



# City of Santa Barbara California

III.

## PLANNING COMMISSION STAFF REPORT

**REPORT DATE:** October 29, 2015  
**AGENDA DATE:** November 5, 2015  
**PROJECT:** Zoning Information Report (ZIR) Process Improvements –Ordinance Amendment to Establish a Minor Zoning Exception Process  
**TO:** Planning Commission  
**FROM:** Planning Division, (805) 564-5470, extension 4555  
Renee Brooke, AICP, City Planner  
Susan Reardon, Senior Planer *SR*

### I. RECOMMENDATION

Staff recommends the Planning Commission review the proposed Ordinance (Exhibit A) amending the Santa Barbara Municipal Code (SBMC) to authorize the Community Development Director to grant Minor Zoning Exceptions (MZE) in the case of a discrepancy or error in Zoning Information Reports (ZIRs) upon certain findings, and adopt a resolution recommending that the City Council adopt the proposed Ordinance.

### II. BACKGROUND

Planning staff has been working with the Santa Barbara Association of Realtors and the City's Planning Commission to address issues that have arisen regarding the preparation of ZIRs. The issues include timeliness of report preparation, discrepancies between ZIRs, report reliability and understandability, and violation identification.

In January 2014, a ZIR Working Group was formed to formulate recommendations for improvements to the ZIR process and Zoning Ordinance. One of the recommendations of the ZIR Working Group was the establishment of a process to allow administrative approval of minor reductions or waivers of zoning standards in the instances of discrepancies between ZIRs, thus expediting the resolution of discrepancies found during the preparation of a ZIR. An amendment to the SBMC is necessary to establish this new administrative review process.

On February 10, 2015, the City Council initiated an amendment to the Zoning Ordinance to establish an administrative review process.

The Planning Commission reviewed an outline of the proposed ordinance on June 4, 2015 (Exhibit B) and provided comments to the Council Ordinance Committee.

On October 13, 2015, the Council Ordinance Committee held a public hearing on the proposed Ordinance and forwarded the Ordinance to the Planning Commission for their review and recommendation to City Council (Exhibit C).

### **III. DISCUSSION**

Minor Zoning Exceptions are proposed as a method of resolving a discrepancy or error in a ZIR that involves a minor inconsistency with the zoning standards. Currently, the only way to resolve a zoning violation, short of demolishing or removing the improvement, is to seek and obtain a Modification. The Modification process can be an expensive and time intensive process for resolving minor violations that were incorrectly documented in a previous ZIR. The MZE process is a way to provide an inexpensive and procedurally efficient means of resolving minor inconsistencies with the zoning standards. Because MZEs are processed administratively, without notice to neighbors or a public hearing, the MZE is only appropriate for minor deviations from the zoning standards. It is not a solution for all zoning violations. More substantial zoning violations will still require a Modification or other resolution.

Over the years there have been several amendments to the SBMC or Design Review Guidelines to grant administrative review authority to the Community Development Director. Currently, the City has provisions for administrative design review and approval of minor design alterations, minor exceptions to the standards for fences, screens, walls and hedges, and administrative review of minor solar installations. All of those administrative processes include a list of eligible improvements and required findings. The proposed MZE process would be similar to those existing administrative reviews in that there is a list of eligible improvements and required findings. As in the case of the other administrative approvals, if a MZE is not granted or the improvement does not qualify for a MZE, there is another City review process available; in this case, the Modification review process.

#### **A. Eligible Improvements**

The proposed types of improvements eligible for a MZE are detailed in the proposed Ordinance (Exhibit A) and generally include, but are not limited to:

- Conversion of required parking to another use, as long as the number and configuration of parking spaces required at the time of the conversion is provided on site.
- Within the required setback, open yard, or distance between buildings, decks less than 200 square feet in size, not extending above the finished floor level of the first floor; building additions less than 250 square feet; and trash enclosures.
- Conversion of a legal non-conforming carport to a garage or vice versa.
- Accessory building less than 120 square feet which is not considered a separate residential unit, was constructed prior to August 1, 1975, and is not located in a front yard or required open yard.
- Accessory building(s) or garage(s) which exceed the size limits established by SBMC §28.87.062.B.3 by no more than 100 square feet and were built prior to August 1, 1975.
- Additions to residences which currently exceed the required maximum Floor to Lot Area Ratio (FAR), if the addition is interior only within the existing legal building volume (e.g., loft, cellar, etc.)

