secretary of the Planning Commission

Exhibit A
[PROPOSED ORDINANCE]

ORDINANCE 2022-__

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOWLER REPEALING
CHAPTER 3, OF TITLE 9 OF THE FOWLER MUNICIPAL CODE REGARDING
SETBACK STANDARDS, AND TO ADOPT AN EXEMPTION UNDER CEQA
GUIDELINES SECTION 15061, SUBDIVISION (B)(3).**

WHEREAS, on February 3, 2009, the City Council of the City of Fowler voted to adopt Ordinance Bill No. 2009-01, amending Chapter 5, of Title 9 of the Fowler Municipal Code, which was a comprehensive update to the City's Zoning Ordinance and is referred to as the City's "Zoning Ordinance"; and

WHEREAS, the Chapter 3, of Title 9 of the City's Municipal Code, referred to as the City's "Setback Law", contains a conflicting definition of a "structure", resulting in conflicting interpretations within the Zoning Ordinance; and

WHEREAS, the Planning Commission adopted Resolution No. 675, on July 7, 2022, recommending that the City Council adopt an ordinance to repeal Chapter 3, of Title 9 of the Fowler Municipal Code; and

WHEREAS, the City Council desires to repeal Chapter 3, of Title 9 of the Fowler Municipal Code to ensure consistent and streamlined interpretations of the City's Zoning Ordinance.

THE CITY COUNCIL OF THE CITY OF FOWLER DOES ORDAIN AS FOLLOWS:

SECTION 1: Chapter 3, of Title 9 of the Fowler Municipal Code is hereby repealed in its entirety.

~~9-3.01 Title.~~

~~This chapter shall be known as the "Setback Law of the City of Fowler".~~

~~9-3.02 Precise plan: Adoption and purpose.~~

~~There is hereby adopted a precise plan limiting the location of buildings and other improvements with respect to existing or planned rights-of-way pursuant to the authority of the Zoning and Planning Law of the State for the purpose of implementing the General Plan of the City, and to furnish a guide for the orderly physical growth and development~~

~~of the City, and to promote and protect the public health, safety, and general welfare. Such specific plan may be developed progressively by the addition thereto from time to time, in the manner prescribed by law, of detailed plans for certain streets or highways.~~

~~9-3.03 Scope.~~

~~The provisions of this chapter are intended to:~~

- ~~(a) — Regulate the future location of buildings and other improvements so as to furnish sufficient visibility for the safe operation of vehicles upon, and entering into, streets and highways and sufficient visibility and places of safety for pedestrians in present and future rights of way; and~~
- ~~(b) — Regulate the future location of buildings and other improvements so that such buildings and other improvements shall conform to the zoning provisions set forth in Chapter 5 of this title with relation to the distance from the lot line determined by the new right of way line when street or highway rights of way are extended to the specific plan lines.~~

~~9-3.04 Definitions.~~

~~For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:~~

- ~~(a) — "Building" shall mean any building, structure, or installation, whether located in, on, over, or under the ground, and shall include, but shall not be limited to, the following: walls, fences other than open fences, wells for water, oil, or other~~

~~hydrocarbon products, tanks, off-street parking spaces or facilities required by any law of the City, and swimming pools. "Building" shall not include or apply to the following: trees, shrubs, agricultural crops, open fences, public utilities installed pursuant to the provisions of law or a franchise, walks, driveways, irrigation pipes and related fixtures, off-street parking facilities or spaces not required by laws of the City, streets, curbs, and other municipal facilities or installations.~~

~~(b) — "Commission" shall mean the Planning Commission of the City.~~

~~(c) — "Improvement" shall have the same meaning as "building", as defined in subsection (a) of this section.~~

~~(d) — "Open fence" shall mean a fence, fifty (50%) percent or more of the surface of which is open to the passage of light and vision on either any and all horizontal planes, or any and all vertical planes, perpendicular to the vertical surface thereof.~~

~~(e) — "Setback line" shall mean that line, measured from the specific plan line, beyond which no building or improvement would be permitted to be erected or constructed pursuant to the zoning provisions set forth in Chapter 5 of this title if the lot line, as defined in the zoning provisions, were the same as the specific plan line.~~

~~(f) — "Specific plan line" shall mean a line indicating the exterior boundary of the proposed right-of-way of any street or highway on any map on which the specific plan is expressed.~~

~~(g) — "Verification" shall mean and include a declaration under penalty of perjury.~~

