

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #18-02

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: Feb. 7, 2018

PREPARED BY: Francisco Mendoza-Gonzalez,
Planner

SUBJECT: **Conditional Use Permit #1222** initiated by Healthy House on behalf of Shepherd of the Valley Evangelical Lutheran, property owner. This application involves a request to allow an outdoor community garden (approximately 1,700 square feet) on the grounds of the Shepherd of the Valley Lutheran Church, generally located on the northeast corner of Yosemite Avenue and White Dove Avenue (1455 E. Yosemite Avenue), within a Low-Density Residential (R-1-6) Zone. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #17-21 (Categorical Exemption)
- 2) Conditional Use Permit #1222

SUMMARY

Healthy House is requesting conditional use permit approval to operate an outdoor community garden on the premises of the Shepherd Valley Lutheran Church located at 1455 E. Yosemite Avenue. This 4-acre site is located on the northeast corner of Yosemite Avenue and White Dove Avenue (Attachment A). The subject site includes an existing 12,588-square-foot church, a parking lot (80 spaces), and 1.5 acres of open space on the eastern portion of the parcel. The proposed 1,700-square-foot community garden would be located within the open space portion of the parcel, and includes 20 raised beds (each 8'x4') used to grow a variety of fruits, vegetables, and herbs. A community garden is considered a conditional use within the Low-Density Residential (R-1-6) Zone and requires Planning Commission approval. Staff is recommending approval of this request, subject to the conditions in the staff report.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #17-21 (Categorical Exemption) and Conditional Use Permit #1222 (including the adoption of the Resolution at Attachment E), subject to the following conditions:

- *1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) - Attachment B-2, except as modified by the conditions.

- *2) All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superseded by Code) shall apply.
- *3) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- *4) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- *5) The applicant shall comply with all relevant Conditions of Approval from Resolution #2254 for Conditional Use Permit #847.
- *6) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- *7) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
- 8) No separate signage shall be allowed for the garden, except for temporary signs as approved by the Planning Division. All signing shall comply with the City’s Sign Ordinance. Building permits shall be obtained prior to installing any permanent signing. A Temporary Sign Permit shall be obtained prior to installing any temporary signs or banners. Temporary freestanding or A-frame signs are not allowed.
- 9) All gardening activities shall be conducted within the private property of the church.
- 10) All lighting on site shall be shielded or oriented in a way that does not allow “spillover” onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building, parking lot lighting, or signage shall be oriented to shine downward and not spillover onto adjacent parcels.

- 11) The applicant shall obtain building permits before constructing any structures, as required by the Building Department.
- 12) Land use approval for accessory structures may be considered by the Director of Development Services or, if deemed necessary, by Site Plan Review Committee.
- 13) The disking of soil is prohibited, unless conducted in a manner approved by the San Joaquin Valley Air Pollution Control District.
- 14) Aerial spraying of pesticides or herbicides is prohibited.
- 15) The community garden shall only operate between 8:00 a.m. and 8:00 p.m. daily.
- 16) The community garden shall maintain a minimum setback distance of 30 feet from all property lines.
- 17) Only non-odorous fertilizers shall be utilized on the property.
- 18) Odorous crops or plants shall be prohibited or mitigated as determined by the Director of Development Services.
- 19) If the garden is open after sunset, the applicant shall submit a Lighting Plan for Planning staff review and approval. Lighting shall illuminate the garden and at least a 20-foot radius around the garden. On-site lighting shall ensure safety and security of the property, including access areas. If lights are not provided, the garden shall close at sundown.
- 20) On-site sale of community garden products shall be prohibited.
- 21) Community garden activities shall in no way interfere with the operation of the existing church on the lot, including noise, litter, and loitering.
- 22) The applicant shall comply with all City of Merced business licensing requirements and all requirements of the Merced County Health Department.
- 23) No animals, including bees and fish, shall be allowed to be housed in the community garden. Only produce, plants, or flowers shall be allowed to grow in the community garden. Cannabis/Marijuana plants are prohibited.
- 24) The applicant shall comply with all regulations found in Merced Municipal Code Section 20.44.050 – Community Gardens.
- 25) Future expansion of the community garden may be approved by the Director of Development Services if the expansion does not exceed 33% of the area originally approved with this permit and if the garden maintains a minimum 30-foot setback from all property lines.

(* Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The proposed Healthy House community garden would be located on the grounds of Shepherd of the Valley Lutheran Church located at 1455 E. Yosemite Avenue. This 4-acre subject site is located within North Merced, on the northeast corner of Yosemite Avenue and White Dove Avenue. Healthy House will collaborate with various non-profit organizations, including the church on site, to organize and manage the proposed 1,700-square-foot community garden. The garden would include 20 raised beds used to grow a variety of fruits, vegetables, and herbs. Healthy House would have on-site management available at all times to oversee the site and respond to concerns from the neighborhood, if any.

The garden would generally operate between March and October during the hours of 8:00 a.m. and 8:00 p.m. daily. The applicant expects to have between twelve and twenty participants working the gardens during the busiest times of the year. The majority of the participants would be the Hmong Elders enrolled through Healthy House, along with a few youth scouts. All participants would receive formal training from Master Gardeners regarding cultivation and harvesting techniques. The garden would be served by a low-drip irrigation system connected to existing utilities from the church. The applicant’s main goal with this project is to provide a garden that allows residents to have access to fresh fruits and vegetables while allowing different cultures and age groups to come together and build positive relationships.

Surrounding Uses
(Attachment A)

Surrounding Land	Existing Use of Land	City Zoning Designation	City General Plan Land Use Designation
North	Single-Family Homes	Low-Density Residential (R-1-6)	Low Density Residential (LD)
South	Vacant 5.7-Acre Lot (across Yosemite Avenue)	Residential Planned Development (RPD) #20	Office Commercial (CO)
East	Single-Family Homes	Low-Density Residential (R-1-6)	Low Density Residential (LD)
West	Single-Family Homes (across White Dove Avenue)	Low-Density Residential (R-1-6)	Low Density Residential (LD)

BACKGROUND

In 2016, the City did a comprehensive amendment to the Zoning Ordinance for the first time in over 50 years. The revised Zoning Ordinance allows community gardens with a conditional use permit within all residential zones and most commercial zones. In addition, the City Council elected to waive the application fees for community gardens. However, water connection fees would need to be paid if there aren’t any existing utilities within the site. In this case, the applicant

may connect to the church's existing water utilities and would not have to pay water connections fees unless the garden uses so much water that the water line needs to be upgraded to serve both the garden and the church. According to City records, this is the first Community Garden to ever be reviewed by the Planning Commission.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Low-Density Residential (LD) and the zoning designation of Low-Density Residential (R-1-6) with Conditional Use Permit approval.

Parking

- B) The Zoning Ordinance requires parking based on the largest meeting room for church sites, which in this case is the worship hall. The applicant can utilize some of the existing parking spaces that are available onsite so no new parking will be required. The subject site has 80 parking spaces on the northern portion of the parcel, approximately 25 feet west of the proposed community garden. The community garden will mainly be used while the worship hall is closed, so there should be sufficient parking to accommodate members of the community garden.

Building Design

- C) The applicant is not proposing to modify any of the existing church facilities onsite or construct any new buildings with this Project. Tools and gardening equipment will be stored inside an existing 800-square-foot storage shed, located on the north side of the parcel, approximately 50 feet north from the community garden. If in the future the applicant wishes to construct additional storage sheds, they may be required to apply for a building permit to ensure compliance with Building and Fire Code requirements (Condition #11). Small accessory structures under 120 square feet may be approved administratively by staff. Larger facilities may require a Site Plan Review Permit with a public hearing, at the discretion of the Director of Development Services (Condition #12).

Site Design

- D) The subject site is located at the northeast corner of Yosemite Avenue and White Dove Avenue. The subject site is a rectangular-shaped 4-acre parcel that is 450 feet long by 390 feet wide. This site is already developed with a 12,588-square-foot church hall and an 1,800-square-foot pavilion, both located on the southern portion of the parcel (Attachment B-1). Pedestrian access is available from the sidewalk along White Dove Avenue that connects directly to church facilities and the proposed community garden. Vehicle access is available from two 20-foot-wide driveways along White Dove Avenue that lead directly to the church parking lot (80 parking spaces). The 1,700-square-foot community garden would be located on the eastern portion of the parcel, between 30 and 60 feet from the adjacent subdivisions (Attachment B-2). There is an existing 6-foot-tall wooden fence between the proposed community garden and residential properties that help reduce impacts from noise. In addition, there are several existing trees along the fence, strategically placed to provide additional privacy for the subdivision.