It is important to note that improvements authorized by a MZE may still require a building permit. The City does not have the ability to waive a building permit. However, Planning and Building staff have been working together to streamline the permit process for these types of projects. The majority of these projects may qualify for expedited building permit review with minimal information required and the building permit serves as documentation of the existing situation on the site.

As stated above, the list of eligible improvements has been vetted and discussed at several public hearings and there has been continued support for the list of improvements. Staff recommends that the Planning Commission concur with the list of eligible improvements.

## **B. Required Findings**

The proposed Ordinance contains a list of required findings that must be made in order to approve a MZE (§28.92.130.C). The findings include, but are not limited to, a provision related to the time period when the improvement was first on the site, and requirements that the improvement is the subject of a discrepancy or error in a ZIR, does not affect historic resources, and is in general compliance with the Single Family Design Board's (SFDB) good neighbor policies.

At the hearing before the Planning Commission in June, the Planning Commission suggested that the findings specific to certain improvements be separate from the findings that are required for all MZE requests. That change has been made in the proposed Ordinance. Additional discussion at the Planning Commission hearing regarding the findings mainly pertained to proposed findings C.1.a, b., and C.2.a.

Finding C.1.a on page 3 of proposed Ordinance states:

*A material discrepancy or error has occurred in the preparation of a Zoning Information Report regarding the subject property and the discrepancy or error directly involves the zoning standard from which relief is sought.*

Questions arose during the public hearing regarding the use of the word "material" in this finding and what is meant by this term. A "material" discrepancy or error in the ZIR is the failure of the ZIR to properly identify a zoning violation, or a mischaracterization of the legality of an existing improvement on the property. The second part of that finding mandates that the requested relief from the zoning standard be directly related to that material discrepancy or error. For example, if a ZIR failed to note that a portion of a building encroached into a setback, that error would qualify as "material" and the owner could then seek relief through the MZE process to modify certain aspects of the nonconforming element. In contrast, incorrectly identifying the number of bedrooms or bathrooms on the property could be considered a material error; however, it is not one that would allow an owner to seek that same relief described above, as the error or discrepancy is not directly related to the relief sought.

Finding C.1.b on page 4 of proposed Ordinance states:

*Substantial evidence has been provided that indicates the improvement for which relief is sought existed in its current form on the site prior to January 1, 1980 or, in the case of accessory structures, August 1, 1975.*

At the public hearing before the Planning Commission in June, members of the public questioned whether a date later than 1980 could be used. The ZIR Working Group recommended that the improvement had to be on the site since 1974, which was when the first ordinance pertaining to ZIRs was adopted by the City Council. The proposed Ordinance includes a later date, 1980.

Staff is proposing 1980 for several reasons:

1. The City made major changes to the Zoning Ordinance in the mid-70s. In many cases, the actual date of construction of the “as-built” improvement is not subject to precise determination. By requiring the improvement to pre-date 1980, it is more likely that, although a building permit was not sought, the improvement was built at a time when it conformed to the zoning ordinance.
2. From the mid to late 1970s, the County issued building permits on the City’s behalf. Staff is aware that our records are not complete for improvements that occurred during that time period. Following that transition, staff is more confident that if the City does not have a permit on file, the improvement was constructed without a permit.
3. If the improvement has existed since January 1, 1980 without complaint, staff is more confident that the zoning violation in question is minor. If an improvement has existed that long, it is more likely that it has been accepted as the status quo condition of the neighborhood.

At the Council Ordinance Committee meeting in October, staff was questioned about the 1975 date related to accessory buildings. Prior to 1975, detached accessory buildings could be located in the interior setback as long as various requirements could be met. In 1975, an Ordinance was adopted which applied yard/setback requirements to all accessory buildings. Those same requirements apply today.

Finding C.2.a on page 4 of proposed Ordinance states:

*For improvements in the required open yard or minimum distance between buildings, the site will maintain adequate yard areas to provide light and air, separation of buildings, and privacy and enjoyment of occupants.*

The intent of the required open yard and distance between buildings is to promote desirable living conditions, promote a sense of openness, and to provide minimum useful outdoor space for landscaping, gardening, and outdoor enjoyment. This finding is proposed to further that intent and to ensure that the majority of the required open yard is not occupied by buildings/structures.

Staff recommends the Planning Commission review the proposed findings and indicate their support or suggest changes.