~~9-3.05 Setback lines: Establishment: Amendments: Authority.~~

~~A specific plan establishing a setback line shall be adopted by means of a map or a written statement, or by a combination of a map and a written statement, which shows or describes such line. Such maps and written statements shall be as much a part of this chapter as if the matters and information set forth on them were fully described in this chapter. Such maps and written statements shall be kept on file in the office of the City Clerk. Additional setback lines may be adopted, and changes in the established lines may be made by adding new maps, amendments to all or parts of maps, and written statements, or combinations of the same.~~

~~Such maps may be divided into parts and subparts, which may be separately shown or employed for the purposes of amending such maps.~~

~~9-3.06 Variances: Authority of Commission.~~

~~(a) — All duties with respect to the hearings, considerations, and recommendations for variances from the provisions of this chapter are hereby assigned and delegated to the Commission pursuant to the provisions of Article 12 of Chapter 3 of Title 7 of the Government Code of the State (Sections 65700 et seq.) and Article 10 of Chapter 5 of this title.~~

~~(b) — The Commission shall have the authority to grant variances to the setback lines established pursuant to the provisions of this chapter and to specify the terms and conditions thereof, subject to the final approval of the Council. Any such variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the~~

~~limitations upon other properties in the vicinity in which the subject property is situated and such other conditions as the Commission shall deem necessary to carry out the purposes of this chapter. Any action by the Commission and Council in such cases shall be by resolution.~~

~~9-3.07 Variances: Granting or denial: Criteria.~~

~~(a) — Variances to the setback lines established pursuant to the provisions of this chapter shall be granted if the applicant shows, and the Commission finds, that any of the following is true:~~

~~(1) — That because of special circumstances applicable to the subject property, including size, shape, topography, or location, the strict application of the provisions of this chapter would deprive the subject property of privileges enjoyed by a substantial number of other properties in the vicinity and fronting on the same street or highway;~~

~~(2) — That the nature of the property of the applicant is such that he will be substantially damaged unless the proposed building or improvement is authorized;~~

~~(3) — That the property of the applicant will not earn a fair return on the investment of the applicant unless the proposed building or improvement is authorized; or~~

~~(4) — That, balancing the interests of the public in effecting the purposes of the provisions of this chapter against the interests of the applicant in using his~~

~~property with the proposed building or improvement thereon, the granting of the variance is required by consideration of justice and equity.~~

~~(b) — Such variance shall not be granted if the Commission shall find that any of the following is true:~~

~~(1) — That the applicant will not be substantially damaged by locating the proposed building or other improvement at a point on his property behind the setback line; or~~

~~(2) — That, balancing the interests of the public in effecting the purposes of this chapter against the interests of the applicant in using his property with the proposed building or improvement thereon, the resulting disadvantages to the public would be unreasonably disproportionate to the advantages to the applicant to be derived from so using his property.~~

~~9-3.08 Variances: Procedure.~~

~~(a) — Initiation. Variances to the setback lines established pursuant to the provisions of this chapter shall be initiated by the verified application of any owner of property claiming to be entitled to a variance therefor, or of his agent, which application shall be filed with the Commission.~~

~~(b) — Commission hearings: Notices. The Commission shall hold at least one public hearing on the matter of an application for such variance. Notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the City at least ten (10) days before the hearing and by such other means as the Commission may deem necessary.~~

- ~~(c) — Commission hearings: Continuance. Any such hearing may be continued by the vote of the majority of the members present at such hearing who may fix a time and place to which such hearing shall be so continued, even in the absence of a quorum, in which case the presiding officer at such hearing shall publicly announce, prior to the conclusion of the hearing, the time and place to which the hearing is to be continued, and no further notice shall be required.~~
- ~~(d) — Commission hearings: Quorum: Voting. The number of members necessary for a quorum, and the number of votes necessary for the adoption of any resolution granting or denying such variance, shall be a majority of the total voting membership of the Commission. All other matters shall be determined by the majority vote of the members present.~~
- ~~(e) — Commission hearings: Reports of investigations. The Commission may consider at such hearing any report of any investigation by a committee of one or more members of the Commission, or its staff, authorized by the Commission in its discretion.~~
- ~~(f) — Commission hearings: Granting: Filing with Council. Within thirty (30) days after the adoption of a resolution granting such variance, the Commission shall file a copy of such resolution with the Council.~~
- ~~(g) — Council hearings. Within thirty (30) days after the receipt of a copy of such resolution, the Council shall consider such resolution at a public meeting. No notice of the consideration of such matter shall be required.~~

