



City of Stockton

Legislation Text

File #: 20-7415, Version: 1

COMMISSION USE PERMIT TO ESTABLISH A RETAIL STOREFRONT CANNABIS BUSINESS, ADMINISTRATIVE USE PERMIT TO ESTABLISH A RETAIL NON-STOREFRONT (DELIVERY ONLY) CANNABIS BUSINESS, AND A WAIVER OF CANNABIS BUSINESS LOCATION REQUIREMENTS - ALL CONCERNING A 4,123 SQUARE FOOT COMMERCIAL SPACE AT 6709 PLYMOUTH ROAD, SUITES C & D (APPLICATION NO. P20-0596)

RECOMMENDATION

Staff recommends that the Planning Commission adopt a resolution to:

1. Approve a Commission Use Permit to allow the establishment of a proposed retail storefront cannabis business, in accordance with the findings and subject to the conditions herein;
2. Approve an Administrative Use Permit to allow a retail non-storefront (delivery only) cannabis business, in accordance with the findings and subject to the conditions herein; and
3. Approve a Waiver to reduce the location requirement to separate commercial cannabis businesses from at least 600 feet to approximately 574 feet of a childcare center.

SUMMARY

The applicant, Alissa Metzger, submitted an application for a Commission Use Permit, Administrative Use Permit, and Waiver to establish a 4,123-square foot retail storefront cannabis business and a retail non-storefront (delivery only) cannabis business in a Commercial General (CG) zoned parcel, located at 6709 Plymouth Road, Suites C & D. The site is currently a multi-tenant commercial building with a convenience store and pizza restaurant as occupying tenants in the adjacent suites (Attachment A - Location Map).

This applicant participated in the 2019 Commercial Cannabis Lottery program and was awarded the opportunity to apply for a Retail Storefront as a general pool applicant. The Non-storefront Retail (delivery only) use applicability is not granted through the Commercial Cannabis Lottery program.

Stockton Municipal Code (SMC) Section 16.80.195 provides a land use process for permitting cannabis business types and standards for development, which includes certain location restrictions. Currently, there are no restrictions on the proximity or concentration of cannabis businesses. Nor does the Code place a limit on the total number of permits allowed citywide for either of the proposed uses. Instead, the restrictions built into the Code, including an annual limit of two permits per year awarded through a Commercial lottery program and the natural limits of market availability and capacity, provide an organic limitation on these uses.

The SMC also contains location requirements for both Retail Storefront and Retailer Non-Storefront

File #: 20-7415, Version: 1

(Delivery Only) uses, which are the same. A minimum 300-foot separation is required from any residential zone, which is met. The Code also requires a minimum 600-foot separation from any park, school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center, childcare center, child care, in-home (family day care home), religious facilities, drug abuse, or alcohol recovery/treatment facility that is in existence at the time the land use permit is issued.

Staff analysis determined that the proposed business location site is approximately 574 feet from a child care center located to the south west of the property on the opposite (west) side of Interstate 5 (I-5). The Code currently allows waivers for unique situations where the literal application of the distance requirement is not reasonable. Here, the applicant requests a Waiver due to the unique physical barrier created by the I-5 freeway, which leaves an approximate 1,500-foot path of travel separation between the proposed project site and the daycare center. The project location is approximately 26 feet from meeting the 600 foot location requirement.

Staff recommends that the Commission approve the proposed project as it substantially complies with all Code requirements except for the minimum separation from a childcare center, where a waiver can be supported due to the unique I-5 freeway barrier and that the project location is approximately 26 feet from meeting the 600 foot location requirement.

Importantly, the proposed project aligns with the General Plan 2040 goals to provide for orderly, well-planned, and balanced development (Goal LU-6), attract and retain companies that offer high-quality jobs with wages that are competitive with the region and state (Goal LU-4), and provide opportunities for growth and expansion, particularly in infill developments (Policy LU-6.2).

DISCUSSION

Background

On March 5, 2019, City Council approved changes to the City's cannabis regulatory program to: (a) align state/local regulation; (b) allow additional businesses types; (c) establish a method to control the pace of new business openings; and (d) establish a method to address historic racial inequities.

New business types were introduced, including manufacturing, distribution, testing laboratories, delivery-only non-storefront retailers, and microbusinesses. The program also included additional cultivators and storefront retailers (dispensaries) as well as an equity program. The changes were to align local regulation with the Medical Cannabis Regulation and Safety Act and the Adult-Use of Marijuana Act of 2016 (Proposition 64). In addition to achieving regulatory consistency, the program was changed to eliminate the limit (i.e. caps) on the total number of Operator Permits regulated by the Stockton Police Department under Stockton Municipal Code (SMC) Chapter 5.100.

For certain permit types where there is concern about the potential impact on public safety, public health, or community character, a controlled expansion was established. A controlled expansion program allows the City and the existing industry to adapt to an evolving industry and gives the City ongoing flexibility to accelerate or decelerate industry expansion over time. The controlled expansion also has the benefit of allowing the City to give preference to equity applicants.

