

APPEAL OF PLANNING COMMISSION DECISION TO THE CITY COUNCIL

Today's Date: 7.16.21 Date of Planning Commission Decision: 7.8.21

Last day to file Appeal (ten days): 7.19.21

APPELLANT: Jiva SCK LLC Send Return Correspondence
(Name) 436 Clementina St. STE 303. to:
(Address) 3439 Brookside Rd. STE 104
San Francisco, CA 94103 Stockton, CA 95219
(City, State, Zip)
1(732) 801-6300
(Telephone)

APPEAL: Planning Commission Denial of Application No. P20-0693 (Jiva SCK LLC)
Commission Use Permit to establish a retail storefront Cannabis Business and
Administrative Use Permit to establish a Non-Storefront (Delivery Only) Cannabis
(Case Number and Project Name) Business.

Retail Business at 7616 Pacific Avenue Suite A-5 Stockton, CA 95207 . (See Attached Appeal Letter)
(Property Address)

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

PAID BY: 1034 (Check) check/number _____ Cash _____ Money Order

HAND DELIVERED: x MAILED: _____

Majority decision to deny application not justified by
STATE REASON FOR FILING THIS APPEAL: record of the proceedings, with stated basis for majority decision being protection of a single existing
business, ("reduction of business prosperities" finding(s) #2,6) despite signatures of support from
10 other neighboring businesses. These grounds are outside of the parameters of P.C.'s land use
determination and necessary findings. Potential for public safety risk (finding #5) contrary to
testimony provided by SPD. These purported justifications for decision were also not based
in fact but rather on testimony from existing (single) business owner and its constituents, and
contrary to factual circumstances concerning similarly situated cannabis businesses.

Zachary Drivon, Attorney, Jiva SCK LLC
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 Aceves*
CC TO: CC_Office@stocktonca.gov

STOCKTON CITY COUNCIL
425 North El Dorado Street
Stockton, CA 95202
Phone: (209) 937-8458

July 19, 2021

VIA HAND DELIVERY: STOCKTON CITY CLERK

Mayor Lincoln, Vice Mayor Fugazi

Stockton City Council

c/o City Clerk

425 N. El Dorado Street, 1st Floor

Stockton, CA 95202



**Re: Appeal of Planning Commission July 8, 2021 Denial of Application No. P20-0693,
7616 Pacific Avenue Suite A5 Stockton, CA 95207 (Jiva SCK LLC)**

Mayor Lincoln, Vice Mayor Fugazi, and City Councilmembers,

This appeal results from the denial of applicant Jiva SCK LLC's (cannabis retail lottery winner from 2020 social equity pool) application for a Commission Use Permit to establish a Commercial Cannabis Retail Storefront and Administrative Use Permit to establish a Non-Storefront Retail (Delivery) Cannabis Business at 7616 Pacific Avenue Suite A5 Stockton, CA 95207. The Planning Commission Vote on July 8, 2021 was 4-2. This project was reviewed and recommended for approval by City Staff with 6 findings affirming compatibility and compliance with Stockton Municipal Code with no requests for a waiver or variances.

We are petitioning the City Council for a reversal of the above decision under Stockton Municipal Code Section 16.100.040. The grounds for this appeal arise from the Planning Commission's decision's abuse of discretion by not proceeding as required by law in making its determination; the decision is not supported by its findings; and the findings are not supported by the evidence presented during the hearing.

The stated rationale of the four (4) Commissioners who voted to deny was a clearly articulated desire to protect Zen Garden Wellness from, an existing Cannabis Retail Storefront located in the shopping center within which applicant has proposed its business, from competition. Each of these Commissioners voted on a motion to deny by Commissioner Xavier Mountain whose main contention was that approval would result in a 'reduction of business prosperities', citing a purported lack of evidence for the following findings:

[2. The proposed use would maintain or strengthen the integrity and character of the neighborhood and zoning district in which it is located];

[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].

