

Resolution No.

STOCKTON PLANNING COMMISSION

RESOLUTION APPROVING A USE PERMIT AND WAIVER FOR THE OFF-SALE OF ALCOHOLIC BEVERAGES AT A PROPOSED GROCERY STORE WITHIN THE SHERWOOD MALL SHOPPING CENTER, LOCATED AT 5308 PACIFIC AVENUE (P21-0909)

On September 8, 2020, the applicant, Kyle Godat of Brixton Capital on behalf of the owner, Brixton Sherwood LLC, submitted an application to the Community Development Department for Commission Use Permit P21-0909, to request a California Department of Alcoholic Beverage Control (ABC) Type 20 license for the sale of beer and wine, which allows for sale of beer and wine for consumption off the premises where sold; and

The primary use is a proposed grocery store, and the sale of beer and wine would be incidental to the primary use. The business is located at 5308 Pacific Avenue within the Sherwood Mall shopping center; and

On November 8, 2021, a public notice for the subject application was published in local newspaper in accordance with Stockton Municipal Code (SMC) section 16.88.030; and

On November 18, 2021, the Planning Commission conducted a public hearing on the application, in compliance with SMC section 16.168.040(D), at which point all persons wishing to be heard were provided such opportunity; now, therefore,

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

A. The foregoing recitals are true and correct and incorporated herein reference.

B. Based on its review of the entire record herein, the Planning Commission makes the following findings:

Use Permit: General Findings

1. The proposed use is allowed in the Commercial, Large (CL) zoning districts, subject to approval of a Use Permit by the Planning Commission and complies with all other applicable provisions of the Development Code (Title 16) and the Stockton Municipal Code. Per Stockton Municipal Code (SMC) Section 16.20.020, Table 2-2, the use, as proposed, will meet all applicable development standards at SMC Title 16 (Development Code). There are no applicable overlays or specific plans for this site.

2. The proposed use, as conditioned, will maintain or strengthen the integrity and character of the neighborhood and zoning district in which it is to be located. The

proposed grocery store use is allowed in the CL zoning district, it will provide a wide selection of fresh produce, bulk foods, meat and seafood, deli, baked goods, dairy products, frozen foods, natural body care and household items. The primary use is a 26,800 square foot grocery store. The sale of beer and wine would be incidental to the primary use. The project location provides food shopping convenience for the general public.

3. The proposed use will be consistent with the general land uses, objectives, policies, and programs of the General Plan and any applicable specific plan or master development plan:

Goal CH-3: Expand opportunities for local enterprise, entrepreneurship, and gainful employment.

ED—1 To maintain a thriving business community that provides a sound tax base for the City, jobs for the local workforce, and commercial shopping opportunities for residents and visitors alike. The proposed project use will create jobs and provide services to the general City of Stockton public.

4. The subject site is located in the existing Sherwood Mall shopping center and will be physically suitable for the type and density/intensity of the 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 Project is within a developed site which includes all adequate services and accesses. For all these reasons, the proposed use is of an appropriate intensity and all services are existing.

5. The establishment, maintenance, or operation of the subject use, at the location proposed and for the time period(s) identified, is not expected to 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 subject use, because the use will be subject to conditions of approval that require a security surveillance video system, lighting around the premises, as well as additional conditions of approval relating to loitering and obeying all laws established by the City of Stockton and Alcoholic Beverage Control.

6. The location, size, and operating characteristics of the subject use are expected to be compatible with existing and future land uses on- site and in the vicinity of the subject property because the grocery store with the off-sale of beer and wine is classified as a retail use that is compatible with the Commercial General Plan designation on the subject site. The anticipated customer base, traffic patterns, noise levels, and general operational characteristics of the proposed grocery store with the off- sale of beer and wine are compatible with nearby commercial and residential uses.

7. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines, in accordance with the provisions of section 15301, existing facilities. The proposed use will be locating in an existing building.

Problem Use Findings – Alcoholic Beverage Sales, Off-Sale

8. The proposed use, as conditioned, is not likely to interfere with the comfortable enjoyment of life or property in the area. The proposed off-sale of beer and wine will occur in a grocery store, which will be part of the larger existing Sherwood Mall shopping center. In recent years, shopping malls are evolving to incorporate mixed-use adaptations such as gyms, grocery stores, dining and entertainment facilities, and residential areas. The Sherwood Mall currently includes several tenants, such as large department stores, restaurants, and large and small retail stores.

9. The proposed use, as conditioned, will not increase or encourage the deterioration or blight of the area. The proposed off-sale of beer and wine will be going into a grocery store which will be the primary use and therefore, the alcohol beverage sale will be incidental to the primary use. The Owners, Developers, and/or Successors in Interest (ODS) are required to conform to all Conditions of Approval related to the Project, which include conditions related to loitering, as well as all laws and regulations provided by Alcoholic Beverage Control.