- (h) ~~Council hearings: Decisions. The approval or disapproval by the Council of the granting of such variance, or of any conditions attached to such variance, shall be upon the grounds set forth in Section 9-3.07 of this chapter. The Council may impose new or different conditions to the granting of the variance. The action of the Council shall be final.~~
- (i) ~~Automatic granting. If the Council fails to adopt a resolution approving or disapproving the granting of such variance, or imposing a new or different condition to the granting thereof, within thirty (30) days after the date of the receipt of the copy of the resolution of the Commission by the City Clerk, then such variance shall be deemed to be granted with the conditions as provided in the resolution of the Commission.~~

~~9-3.09 Effect of provisions.~~

- (a) ~~Location of buildings and other improvements. On and after May 16, 1974, it shall be unlawful to erect or locate any building or other improvement:~~
- (1) ~~Within the space between a setback line and the adjacent street right-of-way line; or~~
- (2) ~~Within the space between adjacent setback lines.~~
- (b) ~~Controlling provisions. In the event the provisions of this chapter impose more stringent restrictions on the erection or location of buildings or improvements than may be imposed or required by any other law, rule, or regulation or by any easement, covenant, or agreement, then the provisions of this chapter shall control.~~

- ~~(c) — Subdivisions. The street and highway design and the location of right-of-way lines in any subdivision falling under the provisions of the Subdivision Map Act of the State, or under the provisions of any law of the City controlling subdivisions and/or divisions of land other than subdivisions, shall be based on the specific plan lines established pursuant to the provisions of this chapter.~~
- ~~(d) — Zoning and setback lines. All building setback lines designated by the zoning provisions set forth in Chapter 5 of this title shall be measured from the specific plan lines set forth on the maps thereof. Building setback lines shall be that distance from the specific plan lines as designated for the respective zone classifications in the zoning provisions.~~
- ~~(e) — Nonconforming buildings and improvements. Any building or other improvement existing on April 16, 1974, the erection of which would be contrary to the provisions of this chapter, may continue with reasonable maintenance; provided, however, such nonconforming buildings or improvement shall not be moved, enlarged, or reconstructed except in a manner which shall cause such nonconforming building or improvement to conform to the provisions of this chapter, except to replace any portion destroyed by fire or other casualty which destroys not more than seventy five (75%) percent of its reasonable value.~~

~~9-3.10 Amendments.~~

~~The procedure for the adoption of amendments to the provisions of this chapter shall be as set forth in Article 11 of Chapter 3 of Title 7 of the Government Code of the State (Sections~~

65650 et seq.), and otherwise under the applicable provisions of this chapter, if any, not in conflict therewith.

~~9-3.11 Appeals.~~

- ~~(a) Filing. Any applicant not satisfied with the action of the Commission, or whose application has been denied, or whose application has not been finally acted upon by the Commission within a period of sixty (60) days after the filing of the application may file an appeal in writing with the Council within ten (10) days after the final action of the Commission, or within sixty (60) days after the filing of such application in the case of no final action, and the Council shall hold a public hearing with respect thereto.~~
- ~~(b) Hearings. Such public hearing shall be conducted within thirty (30) days after the filing of such written appeal, and the final decision of the Council shall be made within thirty (30) days after the public hearing. The failure of the Council to take final action within sixty (60) days after the date of the filing of the written appeal shall be deemed to be a denial of the appeal.~~
- ~~(c) Hearings: Notices. Notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the City at least ten (10) days prior to the hearing.~~
- ~~(d) Decisions. On such appeal, the Council may grant the variance, deny the granting of such variance, or attach conditions thereto upon the grounds set forth in Section 9-3.07 of this chapter.~~

9-3.12 Public nuisances.

- (a) ~~Any building or other improvement erected, located, or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance.~~
- (b) ~~Any act or condition declared to be unlawful and a public nuisance shall be subject to the abatement and cost recovery proceedings set forth in Title 5, Chapters 21, 22 and 23.~~

SECTION 2. The City Council has determined that the Project is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15061, subdivision (b)(3) (Common Sense Exemption).

SECTION 3. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 4. The City Clerk is further directed to cause this ordinance or a summary of this ordinance to be published once in a newspaper of general circulation published and circulated within the City of Fowler, within fifteen (15) days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The summary shall be approved by the City Attorney.