### **C. Conditions of Approval**

The proposed Ordinance allows the Community Development Director to place conditions on MZEs to minimize potential adverse impacts on neighboring properties. Staff anticipates that the majority of the time conditions will not be necessary given the limited scope of the eligible improvements, the fact that the list of eligible improvements is intentionally limited to improvements that are minor in nature, and the list of improvements are consistent with other administrative approvals granted by staff. If conditions are necessary, they will likely be in order to make the finding related to the SFDB good neighbor policies (privacy, landscape screening, and noise). If the provision to allow conditions of approval for MZEs was removed, staff would suggest that the list of eligible improvements be re-examined to ensure that the eligible improvements would not potentially cause adverse effects to neighboring properties.

Staff recommends the Planning Commission discuss this provision of the proposed Ordinance and indicate their support or suggestions for changes to this provision.

### **D. Decision on MZE Requests – (i.e. Option for Appeal)**

The proposed Ordinance states that the decision on the MZE request is final and effective when the decision is made. This is consistent with the City's existing Design Review administrative approval process and the administrative review of minor exceptions to the fence/hedge ordinance. The purpose of an administrative review process, without public notice or a public hearing, is to allow minor improvements that meet specific criteria to be expeditiously reviewed and potentially approved, or approved with conditions. An appeal provision would be counter to that purpose.

At the public hearings before both the Planning Commission and Council Ordinance Committee SBAOR requested that MZE decisions be appealable. The majority of the Planning Commission agreed with staff's proposal to not include an appeal process but stated that if an appeal process was established, the decision should be appealable to the Community Development Director and not to a review body (i.e., Staff Hearing Officer or Planning Commission).

Staff recommends the Planning Commission discuss this provision of the proposed Ordinance and indicate their support or suggestions for changes to this provision. It is important to remember that if a MZE request is denied, the property owner has the ability to apply for a Modification.

### **E. Environmental Review**

The Environmental Analyst has determined that this project is exempt from further environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15301, Existing Facilities, 15303, New Construction or Conversion of Small Structures, and 15305, Minor Alteration in Land Use Limitations. Adoption of the proposed Ordinance would not result in a change in land use or density. The intent of the MZE process is to expedite the resolution of discrepancies between ZIRs through an administrative review process. As such, the scope of the eligible improvements is limited to minor projects that will not cause impacts to historic resources and should not adversely affect neighbors. Given the limited scope of the

eligible improvements and the minor nature of the improvements, individual projects will qualify for one of the listed CEQA exemption categories above.

#### **IV. CONCLUSION AND NEXT STEPS**

The proposed ordinance amendment is supported by the City's adopted Housing Element, specifically Policies H17 (Flexible Standards) and H20 (Property Improvement). The adoption of the Ordinance will provide flexibility in zoning standards, expedite the review process, and encourage property owners to improve the conditions of their property.

Staff recommends that the Planning Commission review the proposed Ordinance and adopt a resolution recommending that the City Council adopt the proposed Ordinance.

Following this public hearing, any recommended changes will be incorporated into the proposed Ordinance forwarded to City Council. A public hearing will be scheduled before the City Council for the introduction and subsequent adoption of the Ordinance.

#### Exhibits:

- A. Proposed Ordinance Amendment to Establish the Minor Zoning Exception Process
- B. Planning Commission Minutes (Excerpt), June 4, 2015
- C. Council Ordinance Committee Agenda Report, October 13, 2015

## **28.92.130 Minor Zoning Exceptions for Errors in Zoning Information Reports**

### **A. Purpose.**

A Minor Zoning Exception is a method of resolving a discrepancy or error in a Zoning Information Report (ZIR) prepared by the City pursuant to Section 28.87.220 of this Code. If a discrepancy or error in a ZIR involves one or more of the zoning violations specified in Subsection B, the property owner may request a Minor Zoning Exception to obtain relief from the zoning standard up to the maximum amount of relief specified for the particular zoning standard, subject to the findings specified in Subsection C.

In order to qualify, the discrepancy or error in the ZIR must involve a failure of City staff to properly identify a zoning violation, or a mischaracterization of the legality or illegality of an existing improvement on the real property, that is related to the relief requested. A decision on a requested Minor Zoning Exception is an administrative action of the Community Development Director, or the Director's designee, without public notice or hearing. In order to grant a Minor Zoning Exception, the Community Development Director or his or her designee must make the findings specified in Subsection C.

