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March 22, 2016

VIA EMAIL

Stockton Planning Commission
C/O Richard Larrouy
Planning Manager
345 N. El Dorado Street
Stockton, CA 95202

Re: P15-0453 Use Permit to Upgrade Off-Sale Alcohol at 7906 N. El Dorado Street (PC Agenda Item 5.2, March 24, 2016)

Dear Richard:

As you may recall, I represent the applicant, Manju Trehan, on the above-referenced use permit application.

Through this application Mrs. Trehan seeks improve her existing Sinclair fuel station/convenience store by upgrading from beer and wine sales (Type 20) license to general alcohol sales (Type 21).

While the staff report recommends denying this application, we request that the Commission approve the permit and believe all necessary findings can be made. To facilitate the Commission's decision-making process, I have enclosed a proposed resolution approving the application.

Also for the Commission's benefit, I wish to highlight a few facts in support of approval for the record:

- The convenience store has sold beer and wine at this location for 40 years and no evidence suggests my clients (who purchased and began operating the facility in 2002) or the prior owners were ever out of compliance with the current use permit (UP2-76). Thus, my client has a positive, established history of compliant alcohol sales at this location.

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- Although ABC will not require my client to surrender her existing Type 20 beer and wine off-sale license as in order to receive a Type 21 general alcohol off-sale license, she has voluntarily agreed to do so should the Commission approve her request. Although that Type 20 license is a marketable property interest worth thousands of dollars, she is willing to surrender this property right without compensation to ensure there is no net increase in the number of off-sale alcohol licenses in the City.
- The nearest school is over 1,100 feet away (well in excess of the City's 300-ft. ban and ABC's 600-ft. basis for denial) and upon receiving notice of the application Stockton Unified School District responded that it had no comment on the proposal.
- Unlike the recently-withdrawn proposed mini-mart at 2001 Pacific Avenue, which received hundreds of signatures and comments in opposition, as well as objections from SUSD, to our knowledge the City has not received a single comment in opposition to my client's application. In fact, my client has received several written and oral comments in support of the application which she intends to submit to the Commission at the hearing on Thursday evening.

Finally, the staff report notes that the convenience store is located in a crime-reporting district which is more than 20% above the City's average and suggests that the proposal could increase vagrancy, public drunkenness, and other illegal activities. But several factors rebut this assumption.

First, my client is both the owner and operator of the fuel station/convenience store and she has history of compliant beer and wine sales at this location.

Second, as the owner-operator my client takes pride in the appearance of her fuel station and convenience store and actively works to keep the property clean, safe, and free of loitering/vagrancy/public drunkenness.

Third, unlike a traditional liquor store, the vast majority of my client's alcohol sales are ancillary to fuel purchases or other food/convenience purchases. Simply stated, this is not a gathering place where alcohol will be consumed in the immediate area.

Fourth, in 2014 the City approved application P13-148 permitting A-1 Liquor, located in the same commercial center as my client's fuel station, to upgrade from off-sale beer and wine to off-sale general alcohol (See Council Res. No. 2014-02-25-1603-02). At that time, there existed an additional off-sale license in the center that has since terminated (former Rite-Aid). No evidence suggests that approval, resulting in **5 off-sale licenses** in Census Tract 33.10 at the time, increased loitering/vagrancy/public drunkenness or other alcohol-related crimes or offenses in the area. Logically, then, it cannot be found that approving this application, which will result in a total of only **4 off-sale licenses** in the census area (the same number that exists currently), is likely to lead to any increase, let alone a material increase, in such problems.

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Accordingly, we respectfully request the Commission approve the use permit based on the facts of the application.

Very truly yours,

SHORE, McKINLEY & CONGER, LLP

A handwritten signature in black ink, appearing to read "Brett S. Jolley", with a long, sweeping horizontal line extending to the right.

Brett S. Jolley

Enclosure (proposed Resolution approving use permit)

Cc: Client
David Kwong, Community Development Director

Resolution No.

