



CITY OF NOVATO
CALIFORNIA

PLANNING COMMISSION

Meeting Minutes

Monday, February 26, 2024 – 7:00pm

A. CALL TO ORDER AND ROLL CALL

Commission Present: Crockett, Derby, Engdahl, Tiernan, Havel, Heath

Commission Absent: Dawson

Staff Present: Deputy Director Steve Marshall, Senior Planner Kaitlin Zitelli, Assistant City Attorney John Abaci

B. APPROVAL OF FINAL AGENDA

Commission Action: Upon motion by Commissioner Tiernan and seconded by Commissioner Crockett the Planning Commission voted 6-0-0-1 via roll call to approve the final agenda.

AYES: Commissioners Crockett, Derby, Havel, Heath, Engdahl, and Tiernan

NOES: None

ABSTAIN: None

ABSENT: Commissioner Dawson

C. PUBLIC COMMENT - NONE

D. CONSENT ITEMS - NONE

E. UNFINISHED AND OTHER BUSINESS - NONE

F. PUBLIC HEARINGS

- F.1. HOLD A PUBLIC HEARING AND POSSIBLY ADOPT A RESOLUTION RECOMMENDING THE CITY COUNCIL AMEND NOVATO MUNICIPAL CODE CHAPTER XIX (ZONING) TO ALLOW CHECK CASHING SERVICES AS AN ACCEPTABLE ACCESSORY USE TO TRAVEL AGENCIES AND GROCERY STORES AND CLARIFYING THE TREATMENT OF PROHIBITED LAND USES AND ACCESSORY LAND USES AND FIND THE AMENDMENTS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15061(b)(3)**

Deputy Director Marshall present the staff report.

Commissioner Tiernan asked whether grocery stores need to go the extra step of obtaining a use permit.

Deputy Director Marshall clarified the use permit is required for the grocery store itself.

Commissioner Tiernan noted the CG zoning district requires a use permit for check cashing.

Deputy Director Marshall said a use permit is required for standalone check cashing businesses and that is how the code is written now.

The public hearing was opened.

Niran Somasundaram representing Paulo Leal, owner of Star Latina, stressed the importance of having check cashing available at the location in the downtown area. He said that customers said it was important to have, especially for the Latino/a community. He said that his client is worried about the future of their business because of the current wording in the community code. He said they are thankful for the city working with them to update and amend the code.

The Public hearing was closed.

Commissioner Havel acknowledged and thanked the staff and City Council seeking out a resolution to this issue and a job well-done.

Commissioner Tiernan moved to motion and commented on the services to be updated by the zoning amendment.

COMMISSION ACTION: Upon motion by Commissioner Tiernan and seconded by Commissioner Derby, the Planning Commission voted 6-0-0-1 via roll call to adopt the zoning amendment resolution as presented.

AYES: Commissioners Crockett, Derby, Havel, Heath, Engdahl, and Tiernan

NOES: None

ABSTAIN: None

ABSENT: Commissioner Dawson

F.2. 7-ELEVEN REZONE & ALCOHOL SALES

REZONE; P2023-072

USE PERMIT; P2023-020

CEQA EXEMPT; CEQA GUIDELINES SECTIONS 15183 & 15301

PUBLIC HEARING AND POSSIBLE ACTION TO ADOPT RESOLUTIONS RECOMMENDING THE CITY COUNCIL: (1) MAKE A CEQA DETERMINATION AND FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15183 AND APPROVE A ZONING MAP AMENDMENT REQUEST; AND (2) MAKE A CEQA DETERMINATION AND FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15301 AND APPROVE A USE PERMIT TO ALLOW FOR A CONVENIENCE STORE, EXTENDED HOURS BUSINESS, AND SALE OF ALCOHOL FOR OFF-SITE CONSUMPTION AT 800 DIABLO AVENUE, APN 140-131-21

Senior Planner Zitelli presented the staff report.

Ryan Kroll presented on behalf of the 7-Eleven store's owner, Mr. Singh.

Mr. Singh expressed his support for the proposal; it would be good for the community and his customers.

Commissioner Tiernan asked if ABC waits for planning commission or city council to give approval before issuing an ABC license.

Mr. Kroll stated they wait for the city to decide. He clarified the license is on hold with ABC.

Commissioner Engdahl asked about the economic impact.

Mr. Kroll stated he does not have specific numbers but stressed that adding a small amount of distilled spirits would increase the economic impact.