10. 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. The use will be going into an existing shopping center and will provide additional services to the neighborhood. There are no neighborhood conservation programs, improvement programs, or redevelopment programs in the area that the Project would be subject to.

Alcoholic Beverages Findings

11. The proposed use will not result in repeat nuisance activity on or near the premises. Nuisance activity includes, but is not limited to: disturbing the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination/defecation, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noise (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or police detentions and arrests. As conditioned, the proposed grocery store will endure to limit potential nuisance and criminal activity, littering, graffiti, and excessive loitering. The Applicant has agreed to comply with all conditions of approval.

12. The owners and all employees of the establishment will complete an approved course in Licensee Education on Alcohol and Drugs (LEAD), or other "Responsible Beverage Sales" (RBS) or any other California Department of Alcoholic Beverage Control Board (ABC) approved program within 60 days of hire for new employees. To satisfy this requirement, a certified program must meet the standards of the Alcohol Beverage Control Responsible Beverage Service Advisory Board, Service Advisory Board, or other certifying/licensing body designated by the State of California. As a condition of approval, the Applicant will complete the approved course for responsible beverages sales.

13. The proposed use will comply with all provisions of local, state, and federal laws, rules, regulations, policies, or orders, including, but not limited to, those promulgated and or enforced by the ABC, California Business and Professions Code

sections 24200, 24200.6, and 25612.5, and any condition imposed on any valid permit(s) issued pursuant to applicable laws, regulations, or other authority. This includes compliance with annual city business license fees. The Applicant and proposed use will comply with all provisions of local, state, and federal laws, rules, regulations, policies, or orders enforced by the City of Stockton and ABC.

14. If required by Business and Professions Code section 23958.4, public convenience or necessity will be served by the issuance of this Commission Use Permit or land development permit. The proposed off-sale of beer and wine at this location does not require a Public Convenience and Necessity determination.

Waiver Findings

15. The granting of the waiver shall enable the site to be utilized so that specific standards can be addressed without creating undue hardship. The primary use is a 26,800 square foot grocery store. The sale of beer and wine would be incidental to the primary use. Of the 111 crimes at the project site, the data indicates that the nature of the crimes reported are largely related to theft. The crime reporting district covers a large territory of the shopping mall. Crimes reported can be skewed higher in areas where there is a concentration of retail establishments.

16. The granting of the waiver shall allow for the economic viability and use of the site. The primary use is a 26,800 square foot grocery store. The sale of beer and wine would be incidental to the primary use. The project location provides food shopping convenience for the general public.

17. The granting of the waiver, with conditions that are imposed, will not be detrimental to the public convenience, health, interest, safety, or general welfare of the City or injurious to the property or improvements in the zone or neighborhood in which the property is located. The proposed use, as conditioned, will maintain or strengthen the integrity and character of the neighborhood and zoning district in which it is to be located. The proposed grocery store use is allowed in the CL zoning district, it will provide a wide selection of fresh produce, bulk foods, meat and seafood, deli, baked goods, dairy products, frozen foods, natural body care and household items. The primary use is a 26,800 square foot grocery store. The sale of beer and wine would be incidental to the primary use.

18. The granting of the waiver will 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 Codes. The proposed use will be consistent with the general land uses, objectives, policies, and programs of the General Plan and any applicable specific plan or master development plan in that:

Goal CH-3: Expand opportunities for local enterprise, entrepreneurship, and gainful employment.

ED—1 To maintain a thriving business community that provides a sound tax base for the City, jobs for the local workforce, and commercial shopping

opportunities for residents and visitors alike. The proposed project use will create jobs and provide services to the general City of Stockton public.

19. The granting of the waiver will not conflict with applicable provisions of the latest edition of the California Building Code and Fire Code and other applicable Federal, State, and local laws and regulations. The proposed use will be locating in an existing building and development. The applicant will comply with all necessary building codes, fire codes, and any other applicable Federal, State, and local laws and regulations as conditioned.

20. The granting of the waiver will be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines, in accordance with the provisions of section 15301, existing facilities. The proposed use will be locating in an existing building.

California Environmental Quality Act

C. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15301, existing facilities. The proposed use will be locating in an existing building.

D. Based on its review of the entire record herein, all supporting, referenced, and incorporated documents, and all comments received, the Planning Commission hereby approves the requested Amendment, subject to the following conditions of approval.