* * * * *

The foregoing ordinance was introduced at a regular meeting of the City Council held on _____, 2022, and was adopted at a regular meeting of said Council held on _____, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

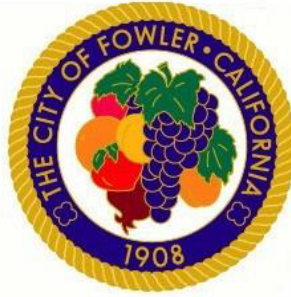
ABSENT:

APPROVED:

Mark Rodriquez, Mayor Pro-Tem

ATTEST:

Angela Vasquez, Deputy City Clerk



PLANNING COMMISSION OF THE CITY OF FOWLER

ITEM NO: 7

REPORT TO THE PLANNING COMMISSION

July 7, 2022

FROM DAWN E. MARPLE, City Planner

SUBJECT

Actions Pertaining to Variance Application No. 22-20, filed by Tawanda and Jennifer Mtunga, to construct a swimming pool within a rear and side yard setback at 991 East Boornazian Avenue (APN: 340-300-41).

1. ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15303.
2. APPROVE Resolution No. 676 approving Variance Application No. 22-20.

RECOMMENDATION

Staff recommend the Planning Commission adopt a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15303, and approve Resolution No. 676 approving Variance Application No. 22-20, to allow construction of a swimming pool within the rear and side yard setbacks at 991 East Boornazian Avenue.

BACKGROUND

In accordance with Section 9-5.27.01 of the Fowler Zoning Ordinance, the Planning Commission may grant variances in order to prevent unnecessary hardships that would result from a strict or literal interpretation and enforcement of regulations. A practical difficulty or unnecessary hardship may result from the size, shape or dimensions of a site or the location of existing structures thereon, from physical conditions on the site or in the immediate vicinity, or from population densities, street locations, or traffic conditions in the immediate vicinity.

The decision of the Planning Commission is final unless appealed to the City Council. The Planning Commission is empowered to grant or deny applications for variances and to impose reasonable conditions upon granting approval.

The subject parcel is zoned R-1-10 (One Family Residential District, Minimum 10,000 sqft) (Figure 2), and is planned for Low Density Residential land uses by the City of Fowler General Plan (Figure 3). The site (Figure 4) is approximately 10,140-square feet and is located on the southwest corner of East Merced and South 10th Streets (APN: 343-340-11S). The applicable development standards of the R-1-10 zone district are as follows:

- Rear: 10 feet
- Side: 7 feet

The applicant requests to vary these developments standards to 7 feet rear yard and a 6-foot rear yard to accommodate the construction of a swimming pool (Figure 1).

Staff reviewed a number of nearby properties in the neighborhood as well as others within the City. It was found that many permits were issued that allowed the construction of pools in the setback area. Staff was unable to locate any record of these approvals, nor of prior staff's legal authority to grant such exceptions to the zoning ordinance.

Findings

The Fowler Zoning Ordinance Section 9-5.27.04 requires the Planning Commission to make the following findings for approval of a Variance:

1. *That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the Zoning Ordinance.*

The purpose of the R District is to promote and encourage a suitable environment for family life. The intent of the side and rear yard setbacks are intended to protect safety (fire separation) and open space (welfare) by limiting the extent to which structures, specifically buildings, are situated next to adjacent properties. Because one does not increase the depth of a pool in order to accommodate area restrictions, this would result in a practical difficulty which would not lend itself to a suitable environment for family life. This finding can be made.

2. *That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties classified in the same zone.*

The applicant states that the variance would allow this project to be consistent with other R-1-10 zoned properties within the immediate vicinity. This lot is 130 feet deep, although the front yard setback is a minimum of 25 feet, the house was placed 27 feet back from the front property line, making the rear yard buildable footprint smaller. Adjacent properties were developed with similar standards and have been issued permits for pool construction with similar setbacks as those proposed in this application. This finding can be made.

3. *That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone.*

There are other pools in the area that have been issued permits which resulted in reduced setbacks, thus strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone. This finding can be made.

4. *That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone.*

Granting of the variance would allow the construction of a swimming pool within setbacks as found in properties in the surrounding area in the same zone, thus the granting would not constitute a granting of a special privilege. This finding can be made.

5. *That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

The applicant proposes to decrease the required side and rear yard setbacks to provide consistency with neighboring properties. The granting of the variance would not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the project. This finding can be made.

ENVIRONMENTAL FINDINGS

The City, as the Lead Agency under CEQA, determined that the proposed project is categorically exempt pursuant to CEQA Guidelines Section 15303, subdivision (e), as the project consists of a swimming pool, a small structure.

CONFLICT OF INTEREST

Commissioners Brian Hammer and Kevin Kandarian reside within 500 feet of the subject property.

