



APPEAL OF PLANNING COMMISSION DECISION TO THE CITY COUNCIL

Today's Date: **2020-12-21**

Date of Planning Commission Decision: **2020-12-10**

Last day to file Appeal (ten days): **2020-12-21**

APPELLANT: **Sara Presler on behalf of Alissa Metzger, c/o Cynthia Morgan-Reed**

(Name)

2907 Shelter Island Drive, Suite 105-5509

(Address)

San Diego, CA 92106

(City, State, Zip)

619-301-0456

(Telephone)

APPEAL: **Application P20-0596**

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.

(Case Number and Project Name)

5709 Plymouth Road, Suites C&D, Stockton CA

(Property Address)

FEE: **\$500.00 (effective 7/1/20) per appeal (project)**

PAID BY: _____ check/number _____ Cash _____ Money Order


HAND DELIVERED: _____ MAILED: _____

STATE REASON FOR FILING THIS APPEAL:

Please see attached Letter.

Cynthia Morgan-Reed

Print Your Name


Signature

Internal Note – Scan & Email to: Esther Gilliland, Lori Asuncion, Patty Vasquez, Courtney Christy, Florence Low, Will Crew, Michael McDowell, the project's CD planner, and Jobi Adams

CC TO: CC_Office@stocktonca.gov



December 21, 2020

Via Hand Delivery: Stockton City Clerk

Mayor Lincoln, Vice Mayor Wright
Stockton City Councilmembers
c/o City Clerk
425 N. El Dorado Street, 1st Floor
Stockton, CA 95202

**Re: Appeal of Planning Commission December 10, 2020 Denial of Application No. P20-0596:
6709 Plymouth Road, Suites C&D Cannabis Retail Storefront, Delivery and Waiver**

Dear Mayor Lincoln, Vice Mayor Wright and Stockton City Councilmembers:

I. **INTRODUCTION**

This appeal arises from the denial of applicant Alissa Metzger's ("Applicant") application for a 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 for a 4,123 square foot commercial space at 6709 Plymouth Road Suites C&D ("Project"). The vote on December 10, 2020 taken by the Commissioners against the Project was 4 to 3.

This appeal is brought pursuant to Stockton municipal code section 16.100.020(A)(2). The Planning Commission abused its discretion by not proceeding as required by law; the decision is not supported by its findings; and the findings are not supported by the evidence. We urge you to overturn the Planning Commission's decision and grant the Commission Use Permit, Administrative Use Permit and Waiver.

II. **COMMISSION USE PERMIT FINDINGS**

The Planning Commission's decision is not supported by its findings. The Planning Commission failed to properly consider section 16.80.195(A)(6)(c) of the cannabis ordinance for Finding 1. That section provides:

As permitted by 16 Cal. Code Regs. 5026(b), the Review Authority may waive the location requirements as provided in Chapter 16.176. 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.

("Waiver"). The Planning Commission made a curt and unsupported statement that the location requirement in Finding 1 could not be met without addressing why. The Planning Commission should have addressed why the Waiver did not apply to meet the location requirement in Finding 1. Applicant's Waiver request clearly shows the Project can be within 574 feet of a childcare center due to the I-5

freeway and other intervening obstacles. By failing to discuss the Waiver, or give contrary evidence, the Planning Commission did not proceed as required by law.

The Planning Commission's evidentiary support for their adverse findings to deny the Project was sparse and inconsistent. Some of the adverse findings made are unsupported by facts or law. Of particular note, is the Planning Commission's adverse Commission Use Finding 4. Commission Use Finding 4 is:

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.)

However, the Planning Commission's adverse finding was that the retail store use would be too intense for the strip mall because customer lines will form and there cannot be physically suitable social distancing in the parking lot during a pandemic. Planning Commission also erroneously claimed there is not adequate parking even though the Project meets the City's parking requirement. There was no discussion about whether lines in the parking lot were even likely nor facts submitted to support this adverse Finding 4 by Planning Commission.