Neighborhood Impact/Interface

- E) The subject site is located within Northeast Merced and is surrounded by low-density residential uses to the north, east, and west (across White Dove Avenue). The subject site was originally in County jurisdiction before being annexed by the City of Merced and developed in the early 1990's. This neighborhood was part of the Northeast Yosemite Specific Plan, which was developed in phases. Phase 1 consisted of developing the church and Phase 2 consisted of developing the surrounding homes. Because the church and surrounding homes were part of the same master plan, effort was made to ensure that the church was a compatible use for the neighborhood. In doing so, a Conditional Use Permit (CUP #847) was approved by the Planning Commission requiring a six-foot-tall fence between the church and the subdivision to reduce impacts regarding noise and privacy. In addition, trees with large canopies were strategically planted along the fence to screen the church from the subdivision. These two factors, along with the fact that the site plan was designed to place the church as far away as possible from the subdivision at the southeast corner of the parcel (setback between 170 feet and 340 feet from the subdivision) with buffer spaces, help reduce impacts regarding noise and privacy. This level of planning makes the subject site a quality location for a community garden.

Additional conditions of approval can be included with this permit to ensure that the community garden is compatible with the adjacent homes. As is standard for agriculture-related projects, special consideration was given to air quality, noise, lighting, and odor, as discussed below:

Air Quality

To address concerns regarding air quality, staff is including Condition #13 prohibiting disking of soil or requiring that it be done in a manner approved by the San Joaquin Air Pollution Control District. Other concerns about air quality have to do with the types of chemicals and/or pesticides that could be used to protect the crops from bugs, fungus, and other ailments. The applicant has acknowledged that pesticides and herbicides will not be used to protect crops or plants. Instead, the applicant will use natural solutions and traditional cultivation techniques to protect their plants (see Condition #14).

Noise

To address impacts regarding noise from gardening activities, staff is including Condition #15, which limits the hours of operation that would be available to prepare the soil and work the garden from 8:00 a.m. to 8:00 p.m. daily. In addition, the applicant is acknowledging that the garden will be worked with manual tools instead of electrical or gasoline powered tools, which tend to be noisier. To further reduce noise, staff is including Condition #16, which requires a minimum setback distance of 30 feet between the garden and the adjacent homes.

Odor

Odor is an element that is generally difficult to monitor and regulate because there are limited resources that can measure the impacts of odor and because the critique of odor can be highly subjective. However, typical concerns regarding odor are associated with

the manure being used to fertilize crops. To address this impact, staff is including Condition #17, which limits the fertilizer types used, to those that are non-odorous.

The odor generated by crops and plants grown within the garden is somewhat mitigated by the setback distance between the garden and the homes (generally between 30 and 50 feet apart). However, should excessive complaints be filed regarding the odor of specific crops or plants, the Director of Development Services would have the authority to determine if the odor of a crop, herb, or plant qualifies as a nuisance. If so, the herb, plant, or crop would be prohibited or mitigated in a manner approved by the Director of Development Services (Condition #18). Ideally, it would be most efficient if the community garden's Manager works directly with the residents to address complaints.

Lighting

The applicant is not proposing outdoor lights at this moment, because the garden would close before sunset. However, if in the future the applicant wishes to use the garden after sunset, they would be required to provide a lighting plan to the Planning Department for review and approval. Said lighting plan should illuminate the entire community garden and a 20-foot radius around the garden (Condition #19). In addition, the applicant shall provide lighting for the path-of-travel leading up to the community garden so that pedestrians can safely walk from the parking lot to the garden. Lighting must be shielded or oriented in a way that does not allow "spillover" onto adjacent parcels in compliance with California Energy Code requirements (Condition #10).

Signage

- F) Healthy House has acknowledged that they will not utilize or install illuminated signs, movable signs, inflatable signs, A-Frame signs, flags, or pennants (see Condition #8). Temporary banner signs may be installed on the raised beds or the wall of a church building if they are installed in a secure manner approved by Planning staff and authorized with a temporary sign permit.

Community Garden Standards

- G) MMC 20.44.050 - Community Gardens: In considering an application for conditional use permits, the following criteria and standards shall be satisfied:

A. Location. *Community gardens are only permitted in zoning districts as shown in the land use regulation tables in Part 2 (Zoning Districts).*

The subject site is located within a Low-Density Residential (R-1-6) Zone, which allows Community Gardens with a Conditional Use Permit as shown on Table 20.08-1 *Permitted Land Uses in the Residential Zoning Districts* under "Community Uses."