The controlled expansion is accomplished on an annual basis through a lottery process for the

File #: 20-7415, Version: 1

following business types:

- a. Two (2) storefront retailer permits
- b. Two (2) cultivation permits
- c. Two (2) volatile-manufacturing permits
- d. Two (2) microbusinesses, which include storefront retail and/or cultivation business types

The lottery includes an equity component to enable Stockton residents from disadvantaged neighborhoods to obtain cannabis business permits. Applicants for the above business types are evenly selected from 1) a general pool of applicants and 2) an equity pool of applicants. Equity pool applicants must meet certain criteria and are also eligible to be a part of the general pool. To qualify as an equity applicant, an applicant must own more than 50 percent of the business, be a resident of Stockton, and meet one of the following: be a Minority Business Enterprise (MBE)/Women Owned Business Enterprise (WBE), live in an opportunity zone, live in the Senate Bill 535 disadvantaged area, or live in a Housing and Urban Department (HUD) designated area.

Alissa Metzger, the applicant of the proposed project, is a successful general pool applicant for a storefront retailer business. The Non-storefront Retail (delivery only) use is not granted through the Commercial Cannabis Lottery program and there are no limits or “caps” to the number of applications that may be approved.

Present Situation

The applicant requests approval to operate a 4,123-square foot retail storefront and non-storefront retail (delivery only) commercial cannabis business in a Commercial, General (CG) Zone located at 6709 Plymouth Road, Suites C & D. See Attachment B - Proposed Site Plan.

This site location is a commercial center and includes a pizza restaurant and a convenience store. A hotel is located to the north of the property and a gas station is located to the south of the property. The I-5 freeway lies to the direct west of the property and a multi-family apartment complex and Swanson golf course is located to the east of the property. The multi-family apartment complex is located in a commercial zone and therefore meets the location requirement set forth in the Municipal Code.

The retail storefront will operate between 9:00 a.m. and 8:00 p.m. Monday through Sunday, and the non-storefront retail (delivery only) will operate between 9:00 a.m. and 7:00 p.m. Monday through Sunday. The proposed project will employ 20 full-time employees.

The existing commercial center has 17 shared parking stalls. The number of parking stalls is consistent with the requirements for proposed cannabis businesses and, therefore, is adequate to service the business.

Staff Analysis

To permit the proposed uses, the Planning Commission is asked to consider approval of a Commission Use Permit, an Administrative Use Permit, and a Waiver to reduce the required separation from a childcare center from 600 feet to 574 feet. Each request and staff's analysis are provided below.

File #: 20-7415, Version: 1

Commission Use Permit/Administrative Use Permit

When located in a CG Zone, a Commission Use Permit is required for a Cannabis Retailer Storefront and an Administrative Use Permit is required for a Non-storefront cannabis retail (delivery only). The operations of each use would be combined within a single business and within the same building area. As a result, and since the findings required to address each permit type are the same, the following analysis addresses both land uses.

SMC §16.168.050(A) requires seven (7) findings of fact to grant approval. Each finding and staff's analysis are as follows:

1. Finding: The proposed use is allowed within the subject zoning district with the approval of a use permit and complies with all other applicable provisions of this Development Code and the Municipal Code;

Staff Analysis: The two proposed cannabis business types (i.e., uses) are both allowed in the CG Zone. The subject uses would be located within an existing commercial building and, therefore, do not raise a question of conformance with Title 16 development standards, except for the location requirements which are being addressed through the request for waiver. As noted below, adequate off-street parking spaces are provided for both the existing and proposed uses.

2. Finding: The proposed use would maintain or strengthen the integrity and character of the neighborhood and zoning district in which it is to be located;

Staff Analysis: The proposed cannabis business would be situated in a shopping center with several other commercial land uses. It would be aligned with the intent of the shopping center to provide retail options to the community. It would prevent the shopping center from having a vacant unoccupied suite which would help strengthen the integrity of the surrounding area by encouraging secured use of the site which will discourage vandalism, graffiti, and crime due to the increased level of security required for this business type.

3. Finding: 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;

Staff Analysis: The General Plan Land Use Map designates the subject site as Commercial. The Commercial designation is intended to accommodate a wide variety of commercial uses, including, but not limited to, service uses. SMC Section 16.20.020 Table 2-2 classifies the Cannabis Retail Storefront and the Non-storefront Cannabis Retail Operator Permit (Delivery Only) use within a service use category. Therefore, the proposed use is consistent with the Commercial designation.

Additionally, the project is consistent with General Plan Policy LU-4.2 which states, "Attract employment and tax-generating businesses that support the economic diversity of the city." The proposed use furthers this policy since it would provide for a business type that generates tax revenue for the City of Stockton's general fund.

4. Finding: 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.);

Staff Analysis: The proposed project was reviewed for compliance with all applicable and current Building Code guidelines and found to be in compliance given the nature of the proposed project. No expansion of the building is proposed.