Commissioner Engdahl acknowledged the mention of police calls in the staff report but wanted acknowledgement of the apartment complex near the store. He asked who the primary customers are, and what is the range of customers coming to the store.

Mr. Singh stated that customers are mostly from the surrounding neighborhood, with some travelers.

Commissioner Engdahl asked about the tax impact on the city despite not knowing about the revenue impact.

Mr. Kroll stated on the grand scale the city would not see a dramatic impact on taxes.

Commissioner Crockett asked if this proposal was mostly about the impact of economics of the store.

Mr. Kroll agreed that is a fair assessment. He clarified that Mr. Singh is acting on behalf of requests from customers.

Commissioner Havel asked staff about the permit history mentioned in the staff report.

Senior Planner Zitelli stated when initially approached by the applicant, the request was for a use permit for distilled spirits. She stated that staff did not find previous history of use permits for the existing convenience store, 24-hour operations, or the existing beer and wine sales. She stated the zoning was different when the store was originally approved in the 1980s.

Commissioner Havel asked for staff's view on spot-zoning.

Deputy Director Marshall stated the site is designated as General Commercial and that the General Commercial zoning district implements this designation.

Commissioner Havel asked why there is a locked cabinet [for the sales of the alcohol].

Mr. Kroll stated that was the proposal volunteered by the applicant.

Commissioner Havel asked why the city would need it – is there a theft problem.

Mr. Kroll stated that cities typically request it, so they volunteered ahead of any formal request.

Deputy Director Marshall stated that staff confirmed there were few incidents related to alcohol based on police department records.

Commissioner Havel asked if theft is common with convenience stores that serve hard alcohol.

Deputy Director Marshall stated he did not know.

Mr. Kroll stated that he did not know, but that the locked cabinet is proactive.

Commissioner Havel asked about the board on the window of the 7-Eleven.

Deputy Director Marshall stated a car had gone through the window and Mr. Singh was in the process of obtaining a building permit to repair the window.

Commissioner Derby asked the staff about the rezone and if in the future the business would need a certificate to serve liquor and would it come from the city.

Deputy Director Marshall stated yes, future uses under the use permit would come from the city based on the zoning.

Commissioner Derby asked how many other 7-Elevens in Novato.

Deputy Director Marshall stated he thought three (3).

Commissioner Derby asked if they had the same zoning.

Deputy Director Marshall stated he believes they do.

Commissioner Heath asked to quantify the benefit of the use permit on this 7-Eleven location compared to the other locations within the city.

Mr. Kroll stated no other locations in Novato have distilled spirits.

Commissioner Heath asked would this lead to other stores asking for the same permit. She asked if any other locations in Marin sell distilled spirits.

Mr. Kroll stated a store in Sausalito has distilled spirits and a store in San Rafael is in the process of obtaining permits for the same.

Commissioner Heath asked about data for the Sausalito location.

Bill Mara, market leader for Northern California 7-Eleven stores, stated that the use permit does increase sales, even if it is not a dramatic increase.

Commissioner Heath asked if the locked cabinet would be a requirement written into the use permit.

Mr. Kroll stated it was not a proposed condition. He stated it was a precaution.

The public hearing was opened.

Genevieve Walker, a public-school teacher in the community, stated the different locations within proximity to 7-Eleven where hard alcohol could be purchased. She believes this store does not need to be a destination for hard alcohol and that it would change the culture of the neighboring community. She disagreed with the statement there is no consumption of alcohol on the store's premises. She stated the small increase in revenue would not be worth affecting the community around the store.

Paul Walker, a Novato resident living near the store, stated he does not believe the claim there is no crime. He stated the problem is loitering on the property, the public nuisance of customers loitering. He stated changing the zoning could eventually turn the location into a full liquor store.

Andrew Ferguson, a Novato resident living near the store, stated he objects to this proposal. He stated the zoning and use permit are not in the best interest of the community. He listed other locations customers could purchase hard alcohol and stated it was unnecessary for 7-Eleven to sell it as well. He stated police incidents that occurred at the location. He stated if the permits are granted there will be an increase in police activity and reduction in land value. He mentioned the possibility of a lawsuit.

The public hearing was closed.

Commissioner Tiernan asked staff is it accurate if the property is rezoned to CG could the store become a liquor store.

Deputy Director Marshall stated no, the use permit would be limited to the operational components described in the applicant's project description. He stated amending the use permit for alcohol sales would be necessary for a liquor store.

Commissioner Heath asked to clarify about the locked cabinet.

