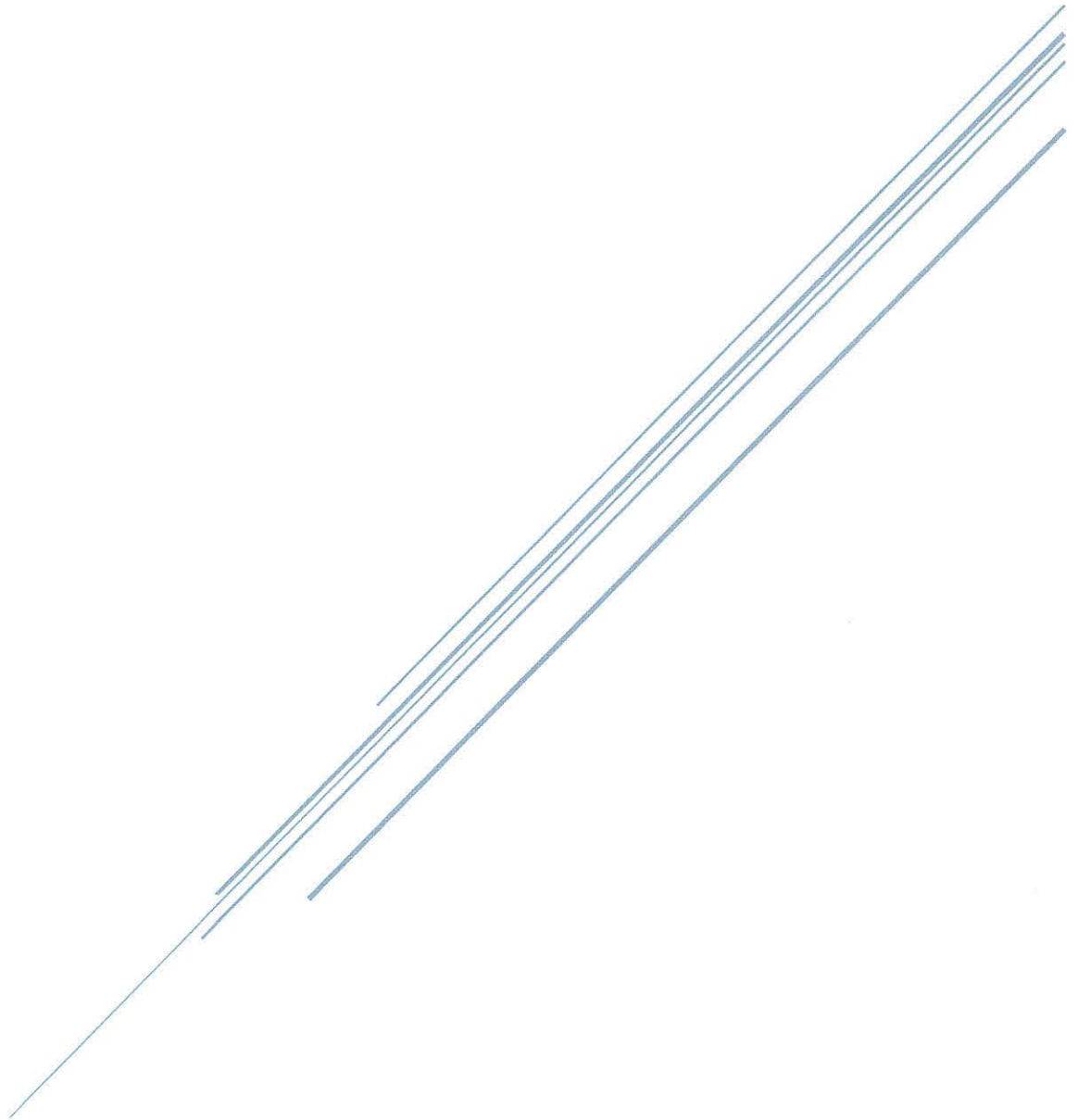


APPEAL TO PLANNING COMMISSION

TEMPORARY ACTIVITY PERMIT TIME EXTENSION REQUEST
#P21-0383



Stocklandia LLC
2107 West Lane, Stockton Ca 95205

Findings

Per SMC 16.164.050 [Temporary Activity Permits – Findings and Decision], a TAP shall only be approved if all of the eight (8) findings of fact can be made. The same findings are being utilized in regard to your submitted Time Extension Request. It is the responsibility of the applicant to establish evidence in support of the required findings. Further, per SMC 16.96.030 [Extensions of time] “The burden of proof is on the permittee to establish, with substantial evidence, why the permit or entitlement should be extended.”