5. Finding: 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, peace, or general welfare of persons residing or working in the neighborhood of the proposed use because operations are being carried out indoors, in a commercial zone; appropriate security provisions will be incorporated into the project operations plan, including both electronic surveillance and on-site security personnel procedures;

Staff Analysis: The proposed land-use will require the applicant to adhere to all applicable Building Code, Fire Code, and requirements established by the State of California, Bureau of Cannabis Control (BCC). The BCC issues annual licenses and monitors Retail Storefronts and Non-Storefront Retail (delivery only) to ensure safety of business practices. The applicant will also be required to obtain and maintain a City of Stockton Operator's Permit that requires the business owner to develop and maintain a security and lighting plan that is reviewed annually by the City of Stockton Police Department.

For the above reasons, the establishment, maintenance, or operation of the proposed land use activity 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.

6. Finding: 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; and

Staff Analysis: The proposed Retail Storefront and Non-Storefront Retail (delivery only) is located in an existing commercial building and no changes have been proposed to the exterior characteristics of the project site. The proposed use is commercial in nature and modest floor area raises no potential issues related to compatibility with the existing and future land uses on-site and in the vicinity of the subject property. The project site is adjacent to a public golf course (Swenson Golf Course). The entrance to the golf course is not located on the west side of the property where the property fronts. Patrons of the golf course would not access Plymouth Road to enter the golf course. The distance and natural path of travel supports the compatibility with existing uses. The proposed use is therefore deemed appropriate.

7. Finding: The proposed action would be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines.

Staff Analysis: The proposed uses would occur within a portion of an existing commercial

File #: 20-7415, Version: 1

building with negligible alterations within the structure. No expansion of the existing building is proposed. Therefore, the project is categorically exempt from the CEQA, pursuant to CEQA Guidelines Section 15301 (Existing Facilities). Categorical Exemption under section 15301, Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

Waiver

The following location requirements apply to all retail storefront and retail non-storefront (delivery only) commercial cannabis businesses:

- a. Located 300 feet or more, measured from the nearest property lines of each of the affected parcels, of any existing residential zone.
- b. Located 600 feet or more, measured from the nearest property lines of each of the affected parcels, of any park, school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center, childcare center, child care, in-home (family day care home), religious facilities, drug abuse, or alcohol recovery/treatment facility that is in existence at the time the land use permit is issued.

Location requirements may be waived or reduced through approval of a Waiver. SMC Section 16.80.195 provides that, "Waivers shall only be considered for unique situations where the literal application of the distance requirement is not reasonable. Waiver determinations will be made on a case-by-case basis."

The applicant submitted a neighborhood context information showing all required separation distances to determine whether the cannabis businesses conformed to each location requirement (Attachment C - Neighborhood Context Information). Staff has also reviewed the information to verify for accuracy and found no inconsistencies. This includes consideration of uses not tracked in the City databases and a site visit to the surrounding area.

The subject property is located approximately 574 feet from a parcel that contains a childcare center. All other location requirements are met. The childcare center is located southwest of the proposed project. The childcare center is located on the opposite (west) side of the I-5 freeway and only accessible via Grigsby Place (a side street). The physical barrier of a major interstate highway coupled with the street separation and access to the childcare center are unique enough such that the rationale behind the separation is met notwithstanding the lack of 26 feet of technical separation. This unique situation is exactly the type of unique circumstance the Code contemplates.

The applicant submitted a request to waive the location requirement (Attachment D - Request to Waive Location Requirement). The 'path of travel' between the proposed project and the childcare center is over 1,500 feet due to the physical barrier of the I-5 freeway. The childcare center is located on the south side of a gasoline/convenience station on the west side of the I-5 freeway. It is unlikely the proposed project will be a detriment or public/environmental hazard to the customers of the childcare. Given the facts provided, staff recommends approving the waiver request because it is considered a unique situation where the literal application of the distance requirement is not reasonable. The intent of the 600-foot location separation is to provide a safeguard to reduce the potential for any land use conflict or interaction between the proposed cannabis business use with

File #: 20-7415, Version: 1

identified sensitive land uses. In this case, the uniqueness of the physical barrier of the I-5 freeway meets the intent of providing a safeguard and is a preventative for potential conflict and interaction (access) with the childcare center.

As a point of reference, Staff has provided geographic information to this report regarding currently approved commercial cannabis businesses for Retail Storefront businesses, and Non-storefront Retail (delivery only) businesses as a reference (Attachment E - Existing Retail Storefront Businesses, Attachment F - Existing Non-storefront Retail (delivery only) Businesses).

PUBLIC COMMENT

Although not required by the Stockton Municipal Code, a virtual community meeting was held on November 2, 2020 via Zoom. All property owners within a 300-foot radius of the subject property were invited to the meeting. The applicant representative, property owners, and City staff attended the virtual community meeting held on Monday, November 2, 2020 at 5:00 pm; no community members attended. The applicant recorded the presentation and made it available to community members by request.

Attachment A - Location Map

Attachment B - Proposed Site Plan

Attachment C - Neighborhood Context Information

Attachment D - Location Waiver Request

Attachment E - Existing Retail Storefront Businesses

Attachment F - Existing Non-storefront Retail (delivery only) Businesses

This report was prepared by Ariana Adame, Planning Manager, (209) 937-8270; ariana.adame@stocktonca.gov.