

Resolution No.

STOCKTON PLANNING COMMISSION

RESOLUTION DENYING A COMMISSION USE PERMIT TO ESTABLISH A CONVENIENCE STORE WITH OFF-SALE OF BEER, WINE, AND DISTILLED SPIRITS AT 1515 EAST MAIN STREET (P23-0292) (APN 153-040-30)

On October 18, 2023, the applicant, Gagan Bahad, submitted an application to the Community Development Department for a Commission Use Permit with Waiver to allow the establishment of a convenience store at an existing location with off-sale of beer, wine, and distilled spirits; and

On August 12, 2024, public notice for the subject application was published in the local newspaper in accordance with Stockton Municipal Code (SMC) Section 16.88.030; and

On August 22, 2024, the Planning Commission approved a continuance of the public hearing to the regularly scheduled October 10, 2024 meeting date; and

On October 10, 2024, the Planning Commission conducted a public hearing on the application, in compliance with SMC Chapter 16.88, 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 herein reference.

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

Use Permit: General Findings

1. Although the proposed Convenience Store use is allowed in the Commercial, General (CG) zoning district, subject to approval of a Use Permit, the use does not conform with several of the location restriction standards of the Development Code (Title 16), Section 16.80.040(D) for new alcoholic beverage sales that are intended to protect the surrounding neighborhood from harmful effects attributable to the sales. Most notably, the proposed use does not conform to the 500 foot location restriction from an academic school that is located within 200 feet of the proposed use; Further the proposed use does not conform to the 500 foot location restriction from another off-sale alcohol establishment based on the fact there are two (2) existing off-sale alcohol establishments within less than 500'; and will result in a grouping of six (6) off-sale alcohol establishments within a 1,000 foot radius with the project included, which exceeds the

grouping of four (4) standard. Based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use and requested Waiver would weaken the integrity of the neighborhood and zoning district and potentially increase the harmful effects which the City has deemed attributable to the sale of alcoholic beverages. Although a Waiver is requested from the location restriction standards, the harmful effects would remain. There are no applicable overlays or specific plans for this site.

2. The proposed convenience store use does not conform to several of the location restrictions identified in SMC Section 16.80.040(D) for new alcoholic beverage sales that are intended to protect the surrounding neighborhoods from harmful effects attributable to the sale of alcoholic beverages and to prevent public nuisances in the community. Most notably, the proposed use does not conform to the 500 foot location restriction from an academic school that is located within 200 feet of the proposed use; Further the proposed use does not conform to the 500 foot location restriction from another off-sale alcohol establishment based on the fact there are two (2) existing off-sale alcohol establishments within less than 500'; and will result in a grouping of six (6) off-sale alcohol establishments within a 1,000 foot radius with the project included, which exceeds the grouping of four (4) standard. Based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use and requested Waiver would weaken the integrity of the neighborhood and zoning district and potentially increase the harmful effects which the City has deemed attributable to the sale of alcoholic beverages

3. The proposed use will be consistent with the general land uses, objectives, policies, and programs of the General Plan and any applicable specific plan or master development plan:

Goal CH-3: Expand opportunities for local enterprise, entrepreneurship, and gainful employment.

Policy LU-4.2: Attract employment- and tax-generating businesses that support the economic diversity of the city.

Policy SAF-1.2: Incentivize a variety of uses in neighborhood that will be active throughout the day and night.

4. The subject site will be physically suitable for the type and density/intensity of the 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.). The Project is located in an already developed site and is not proposing any new construction, expansion, or modification of the site. Therefore, the proposed use is of an appropriate intensity and would be carried out on a suitable site.

5. The proposed convenience store use that includes off-sale alcohol (beer, wine and distilled spirits) is expected to 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 subject use. This is based on the fact that

the use does not conform to several of the location restrictions identified in SMC Section 16.80.040(D) for new alcoholic beverage sales that are intended to protect the surrounding neighborhoods from harmful effects attributable to the sale of alcoholic beverages and to prevent public nuisances in the community. Most notably, the proposed use does not conform to the 500 foot location restriction from an academic school that is located within 200 feet of the proposed use; Further the proposed use does not conform to the 500 foot location restriction from another off-sale alcohol establishment based on the fact there are two (2) existing off-sale alcohol establishments within less than 500'; and will result in a grouping of six (6) off-sale alcohol establishments within a 1,000 foot radius with the project included, which exceeds the grouping of four (4) standard. Based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use and requested Waiver would jeopardize and increase the harmful effects in the neighborhood which the City has deemed attributable to the sale of alcoholic beverages.