Agencies rendering adjudicatory decisions must set forth findings that bridge the analytical gap between raw evidence and the decision or order. *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 C3d 506, 515-516. Because the Project is located in an area with crime incidents, the Planning Commission stated that existing "high crime" or new crime related to cannabis will make the shopping center less safe. These reasons were cited to make adverse findings for Findings 2, 3, 5 for the Commission Use Permit and Waiver Findings 1, 2 and 3. Stockton Police Detective Strika provided some statistics regarding police reports in the surrounding area. However, the Planning Commission seemed not to consider Applicant's factual evidence, based on years of experience, that cannabis retail stores actually help lower crime and make areas more safe. Cannabis retail stores have better lit parking lots; are more safe due to security guard presence; and, make it easier to address issues due to security cameras and computerized inventory.

The Planning Commission rejected factual evidence contrary to their own personal biases; embraced legal theories to reject the Project that are unsupported by Stockton's cannabis ordinance; and, rejected Applicant's Waiver without refuting Applicant's evidence for the Commission Use Permit findings. The courts have found that terse statements without supporting analysis that lead to boilerplate rejection are not appropriate. *Glendale Mem. Hosp. & Health Ctr. v State Dep't of Mental Health* (2001) 91 CA4th 129, 140 (agency's administrative findings that were terse statements of boilerplate rejection did not contain sufficient details to bridge analytic gap between the evidence presented and the agency's ultimate decisions). The Planning Commission failed to establish an adequate record for denying the Commission Use Permit and rejecting the Project.

III. WAIVER FINDINGS

Upon appeal, we ask the City Council to grant the Waiver to allow the Project within 574 feet of a childcare center. City staff recommends approval because this is a unique situation. It is completely infeasible that someone from the childcare center would traverse the I-5 freeway, a nine-foot wall and a six-foot chain link fence and directly reach the Project or vice versa. City staff's support for the Waiver is unequivocal: "This unique situation is exactly the type of unique circumstance the Code contemplates." See Planning Commission Legislation Text p. 6.

As a land use attorney who has represented numerous cannabis businesses throughout the state, this is an ideal situation for a Waiver. Staff recognizes the Waiver strikes the right balance of protecting the sensitive use while allowing the Project to operate.

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 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.

See Planning Commission Legislation Text p. 6-7. Staff uses "path of travel" analysis to reflect the true distance between the uses and support the Waiver. It is simply not possible for someone to walk directly from the Project to the childcare center. The Stockton municipal code measures sensitive uses from cannabis sites property line to property line or "as the crow flies". In this situation, a person is prohibited from accessing the Project site "as the crow flies" because of the I-5 and the walls and fences that surround highway.

Thus, the waiver would acknowledge that the only direct access must be measured as "path of travel": how a person would physically access the Project site by walking or driving along established sidewalks or roads. Such a path of travel far exceeds the 600-foot minimum from the Project site. Therefore, the Waiver is appropriate because accessing the childcare center from the Project far exceeds the 600 feet of distance. Many California jurisdictions measure sensitive uses this way.

The Planning Commission failed to provide substantial factual evidence to reject the Waiver. The Planning Commission did not put forth any specific nor substantial evidence regarding the childcare center and how, despite being separate by almost 600 feet from the Project by the I-5 freeway, a nine foot wall, and a six foot chain link fence, or over 1,500 feet by path of travel, the Project would impact the childcare center. City staff and Applicant provided evidence to the Planning Commissioners that the unique situation of the childcare center made the literal application of the distance requirement

December 21, 2020
Page 4 of 4

unreasonable. However, the Planning Commission failed to analyze such evidence; reject such evidence; or, provide any evidence to the contrary. Furthermore, by failing to address Applicant's Waiver, the Planning Commission abused its discretion and prejudiced Applicant's ability to receive approval for the Project.

The Planning Commission decision appeared to result from an overt desire by some Commissioners to deny the Project, and penalize the Applicant, because they disagree with cannabis and their own cannabis ordinance. Commissioners spoke about their frustrations with numerous aspects of the cannabis ordinance. Such bias and frustration resulted in little discussion and no substantial evidence supporting the Planning Commission's denial of the Project. Approving the Waiver allows the Stockton City Council to make all seven findings required under the Stockton municipal code. We urge you to make such findings and approve the Project.

IV. CONCLUSION

Applicant requests the City Council supports City staff's recommendation to overturn the Planning Commission's decision and grant the Project's Commission Use Permit, Administrative Use Permit and Waiver.

Please contact us if you have any questions.

Sincerely,



CYNTHIA MORGAN-REED

Cc: Ariana Adame
Sara Presler