



City of Stockton

Legislation Text

File #: 23-0769, Version: 1

REQUEST FOR A GENERAL PLAN AMENDMENT, REZONE, USE PERMIT AND DESIGN REVIEW TO ALLOW THE ESTABLISHMENT OF A CONVENIENCE STORE WITH OFF-SALE OF BEER AND WINE, GENERAL MERCHANDISE, AND A FUELING STATION, WITH A CAR WASH FACILITY, AT 9036 THORNTON ROAD (P23-0083) (APN 072-410-43)

RECOMMENDATION

Staff recommends that the Planning Commission:

- 1) Adopt a Resolution recommending the City Council approve a General Plan Land Use Map Amendment to change approximately 1.48-acres of APN 072-410-43 from Administrative Professional to Commercial and the remaining .62-acres from Administrative Professional to Medium Density Residential; and
- 2) Adopt a Resolution recommending the City Council approve a Zoning Map Amendment to change approximately 1.48-acres of APN 072-410-43 from Commercial, Office (CO) to Commercial, General (CG) and the remaining .62-acres from Commercial, Office (CO) to Residential, Medium Density (RM); based on the findings and subject to the conditions in the proposed resolution.
- 3) Adopt a Resolution denying a request for a Use Permit to allow a new convenience store with off sale of beer and wine, general merchandise, a fueling station, and car wash facility, at 9036 Thornton Road, based on the inability to make required findings.
- 4) Adopt a Resolution approving Design Review for a proposed mini-mart with fueling station and car wash at 9036 Thornton Road, based on the ability to make required findings.

Summary

The applicant, Al Shaghaghi, is requesting a General Plan and Zoning Map Amendment, Use Permit and Design Review to develop a new convenience store with off-sale of beer and wine, fueling station, and car wash facility on a portion of an approximately 1.8-acre site at the above-noted location, and a future residential project to be developed at a later date. Said portion shall be a new 1.48-acre parcel created through a separate lot line adjustment application (processed ministerially).

The convenience store, fueling station, and car wash facility, also known as the "Project", consists of the construction of a 3,400 square foot (SF) convenience store, 816 SF car wash facility, six fueling stations with 12 parking stalls under a 4,606 square foot overhead canopy, 25 off-street parking spaces, and on-site landscaping and site improvements.

Convenience Store, Fueling Station, and Car Wash land uses are not permitted under the current

File #: 23-0769, Version: 1

General Plan designation of Administrative Professional and Zoning designation of Commercial, Office (CO). Amending the General Plan designation to Commercial, and amending the Zoning designation to Commercial, General (CG), would permit the Project's proposed land uses. Additionally, amending the General Plan designation from Administrative Professional to Medium Density Residential, and Zoning designation to Residential, Medium Density (RM) would allow for future residential development compatible with the existing neighborhood.

In accordance with Stockton Municipal Code (SMC) Section 16.20.020, Table 2-2, "Allowable Land Uses and Permit Requirements," a Use Permit is required for a convenience store which is defined as: "Easy access retail stores selling a combination of alcohol, gasoline, and a range of merchandise to provide a variety of items primarily for the motoring public". Convenience stores are required to comply with the alcoholic beverage sales (off-sale, SMC Section 16.80.040) and for Problem Uses (SMC Section 16.80.270). The off-sale establishment complies with all location restrictions under SMC 16.80.040, and all findings required under Section 16.80.270, "Problem Uses" can be made.

Staff recommends that the requested General Plan Land Use and Zoning Map Amendments be recommended for City Council approval by the Planning Commission, based on the required findings provided herein. Further, staff recommends approval of Design Review based on required Findings. However, staff is unable to provide the required findings for Planning Commission approval of the requested Use Permit for a Convenience Store use since it does not comply with location requirements for alcoholic beverage sales and therefore recommends denial of that request.

Should the Planning Commission accept Staff's proposed findings and deny the Use Permit, the applicant requests and staff recommends that the General Plan and Zoning Map Amendment requests be recommended for City Council approval. This allows the applicant to change the project type to a mini-mart selling general merchandise, a fueling station, and carwash use - without the off-sale of alcohol; thus, not requiring a Commission Use Permit.

