Resolution No.

STOCKTON CITY COUNCIL

RESOLUTION DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF A USE PERMIT TO ALLOW THE OFF-SALE OF BEER AND WINE IN AN EXISTING MINI-MART WITH GASOLINE SALES AND A VARIANCE TO REDUCE THE MINIMUM SEPARATION REQUIREMENT BETWEEN AN OFF-SALE ALCOHOLIC BEVERAGE ESTABLISHMENT AND AN ACADEMIC SCHOOL, FOR PROPERTY LOCATED AT 3440 EAST MAIN STREET (P15-0420)

On April 14, 2016, the City Planning Commission denied a Use Permit to allow the off-sale of beer and wine in a mini-mart and gasoline sales and a Variance to reduce the minimum separation requirement between an off-sale alcoholic beverage establishment and an academic school at 3440 East Main Street; and

On April 25, 2016, pursuant to the provisions of Section 16.100.040 of the Stockton Municipal Code (SMC), the applicant submitted an appeal of the Planning Commission's denial of the subject Use Permit and Variance; and

On August 23, 2016, the City Council convened a public hearing regarding the appeal of the Planning Commission's decision; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council hereby denies the appeal and upholds the decision of the Planning Commission to deny a Variance to reduce the minimum separation requirement between an off-sale alcoholic beverage establishment and an academic school, based on the following findings:

a. Special Circumstances - There are no special circumstances, unique physical characteristics, or conditions applicable to this site that distinguish it from other similarly-zoned parcels in the vicinity, because it has the same general physical characteristics and zoning as nearby parcels. The requested Variance application was submitted solely for the applicant to be able to provide alcohol sales to his customers and compete with other retail stores in the area that already have the off-sale of alcohol. Therefore, enforcement of the required 300-foot minimum separation does not deny the applicant privileges enjoyed by other property owners with similarly-zoned parcels in the vicinity of the project site.

b. Exceptional Circumstances - There are no exceptional or extraordinary circumstances or conditions applicable to the site or to the intended use of the site that distinguish it from other properties with the same zoning

designation, because the project site has the same zoning as the adjoining parcels to the north, east, and west and the existing mini-mart is not configured in such a way that students at the adjacent school are precluded from being able to access the store. Finally, the Development Code does not contain any provisions that would exclude the proposed off-sale alcohol use from having to comply with the noted minimum separation requirement.

c. Physically Suitable – The subject site is not physically suitable for the proposed Variance, because the site has no distinctive topographical or physical features, such as being landlocked or having an irregular shape. Because the site lacks a distinctive physical characteristic, it is not physically suitable for the granting of a Variance application.

d. All of the following circumstances must exist in order to grant the variance:

(a) Be necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the same vicinity and zoning district and denied to the property owner for which the variance is sought;

(b) Be consistent with the general land uses, objectives, policies, and programs of the General Plan, any applicable specific plan, precise road plan, or master development plan, and the intent of this Development Code;

(c) Not constitute a granting of special privilege inconsistent with the limitations on other properties classified in the same zoning district;

(d) Not authorize a use or activity which is not otherwise expressly authorized by the zoning district regulations governing the subject property;

(e) Not be detrimental to the public convenience, health, interest, safety, or general welfare of the City or materially injurious to properties or improvements in the vicinity; and

(f) Be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines.

The proposed use does not meet the noted criteria and granting the Variance would authorize a use that would not otherwise be permitted for other CG-zoned parcels within 300 feet of the nearby school and increase the intensity and incompatibility of a use that is not consistent with applicable General Plan policies. Specifically, General Plan Land

Use Policy LU-1.7 states that "The City shall continue to apply the regulations and procedures of the Development Code and shall use the environmental process to prevent or mitigate land use conflicts." The subject use is not consistent with the noted Policy, because it does not meet Development Code standards for separation from a school, which is intended to prevent land use conflicts between alcohol-related land uses and schools. Approval of the Variance would represent the granting of a special privilege that would be inconsistent with limitations placed on other similarly-zoned parcels in the vicinity of the project site. Granting the Variance could be detrimental to the safety and general welfare of students, teachers, and staff in the existing school and residents in the surrounding neighborhood, due to the project's potential for police-related problems associated with the proposed off-sale of beer and wine in the existing mini-mart (e.g. loitering, increased calls for service…). As an example of the detrimental impact of such a use on the neighborhood, records from the State Department of Alcoholic Beverage Control (ABC) indicate that a previous operator of the subject mini-mart sold alcohol to minors in 2001.