1. **Finding:** The proposed temporary activity would not be consistent with the general land uses, objectives, policies, and programs of the General Plan and any applicable specific plan, precise road plan, or master development plan. (SMC 16.164.050.A)

Evidence: A podcast studio is allowed in the IL (Industrial, Limited) Zoning District per Stockton Municipal Code section 16.164.010.B. However, a Food Truck Park is not identified in the Code. In this case, unless specific food wagon (truck) park regulations are adopted via Ordinance, the Food Truck Park Use is not a permitted use in the IL zoning district, notwithstanding the failed 6-month trial period under the TAP.

Appealing Response:

Per section 16.08 (F) Unlisted Uses of Land may be allowed under Director’s determination. As originally stated in TAP #P20-0284 Response Dated 03/25/2021 (See Image Below and Attachment # 1 As reference) the City of Stockton has formed a committee of 14 members including Stocklandia LLC to form a committee for creation of a Food Truck Ordinance. The City of Stockton’s creation of an Ad Hoc committee to address the growing need of the local Food Truck industry, indicates the City recognizes its potential as a viable revenue source for the City and that regulations to manage such operations is needed. Since the TAP is utilized throughout the City of Stockton for similar activities and conditions imposed on such events are required to ensure the health and safety for those who participate in those events; it would not be unreasonable for events like the Food Truck Wagons, to continue subject to the conditions originally imposed by the Planning Department for the current TAP. Applicant will ensure compliance with said conditions and would agree to monitoring such operations as set forth by the Planning Department or Planning Commission. Such conditions can be reviewed at the end of each subsequent 6-month TAP period, until such time as a Food Truck Park Ordinance can be instituted.

Food Truck Ordinance Update

Question 8: "What is the current state of the code committee, when is our first meeting, who are the members and what is the timeline for implementation?"

City Response: The Food Truck Ordinance Ad Hoc Committee currently has 14 confirmed members (including yourself). These members represent local government (City and County), local real estate, and the University of the Pacific. The City is still working on obtaining additional members to represent other aspects of the industry. The City has also confirmed an industry expert who has had success in the Food Truck Park industry in California that will be available to provide overall input and feedback.

Until the final member(s) are confirmed, a meeting will not be scheduled. As stated during previous correspondence, you will be notified (along with the rest of the Committee) when the first meeting is scheduled.

2. Finding: The establishment, maintenance, or operation of the proposed temporary activity at the location proposed and within the time period(s) identified may 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 activity. (SMC 16.164.050.B).

Evidence: As proposed, Stocklandia's Day-to-Day Operations including five (5) food wagons (trucks), one-way vehicle access that directs traffic to existing residential, and 17 off-site parking spaces, may endanger, jeopardize, or otherwise constitute a hazard due to the following:

- Insufficient parking
- Lack of two-way ingress/egress
- Impacts to neighboring properties (increased traffic, decreased street parking, noise, etc.)
- Site configuration and Accessibility concerns

Appeal Response:

Proposal for alternate parking location at 1240 Klinger Road the parcel is approximately .13 acres and will provide perimeter parking with access from Klinger Road. The parcel is app. 430' from the primary site and is within the required distance as stated per SMC 16.64.080.b.4. The parking lot will meet standards as indicated per section 16.64, if deemed approved as substantial evidence to address the items listed by City of Stockton Planning Department.

3. Finding: The proposed site would not be adequate in terms of location, shape, and size to accommodate the temporary activity. (SMC 16.164.050.C)

Evidence: Based upon observations regarding business operations during the initial 6-month TAP, updated floor plan, and land uses on site, staff determined that the site cannot accommodate five (5) food wagons (trucks). To support all proposed uses of the site, twenty-two (22) parking spaces are required per the SMC. The site's proposed one-way circulation is also insufficient for current business traffic demands. The site is appropriate for the podcast studio and office uses only.

Further, it is the applicant and business owner's responsibility to comply with all applicable provisions of the Americans with Disabilities Act, Title III for the public accommodations associated with this proposed use. Current configuration does not provide all necessary accommodations.