### **B. Unpermitted Improvements Eligible for Minor Zoning Exceptions.**

If a discrepancy or error in a ZIR involves one of the unpermitted improvements listed below, the property owner may request a Minor Zoning Exception:

#### **1. Unpermitted Alterations to Properties with Legal Nonconforming Buildings.**

The following unpermitted additions or alterations to existing structures that are legal nonconforming as to setbacks, open yard area, residential density, or distance between buildings are eligible to apply for a Minor Zoning Exception, subject to the findings specified in Subsection C:

##### **a. Conversion of an Encroaching Garage or Carport to Other Parking.**

Where a carport or garage encroaches into any setback or required open yard or does not meet the minimum separation between buildings, the conversion of the carport to a garage or the garage to a carport may be granted a Minor Zoning Exception, provided the number of parking spaces provided in the garage or carport is not increased and the proposed garage or carport meets required minimum interior dimensions or an exception from that standard is approved by the Public Works Director or designee.

**b. Conversion of an Encroaching Garage to Another Use.** The conversion of a garage that encroaches into a setback to a use other than parking (such as storage, workshop, bedroom, or similar) may be granted a Minor Zoning Exception, subject to the finding specified below in Section 28.92.130.C.2.a.

**c. Encroaching First Story Windows.** If a building encroaches into an interior or rear setback, the addition of new windows to, or the enlargement or relocation of existing windows on, the first story of the encroaching wall may be granted a Minor Zoning Exception.

d. **Exterior Alterations in the Front Setback.** If a building encroaches into the front setback, exterior alterations (i.e., windows, doors, skylights, façade changes, etc.) to the portion of the building that encroaches within the front setback may be granted a Minor Zoning Exception.

e. **Encroaching Ground Floor Additions.** If a building encroaches into an interior setback, a ground floor addition that encroaches into the same interior setback may be granted a Minor Zoning Exception, so long as the total square footage of the addition does not exceed 250 square feet and the addition does not result in a new residential unit or an increase in residential density.

f. **Alterations to Roof Height.** If a structure encroaches into a setback, alterations to the roof height of the portion of the structure that is within a setback may be granted a Minor Zoning Exception as long as the alteration does not increase the building height of the portion of the building within the setback by more than one foot.

g. **Cantilevered Architectural Features and Chimneys.** New or altered cantilevered architectural features (such as awnings, cornices, canopies, or eaves) that are unsupported from the ground below and do not provide additional floor area within the building, or chimneys that encroach no more than an additional two feet into a setback may be granted a Minor Zoning Exception. However, no cantilevered architectural feature or chimney shall be located closer than three feet from any interior lot line or five feet from any front lot line, except roof eaves, which may be located as close as two feet from any lot line.

h. **Uncovered Balcony in the Front Setback.** An uncovered balcony within the front setback that does not provide additional floor area within the building and which does not extend more than an additional two feet into the front setback may be granted a Minor Zoning Exception. However, no balcony shall be located closer than five feet from the front lot line.

i. **Bay Window in the Front Setback.** A bay window within the front setback, that is at least three feet above adjacent grade or finished floor (whichever is higher), does not provide additional floor area within the building, and does not extend more than an additional three feet into the front setback may be granted a Minor Zoning Exception. However, no bay window shall be located closer than five feet to the front lot line.

j. **Addition of an Encroaching Landing or Front Porch.** In the front setback, a covered or uncovered front porch and any associated steps, not extending above the finished floor level of the ground floor, and not exceeding six feet wide by four feet deep may be granted a Minor Zoning Exception, as long as it is no closer than five feet from the front lot line. In the interior setback, an unenclosed, uncovered, entrance landing and outside steps not extending above the finished floor level of the ground floor may be granted a Minor Zoning Exception to encroach an additional three feet into a setback. However, no entrance landing shall be closer than two feet from the interior lot line, and the size of the landing and steps may not exceed the minimum area required by the building code.

2. **“As-built” Addition or Expansion of Hardscape, Landscape or Site Improvements.** The “as-built” addition or expansion of the following hardscape, landscape, or site improvements that encroach into setbacks, required open yard area, or the minimum distance between buildings may be granted a Minor Zoning Exception, subject to the findings specified in Subsection C:

- a. Decks with a total area of not more than 200 square feet, attached to a main building, not extending above the finished floor level of the ground floor, and no closer than two feet to an interior lot line;
- b. Fountains, ponds, and similar water features;
- c. Trash enclosures that are no closer than ten feet from a front lot line and two feet from an interior lot line; and,
- d. Decorative features, mailboxes, flagpoles, sculptures. The cumulative area of all such features shall not exceed 50 square feet in the front yard or cover more than 20% of the required open yard. However, the exceptions under this paragraph 2 are not available to allow the encroachment of BBQs, exterior fireplaces, or raised fire pits into setbacks.

