

Resolution No.

## STOCKTON PLANNING COMMISSION

---

### **REQUEST TO AMEND A COMMISSION USE PERMIT FOR ALCOHOLIC BEVERAGE SALES, OFF-SALE BEER AND WINE, TO REMOVE A CONDITION OF APPROVAL REQUIRING ON-SITE SECURITY GUARD AT 6009 NORTH EL DORADO STREET (P20-0291)**

On January 26, 2017, the Planning Commission approved a Use Permit P16-0342 via Resolution No. 2017-01-26-0301 for this location and which authorized the establishment of a convenience store, inclusive of off-sale beer and wine and a fueling station at 6009 North El Dorado Street; and

The applicant, Grin Investments, Inc., submitted an application to request an amendment to Planning Commission Use Permit No. P16-0342 to remove Condition of Approval "I", on the basis that there have not been any significant calls for service in the last year; and

Condition of Approval "I" states the property owner or business operator shall hire a uniformed licensed security guard to patrol the subject site and the vicinity of the subject site between 9:00 A.M. and 11:00 P.M., seven days a week; and

The applicant's request for an amendment is considered a "major change", in accordance with Stockton Municipal Code (SMC) Section 16.104.030, and requires a review and consideration by the Planning Commission since it involves a feature of the project that was specifically addressed by the Commission in their original approval decision; and

On September 9, 2020, public notice for the subject application was published in the local newspaper in accordance with SMC Section 16.88.030; and

On September 24, 2020, the Planning Commission conducted a public hearing on the application, in compliance with SMC Section 16.116.040(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 by this reference.

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

Use Permit: General Findings

1. The subject use is allowed in the Commercial General (CG) and Commercial Neighborhood (CN) zoning districts, subject to approval of a Use Permit by the Planning Commission. With the proposed amendment, the convenience store continues to comply with all applicable provisions of this Development Code and Municipal Code, including SMC Section 16.80.040(D)(2)(a), which permits the Review Authority discretion to waive location restrictions to promote and support local economic business growth throughout the City.

2. The proposed amendment to the conditions of approval applied to the project would not interfere with the convenience store's ability to maintain the integrity and character of the surrounding neighborhood, because the remaining conditions of approval related to convenience store operations, including the requirement for video surveillance system and installation of exterior security lighting, discourage nuisance and criminal activities and support public peace and welfare of the subject site and vicinity.

3. The proposed modification to the use is consistent with applicable general land uses, objectives, policies, and programs of the General Plan because it is a commercial use on a site designated for such uses and is consistent with the following General Plan policies from the 2040 General Plan:

Policy CH-3.1: Promote entrepreneurial development and small business expansion.

Action SAF-1.2C: Engage residents and business owners in ongoing discussions about how land use and planning decisions can help to reduce violence.

The proposed amendment allows the continuance of a small business to viably continue operations, providing the surrounding neighborhood with convenient access to fueling station and other merchandise. Further, processing the proposed amendment to remove the requirement to employ an onsite security guard in accordance with SMC Section 16.168.040 necessitated the Community Development Department and the applicant to consider the effectiveness of conditions applied to the Use Permit to reduce criminal activity and support the effort to engage business owners to utilize land use and planning decisions to create a safer community.

4. The proposed amendment does not result in any physical changes to the site, therefore the subject site would continue to 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.).

5. The maintenance and operations of the convenience store is not expected to 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 due to the proposed amendment to remove the requirement to employ an on-site security guard. The remaining conditions of approval related to convenience store operations, as well as the addition of a new condition of approval requiring the

convenience store owners and employees to complete an approved course in Licensee Education on Alcohol and Drugs (LEAD), will sufficiently discourage nuisance activities and support public safety onsite and in the vicinity.

6. The design, location, size, and operating characteristics of the subject use will remain compatible with existing and future land uses on the site and in the vicinity of the subject property, because the proposed amendment to remove the requirement to employ an security guard does not result in any changes to the nature of the subject use (commercial retail business), which is compatible with the commercial uses within the existing shopping center and surrounding area.

#### Use Permit: Problem Uses Findings

7. The proposed amendment to remove Condition of Approval “I”, requiring the employment of an onsite security guard, is not likely to interfere with the comfortable enjoyment of life or property in the area, because the convenience store contributes to the enjoyment of the neighborhood by providing convenient access to fuel and other merchandise.

8. The proposed amendment will not encourage or increase the deterioration or blight of the area because the establishment of the convenience store allowed for development of a previously vacant site, and its continuing operation supports the success of infill development to strengthen and enhance the city’s core and interior neighborhoods.