If the Variance request is denied, no environmental analysis is needed for the proposed use under the California Environmental Quality Act (CEQA).

2. The City Council hereby denies the appeal and upholds the Planning Commission's denial of a Use Permit to allow the off-sale of beer and wine in the existing mini-mart with gasoline sales at 3440 East Main Street.(See Exhibit 1 - Site and Floor Plans), based on the following General and Problem Use Findings in former SMC Section 16.168.050. A and B and the consideration of the criteria in former SMC Section 16.80.270.B:

General Findings:

a. The proposed use would not maintain or strengthen the integrity and character of the neighborhood and zoning district in which it is to be located, because the proposed use has the potential to increase the number of calls for police service in nearby residential and commercial neighborhoods. There are twelve (12) existing off-sale alcohol establishments within approximately three-quarters of a mile of the project site and the addition of another off-sale alcohol establishment has the potential to increase illegal activities associated with alcohol sales. Further, allowing the off-sale of beer and wine in the subject mini-mart has the potential to increase crime-related activities in the area and result in additional demands for police services.

b. The establishment, maintenance, or operation of the proposed use at the location proposed and for the time period(s) identified, would endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use, because the proposed use is a potentially detrimental use that has the potential to adversely affect, endanger, or jeopardize the public convenience, health, interest, safety, or general welfare of persons

residing or working in the vicinity of the project site, due to possible additional calls for police services related to illegal activities from alcohol sales – including noise, public drunkenness, vandalism, and panhandling and thereby placing a further strain on police resources.

c. The design, location, size, and operating characteristics of the proposed use would not be compatible with existing and future land uses on-site and in the vicinity of the subject property, because the proposed use has the potential to be incompatible with residences, offices, retail uses, and the school in the area of the project site, due to the creation of additional alcohol-related impacts, such as noise, illegal drug usage and sales, theft, and violent behavior.

Problem Use Findings:

a. The proposed use is likely to interfere with the comfortable enjoyment of life or property in the area, because the applicant has failed to provide any evidence that another alcoholic beverage sales establishment would not negatively affect the area surrounding the subject site. He has stated that no more than 20% of the store floor area would be dedicated to the sale, display, and/or storage of alcohol; however, that restriction is not intended to reduce off-site impacts, but is simply a way to differentiate between two similar land uses: convenience stores/mini-marts and liquor stores.

b. The proposed use will increase or encourage the deterioration or blighting of the area. According to the Police Department's crime report statistics, the average number of crimes reported in all of the Citywide Crime Reporting Districts is 85. The project site is located in Crime Reporting District No. 204. The average number of crimes reported in this district is 92, which is not more than 20% above the City-wide average. Although the project site is not located in a High Crime Reporting District, there are already twelve (12) existing off-sale alcohol outlets within approximately three-quarters of a mile of the subject site. Clearly, the area immediately surrounding the proposed use is adequately served by the existing alcohol sales outlets. Adding another alcoholic beverage sales establishment on the subject site does not provide any benefit for the customers' convenience, which were given the number of existing alcohol sales establishments and the potential to create an unsafe neighborhood, due to an increase in alcohol-related crimes, illegal activities, and drunkenness and to increase or encourage deterioration or blight in the area.

c. The establishment of an additional use of this type in the area will hinder neighborhood conservation, improvement, or redevelopment, either residential or nonresidential, because such an establishment has the potential to increase alcohol-related illegal activities, which would adversely affect the quality of life for area residents.

3. The City Manager is authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED August 23, 2016.

ANTHONY SILVA
Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE
City Clerk of the City of Stockton