Appeal Response: The project site is currently configured with ADA Van Parking and accessibility requirements. The restrooms to be utilized by the patrons is an ADA approved Portable Restroom. (last line should say: The site surface which had previously been utilized as a permitted Used Auto Sales dealership and Auto Parts Sales Department, is located on a paved level surface as the existing structure is one-story building, thus no stairs are needed or required by building code requirements.. Current site does have ADA van parking and accessibility as per ADA Requirements the restrooms for customers is an ADA Portable restroom. The restrooms in the office area and the warehouse also have_A 42 inches (1065 mm) minimum length grab bar is required

on the side wall, spaced a maximum of 12 inches (305 mm) from the back wall and extending a minimum of 54 inches (1370 mm) from the back wall at a height of 33-36 inches. A van-accessible space of 11 feet in width with an access aisle that is of 8 feet in width. An access aisle must span the entire length of the parking space and not intrude in the space. The ground on the site is leveled and there are no stairs or steps on site for customer access. The site surface which had previously been utilized as a permitted Used Auto Sales dealership and Auto Parts Sales Department, is located on a paved level surface as the existing structure is one-story building, thus no stairs are needed or required by building code requirements..

4. Finding: The proposed site would not be adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the temporary activity would reasonably generate. (SMC 16.164.050.D)

Evidence: The site is a through lot and accessed via West Lane on the east side of the parcel, and Berkeley Avenue on the west side of the parcel. During the Day-to-Day Operation of Stocklandia, the site, as currently configured, cannot accommodate the kind and quantity of traffic expected on-site as it is proposing one-way access from West Lane. Berkeley Avenue is not designed to accommodate the traffic generated by the food truck park use.

Appeal Response: See response for Finding #2

5. Finding: Adequate temporary parking to accommodate vehicular traffic to be generated by the temporary activity would not be available either on-site or at an alternate location(s) which is acceptable to the Director. (SMC 16.164.050.

Evidence: For the Day-to-Day Operation of the Stocklandia podcast business and “food truck park,” parking is available on-site. The submitted site plan identifies seventeen (17) available parking stalls (stalls identified on any part of the City right-of-way cannot be considered off-street parking, nor can space no. 6 which extends into the required fire lane) and, per the information below, has a required parking amount of twenty-two (22) spaces; fifteen (15) spaces for the building and seven (7) spaces allocated for the food wagons (trucks).

In its analysis, staff has identified three land uses on the site: Broadcast Studio, Business Office, and Take Out Restaurant; each have their own parking ratio. Per SMC chapter 16.64 (Off-Street Parking) the following parking ratios apply:

Land Use	Parking Ratio	Square Footage of Use on Site	Required Number of Spaces
Broadcasting Studios	1 space for every 200 SF of indoor floor area	132	1
Business/Professional (offices)	1 space for every 200 SF of indoor floor area	548	3
Restaurants – Fast Food/Take Out (food trucks)	1 space for every 100 SF of indoor floor area	680 (five trucks)	7
		1,116 (shop area)	11
Total Required Parking Spaces			22*

**Of the 22 spaces, 1 must be ADA van accessible).*

The shop area is being considered a part of Stocklandia’s overall food truck park facility and therefore included in the parking calculation above.

While food wagons (trucks) vary in size, each food truck is estimated to be approximately 16’ long by 8.5’ wide, or approximately 136 SF each. Per SMC chapter 16.64 (Off-Street Parking and Loading), fast food/take out shall be parked at 1 space for every 100 SF of gross floor area. Five (5) food wagons (trucks) have a combined estimated square footage of 680 SF and requires 6.8 parking stalls. Per SMC section 16.08.020 (Rules of Interpretation), staff is required to round the fractional/decimal results to the next highest whole number when the fraction/decimal is 0.5 or more, and to the next lowest whole number when the fraction is less than 0.5. Therefore, the required amount of parking for the food trucks is seven (7) spaces. The parking ratio identifies a minimum of twenty-two (22) spaces, while the site plan identifies seventeen (17) spaces. Per the submitted site plan, there is insufficient parking to accommodate vehicular traffic generated by Stocklandia. No off-site parking at an alternate location was proposed by the

applicant (parking in the right of way does not constitute off-site parking).