STOCKTON PLANNING COMMISSION

RESOLUTION APPROVING A USE PERMIT TO UPGRADE FROM THE OFF-SALE OF BEER AND WINE TO THE OFF-SALE OF GENERAL ALCHOLIC BEVERAGES IN AN EXISTING CONVENIENCE STORE AT 7906 NORTH EL DORADO STREET (P15-0453)

The applicant, Manju Trehan, owns and operates the existing convenience store on the site and has submitted an application for a Use Permit to upgrade from the off-sale of beer and wine to the off-sale of general alcoholic beverages in an existing convenience store for property located at 7906 N. El Dorado Street, in order to satisfy her customers' needs; and

The existing convenience has store sold beer and wine at this location continuously since 1976 as authorized by Use Permit No. UP2-76; and

The applicant has owned and operated the convenience store for approximately 14 years; and

There are currently four active off-sale alcohol establishments within this Census Tract, including the applicant's off-sale beer and wine license; and

The applicant has agreed to surrender her existing (Type 20) off-sale beer and wine license to the Department of Alcoholic Beverage Control ("ABC") as a condition of approval of the Use Permit to ensure no net increase in the number of active off-sale alcohol establishments would occur as a result of the Use Permit; and

Although the convenience store is located in an area of the City that has experienced an above average number of crimes, based on the convenience store's 40-year history of off-sale beer and wine at this location and the applicant's responsible operation of the convenience store since 2002, expanding the off-sale beer and wine use to the off-sale general alcohol use is not expected to result in additional calls for police service or to result in adverse impacts upon the general health and welfare of the neighborhood, or to increase vagrancy or illegal activities; now; therefore,

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

The Planning Commission hereby grants the request for a Use Permit to upgrade from the off-sale of beer and wine to the off-sale of general alcoholic beverages in an existing convenience store at 7906 N. El Dorado Street, based on the following findings:

1. General Findings

- a. The proposed use, Convenience Store with the Sale of Alcohol – Off Sale, is allowed in the CG (Commercial, General) Zoning District with the approval of a use permit from the Planning Commission, per SDC 16.20.020, Table 2-2. The proposed use complies with all other applicable provisions of the Development Code including those prescribed in SDC 16.80.040 and 16.80.140, which, as applicable, are as follows:
 - i. The minimum parcel size for a Convenience Store is 15,000 square feet and the subject commercial center parcel contains 6.8± acres (296,202± sq. ft.).
 - ii. The minimum parcel frontage for a Convenience Store is 150 feet and the subject parcel has substantially more frontage along both Hammer Lane and N. El Dorado Street.
 - iii. The site is located more than 300 feet from the nearest academic school as the nearest school (Nolan Pulliam Elementary School) is approximately 1,100 feet away. Stockton Unified School District was notified of the application and indicated it had no comment.
- b. The proposed use, as conditioned, would maintain the integrity and character of the neighborhood and CG zoning district because it would provide additional retail sales opportunities. Based on the historic sale of alcohol (beer and wine) at this location without problems, allowing the convenience store to upgrade to general alcohol sales will not significantly affect the neighborhood in any way. The City has not received any comments in opposition to the applicant's request further evidencing the compatibility of the proposed use with the neighborhood.
- c. The proposed use would be consistent with the general land uses, objectives, policies, and programs of the General Plan and any applicable specific plan or master development plan. The project site has a General Plan Land Use designation of Commercial. The use of the site for a retail store is consistent with the following General Plan's policies:
 - i. LU-4.1 – The City shall encourage the upgrading, beautification, revitalization, and appropriate reuse of existing commercial areas and shopping centers.
 - ii. LU-4.8 – The City shall encourage small neighborhood-serving commercial uses adjacent to and within residential areas where such uses are compatible with the surrounding area and mitigate any significant impacts (i.e., traffic, noise, and lighting).