B. Required Permits. *A Site Plan Review or Conditional Use Permit per the land use regulation tables in Part 2 (Zoning Districts) shall be required before applying for a building permit for construction of a community garden.*

This approval of this conditional use permit would fulfill this requirement.

In regards to building permit requirements, at this moment, the applicant is not proposing any structures that require building permit approval. The proposed gardens

are exempt from building permits, because they are less than 4 feet tall. However, future requests to install structures (e.g. large storage structures, tall fences, outdoor light post, outdoor sinks, outdoor restrooms, etc.) may require building permit approval, in addition to discretionary approval by the Director of Development Services or the Site Plan Review Committee (Conditions #11 and #12).

C. Applicant. *An applicant shall be a public entity, civic organization, or community-based organization, which would manage and maintain community gardens.*

The proposed community garden would be managed primarily by Healthy House with assistance from Shepherd of the Valley Lutheran Church. Healthy House has been an independent non-profit organization since January 2003. They are members of this community with an office in Downtown Merced. Their Mission Statement states that their goal is to promote the well-being and health of all people in our multi-ethnic community through the provisions of education, services, and advocacy which are founded in respect for language, culture, and health equity.

D. Operational Standards.

1. Owner's Agreement. *The applicant shall be required to bring a signed affidavit from the property owner, if applicant is not the owner.*

The applicant has provided the Memorandum of Understanding (MOU) between Healthy House and Shepherd of the Valley Lutheran Church (Attachment C). The MOU describes each party's level of involvement with this project, the duration of the agreement (1 year), and the services to be performed by each party.

2. Hours of Operation. *The community gardens shall only be operated between 8:00 a.m. and 8:00 p.m. daily.*

The applicant intends to operate the community garden between 8:00 a.m. and 8:00 p.m. daily (Condition #15).

3. Animals Prohibited. *No animals, including bees and fish, shall be allowed to be housed in community gardens. Only produce, plants, or flowers shall be allowed to grow in community gardens. Marijuana plants are prohibited.*

The applicant acknowledges that the Community Garden would not house any animals or grow cannabis/marijuana. Should animals be found on the premises, they would be addressed by the City's Code Enforcement Department (Condition #23).

4. Commercial Activities. *On-site sale of community garden products shall be prohibited, unless located in a commercial zone or as otherwise authorized by a Site Plan or Conditional Use Permit.*

Item V of the attached MOU states that the community garden will not be used for commercial purposes or for profit-activities (Condition #20). The harvested food will be kept by participants and their families. If there is additional food, the church or Healthy House will donate the produce to needy families and/or children, as allowed by the Merced County Health Department.

5. **Lighting Plan.** *On-site lighting plan shall be required upon submittal for a City Permit. On-site lighting plan shall ensure safety and security of the property, including parking and access areas.*

The applicant is proposing to close the community garden before sunset, so outdoor lights will not be needed at this time. However, if in the future the applicant wishes to use the garden after sunset, they would be required to provide a Lighting Plan to the Planning Department for review and approval. Said lighting plan should illuminate the entire community garden and a 20-foot radius around the garden. However, the lighting shall be shielded or oriented in a way that does not “spill-over” onto adjacent parcels (Conditions #10 and #19).

6. **Maintenance.** *Community gardens shall be maintained free of weeds, trash, and debris.*

The applicant has agreed to maintain the property free of weeds, trash, and debris. The applicant will be working with a multitude of partners to ensure that the garden is maintained properly at all times. Said partners include the Merced Master Gardeners, United Methodist Church Youth, Boys & Girls Scout Troops, and the Healthy House Hmong Elders.

Environmental Clearance

- H) Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (i.e., no further environmental review is needed) is being recommended (Attachment D).