3. **“As-built” Detached Accessory Buildings.** An “as-built” detached accessory building that encroaches into an interior or rear setback may be granted a Minor Zoning Exception if it satisfies all of the following criteria and subject to the findings specified in Subsection C:

- a. The floor area of the building is not more than 120 net square feet; and
- b. The accessory building is not a separate residential unit; and
- c. The building was constructed prior to August 1, 1975; and
- d. The building is not located within the front yard or required open yard or outdoor living space.

4. **Oversized Accessory Buildings.** Accessory building(s) or garage(s) which exceed the size limits established by Section 28.87.160.C of this Code by no more than 100 square feet and were built prior to August 1, 1975 may be granted a Minor Zoning Exception, provided the accessory building meets the open yard and building height standards of the Zoning Ordinance and subject to the findings specified in Subsection C.

5. **Additions Exceeding the Maximum FAR.** Additions of floor area to a residence that exceeded the maximum allowed Floor to Lot Area Ratio (FAR) in effect at the time the errant ZIR was prepared may be granted a Minor Zoning Exception, if the additional floor area is contained within the volume of the legally permitted building (i.e., a loft, cellar, etc.) and subject to the findings specified in Subsection C.

**C. Findings.**

1. In order to grant a Minor Zoning Exception, the Community Development Director or his or her designee must make all of the following five findings:

a. A material discrepancy or error has occurred in the preparation of a Zoning Information Report regarding the subject property and the discrepancy or error directly involves the zoning standard from which relief is sought.

b. Substantial evidence has been provided that indicates the improvement for which relief is sought existed in its current form on the site prior to January 1, 1980 or, in the case of accessory structures, August 1, 1975.

c. The Minor Zoning Exception does not involve the permanent removal of a significant component or a character defining element from a historic resource, potential historic resource, or an un-surveyed building located in a Demolition Review Study Area which is more than 50 years old.

d. Any as-built additions that are uniform extensions of the legal non-conforming portion of the building and are generally no closer to the lot line in question than the legal non-conforming portions of the building.

e. The improvement is located in general compliance with the Single Family Design Board's Good Neighbor Guidelines.

2. The following additional findings shall be made, if applicable to the requested Minor Zoning Exception:

a. For improvements in the required open yard or minimum distance between buildings, the site will maintain adequate yard areas to provide light and air, separation of buildings, and privacy and enjoyment of occupants.

b. For garage conversions, the number and configuration of parking space(s) required at the time of the conversion is provided on site.

c. For improvements that increase the height of the building, the final height of the altered building complies with the maximum building height and building story limitations for the applicable zone.

d. For improvements within the front setback, the height and location shall comply with the corner lot and driveway sight line standards established by the Public Works Director.

**D. Conditions.**

In granting a Minor Zoning Exception, the Community Development Director, or the Director's Designee, may prescribe conditions necessary to minimize potential adverse impacts

on neighboring properties that relate to the requested Minor Zoning Exception and are proportionate to the potential impacts on neighboring properties.

**E. Decisions.**

A decision on the Minor Zoning Exception request pursuant to this Section is final and effective when the decision is made.



D. Comments from members of the public pertaining to items not on this agenda.

Chair Thompson opened the public hearing at 1:04 P.M.

Kate Schwab, Downtown Santa Barbara Organization distributed First Thursday; brochures and encouraged the public to attend this evenings activities.

With no one else wishing to speak, Chair Thompson closed the hearing.



**III. DISCUSSION ITEM**

**ACTUAL TIME: 1:06 P.M.**

**DISCUSSION OF A PROPOSED PROCESS TO ALLOW MINOR ADMINISTRATIVE ZONING EXCEPTIONS**

The purpose of this meeting is for the Planning Commission to discuss a proposal that would allow the Community Development Director to grant Minor Zoning Exceptions (MZE) in the case of a discrepancy or error in Zoning Information Reports (ZIRs). This new Minor Zoning Exception process was one of the recommendations of the ZIR Working Group for ZIR process improvements. The implementation of this proposed process would require an amendment to the Santa Barbara Municipal Code.