6. The design, location, size, and operating characteristics of the proposed Convenience Store use that includes off-sale of alcohol (beer, wine and distilled spirits) will not be compatible with the existing and future land uses in the vicinity of the subject property. This is based on the fact that the use does not conform to several of the location restrictions identified in SMC Section 16.80.040(D) for new alcoholic beverage sales that are intended to protect the surrounding neighborhoods from harmful effects attributable to the sale of alcoholic beverages and to prevent public nuisances in the community. Most notably, the proposed use does not conform to the 500 foot location restriction from an academic school that is located within 200 feet of the proposed use; Further the proposed use does not conform to the 500 foot location restriction from another off-sale alcohol establishment based on the fact there are two (2) existing off-sale alcohol establishments within less than 500'; and will result in a grouping of six (6) off-sale alcohol establishments within a 1,000 foot radius with the project included, which exceeds the grouping of four (4) standard. Based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use, that includes off-sale of alcohol (beer, wine and distilled spirits) and requested Waiver would not be a compatible use in the adjacent neighborhood.

7. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines, in accordance with the provisions of section 15301(a) - Existing Facilities because it includes interior alterations. The interior of the store is being modified to include space dedicated to the sales, display, and storage of alcohol. No exterior modifications are proposed to the existing building.

Problem Use Findings – Alcoholic Beverage Sales, Off-Sale

8. The proposed use is likely to interfere with the comfortable enjoyment of life or property in the area. This is based on the fact that the use does not conform to several of the location restrictions identified in SMC Section 16.80.040(D) for new alcoholic beverage sales that are intended to protect the surrounding neighborhoods from harmful effects attributable to the sale of alcoholic beverages and to prevent public nuisances in the community. Most notably, the proposed use does not conform to the 500

foot location restriction from an academic school that is located within 200 feet of the proposed use; Further the proposed use does not conform to the 500 foot location restriction from another off-sale alcohol establishment based on the fact there are two (2) existing off-sale alcohol establishments within less than 500'; and will result in a grouping of six (6) off-sale alcohol establishments within a 1,000 foot radius with the project included, which exceeds the grouping of four (4) standard. Based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use, that includes off-sale of alcohol (beer, wine and distilled spirits) and requested Waiver would not be a compatible use in the adjacent neighborhood.

9. The proposed use would increase or encourage the deterioration or blight of the area. This is based on the fact that the use does not conform to several of the location restrictions identified in SMC Section 16.80.040(D) for new alcoholic beverage sales that are intended to protect the surrounding neighborhoods from harmful effects attributable to the sale of alcoholic beverages and to prevent public nuisances in the community. Most notably, the proposed use does not conform to the 500 foot location restriction from an academic school that is located within 200 feet of the proposed use; Further the proposed use does not conform to the 500 foot location restriction from another off-sale alcohol establishment based on the fact there are two (2) existing off-sale alcohol establishments within less than 500'; and will result in a grouping of six (6) off-sale alcohol establishments within a 1,000 foot radius with the project included, which exceeds the grouping of four (4) standard. Based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use, that includes off-sale of alcohol (beer, wine and distilled spirits) and requested Waiver would increase the deterioration and potential blight in the adjacent neighborhood.

10. The establishment of an additional use of this type in the area will not be contrary to any program of neighborhood conservation, improvement, or redevelopment, either residential or nonresidential since here are no neighborhood conservation programs, improvement programs, or redevelopment programs in the area that the Project would be subject to.

Alcoholic Beverages Findings

11. The Approval of the Convenience Store use that includes off-sale of alcohol (beer, wine and distilled spirits) would potentially result in nuisance activity in close proximity to the premises Nuisance activity includes, but is not limited to: disturbing the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination/defecation, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noise (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or police detentions and arrests. This is based on the fact that the use does not conform to several of the location restrictions identified in SMC Section 16.80.040(D) for new alcoholic beverage sales that are intended to protect the surrounding neighborhoods from harmful effects attributable to the sale of alcoholic beverages and to prevent public nuisances in the community. Most notably, the proposed use does not conform to the 500 foot location restriction from an academic school that is

located within 200 feet of the proposed use; Further the proposed use does not conform to the 500 foot location restriction from another off-sale alcohol establishment based on the fact there are two (2) existing off-sale alcohol establishments within less than 500'; and will result in a grouping of six (6) off-sale alcohol establishments within a 1,000 foot radius with the project included, which exceeds the grouping of four (4) standard. Based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use, that includes off-sale of alcohol (beer, wine and distilled spirits) and requested Waiver would increase the deterioration and potential blight in the adjacent neighborhood.

12. The owners have indicated their intent have all employees of the establishment will complete an approved course in Licensee Education on Alcohol and Drugs (LEAD), or other "Responsible Beverage Sales" (RBS) or any other California Department of ABC Board approved program within 60 days of hire for new employees. To satisfy this requirement, a certified program must meet the standards of the ABC Responsible Beverage Service Advisory Board, Service Advisory Board, or other certifying/licensing body designated by the State of California .