9. The proposed amendment does not affect the convenience store’s impact to any program of neighborhood conservation, improvement, or redevelopment plan either residential or non-residential because there are not any recognized or City-sanctioned neighborhood conservation, improvement or redevelopment program applicable to the project site or in the immediate area.

#### Use Permit: Alcoholic Beverage Findings

10. The convenience store can continue to prevent and discourage nuisance activity on or in close proximity to the premises with the removal the Condition of Approval L, requiring the employment of an on-site security guard. As conditioned, the convenience store will continue to limit potential nuisance and criminal activity through locking beer cases during business hours Monday through Friday and prohibiting single sales of beer in containers of 40 ounces or less. As discussed above, the convenience store will continue to utilize a video surveillance system to discourage crime and nuisance activities.

11. An additional condition of approval applied to the Use Permit ensures that the owners and all employees of the establishment would 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. The certified program shall meet the requirements of the Alcohol Beverage Control Responsible Beverage Service Advisory

Board, Service Advisory Board or other certifying/licensing body designated by the State of California.

12. The proposed amendment to remove Condition of Approval “I”, requiring the employment of an onsite security guard, does not prohibit the convenience store to 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. Condition of Approval “I” is one of several conditions related to operations found at SMC Section 16.80.040(D)(5) available for the Review Authority’s consideration to impose on the subject use, but is not required to comply with provisions of local, state and federal laws.

13. The proposed amendment does not require a finding of Public Convenience or Necessity. The applicant currently has an active license issued by ABC.

#### California Environmental Quality Act

C. The proposed project is a Categorical Exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15301 (Class 1, Existing Facilities) since it consists of the operation of commercial use within an existing building. The project is also not subject to any of the exceptions to the use of a Categorical Exemption enumerated at CEQA Guidelines section 15300.2.

D. Based on its review of the entire record herein, including the September 24, 2020 Planning Commission staff report, 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: Project Specific

1. This Use Permit Amendment incorporates the following conditions of approval and supersedes the original Use Permit No. P16-0342 (Exhibit 1) which was granted approval by the Planning Commission on January 26, 2017 and retains the project plans approved therein. This incorporation excludes Condition of Approval “I” and adds a new condition included as Condition of Approval “o”
  - a. The business operator shall comply with all applicable Federal State County and City codes regulations laws and other adopted standards and pay all applicable fees.
  - b. 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.
  - c. This Use Permit shall be posted in a conspicuous place and shall be

immediately made available to City personnel upon inspection of the store.

- d. All signs shall be subject to approval by the Community Development Department.
- e. The consumption or carrying of open containers of alcoholic beverages in the store on the subject site or on adjacent public streets and sidewalks shall not be permitted. Signs advising patrons of this prohibition shall be posted adjacent to the front door on the interior of the building.
- f. Store windows shall be left unobstructed to allow interior surveillance of the store during operating hours. No more than 20% of the windows may be covered by any form of temporary or permanent sign, poster, graphic or lettering.
- g. Prior to the initiation of alcohol sales, lighting shall be installed around the exterior of the building to provide a safe and visible environment for the store's customers and area residents. The lighting shall be fully shielded to prevent glare to adjacent properties and rights-of-way.
- h. Prior to the initiation of alcohol sales, a video surveillance system with at least a seven-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 building, including the parking lot and entrances to the store.
- i. Loitering shall be prohibited on the subject site.
- j. No single sales of beer or malt liquor in containers of 40 ounces or less shall be sold in the convenience store.
- k. Pay phones shall be prohibited on the premises.
- l. The property owner or business operator shall acquire a recorded parking easement/agreement from the adjacent property owner in the existing shopping center to use three (3) parking spaces adjacent to the subject site to comply with the parking requirement of the Development Code prior to the issuance of the Building Permit for the convenience store.
- m. The beer cases shall be locked from 9:00 a.m. to 5:00 p.m. Monday through Friday, with the opening control buzzer at the cashier's station.
- n. The Use Permit shall be subject to a six (6) month and a one-year review following initiation of the subject use.
- o. 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. 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. The permittee shall maintain records of compliance with this condition and make them available to city staff upon request.

PASSED, APPROVED, and ADOPTED September 24, 2020.

---

WAQAR RIZVI, CHAIR  
City of Stockton Planning Commission

ATTEST:

---

MICHAEL MCDOWELL, SECRETARY  
City of Stockton Planning Commission