Contact: Susan Reardon, Senior Planner  
Email: SReardon@SantaBarbaraCA.gov

Phone: (805) 564-5470, ext. 4555

Susan Reardon, Senior Planner, gave the Staff presentation.

Chair Thompson opened the public hearing at 1:58 P.M.

The following people commented on the project:

1. Adrienne Schuele, Realtor, has been a part of the ZIR working group and supports the Grand Jury Report and recommends that the ZIR reports be voluntary as the intent was in 1974. Having Staff approve Minor Exemptions would be helpful, however 75-80% of alleged violations are building and safety issues. It would be good if the new ordinance also encompasses something that the building department can do. The date of January 1, 1980 is used because that is when zoning reports began more accurate, but she thinks that it should be January 1, 1996. There is no appeal process proposed for the Minor Zoning Exceptions and a clear appeal process should be included.
2. Reyne Stapelmann, SBAOR, stated that we are treating the symptoms rather than the cause and gave an example of a ZIR done in 2012 and again recently by the same inspector that differed. The burden of proof still remains on homeowner and should be on the City. 75% of ZIR findings are building violations, not zoning violations. She echoed the request that ZIR reports be voluntary and not mandatory,
3. Bob Hart, SBAOR, stated that the focus of the reports should be on more accuracy, not correction of reports. Building issues need to be addressed, not just zoning

issues. A formal appeal process for the Minor Zoning Exceptions needs to be included. He said to look at root causes, not just symptoms and agrees with the Grand Jury Report that reports should be voluntary and not mandatory.

With no one else wishing to speak, the public hearing was closed at 2:07 P.M.

Commissioner's comments to City Ordinance Committee:

Commissioner Pujo:

- Commissioner Pujo is not necessarily supportive of an appeal process. We need to keep the administrative cost down and the timeframe short.
- Commissioner Pujo stated that the language needs to be made very clear that these are errors, discrepancies, omissions, and need language to what a ZIR might have meant, and not make it as narrow as possible, but broader on what circumstances comply with an administrative approval.
- She would like to see item No.1 looked at, item-by-item, for any possibility that could be moved down to the broader list that does not require establishing legal non-conforming status of the existing structure. Item No. 1 as written means that you have demonstrated that the structure or the use was conforming at the time that it was built and was not in violation at the time it was built. That is a higher test than saying there was a discrepancy in an older Zoning Information Report, but before a certain date.
- She stated that it was helpful to get clarification that the process would be open to anyone who had a prior zoning information report with discrepancies or omissions and could be applied for at any point prior to the date the ZIR was produced. This needs to be made clear in helping understand who can apply and when.
- This is one piece of the improvements recommended by the ZIR Working Group.

Commissioner Schwartz

- Commissioner Schwartz is interested in hearing from the Council on their thoughts of the Grand Jury report and comments they receive from the Board of Realtors. If ZIR's continue in some form, she would like the working group be reconvened to look over details rather than spending the Planning Commission and public's time to delve down into specifics as is being done today.
- Commissioner Schwartz still has some concerns on some of the language on Page 1 that is still too narrow, versus broad. The list should be comprehensive and as complete as possible. She referenced page 3, under Decisions and the notion of an appeal process, stating she is supportive of an appeal process. The public should always have the opportunity of an appeal process with their government.
- Commissioner Schwartz does not think she is a sufficient expert on determining whether 1980 or 1996 is the better period of accuracy and suggested Staff work with the Realtors to determine what date is a reasonable compromise.

#### Commissioner Jordan

- Commissioner Jordan gets the reasoning, but has difficulty with the date. Would prefer that this addresses the process going forward rather than using an arbitrary date that stacks in the city's favor. He prefers that we use a date starting from today and going forward, that if anything was on the ground before that date and qualified for something that is categorized as minor, and meets the list of findings, and is conditioned to give the Community Development Director latitude on adjusting to more neighborhood friendly, then that should be our focus, rather than when is the line in the sand going backward.
- Commissioner Jordan is in support of mandatory ZIR's and the protection it gives neighborhoods. The city has a responsibility to play fairly and accurately. This does not yet take responsibility of anything pre-1980 that is the city's mistake. The city or realtor industry need education or a structured handout for potential buyers on the ZIR process as it exists today.
- He believes that an appeal process is counterintuitive to minor and administrative. He supports only if an appeal process took place in-house so that the administrative decision was made at a lower level than the Community Development Director and the appeal would then go to the Community Development Director.
- He would like to see finding No. 5 on Page 3, reworded to remove the word setbacks.

