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STAFF REPORT

NOVEMBER 14, 2013

TO: Planning Commission

FROM: Jenny Liaw, Senior Planner

SUBJECT: **4511 PACIFIC AVENUE; APPLICATION NO. P13-163 REQUESTING APPROVAL OF A USE PERMIT TO UPGRADE THE OFF-SALE OF BEER AND WINE TO THE OFF-SALE OF GENERAL ALCOHOLIC BEVERAGES IN AN EXISTING 1,500-SQUARE FOOT CONVENIENCE STORE; APPLICANT: KARNVIR RANA; CG (COMMERCIAL, GENERAL) ZONING DISTRICT**

RECOMMENDATION

It is recommended that the Planning Commission deny the subject Use Permit in accordance with the findings for decision detailed herein.

Summary

The applicant, Karnvir Rana has been operated a retail sale of gasoline and a convenience store with the off-sale of beer and wine at the above-noted location and has submitted a Use Permit in order to upgrade his alcoholic license from the off-sale of beer and wine to the off-sale of general alcoholic beverages in the convenience store. The applicant has indicated that 20% of the store's floor area would be devoted to alcohol and that it would be displayed either behind the counter area or in enclosed cooler cases. In addition to general alcoholic beverages, the business operator would offer chips, snacks, candies, coffees, cigarettes and bottled/canned beverages in the convenience store.

DISCUSSION

Background

The approximately 0.3-acre site is located at the northwest side of Pacific Avenue and Rosemarie Lane. The project site contains an existing approximately 1,500-square foot convenience store on the northwest side of the property and three existing gas pumps with six (6) fuel dispensers under a canopy located on the east side of the subject site. The site is zoned CG (Commercial, General) and is bounded to the:

- north by a fast food restaurant (McDonald's) zoned CG;
- east across by single-family residences zoned RL (Residential, Low-Density);
- south across Rosemarie Lane by a fast food restaurant (KFC) zoned CG; and
- west by a variety of retail and office uses zoned CG (see attached exhibits).

Project Description

As background, the Planning Commission approved a Use Permit, (UP19-81) in March of 1981

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to allow the retail sale of gasoline and the off-sale beer and wine in a mini-market on the subject site. That use, which is defined as a "convenience store" by the Development Code, has operated to date under the conditions of the noted Use Permit. In April, 2010, the applicant submitted a Use Permit application to expand the sale of alcohol to include general alcoholic beverages. During the review of the application, staff discovered that a San Joaquin County Office of Education "One School" was operating in the existing building on the west side of the subject site, less than one foot away from the building that contains the existing convenience store. A review of building permit records indicated that permits were issued in 1994 to modify the interior of the building for the school. Development Code Section 16.80.040 requires establishments with the off-sale of alcoholic beverages to be located at least 300 feet from any public or private academic school. The noted separation requirement had not been adopted at the time the school use was initiated, so, the off-sale of beer and wine in the convenience store is considered a legal non-conforming with respect to the Code's minimum separation requirement. At that time, the applicant was notified of this separation requirement and decided to submit a Variance application to waive this noted requirement. However, both Use Permit and Variance applications were denied by the Planning Commission in October 14, 2010. Recently, the above-noted "One School" was closed because its leasing contract was due in June of 2013 (a letter received from the property owner, Exhibit 2). Due to no other public or private academic school with grades kindergarten through 12th located within 300 feet from the subject site, the applicant has resubmitted a Use Permit application in order to upgrade the off-sale of beer (Type 20) to the off-sale of general alcohol (Type 21). For the Commission's information, the nearest San Joaquin County Office of Education "One School" at 4635 Georgetown Place, Suite A is approximately 420 feet from the subject site. According to the applicant, the display of general alcohol will be located on shelves behind the sales counter on the south side of the store. Beer and wine will continue to be displayed in an existing walk-in cooler on the north side of the business, respectively. The current hours of operation for the business are from 7:00 a.m. until 11 p.m., Monday through Thursday and Sunday and from 7:00 a.m. to 12:00 midnight, Friday and Saturday.

The project site is located within Census Tract 33.08. Based upon the population in that geographic area, the State Department of Alcoholic Beverage Control (ABC) has determined that one (1) off-sale alcoholic beverage establishment should be allowed in the census tract. There are already two (2) off-sale alcoholic establishments within this census tract, including the license that is currently held by the applicant on the project site. The other off-sale license (Type 20) is located at 660 West March Lane (Walgreens), but is 0.08-mile drive away. The applicant has confirmed for staff that the existing off-sale beer and wine license would be canceled upon issuance of a new ABC license for the off-sale of general alcoholic beverages. Replacing the off-sale beer and wine license with the off-sale general alcohol license would not increase the number of such licenses in the census tract. ABC regulations do not require a finding of Public Convenience and Necessity (PCN) from the Planning Commission in order for ABC to issue an alcohol license for the subject site