13. The proposed use will 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. This includes compliance with annual City Business License fees. However, the project is in conflict with ABC limitations on the maximum number of off-sale licenses allowed in the Census Tract 19. ABC allotment to Census Tract 19 is four (4) off-sale license and currently eight (8) exist. Further, the proposed Convenience Store use does not conform to several of the location restrictions identified in SMC Section 16.80.040(D) for new alcoholic beverage sales that are intended to protect the surrounding neighborhoods from harmful effects attributable to the sale of alcoholic beverages and to prevent public nuisances in the community. Most notably, the proposed use does not conform to the 500 foot location restriction from an academic school that is located within 200 feet of the proposed use; Further the proposed use does not conform to the 500 foot location restriction from another off-sale alcohol establishment based on the fact there are two (2) existing off-sale alcohol establishments within less than 500'; and will result in a grouping of six (6) off-sale alcohol establishments within a 1,000 foot radius with the project included, which exceeds the grouping of four (4) standard. Based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use, that includes off-sale of alcohol (beer, wine and distilled spirits) and requested Waiver would increase the deterioration and potential blight in the adjacent neighborhood.

14. Business and Professions Code section 23958.4 requires a determination if public convenience or necessity would be served by the issuance of this Commission Use Permit. Per ABC, four (4) active off-sale licenses are permitted within census tract 19, however there are currently eight (8) existing off-sale licenses in operation. Approval of the Use Permit for proposed off-sale of beer, wine, and distilled spirits would increase the already overconcentrated census tract and therefore public necessity would not be

served by the issuance of this Commission Use Permit.

Waiver

15. The granting of the location Waiver shall enable the site to be utilized so that specific standards can be addressed without creating undue hardship. The proposed convenience store is going into an existing mini-mart that already sells good to the public; therefore, the conversion to a convenience store use would provide an additional option for the public to purchase alcohol.

16. The granting of the Waiver will allow for the economic viability and use of the site. The proposed convenience store use is allowed in the CG zoning district and will provide not only offer the off-sale of beer, wine, and distilled spirits but other convenience items to compete with other establishments.

17. The granting of the Waiver may be detrimental to the public convenience, health, interest, safety, or general welfare of the City or injurious to the property or improvements in the zone or neighborhood in which the property is located. The Project is located in an overconcentrated census tract with eight (8) active off-sale licenses. Further, the proposed use does not conform to multiple location restrictions in SMC Section 16. Most notably, the proposed use does not conform to the 500 foot location restriction from an academic school that is located within 200 feet of the proposed use; Further the proposed use does not conform to the 500 foot location restriction from another off-sale alcohol establishment based on the fact there are two (2) existing off-sale alcohol establishments within less than 500'; and will result in a grouping of six (6) off-sale alcohol establishments within a 1,000 foot radius with the project included, which exceeds the grouping of four (4) standard. Based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use and requested Waiver would weaken the integrity of the neighborhood and zoning district and potentially increase the harmful effects which the City has deemed attributable to the sale of alcoholic beverages.

18. The granting of the Waiver will be consistent with the general land uses, objectives, policies, and programs of the General Plan, any applicable specific plan, precise road plan, or master development plan, and the intent of this Development Code. The use is consistent with the goals, objectives, and policies in the General Plan; the site is physically suitable for the use will be subject to the conditions of approval; the retail use of the store is compatible with other land uses within the vicinity; however, based on the combined circumstances, the authorization of a Use Permit for the proposed convenience store use and requested Waiver would weaken the integrity of the neighborhood and zoning district and potentially increase the harmful effects which the City has deemed attributable to the sale of alcoholic beverages.

19. The granting of the Waiver will not conflict with applicable provisions of the latest edition of the California Building Code and Fire Code and other applicable Federal, State, and local laws and regulations.

20. The granting of the Waiver will be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines. The proposed project is Categorical Exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines, in accordance with the provisions of section 15301(a) for Existing Facilities.

California Environmental Quality Act

21. The proposed project is Categorical Exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines, in accordance with the provisions of section 15301(a) - Existing Facilities because it includes interior alterations. The interior of the store is being modified to include space dedicated to the sales, display, and storage of alcohol. No exterior modifications are proposed to the existing building.

Conclusion

Based on its review of the entire record herein, all supporting, referenced, and incorporated documents, and all comments received, the Planning Commission hereby denies the requested Use Permit due the inability to make all required findings.

PASSED, APPROVED, and ADOPTED October 10, 2024.

TERRY HULL, CHAIR
City of Stockton Planning Commission

ATTEST:

MICHAEL McDOWELL, SECRETARY
City of Stockton Planning Commission