DISCUSSION

Background

The proposed convenience store, fueling station, and car wash facility is located at the southeast corner of Thornton Road and Waudman Avenue at 9036 Thornton Road. This site has a General Plan designation of Administrative Professional and is currently zoned Commercial, Office (CO) (Attachment A - Aerial Photo, General Plan & Zoning Map) and is bound to the:

- North by a small commercial strip center zoned Commercial, General (CG) and single-family residential which is zoned Residential, Low Density (RL).
- South by properties zoned Commercial, Office (CO).
- East by single-family residential zoned RL and Residential, Medium Density (RM).
- West by single-family residential within the County of San Joaquin and vacant land within the City of Stockton zoned CG.

Present Situation

For the applicant to construct and occupy the proposed Convenience Store with off-sale beer and wine, fueling station, and car wash facility, the Planning Commission must consider approving a Use

File #: 23-0769, Version: 1

Permit and Design Review, which would be subject to approval of a General Plan Amendment and Zoning Map Amendment by the City Council.

The Project's 2.12-acre site is currently vacant and comprised of four parcels combined to form APN 072-410-43. The Project applicant is proposing to merge the parcels into two new parcels, which is a ministerial process and handled administratively. Parcel One will be 1.48-acres and where the Project will be situated; Parcel Two is .62-acres and will be developed at a later time.

The convenience store, fueling station, and car wash facility, would consist of the construction of 3,400 square foot (SF) convenience store, 816 SF car wash facility, six fueling stations with 12 parking stalls under an overhead canopy, 25 off-street parking spaces, and on-site landscaping and site improvements. (Attachment B - Site Plan, Floor Plan and Elevations). In accordance with SMC Section 16.80.320, the Project complies with all applicable Development Code standards for fueling stations, including the number of driveways and off-street parking spaces, landscaping requirements, and minimum separations from pump islands to structures, property lines, and other pump islands.

The Stockton Municipal Code (SMC) Section 16.120.020(A)(2) requires Design Review for all new commercial development throughout the City. Design Review requests are evaluated for conformance with the Citywide Design Guidelines. For this project, Citywide Design Guidelines Section 4.02.060 (Special Commercial Use - Drive-Through Businesses) provides criteria for the achievement of quality development, compatibility with surrounding uses, functional site arrangement, safe/convenient parking and circulation, and architectural character.

Convenience stores, per their definition in SMC 16.240 (Definitions), include an alcohol component, and off-sale beer and wine sales are allowed in the CG zoning districts, subject to securing a Commission Use Permit per SMC Section 16.20.020, Table 2-2. SMC Section 16.80.040 defines Alcoholic Beverage Sales Activity, which includes convenience stores, as businesses having less than 20% of their gross floor area devoted to the sale, display, and/or storage of alcohol. The applicant has advised staff that the convenience store will not have more than 20% of its gross floor area devoted to the sale, display, and/or storage of alcohol, thereby avoiding classification as a "liquor store." The proposed hours of operation for the convenience store and gasoline sales will be 24 hours per day, seven days a week. The sale of alcoholic beverages will comply with Alcoholic Beverage Control (ABC) regulations and only be offered between 6:00 a.m. to 2:00 a.m., seven days a week. While the City has the authority to regulate and permit the use, the sale of alcohol is regulated by ABC.

STAFF ANALYSIS

General Plan Amendment

The proposed project would require a General Plan Amendment to the Land Use Element to change the land use designation on the project site to match the project land use plan and future project that will be designed at a later date. As proposed, the Land Use Element would change approximately 1.48 acres from Administrative Professional to Commercial; the remaining .62-acre portion would change to Medium Density Residential and would be developed in the future under a separate application. The Commercial designation allows for a wide variety of retail, service, and commercial recreational uses, business, medical and professional offices, residential uses, public and quasi-public uses, and other similar and compatible uses. The Residential designation allows for a wide range of residential uses and densities.