Attachments:

- Figure 1 – Site Plan
- Figure 2 – Zoning Map
- Figure 3 – General Plan Land Use Map
- Figure 4 – Aerial Photo
- Resolution No. 676

Figure 1 – Site Plan

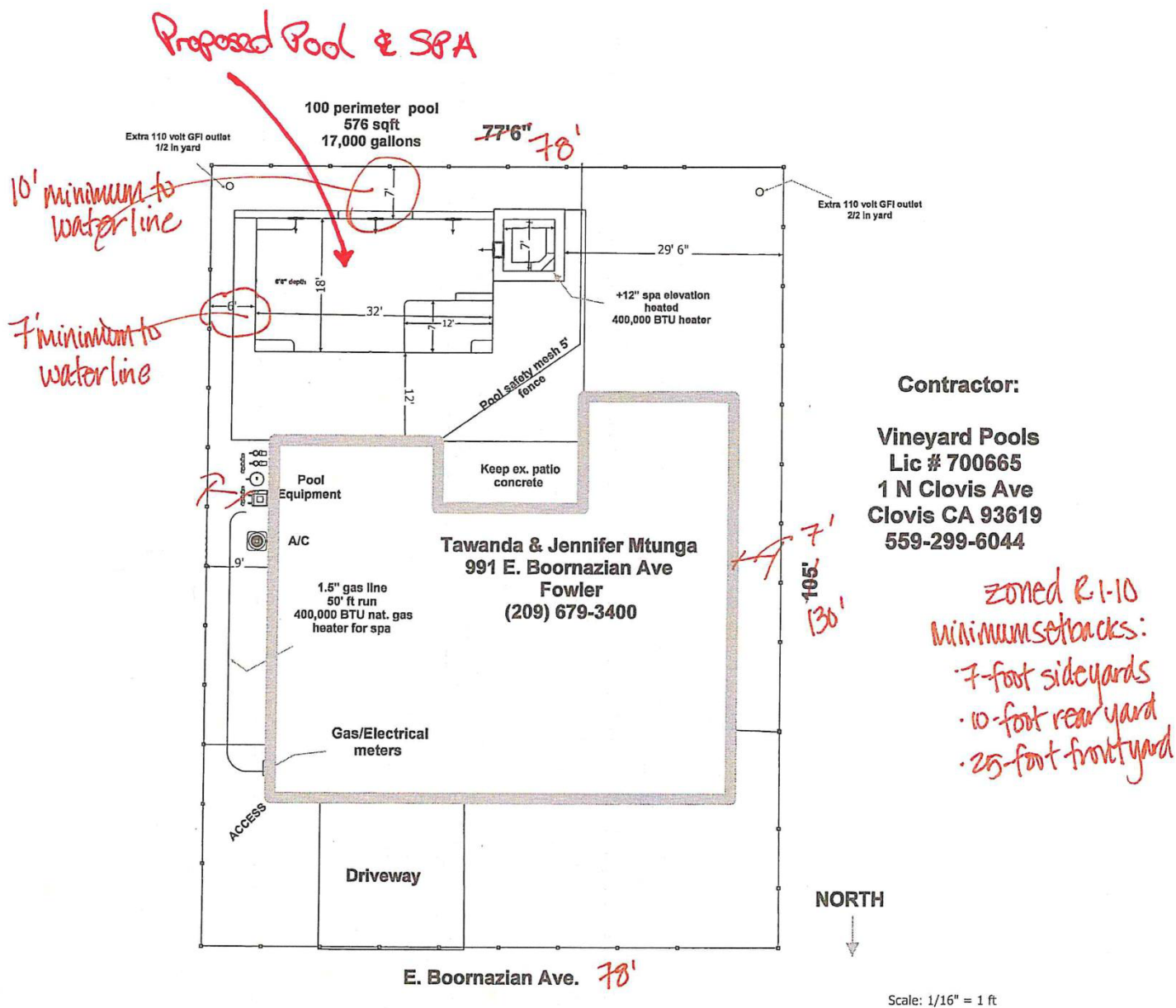


Figure 2 – Zoning Map

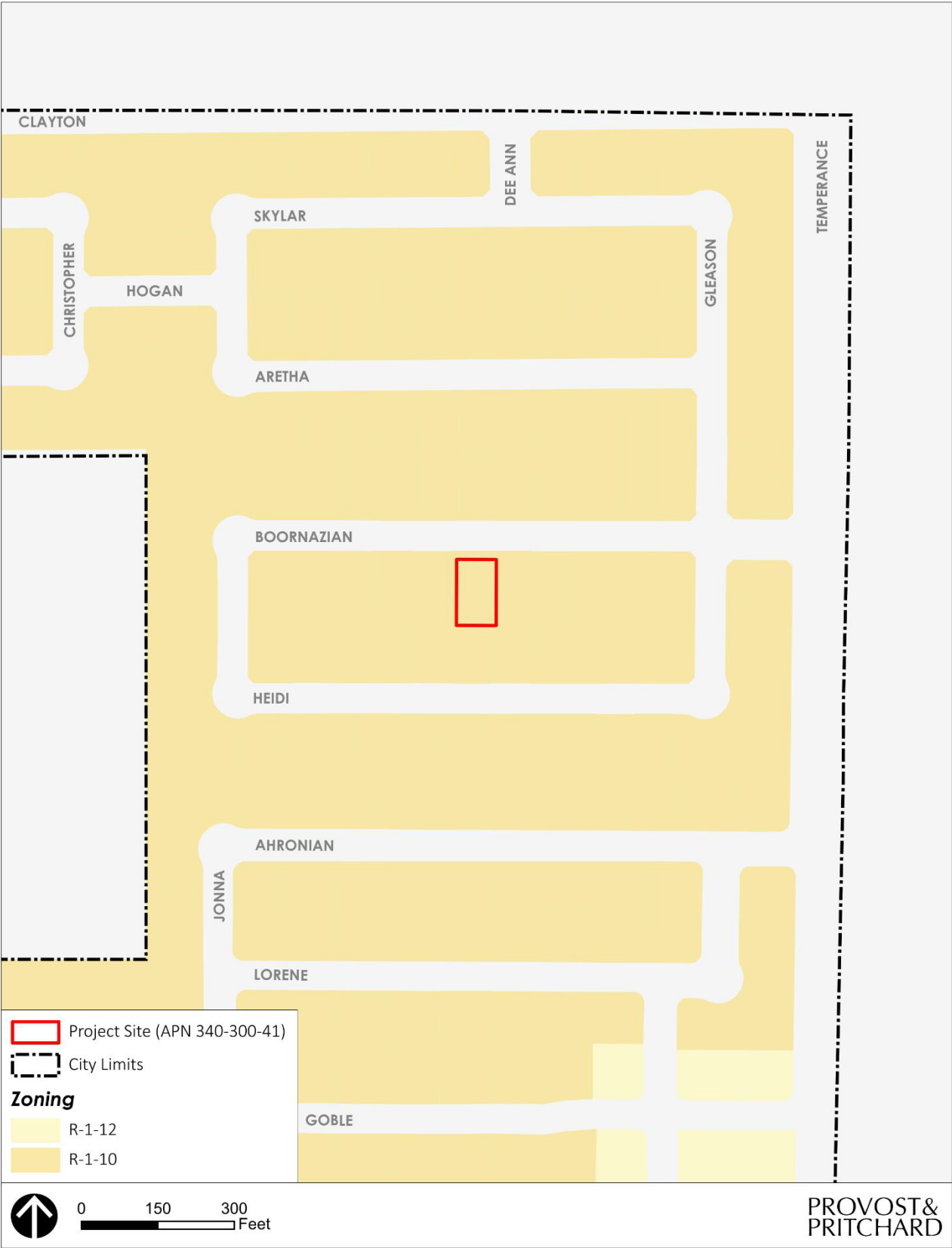