Appeal Response: See response for Finding #2 additionally the provision of an adequate temporary parking agreement with a property owner within 430' of the project site will restrict vehicular access to the Food Trucks by its customers, thereby eliminating Findings No. 2 and 3. In addition, the City's parking requirement and analysis is not clearly defined. To note, the warehouse is being deemed an independent use. The Broadcast studio is a permitted use in the IL zone. The warehouse/storage portion of the existing structure is being utilized to store tables and chairs and banners, cleaning supplies and other items that the applicant utilizes for the Podcast events. The warehouse/storage portion is not being utilized for any other uses. As such the warehouse should be considered an accessory use to the Podcast Studio and should not be counted as part of the parking requirements. An example would be the previous permitted uses of a Used Car Dealership with the Auto Parts sales Department as an accessory use. Since Auto Parts Sales is not an approved standalone use in the IL zone, the Auto Parts Store would need to store their parts, just as the Broadcast Studio would need to store equipment, they use in their studio operations.

Regarding the City's finding that staff has identified three land uses on the site: Broadcast Studio, Business Office, and Take Out Restaurant. The applicant would contend that the Business Office may also be considered an accessory use to the Broadcast Studio, as Broadcast Studio would need a base of operations for phone calls, bookings, and standard office work for the Stocklandia podcast services and or operations. This would be consistent with such business as a Real Estate Office, and or bank. Regarding the Takeout Restaurant Use Type, the current parking ratio identified by the city parking ordinance is 1 space for every 100 SF of gross floor area (SMC Sec 16.08.020. The estimated square footage of Five (5) food wagons is 680 square feet which is equal in value to 6.8 parking spaces, rounded up to 7 spaces. The shop area is not identified. If the ratio for the parking of the trucks is 7 parking spaces, and there are no vehicular parking spaces being utilized for the customers on site, and the food purchased from the trucks is take out, the actual total parking ratio should be recalculated from 22 spaces down to a max of 7 parking spaces required. This will even allow for the Business/Office use type, even though it can be considered an accessory use to the Broadcast Operations. As indicated an alternative Parking agreement is available upon approval of this . Thus, the responses by the applicant Stocklandia for the City's findings Numbers 2-5, can be made.

6. Finding: The design, location, size, and operating characteristics of the proposed temporary activity would not be compatible with the existing and future land uses in the vicinity (SMC 16.164.050.F).

Evidence: The proposed Day-to-Day Operations of the “food truck park” will occur on a developed site that was previously utilized for a used car dealership/auto parts/auto service and is in a predominantly industrial portion of the City where all parcels have an underlying zoning classification of Industrial, Limited (IL) and a General Plan designation of Commercial. The podcast and office uses are currently allowed on site; however a food truck park is not. A single incidental food wagon (truck) is permissible per SMC 16.80.020.B.4.a.i. Please note that any more than one food wagon (truck) on the site would potentially become a destination use (as opposed to an accessory use) that may result in additional traffic at the site and potentially unsafe on-site traffic circulation.

Appeal Response: See response for Finding #2 for traffic and circulation resolution proposal. Food Wagons are permissible per SMC 16.80.020.B.4.a.i. the amount of trucks on private property is not defined and new code creation is required to outline use. With extension of this TAP and creation of new Stockton Municipal Codes the permission of multiple trucks can be granted as the zoning is classification is allowed at 2107 West Lane. As indicated in Stockton Municipal Code Sec 16.80.020 Food Wagons are a permissible use on private property. A motorized Food Wagon is a permitted use in the IL zone, and the City approved the current TAP subject to the conditions originally attached by the City. The applicant has made an adjustment to address access by vehicles and parking by said patrons to the food trucks. A food wagon park Ordinance by the City can ensure that in certain situations that a primary and or future land uses can be maintained. While acknowledging there are currently no Municipal codes that would regulate the establishment and operations of a food truck park, the utilization of the TAP process allows the City Planning Department or Planning Commission to apply conditions upon such activity types. There are no statutes or municipal codes that ultimately determine the number of food trucks in place currently. However, if the applicant can eliminate the concerns the city may have under this finding such as the site possibly becoming a potential destination use, or additional traffic at the site, the applicant would comply with any appropriate conditions until such time as a Food Truck Ordinance can be implemented that will address the City’s concerns. In, addition there are no proposals or plans to alter the current primary use of the Broadcast Studio. The applicants responses to findings numbers 6-7 can be made.