Attachments:

- A) Location Map
- B1) Site Plan for the Church
- B2) Site Plan for the Community Garden
- C) MOU (between the applicant and property owner)
- D) Categorical Exemption
- E) Draft Planning Commission Resolution

PARTRIDGE

Subject Site
(Proposed Community Garden)

WHITE DOVE

POINTER

Single-Family Homes

Shepherd of the Valley
Lutheran Church

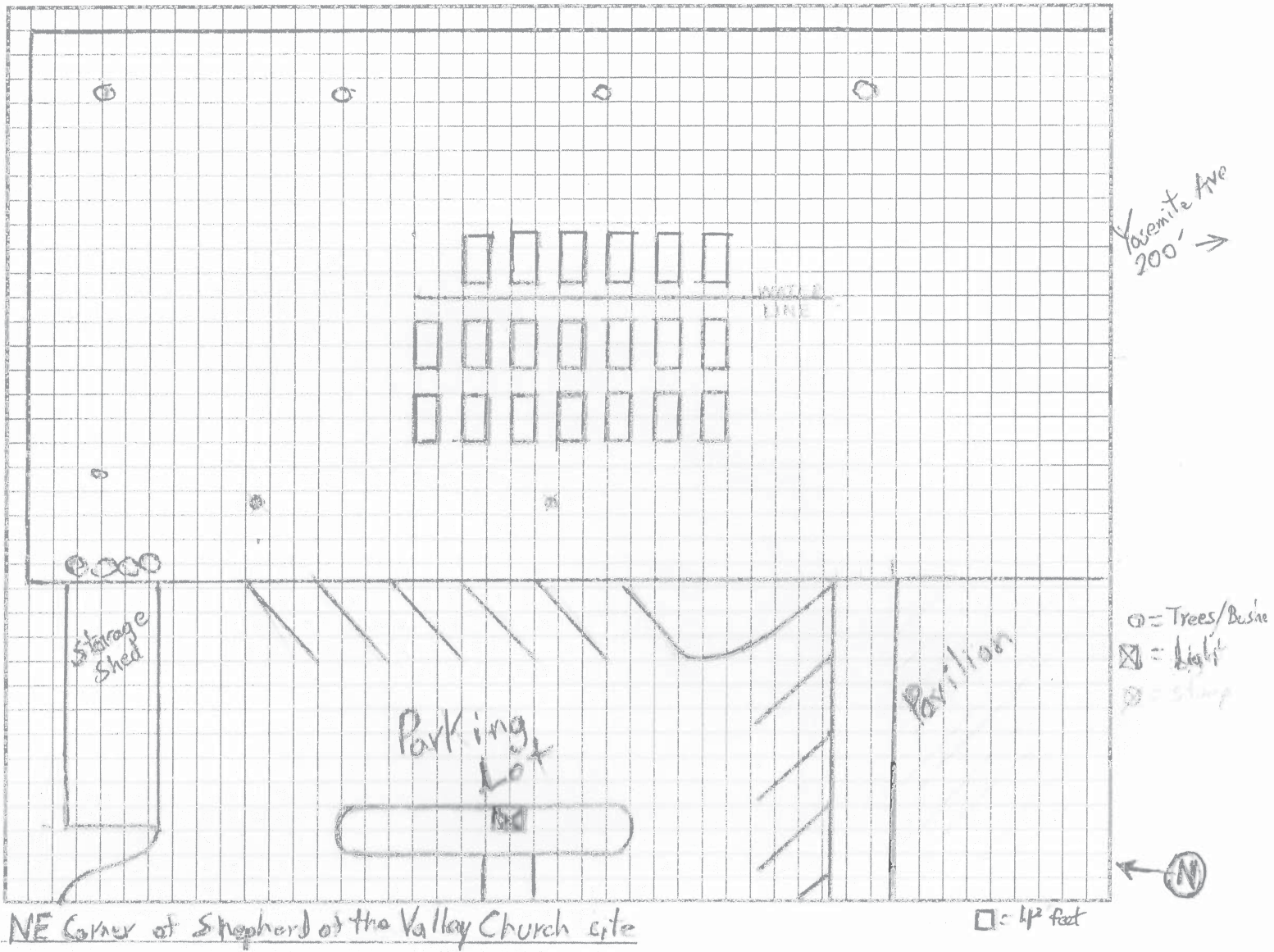
YOSEMITE

Vacant Lot
(designated Office Comercial)

University Surgery Center

ATTACHMENT A





Memorandum of Understanding

For contracted services in implementing a community garden project

I. Parties

Healthy House Within a MATCH Coalition is a non-profit organization located at 301 W. 18th St., Ste. 101, Merced, California 95341 and the Shepherd of the Valley Lutheran Church is a church located at 1455 E. Yosemite Ave., Merced, California 95340.

Other Project Participants: Merced Master Gardeners; United Methodist Church youth; Shepherd of the Valley congregants and youth; Boys & Girl Scout troops; and the Healthy House Hmong Elder program participants.

