

Resolution No.

STOCKTON PLANNING COMMISSION

RESOLUTION DENYING 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 – ALL CONCERNING A 2,280 SQUARE FOOT COMMERCIAL SPACE AT 3008 E. HAMMER LANE, SUITE 108 (APPLICATION NO. P20-0038)

The applicant, Leon Tacardon, submitted a Commission Use Permit, Administrative Use Permit, and Waiver application to establish a 2,280-square foot retail storefront cannabis business and a retail non-storefront (delivery only) cannabis business in a Commercial General (CG) zoned parcel, located at 3008 E. Hammer Lane, Suite 108 (Exhibit 1); and

The applicant is a winner as an equity applicant of the City's 2019 Commercial Cannabis Lottery used to designate how many applicants are allowed to apply for certain commercial cannabis types, including Retail Storefront; and

On August 27, 2020, the Planning Commission conducted a duly noticed public hearing on the application, in compliance with Stockton Municipal Code (SMC) section 16.88, at which point all persons wishing to be heard were provided such opportunity; and

On August 27, 2020, and prior to acting on the requested actions, the Planning Commission considered the California Environmental Quality Act (CEQA) determination reflected in the findings below; 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 reference.

B. Based on the staff report, staff presentation, comments received, and the public hearing, the Planning Commission makes the following findings based on substantial evidence in the record:

USE PERMIT FINDINGS (COMMISSION AND ADMINISTRATIVE)

As evidenced below, not all of the findings of fact as required by Stockton Municipal Code (SMC) Section 16.168.050 for use permit (Commission or administrative) can be made, and therefore, the project cannot be approved:

1. The proposed uses are allowed within the subject zoning district with the approval of a use permit but do not comply with all other applicable provisions of this Development Code and the Municipal Code because Retail Storefront Commercial Cannabis and Non-storefront Retail (delivery only) Commercial Cannabis is allowed in a Commercial, General (CG) zone with a Use Permit and does not meet the 300' location requirement measured from the nearest property in any existing residential zone, in accordance with SMC Sections 16.80.195 (A) (6) (a) for retail storefront and SMC 16.80.195 (B) (4) (a) for retail non-storefront.
2. The proposed use would not maintain or strengthen the integrity and character of the neighborhood and zoning district in which it is to be located because operating a facility engaged in retail storefront commercial cannabis and retail non-storefront (delivery only) commercial cannabis would result in an overconcentration with an existing cannabis business approved approximately 0.4 miles to the east on Hammer Lane.
3. The proposed use is consistent with the general land uses, objectives, policies, and programs of the General Plan and any applicable specific plan or master development plan because the project is a commercial land use consistent with the Commercial land use designation of the General Plan and it is consistent with General Plan Policy LU-4.2 to attract employment and generating businesses that support the economic diversity of the City.
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.) because the project is reusing a portion of an existing commercial building. The project has been analyzed by all departments and it has been determined all streets and public access ways is adequate to serve the proposed project. The site will have access to City water services and the Municipal Utilities Department has reviewed the project.
5. The establishment, maintenance, or operation of the proposed use at the location proposed and for the time period(s) identified would 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 the project would result in an overconcentration with an existing cannabis approved approximately 0.4 miles to the east on Hammer Lane, which could lead to increased crime and is a security risk; appropriate security provisions will not be sufficient, such as electronic surveillance and on-site security personnel procedures.
6. The design, location, size, and operating characteristics of the proposed use would not be compatible with the existing, and future land uses on-site and in the vicinity of the subject property because the project is the use of an existing building suite, which is compatible with the current commercial use. The use of the vacant suite would not enhance the neighborhood surrounded by commercial uses.
7. The proposed use qualifies for a California Environmental Quality Act (CEQA)

Categorical Exemption under section 15301, Class 1, for Existing Facility, because the proposed project would occur within an existing commercial building and the project involves no expansion of use. 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.

As evidenced below, not all of the required findings required by SMC Section 16.176.040 for waiver of the location requirements in SMC Sections 16.80.195 (A) (6) (a) for retail storefront and SMC 16.80.195 (B) (4) (a) for retail non-storefront are met:

- A. The granting of the waiver to allow the project location to be less than the minimum 300' distance from a nearest property in any existing residential zone, will result in specific standards not being addressed and outweighs the undue hardship that may be created to utilize the proposed site. By not meeting the 300' distance standard, future residential dwelling units that may occur in the currently vacant residential property could be at safety risk and negative affected by the proposed project;
- B. The granting of the waiver to allow the project location to be less than the minimum 300' distance from the nearest property existing residential zone to the west of the project use would weaken the integrity and be a detriment of the character of the nearby neighborhood because of the potential safety risks and negative effects of operating cannabis sales activities near residents;
- C. The granting of the waiver to allow the project location to be less than the minimum 300' distance from a nearest property in any existing residential zone, will be increase safety risks to nearby residents and negatively affect the general welfare of the nearby residential neighborhood because of operating cannabis sales activities. The proposed project would allow the sale of a substance that is federally prohibited not in the best interest of the public health;
- D. The granting of the waiver to allow the project location to be less than the minimum 300' distance from a nearest property in any existing residential zone, will not be consistent with the location requirements of SMC 16.80.195 (A) (6) (a) for retail storefront and SMC 16.80.195 (B) (4) (a) for retail non-storefront because it is located approximately 250' from an existing residential zone and might pose a safety risk or otherwise negatively effect future residents;
- E. The granting of the waiver to allow the project location to be less than the minimum 300' distance from a nearest property in any existing residential zone will conflict with the location requirements of SMC 16.80.195 (A) (6) (a) for retail storefront and SMC 16.80.195 (B) (4) (a) for retail non-storefront because it is located approximately 250' from an existing residential zone which might pose a safety risk or otherwise negatively effect future residents; and
- F. The granting of the waiver would be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines. (Ord. 023-07 C.S. § 120; prior code § 16-590.040)

Planning Commission Action

Based on its review of the entire record herein, including the August 27, 2020, Planning Commission staff report, all supporting, referenced and incorporated documents, and all comments received, and the finding above, the Planning Commission hereby denies the requested Use Permit.

PASSED, APPROVED, and ADOPTED: September 24, 2020.

WAQAR RIZVI, CHAIR
City of Stockton Planning Commission

ATTEST:

MICHAEL MCDOWELL, SECRETARY
City of Stockton Community Development