Figure 3 – General Plan Land Use Map

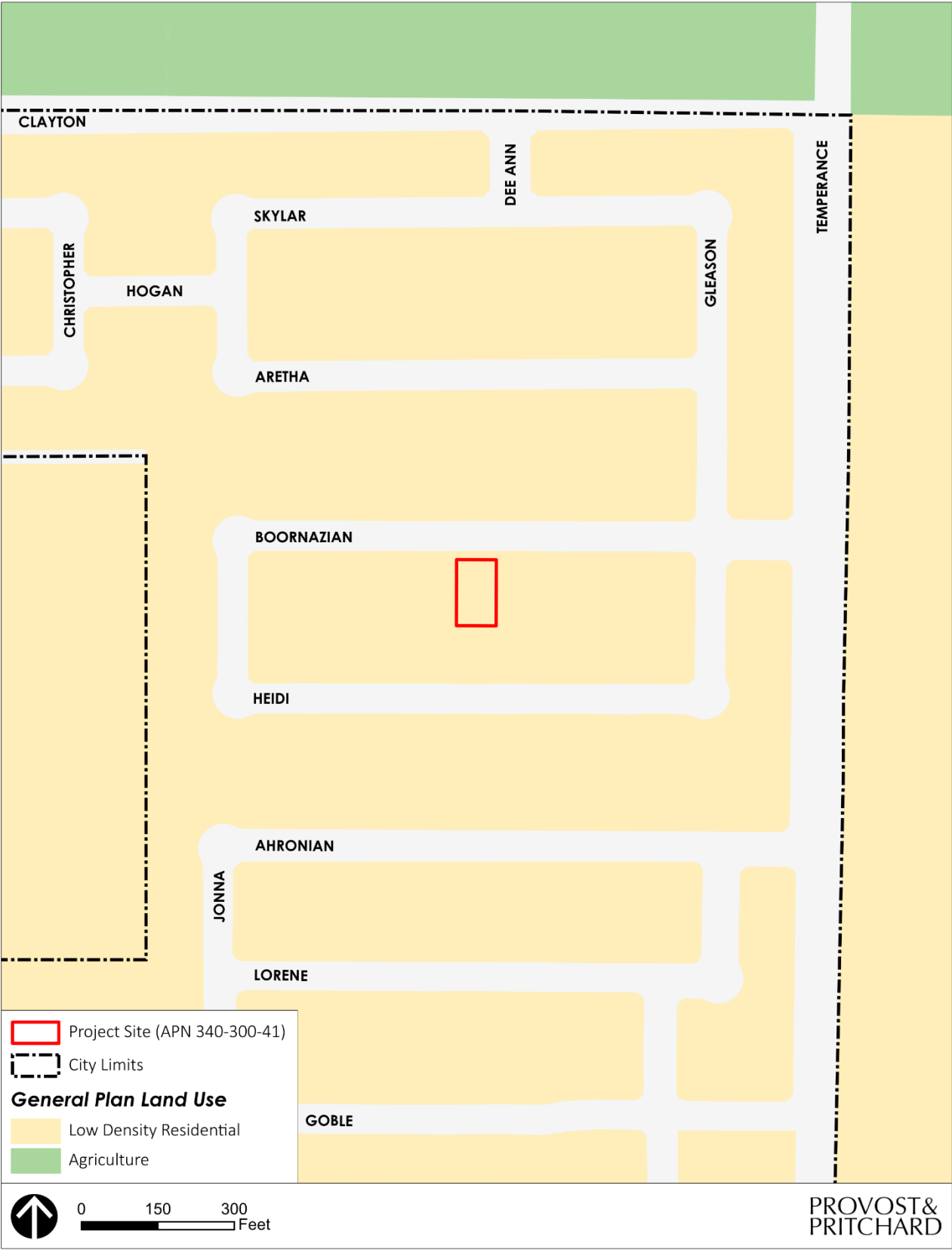
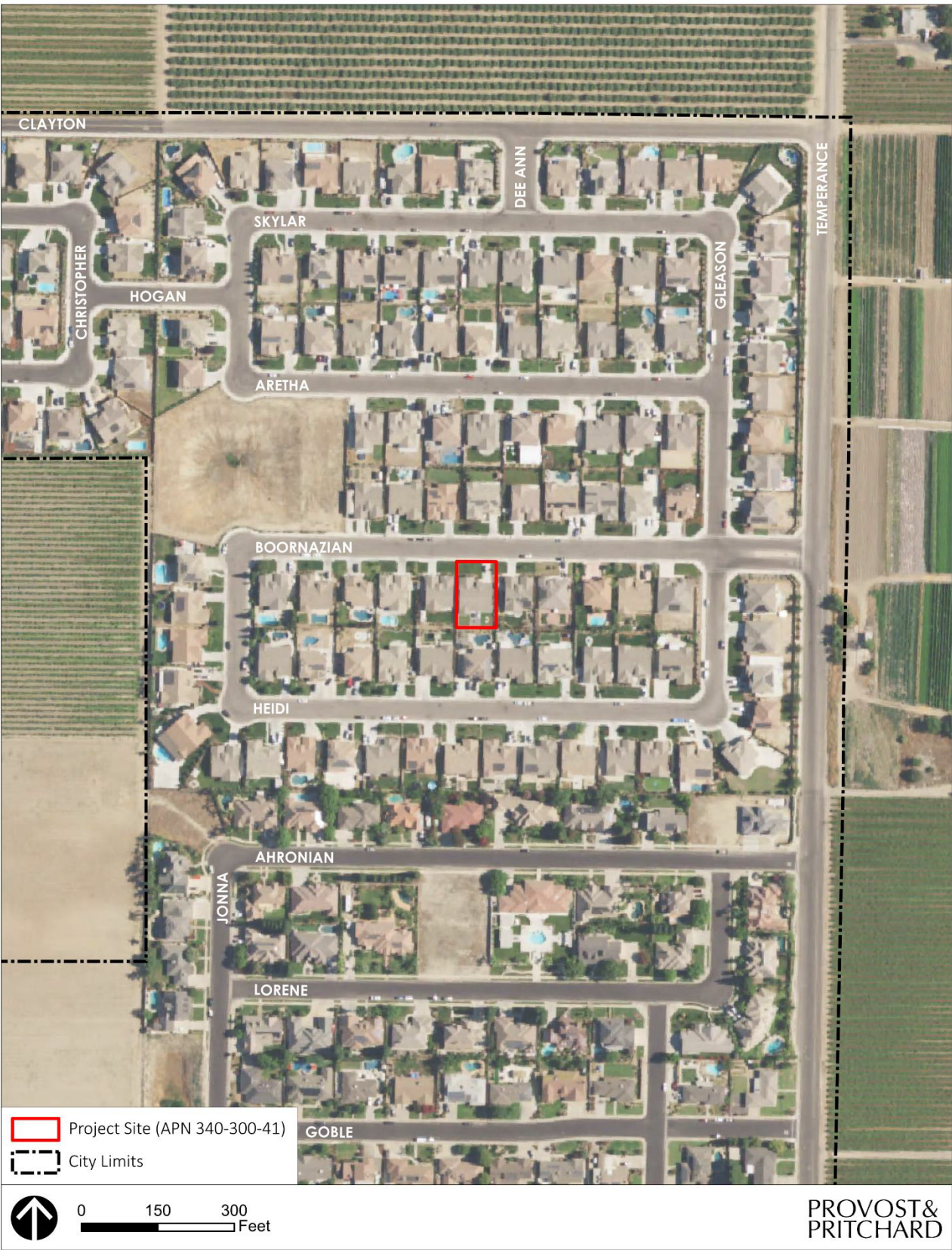