Conditions of Approval: Standard

1. This Use Permit approval authorizes the operation of a Grocery Store with off-sale of beer and wine in the site area identified in Exhibit 1.
 - i. The Owners, Developers, and/or Successors in Interest (ODS) shall comply with all applicable Federal, State, County, and City codes, regulations, laws, and other adopted standards and pay all applicable fees.
 - ii. Compliance with these Conditions of Approval is mandatory. Failure to comply with these Conditions of Approval is unlawful and may constitute a public nuisance subject to the remedies and penalties identified in the SMC including but not limited to, monetary fines and revocation of this Permit.
 - iii. This Use Permit shall be maintained on site and shall be immediately made available to City personnel upon inspection of the facility.
 - iv. Any future building signage shall be subject to approval by the Community Development Department.
 - v. Separate building permits will be required for alterations to the site or building at the project location.

Conditions of Approval: Project Specific

2. This Use Permit is limited to a Type 20 Alcoholic Beverage Control License, which limits sales to off-sale beer and wine.
3. A “complaint response community relations” program established and maintained by the establishment conducting the Alcoholic Beverage Sales Activity may be required. The program must include the following:
 - i. Posting at the entry of the establishment that provides the telephone number for the area commander of the local law enforcement substation to any requesting individual.
 - ii. Coordinating efforts with the Police Department to monitor community complaints about the establishment’s activities.
 - iii. Having a representative of the establishment meet with neighbors, or the applicable neighborhood association on a regular basis and at their request to attempt to resolve any neighborhood complaints regarding the establishment.
4. Hours of operation specific to alcoholic beverage sales activity is limited to 7:00 AM to 9:00 PM, seven (7) days per week.
5. The following signs are required to be prominently posted in a readily visible manner on an interior wall or fixture, and not on windows, in English, Spanish, and any other predominant language of the patrons:
 - i. “California State Law prohibits the sale of alcoholic beverages to persons under 21 years of age.”
 - ii. “No Loitering or Public Drinking” signs shall be posted on the exterior of the business.
 - iii. The business shall post E.A.S.Y. (Eliminate Alcohol Sales to Youth) materials that are visible from outside the business.
 - iv. The consumption or carrying of open containers of alcoholic beverages on the premises of the off-sale alcohol establishment is not permitted. Signs advising patrons of this prohibition shall be posted adjacent to the front door on the interior of the building.
6. The establishment shall be required to operate in a manner appropriate with mitigating alcohol-related problems that negatively impact those individuals living or working in the neighborhood, including, but not limited to: sales to minors, the congregation of individuals, violence on or near the premises, drunkenness, public urination, solicitation, drug-dealing, drug use, loud noise, and litter.

7. Off-sale alcoholic beverage establishment shall be prohibited from selling drug/tobacco paraphernalia products as defined in Health and Safety Code sections 11014.5 and 11364.5.
8. The establishment's operators or employees shall be required to discourage loiterers on or near the premises and to ask persons loitering longer than 15 minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so.
9. Prior to the initiation of alcoholic beverage sales activity, the most current technology for a video surveillance system with at least a seven (7) day continuous recording capability shall be in place. Video recordings shall be archived for at least 30 days. The video surveillance system shall cover the entire exterior of the premises, including the parking lot and the entrances to the building.
10. No more than 20 percent of windows or clear doors shall bear advertising of any sort and all advertising signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance.
11. The owners and all employees of the alcoholic beverage sales establishment who are involved in the sale of alcoholic beverages shall complete an approved course in "Responsible Beverage Sales" (RBS), or any other ABC approved course, within 60 days of hire for all employees hired. To satisfy this requirement, a certified program must meet the standards of the Alcohol Beverage Control Responsible Beverage Service Advisory Board, other certifying/licensing body Service Advisory Board, or other certifying/licensing body designated by the State of California.
12. Exterior areas of the premises and adjacent parking lots shall be provided with sufficient lighting in a manner that provides adequate illumination for alcoholic beverage sales establishment patrons while not spilling onto surrounding parcels and rights-of-way.
13. The Commission Use Permit shall be valid for the duration of the use, but if the alcohol sales license is revoked by the State of California, is transferred off-site, or if the establishment does not sell alcohol for a period of 24 months or more, the use permit may be subject to revocation following a public hearing.
14. If the Grocery Store will sell prepared food, approval will be required from the San Joaquin County Environmental Health Department prior to building permit issuance.

Planning Commission Action

Based on its review of the entire record herein, including the November 18, 2021, Planning Commission staff report, all supporting, referenced, and incorporated documents, and all comments received, the Planning Commission hereby approves the requested Use Permit.

PASSED, APPROVED, and ADOPTED November 18, 2021.

ANNE MALLET, CHAIR
City of Stockton Planning Commission

ATTEST:

WILLIAM CREW, SECRETARY
City of Stockton Planning Commission