7. Finding: Approved measures for removal of the temporary activity and site restoration have been required to ensure that no changes to the site would limit the range of possible future land uses otherwise allowed by this Development Code. (SMC 16.164.050.G)

Evidence: See Conclusion below.

Appeal Response: No current or future proposed changes to the site for the use of the Broadcasting Studio or the Food Truck Park have been made that would limit the range of possible land uses otherwise allowed by the Development Code.

8. **Finding:** The proposed permit would be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines. (SMC 16.164.050.H)

Evidence: The project site concerns an existing private structure, involving negligible or no expansion of an existing or former use. Given these facts, the proposed temporary activities are Categorically Exempt pursuant to CEQA Guidelines §15301 (Existing Facilities).

Appealing Response: As stated above the activities are Categorically Exempt pursuant to CEQA Guidelines §15301 (Existing Facilities).

Noncompliance with Conditions of Approval

Original conditions of approval for TAP 20-0824 required the applicant to obtain a Commercial Rental Business License as the food wagons (trucks) would be renting a space from Stocklandia. This condition was never met, the current approved business license for the podcast studio makes no mention of the food trucks and is unable to claim income under that license. The property owner also failed to obtain a Commercial Rental Business License to claim income from Stocklandia on the subject parcel.

Additionally, other conditions of approval such as the total number of food wagons, the use of tables and chairs, and use of a commissary for overnight parking were not adhered to.

The original TAP made clear that compliance with the conditions of approval was mandatory. Consistent with SMC 16.164.070, said conditions were found to be reasonable and necessary to ensure that the approval would be in compliance with the findings required by Section 16.164.050.

Appeal Response:

A Commercial Business License was submitted by the applicant in October 2020. However, it was not approved by staff because there is not a Use Type for Food Truck Parks. On June 2, 2021, a second application was submitted again with all the required fees for a Commercial Business and were told by the Planning staff, that the application could not be processed as a Food Truck Park. The applicant has been prevented from acquiring a Commercial Business License at this point by the City Planning Department.

In addition, as the tenant which is leasing the site has a business license to operate the Broadcast Studio. As a tenant, is not required to make the owner get a business license for use he is not a part of. This request by the city is not an appropriate request. An example would be tenant leasing a location for a liquor store. The tenant would be responsible for acquiring all necessary permits (California Alcohol Business Control, ABC -217) as well as the city's land use permit. The owner would not be required to purchase a license as well. Two Notice of Violations were issued to Stocklandia over the last 8 months NSS #040320212107-1 NSS #030420212107-1, both notices were immediately remediated and adhered to. There are no additional notices or citations that have been issued and as stated from Code Officer Alex Martinez via email to Stocklandia both notices have been complied with and resolved as of April 14th 2021. The applicants responses to the city's findings for Number 8 can be made.

Conclusion

The TAP expired on April 30, 2021. You were permitted to continue operating in the interim pending the determination of your time extension request. Per the findings above, a time extension will not be granted. The project site at 2107 West Lane shall be completely free of all evidence of the activity within seven (7) days of the date of this letter (SMC 16.164.080). Temporary activities that do not comply shall be subject to code enforcement action, in compliance with SMC chapter 16.224 (Enforcement).

In accordance with SMC section 16.164.080.A and chapter 16.100, this determination may be appealed to the Planning Commission and is subject to a ten (10) day appeal period (from the date of this letter). An appeal shall be in writing, state the grounds for appeal, include a fee of \$567.50, and be submitted to the Community Development Department at 345 North El Dorado Street before 4:30 p.m., on June 7, 2021.

Appealing Conclusion:

The TAP was not extended due to the City's finding 1-8. The applicant has sufficiently addressed the findings with the appropriate responses. The applicant has also complied with all the conditions imposed on the current TAP by the City. In addition, the applicant has expressed that they are willing and open to a monitoring system that will ensure that the food truck operation remain in compliance with all the conditions imposed on this requested TAP, until such time that a more definitive municipal code can be implemented. The applicant agrees that a review of the TAP at the end of each TAP time period would be appropriate to ensure compliance as well. The applicant has further shown that they want to work with the city staff by being a member of the city's creation of an AD HOC committee to address the growing food truck industry. With the above referenced responses, the applicant request the Planning Commission uphold the applicants for (Temporary Activity Permit (TAP) # P21-0383.