Figure 4 – Aerial Photo



RESOLUTION NO. 676

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FOWLER APPROVING VARIANCE APPLICATION NO. 22-20, AND ADOPTING A CATEGORICAL EXEMPTION PURSUANT TO CEQA GUIDELINES SECTION 15303, SUBDIVISION (E).

WHEREAS, an application for Variance No. 22-20 has been received, requesting to allow construction of a swimming pool within side and rear yard setbacks (“Project”) in a R-1-10 (One Family Residential District, Minimum 10,000 sqft) zone district, on an approximately 10,140-square foot parcel (APN: 340-300-41), located at 991 East Boornazian Avenue, on the southwest corner of East Merced and South 10th Streets (“Site”); and

WHEREAS, the application was deemed complete by the City of Fowler Community Development Department and has been reviewed for compliance with the Fowler Zoning Ordinance; and

WHEREAS, the Project requires approval of the Variance application in accordance with Article 27 of the Fowler Zoning Ordinance; and

WHEREAS, the City determined the Project is categorically exempt under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303, subdivision (e), New Construction or Conversion of Small Structures, and no additional environmental analysis is required; and

WHEREAS, a public hearing notice was duly published informing the public that the Categorical Exemption and Project would be considered for approval at a Planning Commission meeting held on July 7, 2022 at 6:30 p.m.; and

WHEREAS, the Planning Commission reviewed the Variance application, the staff report, the CEQA Categorical Exemption, and all evidence presented at the Planning Commission duly noticed public hearing on July 7, 2022, including oral and written public testimony on the Project and the Categorical Exemption.

NOW THEREFORE, BE IT RESOLVED the Planning Commission of the City of Fowler, based upon the entire record of proceedings, makes the following findings with regard to the application for Variance No. 22-20 for the Project:

1. The Project is categorically exempt under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303, subdivision (e), New Construction or Conversion of Small Structures, and that no additional environmental analysis is required.
2. Strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the Zoning Ordinance.

3. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties classified in the same zone.
4. Strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone.
5. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone.
6. Granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
7. Variance No. 22-20 for the Project is approved.

PASSED, APPROVED AND ADOPTED this 7th day of July 2022, at a regular meeting of the Planning Commission of the City of Fowler by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Craig Mellon, Chair

ATTEST:

Maria Aguilar, Secretary of the Planning Commission