Commissioner Schwartz left the dais at 2:35 and returned at 2:40 p.m.

#### Commissioner Lodge

- Commissioner Lodge thinks that as a mechanism to provide relief or the city has made an error, the city has done a good job and the work is appreciated.
- She agrees with Commissioner Jordan that someone should have the ability to condition an exception when there may be some impact. She agrees with Commissioner Jordan that it should not be appealable beyond the Community Development Department.

#### Commissioner Higgins

- Commissioner Higgins looks forward to the outreach work to be done by Staff.
- He would like to see the Planning Department's scope of work narrowed to what is not allowable. Things like windows that have been changed or moved in a front yard setback, elevation, etc., are ordinarily allowable. We need to lower the scope of building permit related exertions that are more painful than the zoning scope of work. He believes he can have a fountain or a pond without a zoning violation, so would like to see this come back before a working group and would like to participate.
- He sees an appeal process not to resolve disputes, but to encourage Staff to get to a decision point. A ZIR conflict may continue on beyond 60-90 days and having

some sort of administrative relief in the way of an appeals decision might add a little to the time process that gives some certainty to the homeowner and buyer.

- He supports a date that is a little bit closer to today's date.

Commissioner Lodge left the dais at 2:42 p.m. and returned at 2:47 p.m.

Commissioner Campanella

- Commissioner Campanella agreed with Commissioners Jordan and Lodge on appeal being done by the Community Development Director. He would like to see consistency which had been a problem in the past with interpretation.
- He would like the Community Development Director involved, either directly or by appeal, in this component of ZIR.
- He appreciates the comments made by the Realtors and the involvement of the Real Estate Community.
- Whether the ZIR becomes permanent, mandatory or voluntary, there needs to be some modifications to the process. Issues need to be addressed after City Council has reviewed the Grand Jury report.

Commissioner Thompson thanked the members of the Board of Realtors for their involvement.



IV. **NEW ITEM:**

**ACTUAL TIME: 2:46 P.M.**

**APPLICATION OF JOSEPH ALLEN, 3617 STATE STREET, APN: 051-051-005, C-P/SD-2 RESTRICTED COMMERCIAL/ SPECIAL DISTRICT 2 "UPPER STATE STREET AREA" ZONES, GENERAL PLAN DESIGNATION: COMMERCIAL/MEDIUM HIGH RESIDENTIAL (MST2014-00438)**

Proposal for a Medical Marijuana Storefront Collective Dispensary Permit. The dispensary would be located in an existing tenant space in Ontare Plaza. Interior improvements are proposed.

The discretionary application required for this project is a Storefront Collective Dispensary Permit (SBMC § 28.80.030).

The Environmental Analyst has determined that the project is categorically exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301(a).

Contact: Tony Boughman, Assistant Planner  
Email: [TBoughman@SantaBarbaraCA.gov](mailto:TBoughman@SantaBarbaraCA.gov)

Phone: (805) 564-5470, ext. 4539

Commissioner Jordan, Planning Commission Liaison to the Staff Hearing Officer (SHO), explained his reasons for suspending the SHO approval of April 15, 2015 for review of the



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** October 13, 2015

**TO:** Ordinance Committee

**FROM:** Planning Division, Community Development Department

**SUBJECT:** Zoning Information Report Process Improvements—Municipal Code Amendments To Establish A Minor Zoning Exception Process

### RECOMMENDATION:

That the Ordinance Committee consider proposed amendments to the Municipal Code to establish a Minor Zoning Exception process, forward the ordinance amendments to the Planning Commission for further review, and subsequently forward said amendments to City Council for introduction and adoption.

### DISCUSSION:

Planning staff has been working closely with the Santa Barbara Association of Realtors and the City's Planning Commission to address issues regarding Zoning Information Reports (ZIRs) for several years. The primary issues include timeliness of report preparation, discrepancies between ZIRs, report reliability and understandability, and identification of code violations.