II. Duration of Agreement

This Memo of Understanding is effective for the period of October 1, 2017 through September 30, 2018. It may be terminated by either party without cause provided that such party desiring termination gives 30 days written notice to either party or said party's decision to terminate.

III. Services to be performed by Healthy House

Management & Coordination of Project and Project Participants

Healthy House staff will provide on-site management and coordination of the community garden project and project participants (associated with the garden) at 1455 E. Yosemite Ave., Merced California 95340. This management will include the construction of 20 raised garden boxes; the planting of the garden boxes; the scheduling of all garden activities; watering and care of the gardens; the neat storage of all gardening implements/supplies on the property; and the harvesting and distribution of all produce from such gardens. *All management decisions will be made in consultation with Marc Medefind, Alan Arnold, and Steve Hand (as representatives of the Council and the Property and Grounds management).*

Healthy House staff will ensure **that all gardening activities occur only during daylight hours.** The program will work out designated hours with the church, but *such hours will never occur earlier than 8 a.m. or later than 8 p.m., as required by City of Merced Zoning Ordinance.* Healthy House will provide oversight of all activities associated with the community garden. This will include providing bathroom facilities for volunteer workers if needed. If church bathrooms are utilized, they will be inspected and cleaned at the cessation of each day's activities.

Any defacement, theft or problems associated with the garden boxes, not covered by insurance, will be addressed and redressed by the Healthy House staff to the best of their ability. This includes cleaning up of any defacement, unsightly messes, pest issues, weeds, trash, and/or other debris associated with the garden.

Healthy House will also list Shepherd of the Valley Lutheran Church as *an additional insured* under their insurance policy.

IV. Services to be performed by Shepherd of the Valley Lutheran Church

Shepherd of the Valley Lutheran Church agrees to allow Healthy House and its community and church-based partners to construct and maintain a community garden, consisting of 20 raised beds (as illustrated in the attached schematic) as planned in consultation with Marc Medefind, Steve Hand, Alan Arnold and the Master Gardener program. Marc Medefind, council member at Shepherd of the Valley Lutheran Church, has volunteered to act as an advisor and liaison to the Church Council on all matters regarding the community garden.

Shepherd of the Valley also agrees to adopt the Community Garden project as a joint ministry between the Church, Healthy House, and the other community-based partners listed above. This ministry, besides providing space, land, water, and limited storage for the community garden project, would include a commitment to supporting the involvement of the church youth, the UMW youth, and the Scout troops which meet or are associated with SOV. This ministry would also include a commitment to providing healthy produce from the garden to families in need in our community, including the families of the Hmong elders involved.

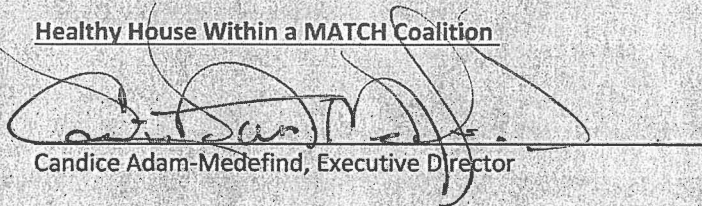
Shepherd of the Valley will ensure that there is adequate lighting for the community garden by keeping the large lights situated around the parking lot in good working order. These include 4 20' lights, including one that is 40' from the garden site, allowing plenty of light for safety and security of property, including parking and access areas.

Shepherd of the Valley will provide *water* to the garden unless the church treasurer, Monte Hamamoto, finds that it is creating exorbitant or unforeseen costs, at which point the provision of water can be re-negotiated.

V. No parties to this MOU will engage in any profit- activity associated with the community garden. All produce will go to benefit needy families and children, including, but not limited to, the Hmong Elders and their families.

VI. Signatures

Healthy House Within a MATCH Coalition


Candice Adam-Medefind, Executive Director

12.13.17
Date

Shepherd of the Valley Lutheran Church


SOV representative

12/13/17
Date

NOTICE OF EXEMPTION

To: _____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

X County Clerk
County of Merced
2222 M Street
Merced, CA 95340

Project Title: CUP #1222 (Environmental Review #17-21)

Project Applicant: Healthy House

Project Location (Specific): 1455 E. Yosemite Ave. **APN:** 231-162-008

Project Location - City: Merced **Project Location - County:** Merced

Description of Nature, Purpose, and Beneficiaries of Project:

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: Healthy House

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: 15301 (a)
- Statutory Exemptions. State Code Number: _____.
- General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: As defined under the above referenced Section, the proposed project consists of minor exterior alterations, which are considered to be exempt under the CEQA Guidelines per Section 15301 (a).