File #: 23-0769, Version: 1

The extension of the Commercial designation across the 1.48-acre area is considered consistent with General Plan policies and objectives and would be consistent with the overall adjacent commercial development in this area, and therefore would represent a minor adjustment to the General Plan land use map. The extension of the Residential, Medium Density designation across the .62-acres site is considered consistent with General Plan policies and objectives and would be consistent with overall adjacent residential uses and densities in the area and would represent a minor adjustment to the General Plan land use map.

The subject development would also further the following General Plan policies:

- Policy LU-4.2 “Attract employment- and tax-generating businesses that support the economic diversity of the city.”
- Policy LU-6.2 “Prioritize development and redevelopment of vacant, underutilized and blighted infill areas.”
- Action CH-2.1C: “Develop incentives to promote reuse of distressed areas, such as through re-zoning, permit streamlining, density bonuses, and other appropriate tools.”
- Policy CH-2.2: “Stimulate investment through partnerships with private property owners, neighborhood groups, health and housing advocates, nongovernmental organizations, and other community supporters.”
- Action CH-2.2A: “...Encourage private investment in older neighborhoods. Cooperate in joint public-private partnerships to invest in older neighborhoods.”

As reflected in the attached Proposed Resolution, all necessary findings can be made to support the proposed General Plan Land Use Map Amendment action.

Zoning Map Amendment

The project proposes rezoning from Commercial, Office (CO) to Commercial, General (CG), coinciding with the 1.48-acre portion of the project site that would implement the General Plan designation of Commercial. As reflected in the attached Proposed Resolution, all necessary findings can be made to support the proposed Zoning Map Amendment action.

The project also proposes rezoning from Commercial, Office (CO) to Residential, Medium Density (RM), coinciding with the .62-acre portion of the project site that would implement the General Plan designation of Medium Density Residential. As reflected in the attached Proposed Resolution, all necessary findings can be made to support the proposed Zoning Map Amendment action.

Use Permit

When evaluating applications for new alcoholic beverage sales establishments, the proposed Commission Use Permit must be evaluated against the location restrictions identified in SMC Section 16.80.040 as referenced below.

Location Requirements

SMC Section 16.80.040(D)(2)(a)

Per SMC Section 16.80.040(D)(2)(a), new alcoholic beverage sales activities or establishments shall not be located within 500 feet of a public or private kindergarten through grade 12 academic school, nursery school, preschool, daycare facility, public park, playground, recreational area, or youth facility. Staff thoroughly researched and evaluated the surrounding area in relation to the proposed site and concluded the proposed location is in compliance with this section. Most of the land uses within 500' of the proposed use are commercial or residential uses. The subject use **complies** with the noted minimum required separation.

Crime Reporting District - SMC Section 16.80.040(D)(2)(d)(ii)(A)

Per SMC Section 16.80.040(D)(2)(d)(i)(a), the establishment shall not be in a crime reporting district, where the average number of crimes in that district exceeds the average number of crimes for all reporting districts citywide by more than 20%.

The subject site is located within Crime Report District 0311. Data provided by the Stockton Police Department for the 2021-2023 reporting period shows the citywide average for all reporting districts is 425 calls for service. Crime Reporting District 0311 has 423 calls for service during the two-year period, and therefore, does not exceed the city-wide average number of crimes by over 20%, as there were less calls in the district than the citywide average.

The Stockton Police Department provided data for site-specific calls for service that shows a total of 12 calls for service between August 22, 2021, and August 22, 2023. Of the 12 calls for service at the Project site, Police Department staff indicate that the nature of the crimes reported are largely related to the site being vacant, such as disturbing the peace, trespassing, and vagrants. (Attachment C - Calls for Service).

The subject use **complies** with the Crime Reporting District requirement.

Existing Off-sale Licenses - SMC Section 16.80.040(D)(2)(ii)(B)

The establishment shall not be located in an area within 500 feet of an existing off-sale alcoholic beverage establishment or any location that will lead to the grouping of more than four off-sale alcoholic beverage establishments within a 1,000-foot radius.

