APPEAL OF THE PLANNING COMMISSION’S DENIAL OF THE REQUEST FOR A USE PERMIT TO ALLOW THE OFF-SALE OF BEER AND WINE IN AN EXISTING MEAT MARKET AND BAKERY AT 944 WATERLOO ROAD (P15-339)

RECOMMENDATION

It is recommended that the City Council adopt a resolution to deny the appeal and uphold the Planning Commission’s denial of the request for a Use Permit to allow the off-sale of beer and wine in an existing meat market and bakery at 944 Waterloo Road.

Summary

The City Council is asked to consider an appeal submitted by the business owner, Eduardo Buenrostro, of the Planning Commission’s January 14, 2016 denial of a Use Permit application which would have allowed the off-sale of beer and wine in an existing meat market and bakery (Attachment A - Appeal Letter). Staff recommended denial of the Use Permit to the Planning Commission, based on the underlying facts and an inability to make affirmative findings for approval. Following public testimony, the Planning Commission deliberated, but was unable to make affirmative findings to support the request, and the application was denied.

DISCUSSION

Background

The approximately 1.05-acre site is located on the northeast corner of Waterloo Road and Nellis Street in northeast Stockton. The neighborhood surrounding the subject site is comprised of a variety of land uses. Generally, the area is developed with single-family homes, duplexes and triplexes, multi-family residential units, three public schools, one group home (Children’s Home of Stockton), and commercial uses. The latter are primarily located on both sides of Waterloo Road and Wilson Way.

The project site is occupied by an approximately 10,000-square foot commercial building. The existing meat market and bakery occupies approximately 6,000 square feet in the north end of the building. The remaining 4,000-square feet of the building is occupied by a restaurant. The site is zoned CG (Commercial, General) and is bounded to the:

- northwest across Waterloo Road by various commercial uses zoned CG;
- east by single-family residences zoned RL (Residential, Low Density); and
- south across Nellis Street by a variety of auto repair businesses zoned CG (Attachment B - Location Map and Aerial Photograph).
Project Description

The market has been in operation since 2000 and the applicant began operating the business in January of 2015. In order to satisfy his customers’ needs, he is requesting a Use Permit to allow the off-sale of beer and wine in his meat market and bakery. The applicant proposes to devote no more than 20 percent of the store’s gross floor area to the sale, display, and/or storage of alcohol, thereby avoiding classification as a “liquor store,” pursuant to Section 16.240.020 of the Stockton Municipal Code (SMC). According to the applicant, beer and wine will be displayed in an existing walk-in cooler on the west side of the store (Attachment C - Site and Floor Plans). The operator would continue to offer other merchandise for sale in the store, including meat, fresh vegetables, chips, snacks, candies, various grocery items, and bottled/canned beverages. The business hours for the market are from 7:00 a.m. to 7:00 p.m., seven days a week and no change is proposed if the Use Permit is approved.

The Planning Division recently processed a comprehensive Code Amendment to Title 16 of the SMC related to alcoholic beverage sales. The noted Code Amendment was approved by the City Council on January 26, 2016 and became effective on March 26, 2016. In accordance with SMC Section 16.04.050.F.1. a. and b., even though the new alcohol ordinance will be in effect at the time of the City Council’s public hearing, the subject Use Permit may be processed according to the requirements in effect when the application was accepted as complete, as long as it is acted upon within 90 days of the adoption of the new alcohol ordinance (April 26, 2016). Alternatively, the City Council may process the Use Permit in accordance with the new alcohol ordinance, only if it determines that it is necessary to do so to ensure public health, safety, welfare, and orderly development. The subject Use Permit was processed by Planning staff in accordance with applicable alcohol provisions of the previous Development Code, based on the fact that the application was deemed complete for processing and scheduled for action by the Planning Commission before that effective date of the new alcohol ordinance. For the sake of consistency, staff is recommending that the City Council utilize the previously-affective alcohol provisions. The proposed findings in the City Council’s staff report are consistent with the previous alcohol ordinance. Even if the provisions of the recent Code Amendment were used to evaluate the application, the recommended action would remain a denial as many of the underlying criteria are the same.

Census Tract Overconcentration

The project site is located in Census Tract 16.00. Based upon the population in that geographic area, the State Department of Alcoholic Beverage Control (ABC) has determined that one (1) off-sale alcoholic beverage establishment is allowed within the Census Tract. There are currently nine (9) active off-sale alcohol establishments within this Census Tract. The two nearest off-sale alcohol establishments (Grocery Outlet and Rite Aid) are located directly across Waterloo Road from the project site in an existing shopping center located in the same census tract. The remaining seven off-sale alcohol establishments in this Census Tract are located to the northeast, southeast, and southwest of the subject site. The larger area surrounding the subject site contains 17 off-sale alcohol uses, four bars, and eight on-sale alcohol businesses (Attachment D - Locations of Active On-Sale and Off-Sale Alcoholic Beverage Licenses).

Approving the proposed off-sale beer and wine use would exacerbate the existing over-concentration of such licenses in the area, as defined by ABC regulations. As a result, ABC regulations required a
finding of Public Convenience or Necessity from the Planning Commission in order for ABC to issue an off-sale alcohol license for the subject site. This neighborhood is already served by an adequate number of alcohol establishments and any additional off-sale alcohol businesses at this time have the potential to increase crimes, loitering, vandalism, panhandling, drunkenness, and vagrancy in this neighborhood and would likely result in an increase in calls for police service, which would deplete police resources in this area of the City.