In January 2014, following public hearings before the Planning Commission and City Council, a ZIR Working Group was formed to clarify and streamline the ZIR process and formulate recommendations for improvements. One of the recommendations was to allow administrative review of minor reductions or waivers of zoning standards in the instances of errors or discrepancies between ZIRs, thus expediting the resolution of issues discovered during the preparation of a ZIR. Staff proposes this review process be established through an amendment to the Municipal Code to create a Minor Zoning Exception (MZE) provision in the Zoning Ordinance, similar to what was recently established for administrative review of exceptions to fence, screen, wall, and hedge requirements (Attachment 1—Draft Ordinance).

On February 10, 2015, the City Council initiated an amendment to the Zoning Ordinance to establish the MZE provision.

On June 4, 2015, the Planning Commission reviewed an outline of the proposed MZE Ordinance. The major comments included applicability of the MZE process, the time

when improvement had to be on the site to qualify for a reduction or waiver of zoning standards, whether an appeal process should be included, and the timing of such a MZE request (Attachment 2—Planning Commission Meeting Minutes).

The ZIR Working Group recommended to the Planning Commission and City Council the types of site improvements that should be eligible for a MZE, which can be generally characterized as minor additions or alterations to buildings located within required setbacks or yard areas and alterations to required parking. Staff initially developed the list of eligible improvements based on experience with past ZIR discrepancies. In many instances, staff administratively rectifies errors in the City record or discrepancies between ZIRs by reviewing evidence and properly documenting the improvement going forward. However, when a disputed improvement is located within a required setback or yard, staff currently does not have the authority to approve or otherwise acknowledge these alterations. In such cases, the property owner must apply for a Modification and seek approval from the Staff Hearing Officer (SHO).

Staff refined the list of eligible improvements by reviewing the types of improvements that currently qualify for Design Review administrative approval and projects involving Modification requests that are typically supported by the SHO and do not raise significant public controversy at SHO hearings. Additional refinements were made to the list as a result of comments received at the public hearings.

As proposed, the alteration or improvement must have existed in its current configuration on the site prior to 1980 and been the subject of a discrepancy between ZIRs or an error in a ZIR or City records. The ZIR Working Group recommended that the improvement had to be on the site since 1974, which was when the first ordinance pertaining to ZIRs was adopted by the City Council. Staff is proposing 1980 instead, which includes the time period when the City made major changes to the Zoning Ordinance and when the County of Santa Barbara ceased granting building permits on behalf of the City. After 1980, City building records are more complete.

It is important to note that improvements authorized through the MZE process may still require a building permit. Although the City cannot waive the requirement for a building permit, Planning and Building & Safety staff have been working together to streamline the permit process for these types of projects. The majority of these projects qualify for expedited building permit review with minimal submittal requirements, and the building permit serves as documentation of the existing situation on the site.

The proposed MZE process does not contain a provision for an appeal of the administrative decision. This is consistent with the City's existing Design Review administrative approval process and the administrative review of minor exceptions to the fence/hedge ordinance. The purpose of an administrative review process, without a public hearing, is to allow minor improvements that meet specific criteria to be expeditiously reviewed and potentially approved, or approved with conditions. An

appeal provision would be counter to that purpose. The Planning Commission agreed but stated that if an appeal process was established, the decision should be appealable to the Community Development Director only and not to a review body (i.e., Staff Hearing Officer or Planning Commission).

As proposed, a property owner may request zoning relief through the MZE process at any time after the ZIR discrepancy or error is discovered. This may be during the preparation of a ZIR, along with other necessary approvals for a future project, or during the building permit plan check process.

**BUDGET/FINANCIAL INFORMATION:**

As part of the recommended ZIR process improvements, Council directed staff to waive Planning fees for projects undergoing discretionary review as a result of a discrepancy or error in a ZIR. Since the proposed MZE process is a component of the ZIR process improvements, staff is not proposing to charge a fee to request a Minor Zoning Exception. Staff estimates that this would result in a revenue loss of approximately \$5,000-\$10,000 due to projects no longer requiring a Modification. If the Ordinance Committee deems that an appeal process is warranted, the Committee should discuss whether it would be appropriate to charge a fee for the appeal.

Since many of the anticipated MZE requests will replace applications currently being processed as Modifications, staff does not anticipate a significant increase in workload as a result of implementation of the MZE process.

**ATTACHMENT:**

1. ~~Draft Ordinance~~
2. Planning Commission Meeting Minutes, June 4, 2015

*Not Attached. Included as P.C. Not Exhibits*

**PREPARED BY:** Susan Reardon, Senior Planner

**SUBMITTED BY:** George Buell, Community Development Director

**APPROVED BY:** City Administrator's Office