Based on ABC records, there are three (3) existing off-sale establishments located within 500' of the site (Attachment D - Existing Off-Sale Locations).

- 9110 Thornton Road (7-Eleven), approximately 55' from the site.
- 9160 Thornton Road (Thornton Market & Liquor), approximately 212 feet from the site.
- 8909 Thornton Road (Country Liquor N Market), approximately 373 feet from the project site.

There are two (2) additional establishments located within 1,000' feet of the Project site:

- 9303 Thornton Road (Herbst Liquor) at approximately 693 feet from the site,
- 9242 Thornton Road (Thornton Mini Market & More) at approximately 732 feet from the site.

Approval of this Use Permit would create a grouping of six (6) establishments that sell alcohol, which is above the grouping allotment of four (4) establishments. The subject use **does not**

File #: 23-0769, Version: 1

comply with the 500' separation requirements from other existing off-sale alcohol establishments nor the grouping requirement limiting off-sale alcoholic beverage establishments to four within a 1,000-foot radius.

The Planning Commission has the discretion to waive these restrictions to promote and support local economic business growth, throughout the City. To reiterate, the Project *does* comply with SMC Section 16.80.040(D)(2)(a) related to separation from sensitive receptors and *does* comply with the Crime Reporting District standards. However, the project *does not* comply with the existing off-sale license requirements (i.e., proximity and aggregation requirements). Approval of a Use Permit would also require approval of a Public Convenience and Necessity determination due to overconcentration of off-sale alcohol establishments in the census tract.

Use Permit Findings

To approve the Use Permit, the Planning Commission must affirmatively make all findings required under SMC Section 16.168.050(A) (General Findings), Section 16.168.050(B) (Problem Uses), and Section 16.168.050(C) (Alcoholic Beverages). As indicated in the Proposed Resolution, the subject use is allowed in the CG zone with an approved Use Permit and complies with applicable provisions of the Development Code. When considering the Use Permit to allow off-sale of beer and wine, the Commission action is guided by the following criteria:

Use Permit: General Findings, Problem Uses and Alcoholic Beverages

General Findings.

There are seven required General Findings in SMC Section 16.168.050.A, they require:

1. Compliance with all applicable provisions in the SMC;
2. Maintaining the integrity and character of the applicable zoning district;
3. Consistency with applicable General Plan objectives and policies;
4. Physical suitability of the site for the proposed use;
5. Not endangering or jeopardizing the public health, safety, peace, or general welfare of the public;
6. Compatibility with surrounding uses; and
7. Consistency with the California Environmental Quality Act.

Staff cannot make all required General Findings to support the project, as evidenced in the attached proposed resolution as the use is not in compliance with all applicable provisions in the SMC due to the inability to make all location restriction findings. The use is, however, allowed in the CG zoning district, it would provide for additional neighborhood-service retail and convenience services to the local neighborhood; it is consistent with the goals, objectives and policies in the General Plan; the site is physically suitable for the development; the use will be subject to the conditions of approval requiring security upgrades to the site; the retail use of the store is compatible with other land uses on-site and in the vicinity; and, the project is Categorically Exempt from CEQA.

Problem Uses.

In addition to the General Findings, Section 16.168.050(B) contains the following three specific

Findings for Problem Uses:

1. The proposed use is not likely to interfere with the comfortable enjoyment of life or property in the area;
2. The proposed use will not increase or encourage the deterioration or blight of the area; and
3. The proposed use will not be contrary to any program of neighborhood conservation, improvement, or redevelopment, either residential or nonresidential.

As it pertains to problem uses, staff recommends that (1) the proposed use will be within an existing, established area and will not interfere with the comfortable enjoyment of life or property in the area; (2) the proposed convenience store will develop a vacant site; and (3) the use is going into an established area and will provide additional services to the neighborhood.

Alcoholic Beverages.