- d. The subject site would be physically suitable for the type and density/intensity of use being proposed including the provision of services (e.g., sanitation and water), public access, and the absence of physical constraints (e.g., earth movement, flooding, etc.). The proposed retail use is located within an established commercial shopping center that provides adequate access and services and is not hindered by physical constraints.
- e. The establishment, maintenance, or operation of the proposed use at the location proposed and for the time period(s) identified, if applicable, would not 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. The proposed use, as conditioned, would be subject to common requirements for security and operation that will reduce the potential for hazard to an acceptable level. The convenience store has sold beer and wine at this location for 40 years and has not been a nuisance or problem use.
- f. The design, location, size, and operating characteristics of the proposed use would be compatible with the existing and future land uses on-site and in the vicinity of the subject property. The proposed retail use is compatible with the other retail, restaurant and service uses already in place at the shopping center.
- g. The proposed action would be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines. The project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines because it constitutes reuse of an existing facility.

2. "Problem Use" Findings

The following criteria shall be considered pursuant to Section 16.80.270.B and findings made in compliance with Section 16.168.050(B) related to problem uses:

Criteria

- a. The proposed use with respect to the proximity and type of other problem uses;
- b. The effect of dispersal or concentration of problem uses in the general area;
- c. The effect that the proposed use is likely to have on the neighborhood;
- d. The noise, traffic, and/or visual impacts, as well as other relevant factors, on the compatibility of the proposed use with the surrounding institutional, business, and residential uses;
- e. The potential of the proposed use to create or increase loitering or vandalism in the area; and

- f. The degree that traffic safety, both on and off-site, will be adversely affected by the proposed activity.

Findings

The Planning Commission directly considered the criteria contained in SDC Section 16.80.270 regarding Problem Uses and finds that:

- a. There are currently four alcohol-related Problem Uses located in Census Tract No. 33.10, including the applicant's current facility which has a Type 20 (off-sale beer and wine) license issued by ABC. Based on the applicant's voluntary offer to surrender her existing Type 20 license to ABC as a condition of approval of the Use Permit and based on the historic (40-year) operation in good standing under UP2-76, and further based upon the applicant's positive operation of convenience store since 2002, the Commission finds that approving the Use Permit and allowing the applicant to convert from off-sale beer and wine to off-sale general alcohol in the existing convenience store would not intensify existing alcohol-related police problems in the area surrounding the subject site or increase the potential to adversely affect or endanger public safety in the surrounding neighborhood through additional crimes and the associated increase in calls for police services. Further, the Commission finds that the minor change to the facility resulting from approving the Use Permit would not increase public nuisances such as loitering, vandalism, and panhandling, etc., that can be associated with the off-sale of alcoholic beverages.
- b. The proposed use is not likely to interfere with the comfortable enjoyment of life or property in the area based on the applicant's history of alcohol (beer and wine) off-sale at the convenience store.
- c. The proposed use, as conditioned, will not increase or encourage the deterioration or blight of the area because the use will be contained wholly within the existing convenience store building within an existing commercial shopping center, which uses consistent architectural and sign programs.
- d. The establishment of an additional use of this type in the area will not be contrary to any program of neighborhood conservation, improvement, or redevelopment, either residential or nonresidential, because there is not any recognized or City-sanctioned neighborhood conservation, improvement, or redevelopment programs applicable to the project site or immediate area.
- e. The Use Permit to allow general liquor to be sold along with the convenience store's existing off-sale beer and wine selection will not result in a significant increase in traffic or noise as the convenience store already exists and sells beer and wine, and two other retailers in the shopping center, a supermarket and a

liquor store, already have general off-sale alcohol permits. The majority of customers likely to purchase any liquor products from the convenience store are likely to be pass-by customers who are already purchasing fuel and/or other already-available food and/or beer and wine items from the convenience store.

PASSED, APPROVED, and ADOPTED March 24, 2016.

AYES:

NAYS:

ABSENT:

KEVIN HERNANDEZ, CHAIR
City of Stockton Planning Commission

ATTEST:

DAVID KWONG, SECRETARY
City of Stockton Planning Commission