Lead Agency: City of Merced

Contact Person: Francisco Mendoza-Gonzalez **Area Code/Telephone:** (209) 385-6858

Signature:  **Date:** 1-16-2018 **Title:** Planner

X Signed by Lead Agency **Date Received for Filing at OPR:** _____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

CITY OF MERCED
Planning Commission

Resolution #_____

WHEREAS, the Merced City Planning Commission at its regular meeting of February 7, 2018, held a public hearing and considered **Conditional Use Permit #1222**, initiated by Healthy House on behalf of Shepherd of the Valley Evangelical Lutheran, property owner. This application involves a request to allow an outdoor community garden (approximately 1,700 square feet) on the grounds of the Shepherd of the Valley Lutheran Church, generally located on the northeast corner of Yosemite Avenue and White Dove Avenue (1455 E. Yosemite Avenue), within a Low-Density Residential (R-1-6) Zone; also known as Assessor’s Parcel Number 231-162-008; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through H of Staff Report #18-02; and,

NOW THEREFORE, after reviewing the City’s Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #17-21, and approve Conditional Use Permit #1222, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner _____, seconded by Commissioner _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

ATTACHMENT E

PLANNING COMMISSION RESOLUTION # _____

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February 7, 2018

Adopted this 7th day of February 2018

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions: CUP#1222 Healthy House_Shepherd of the Valley (1455 E. Yosemite Ave.)

Conditions of Approval
Planning Commission Resolution # _____
Conditional Use Permit #1222

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) - Attachment B-2 of Staff Report #18-02, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superseded by Code) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. The applicant shall comply with all relevant Conditions of Approval from Resolution #2254 for Conditional Use Permit #847.
6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify

or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
8. No separate signage shall be allowed for the garden, except for temporary signs as approved by the Planning Division. All signing shall comply with the City's Sign Ordinance. Building permits shall be obtained prior to installing any permanent signing. A Temporary Sign Permit shall be obtained prior to installing any temporary signs or banners. Temporary freestanding or A-frame signs are not allowed.
9. All gardening activities shall be conducted within the private property of the church.
10. All lighting on site shall be shielded or oriented in a way that does not allow "spillover" onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building, parking lot lighting, or signage shall be oriented to shine downward and not spillover onto adjacent parcels.
11. The applicant shall obtain building permits before constructing any structures, as required by the Building Department.
12. Land use approval for accessory structures may be considered by the Director of Development Services or, if deemed necessary, by Site Plan Review Committee.
13. The disking of soil is prohibited, unless conducted in a manner approved by the San Joaquin Valley Air Pollution Control District.
14. Aerial spraying of pesticides or herbicides is prohibited.
15. The community garden shall only operate between 8:00 a.m. and 8:00 p.m. daily.
16. The community garden shall maintain a minimum setback distance of 30 feet from all property lines.

17. Only non-odorous fertilizers shall be utilized on the property.
18. Odorous crops or plants shall be prohibited or mitigated as determined by the Director of Development Services.
19. If the garden is open after sunset, the applicant shall submit a Lighting Plan for Planning staff review and approval. Lighting shall illuminate the garden and at least a 20-foot radius around the garden. On-site lighting shall ensure safety and security of the property, including access areas. If lights are not provided, the garden shall close at sundown.
20. On-site sale of community garden products shall be prohibited.
21. Community garden activities shall in no way interfere with the operation of the existing church on the lot, including noise, litter, and loitering.
22. The applicant shall comply with all City of Merced business licensing requirements and all requirements of the Merced County Health Department.
23. No animals, including bees and fish, shall be allowed to be housed in the community garden. Only produce, plants, or flowers shall be allowed to grow in the community garden. Cannabis/Marijuana plants are prohibited.
24. The applicant shall comply with all regulations found in Merced Municipal Code Section 20.44.050 – Community Gardens.
25. Future expansion of the community garden may be approved by the Director of Development Services if the expansion does not exceed 33% of the area originally approved with this permit and if the garden maintains a minimum 30-foot setback from all property lines.

n:shared:planning:PC Resolutions: CUP #1222 Exhibit A