In addition to the General Findings and Problem Use Findings, the following findings shall be made for all uses which incorporate “alcoholic beverage sales activity” as defined in Section 16.80.040. Section 16.168.050.C contains the four specific Findings for Alcoholic Beverages. The Findings address the project’s potential to result in nuisance activities on and in proximity to the subject. The completion of a training course in Licensee Education on Alcohol and Drugs (LEAD), compliance with all provisions of local, State and Federal laws, rules, and regulations and required criteria for a Public Convenience or Necessity (PCN) Finding, if required.

The convenience store would (1) endure to limit potential nuisance and criminal activity, littering, graffiti, and excessive loitering, (2) would complete the approved course for responsible beverages sales, and (3) would comply will all provisions of local, State and Federal laws, regulations, rules, policies, or orders enforced by the City of Stockton and ABC. Staff is, however, unable to make the final (4th) finding related to a PCN, as this location **requires** a Public Convenience and Necessity determination as there is an overconcentration of existing licenses within the census tract.

While the establishment of this convenience store would allow for development of a previously vacant and underutilized site, because of the inability to make all required findings in the affirmative, staff is unable to make an approval recommendation for the Use Permit.

Should the Planning Commission not approve the Use Permit for the off-sale of alcohol, the applicant intends to change the Project to a “mini-mart without alcohol sales” in-lieu of a “convenience store.” Per SMC 16.20.240, convenience stores (by definition) include an alcohol component, while a “Mini-Mart without alcohol sales” would still allow for the sale of general merchandise and fueling and are permitted by-right in the CG zone. A General Plan Amendment and Rezoning Amendment are still required to allow for the Mini-Mart and would enable the applicant to develop the Project as intended, albeit without alcohol sales.

Design Review

On October 18, 2023, the City’s Architectural Review Committee (ARC) reviewed the proposed project site plan, elevations, and colors, and found them to be (with minor modifications to the

File #: 23-0769, Version: 1

buildings) substantially in compliance with the applicable provisions in the City's Design Review Guidelines. Following the ARC's review of the plans, the Director has provided ARC's supported findings in the proposed Resolution and recommends Planning Commission final approval.

The Findings required to support an approval relate to the projects' ability to be consistent with the Development Code, General Plan, Zoning Ordinance, and Citywide Design Guidelines; be designed in a manner such that it is compatible with other structures and sites in the area, not create traffic conflicts, block views, or create pedestrian hazards; that adequate parking that is designed and integrated appropriately; and lastly, that the project incorporates appropriate standards such as American's with Disabilities Act regulations, into the project. Staff can make all findings in the affirmative, excluding the Use Permit, as demonstrated in the proposed resolution.

Public Comments

Notice for this item was published in the Record on October 30, 2023, and a notice has been sent to all property owners within a 300-foot radius of 9036 Thornton Road on October 30, 2023. Staff has not received any comment from the public on this project.

Environmental Clearance

The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) in accordance with the provisions of CEQA Section 15332(b) - which consists of projects characterized as in-fill development that meet the following:

- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

With approval of the proposed General Plan Land Use and Zoning Map amendments, the project is consistent with applicable general plan designation and policies, as well as with applicable zoning designation and regulations.

- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The project site is within the City of Stockton City Limits, surrounded by urban uses, on a 2.12-acre parcel. Upon completion of a separate lot merger, the site will be 1.48-acres in size.

- c. The project site has no value as habitat for endangered, rare, or threatened species.

The site is already in an urbanized area within the City Limits.

- d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Project impacts to traffic, noise, air quality, or water quality are negligible as it will be serving that existing area.

- e. The site can be adequately served by all required utilities and public services.

File #: 23-0769, **Version:** 1

Public utilities are readily available and accessible.

Attachment A - Aerial Photo, General Plan & Zoning Map

Attachment B - Site Plan, Floor Plan and Elevations

Attachment C - Calls for Service

Attachment D - Existing Off-Sale Locations

This staff report was prepared by Nicole D. Moore, Contract Planner. She may be contacted at Nicole.Moore.CTR@stocktonca.gov.