Deputy Director Marshall stated it is in the applicant's description for the use permit and any additional changes would need a new use permit application.

Commissioner Tiernan asked to clarify police calls and responses to the 7-Eleven location.

Sr. Planner Zitelli stated only two (2) police calls were related to alcohol.

Commissioner Engdahl commented that it would not be a good idea to allow the sale of alcohol at this location, and that other locations are available for the purchases.

Commissioner Derby asked if the use permit could be revoked later down the line in relation to police calls and activity.

Deputy Director Marshall stated when use permits are granted, they are conditional and the applicant must comply with the conditions. He stated that if they do not comply, the city can either revoke or amend the use permit.

Commissioner Derby asked if someone wants to litigate, how would that work.

Assistant City Attorney Abaci stated anyone can file a lawsuit. He stated if there is a violation of the use permit, the city could take action to change the conditions or revoke the permit. He stated until there is a final action, there cannot be a lawsuit.

Commissioner Crockett commented on the applicant's proposal to train staff on the use of alcohol on the premise. He commented on the location of the locked cabinet being at the back of the store compared to behind the counter at the front.

Commissioner Havel asked if the project description provided by the applicant is what the staff used generally.

Deputy Director Marshall confirmed.

Commissioner Havel expressed concerns that the project description did not seem objective. He asked if the Commission adopts a resolution would they need to amend the project description.

Deputy Director Marshall asked if that meant for the project in the future or this evening.

Commissioner Havel confirmed this evening.

Deputy Director Marshall stated the Commission has full discretion to impose any conditions it feels are appropriate.

Commissioner Havel commented on his observations at the subject property. He stressed the importance of spot-zoning needing to be beneficial to the community.

Deputy Director Marshall stated the current zoning was consistent with the General Plan.

Commissioner Havel proposed changes to the language of the rezoning resolution. He stated the community does not need the sale of alcohol at this location to be a healthy community. He stated he cannot approve the expanded sale of liquor at this site.

Commissioner Heath agreed with Commissioner Havel's sentiments. She confirmed her support for the rezoning but could not support the use permit for sale of alcohol. She acknowledged the community concerns.

Commissioner Havel read the section of the City's municipal code regarding the sale of alcohol.

Commissioner Derby asked if they do not adopt the use permit can the applicant continue with their current non-conforming zoning and permits.

Deputy Director Marshall stated yes, the business would still exist in its current state. He stated the commission could modify the use permit to omit the sale of distilled spirits.

Commissioner Tiernan commented on the benefits of the Use Permit at this location.

Commissioner Heath recommended separating the vote on the use permit and the vote on the rezone.

COMMISSION ACTION: Upon motion by Commissioner Tiernan and seconded by Commissioner Derby, the Planning Commission voted 2-4-0-1 via roll call to adopt both resolutions as presented.

AYES: Commissioners Derby and Tiernan

NOES: Commissioners Crockett, Engdahl, Havel, Heath

ABSTAIN: None

ABSENT: Commissioner Dawson

Motion failed.

COMMISSION ACTION: Upon motion by Commissioner Havel and seconded by Commissioner Crockett, the Planning Commission voted 6-0-0-1 via roll call to adopt the rezone resolution with modifications to the language to eliminate the section stating, "to allow the sale of distilled spirits."

AYES: Commissioners Crockett, Engdahl, Havel, Heath, Derby, and Tiernan

NOES: None

ABSTAIN: None

ABSENT: Commissioner Dawson

Motion passes.

COMMISSION ACTION: Upon motion by Commissioner Tiernan and seconded by Commissioner Derby, the Planning Commission voted 2-4-0-1 via roll call to recommend the use permit resolution as presented.

AYES: Commissioners Derby and Tiernan

NOES: Commissioners Crockett, Engdahl, Havel, and Heath

ABSTAIN: None

ABSENT: Commissioner Dawson

Motion failed.

G. GENERAL BUSINESS - NONE

H. COMMITTEE AND LIAISON REPORTS

Deputy Director Marshall provided an update on the Housing Element. He stated that the next Planning Commission meeting is March 11, 2024, which will include discussion of a use permit for a business with a drive-through component.

I. ADJOURNMENT

The Planning Commission adjourned the meeting at 08:33 PM.

I HEREBY CERTIFY that the foregoing minutes were duly adopted at the Planning Commission meeting of March 25, 2024.

/Steve Marshall/

Steve Marshall, Deputy Director of Community Development