Analysis

The following general findings are required for this use permit:

- 1. 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;**

The proposed use, "Alcoholic Beverage Sales (Off-sale)," is allowed in the CG (Commercial, General) Zoning District subject to the approval of a Use Permit by the Planning Commission, per Stockton Municipal Code (SMC) Section 16.20.020, Table 2-2. The use otherwise complies with all other applicable provisions of the SMC and the Municipal Code, including those related to parking. Further, SMC Section 16.80.040.A imposes a minimum separation of 300 feet between an off-sale alcohol establishment and a public or private school with grades kindergarten through 12th. The proposed use fully complies with this separation requirement, as the nearest "One School" is located approximately 420 feet from the project site. The other public schools: Stagg High School, the Walton Education Center and Kohl Elementary School, are located approximately 2,800 feet from the subject site.

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

The proposed use has the potential to adversely affect the integrity and character of nearby residential neighborhoods, as well as the existing retail/office businesses by exceeding the number of off-sale alcohol establishments that the State Department of Alcoholic Beverage Control allows in the census tract that contains the subject convenience store. Further, upgrading the off-sale of beer and wine to the off-sale of general alcohol use has the potential to increase the intensive problem uses in the area and result in additional demands for police services, thereby adversely affecting public safety.

- 3. 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 convenience store is consistent with the General Plan objectives, policies and programs for this designation. The site and proposed use are not affected by other plans.

- 4. 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 requested land use would not increase the demand for provision of utility service or public access and would not be affected by physical constraints.

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- 5. 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 off-sale of general alcoholic beverages is a potentially detrimental use that has the potential to adversely affect or endanger public safety in the neighborhood surrounding the subject site by possible additional calls for police services and reductions in available police resources.

- 6. 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**

The proposed off-sale of general alcoholic beverages within the existing convenience store has the potential to be incompatible with offices, retail uses and other personal services in the commercial area by creating police and public safety problems.

- 7. 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 under the California Environmental Quality Act (CEQA), pursuant to Section 15301 of the CEQA Guidelines because it constitutes reuse of an existing facility.

Additional Finding

"Alcoholic Beverage Sales (Off-Sale)" is considered a Problem Use and is subject to the additional regulations contained in SMC Section 16.80.270. These regulations include the following criteria, which are to be considered by the Planning Commission before a Use Permit can be approved:

1. The proposed use with respect to the proximity and type of other problem uses;
2. The effect of dispersal or concentration of problem uses in the general area;
3. The effect that the proposed use is likely to have on the neighborhood;
4. 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;
5. The potential of the proposed use to create or increase loitering or vandalism in the area; and
6. The degree that traffic safety, both on- and off-site, will be adversely affected by the proposed activity.

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There are two problem uses located in the census tract including the project site. Approval to upgrade the off-sale of beer and wine to the off-sale of general alcoholic beverages would not increase the number of such licenses in this census tract. However, because an overconcentration of such establishments already exists in this area, the off-sale of general alcoholic beverages in the convenience store would increase the intensity of problem uses and increase the potential to adversely affect or endanger public safety in the neighborhood surrounding the subject site through additional crime and the associated calls for police services. Furthermore, the overconcentration of problem uses in the commercial area and the surrounding neighborhood has the possibility to increase public nuisances such as loitering, vandalism and panhandling, etc. that are generally associated with the convenience store and similar uses. While the proposed use is not expected to be contrary to the on-going conservation or redevelopment of the neighborhood or result in increased noise and traffic (Problem Use criteria 3, 4 and 6), it does have the potential to adversely affect the surrounding neighborhood (Problem Use criteria 1, 2 and 5).

The above criteria are then to be used to inform the following required additional findings for "Problem Uses" (SDC 16.168.050.B):

1. The proposed use is not likely to interfere with the comfortable enjoyment of life or property in the area;

The proposed use has the potential to interfere with the comfortable enjoyment of life or properties in the surrounding neighborhoods because the overconcentration of problem uses in the commercial area may result in increased loitering and vandalism, as well as additional calls for police service.

2. The proposed use will not increase or encourage the deterioration or blight of the area; and

The proposed use has the potential to increase or encourage the deterioration of blight in the commercial area because the resulting concentration of problem uses may result in increased alcohol related problems on the subject site and vicinity area.

5. The potential of the proposed use to create or increase loitering or vandalism in the area.

As already noted in the staff report, the proposed use, by increasing the concentration of problem uses in the commercial area, has the potential to create or increase loitering and vandalism.

CONCLUSION

In conclusion, the required affirmative Use Permit and Problem Use findings for the convenience store with the off-sale of general alcoholic beverages cannot be made in the affirmative. As such, staff recommends that the Planning Commission deny the subject Use Permit.

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ATTACHMENTS

1. Location Map

C: Applicant

Property Owner