Proximity to Schools

Section 16.80.040.A of the SMC requires a minimum separation of 300 feet between an establishment with the off-sale of alcoholic beverages and public or private academic schools for students in kindergarten through 12th grade. The nearest school, Fremont Elementary School, is approximately 1,300 feet east of the project site. In addition, Grunsky Elementary School is located approximately 1,900 feet north of the subject site and Pittman Elementary School is located approximately 2,600 feet southwest of the project site. The proposed use complies with the noted distance separation requirement from schools.

Problem Use

There are seven required general findings in Section 16.168.050.A of the SMC that must be considered in order to approve the proposed use. The general findings require compliance with all applicable provisions in the SMC; maintaining the integrity and character of the applicable zoning district; compliance with General Plan objectives/policies and any applicable Specific Plan or Master Development Plan; the provision of adequate utility services for the proposed use; consideration of public convenience, health, safety, and land use compatibility; and compliance with the California Environmental Quality Act’s (CEQA) Guidelines. Additionally, an off-sale alcoholic beverage establishment constitutes a “Problem Use” and, as such, requires three additional findings, pursuant to SMC Section 16.168.050.B. In accordance with Section 16.240.020 of the SMC, “Problem Uses” are defined as “Uses that have a blighting and/or deteriorating effect upon their surroundings, and which may be dispersed to minimize their adverse impacts.” The proposed use would not represent a dispersal of this problem use, but would, instead, increase the concentration by allowing an additional problem use in the area. As a result, the required findings for “Problem Uses” cannot be made in the affirmative for the following reasons:

1. The proposed use is likely to interfere with the comfortable enjoyment of life or property in the area, because the applicant has failed to provide any evidence that adding additional alcoholic beverage sales would not negatively impact the area. He has stated that no more than 20% of the store floor area will be dedicated to alcohol sale, display, and/or storage of alcohol; however that restriction is not intended to reduce off-site impacts, but is simply a way to differentiate between two similar land uses: convenience stores/mini marts and liquor stores. According to the Police Department’s crime report statistics, the average number of crimes reported in all of the Citywide Crime Reporting Districts is 94. The project site is located in Crime Reporting District No. 180. The average number of crimes reported in this district is 189. The average number of crimes in the district exceeds the average number of crimes for all reporting districts by 101 percent. As a result, the overconcentration of problem uses in the commercial area would likely have the potential to increase vagrancy and similar illegal activities and can be expected to result in additional calls for police service.
2. The proposed use will increase or encourage the deterioration or blighting of the area, because there are already 17 established off-sale alcohol outlets in the vicinity of the proposed use that provide a variety of alcohol products and various grocery items. Clearly, the area immediately surrounding the proposed use is adequately served by the existing alcohol sales outlets and the proposed use would not enhance public convenience or necessity. Instead, adding another alcoholic beverage sales establishment in the neighborhood surrounding the subject site has the potential to contribute to an unsafe neighborhood identical to those in other neighborhoods with similar crimes, illegal activities and drunkenness, and increase or encourage deterioration or blighting in the area.

3. 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, because there are no such programs in place in the subject neighborhood. Adding the off-sale of beer and wine in the meat market and bakery will, therefore, not be contrary to any program of neighborhood conservation, improvement, or redevelopment. However, the proposed alcohol establishment will be contrary to the conservation, improvement, and redevelopment of the area, because such establishments have the potential to increase alcohol-related illegal activities, which would adversely affect the quality of life for area residents.

In summary, the proposal, if approved, would introduce an additional problem use into a neighborhood that, by both ABC standards and City code, is already adequately served by existing alcohol retailers. The required findings for problem uses and Public Convenience or Necessity cannot be made in the affirmative, because this neighborhood already has an adequate number of alcohol sales outlets and an additional outlet would have the potential to result in adverse impacts upon the general health and welfare of the neighborhood.

Planning Commission Action

At the January 14, 2016 public hearing, the applicant appeared at the hearing and presented testimony in support of his request to allow the off-sale of beer and wine in the meat market and bakery. He stated his family background and business history in Stockton. According to the applicant, his family has operated grocery stores/markets with the off-sale of alcoholic beverages at various locations around Stockton for 30 years and has not had any police problems related to alcohol sales. He submitted photos showing the interior and exterior of the existing commercial building on the project site (Attachment E - Photos of Buildings) and copies of petitions (containing the names and signatures of more than 300 of his customers) to support his business (Attachment F - Public Petitions).

Following public testimony, members of the Planning Commission expressed concerns about the overconcentration of similar alcoholic beverage sales establishments in the census tract, high crime reports in the subject site’s Crime Reporting District, and the many illegal activities occurring in the vicinity of the project site. At the conclusion of the hearing, a motion was made and approved (7-0) to deny the subject Use Permit.

On January 19, 2016, the applicant filed an appeal of the Planning Commission’s denial of the Use Permit to allow the off-sale of beer and wine in an existing meat market and bakery at 944 Waterloo
Road. Staff is recommending that the Council deny the appeal and uphold the decision of the Planning Commission to deny the Use Permit.

City Council can uphold the Commission’s action and deny the appeal, or override the Commission’s action and modify or approve the appeal with five (5) concurring votes.

ENVIRONMENTAL REVIEW

Denial of the application does not constitute a project under the California Environmental Quality Act (CEQA) and, therefore, no environmental analysis is needed for the proposed use.

FINANCIAL SUMMARY

There is no anticipated financial impact to the City of Stockton as a result of the project.

Attachment A - Appeal Letter
Attachment B - Location Map and Aerial Photograph
Attachment C - Site and Floor Plans
Attachment D - Locations of Active On-Sale and Off-Sale Alcoholic Beverage Licenses
Attachment E - Photos of Buildings
Attachment F - Public Petitions