This decision is contrary to evidence and testimony presented by applicants and landlord Kathryn Smith, as well as 10 neighboring businesses who provided signatures of support for the proposed business, anticipated to generate substantial foot traffic and dedicated improvements and contributions to the shopping center. These contributions include:

- Serving as an anchor business to attract new businesses to occupy vacant suites in the Hammer Ranch Shopping Center, thus eliminating vacancies and blight;
- Increasing safety and security to ensure crime prevention for the center;
- Maintaining and conducting any upgrades the parking lot and conducting daily cleanup;
- Creating 40+ jobs for local residents within years 3-5 with a 75%-90% local hire commitment; and
- Enhancing aesthetic appeal of the Hammer Ranch Shopping Center;
- Generating approximately \$2,200,000.00 in revenue for City of Stockton over the first five years in operation;
- Commitment to charitable contributions at a minimum of \$50,000.00 per year, up to 2.5% of the proposed businesses gross revenues.

Despite hearing testimony as to the co-existence and mutual prosperity of several other Cannabis Businesses operating within close proximity of one another in Stanislaus County as well as the City of San Bernardino, the Commissioners voting to deny placed undue and erroneous consideration in their stated justification for the vote: Zen Garden Wellness's opposition to the proposed business as potentially harmful to its own. This rationale was asserted in Commissioner Mountain's motion to deny.

Notably, Jiva SCK LLC offered concessions to the existing business in order to promote fostering positive relations and successful co-existence, including diversification of its product line to ensure no unfair price competition would occur, covering the cost of Zen Garden Wellness's Common Area maintenance fees and costs of security, as well as the cost of cleanup for both parking areas. Applicant's also offered improvements to upgrade Hammer Ranch Shopping Center, as well as co-sponsored charitable contributions with costs to be borne solely by the applicant. Moreover, testimony was provided as to the diversity and extensiveness of cannabis products available at retail, as well as the fact that applicants licensing partner, Cookies, carries an inventory in its stores that are 50%-60% in-house brands, with a higher price point than a majority of fellow cannabis retailers operating in California. This is significant as it is likely that Zen Garden Wellness would stand to benefit from overflow and inquiry as to their own products from prospective customers of applicant's business. No testimony or evidence was presented that would indicate or support a finding that the proposed use would not strengthen or maintain the integrity and character of the neighborhood or zoning district. No testimony or evidence was presented that would indicate or

support that the design, location, size and operating characteristics of the proposed use would not be compatible with existing and future land uses on-site and in the vicinity of the subject property.

Commissioner Mountain, in his motion to deny, also cited a public safety risk citing finding #5, (see below) as not being met, as purported grounds for denial.


This rationale is contrary to a prolonged discussion during the hearing with Stockton Police Department representative Lt. Scott Graveyette, responsible for regulation of commercial cannabis businesses in Stockton, who stated that there had been no significant increase in criminal activity or public safety risk due to the operation of Zen Garden Wellness, nor was there any reason to believe that the proposed use by Jiva SCK LLC would result in any public safety risk or threat.

Accordingly, the record is void of any justification for a negative finding as to Finding #5: 'The establishment, maintenance, or operation of the proposed use at the location proposed for the time period(s) identified, if applicable, would not 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.'

It is also notable that Commissioner Mountain, in stating his motion, was unable to independently articulate his grounds for denial relative to these findings and attempted to solicit the assistance of staff in making these findings. It is clear that the majority decision of commission in this matter was based solely on the interests of Zen Garden Wellness, despite existing vacancies in Hammer Ranch Shopping Center, and numerous other neighboring businesses who would stand to benefit, along with the City at large, from the approval and operation of the proposed business. Notwithstanding lack of evidence for this stated rationale, these grounds are outside the purview of the Commission's land use determination, and economic protection for the sole benefit of a single business to the detriment of numerous other businesses and the City at large was both erroneous procedural standpoint, and contrary of the interest of the City and its resident in principle.

Based on the foregoing, we humbly petition the Mayor Lincoln, Vice Mayor Fugazi and the members of Stockton's City Council to thoughtfully consider Staff's recommendation to approve based on the necessary findings being met per their analysis, as well as the record of the Planning Commission hearing itself, and vote to overturn Planning Commission's denial of this project, thus providing its final approval for the same.

Sincerely,





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STOCKTON, CA

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Zach Drivon, General Counsel

On behalf of Jiva SCK LLC

Cc. Stephanie Ocasio, Assistant Director of Community Development;
Lori Asuncion, Assistant City Attorney