City of Santa Barbara

STAFF HEARING OFFICER
MINUTES
OCTOBER 25, 2017

9:00 A.M.
David Gebhard Public Meeting Room
630 Garden Street
SantaBarbaraCA.gov

STAFF:
Susan Reardon, Staff Hearing Officer/Senior Planner
Kathleen Goo, Commission Secretary

CALL TO ORDER

Ms. Reardon called the meeting to order at 9:00 a.m.

STAFF PRESENT

Susan Reardon, Staff Hearing Officer/Senior Planner
Tava Ostrenger, Assistant City Attorney
Anthony Wagner, Public Engagement Officer, Santa Barbara Police Department
Megan Arciniega, Associate Planner
Tony Boughman, Assistant Planner
Kathleen Goo, Commission Secretary

I. PRELIMINARY MATTERS

A. Requests for continuances, withdrawals, postponements, or addition of ex-agenda items.

No requests.

B. Announcements and appeals.

No announcements.

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

No public comment.

II. CONSENT ITEMS

ACTUAL TIME: 9:01 A.M.

A. APPLICATION OF MARK EDWARDS, AGENT FOR LOS AGUAJES L.P., 124 LOS AGUAJES, APN: 033-041-007, R-4/SD-3, (HOTEL-MOTEL-MULTIPLE RESIDENCE AND COASTAL OVERLAY ZONES), GENERAL PLAN AND COASTAL LAND USE DESIGNATIONS: HOTEL AND RESIDENTIAL (MST2004-00725)

This is a request for a one year time extension of the expiration date of the Tentative Map, Modifications and Coastal Development Permit approved by the Planning Commission on September 3, 2009. The approved Map was set to expire on September 3, 2017, based on the time extensions granted by the City and the statutory extensions provided by the State. The current time extension request was submitted prior to the expiration date, consistent with City requirements.

The project consists of the demolition of an existing 884 square-foot, single-family residence and 440 square-foot detached garage, and the construction of three new residential condominium units in the Appealable Jurisdiction of the Coastal Zone. The approved structure would be three stories with a maximum building height of 29' 7", consisting of 3,856 square feet of residential floor area above 1,143 square feet of garage floor area on a 6,000 square foot lot located adjacent to Mission Creek. The project includes two two-car garages, a one-car garage, and one unenclosed covered parking space, a two-bedroom residential unit and two one-bedroom residential units. The project includes 25 cubic yards of cut and 135 cubic yards of fill outside the main building footprint. Grading under the main building footprint would involve 110 cubic yards of cut. The project also includes landscaping changes, bioswales and a retention basin adjacent to the proposed residences.

Ms. Reardon announced that she read the Staff Report for the proposed project and also visited the site and surrounding neighborhood.

Public comment opened at 9:01 a.m., and as no one wished to speak, it closed.

ACTION: **Assigned Resolution No. 069-17**

Approved the One-Year Time Extension to September 3, 2018 for the Tentative Map, two Modifications, and Coastal Development Permit originally approved by the Planning Commission on September 3, 2009, making the findings as outlined in the Staff Report dated October 17, 2017.

Said approval is subject to the original Conditions of Approval contained in Planning Commission Resolution No. 033-09, dated September 3, 2009.

III. PROJECTS

ACTUAL TIME: 9:03 A.M.

A. APPLICATION OF RYAN HOWE, 118 NORTH MILPAS STREET, APN 017-091-016, C-2 ZONE, GENERAL PLAN DESIGNATION: COMMERCIAL/HIGH RESIDENTIAL (MST2015-00319) POSTPONED FROM SEPTEMBER 13, 2017

Proposal for management staff changes and operational changes for an issued Medical Marijuana Storefront Collective Dispensary Permit. Tenant improvements for the dispensary in the existing 2,264 square foot commercial building are currently under construction. The collective has not begun operating.

The discretionary application required for this project is an amendment to the Storefront Collective Dispensary Permit (SBMC §28.80.030).

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

Tony Boughman, Assistant Planner, gave the Staff presentation and recommendation. Tava Ostrenger, Assistant City Attorney and Anthony Wagner, Public Engagement Officer of the Police Department were available to answer questions.

Ryan Howe, Applicant, gave the Applicant presentation, and was joined by Fernando Velez, attorney.

Ms. Reardon questioned Ms. Ostrenger on the status of the City Attorney Office's investigation into the Storefront Dispensary Collective Permit. Ms. Ostrenger reported that the City Attorney's Office has not completed its investigation and that there has been no formal action with regard to the investigation by the City Attorney's Office at this time. Ms. Ostrenger indicated that it was acceptable to proceed with this public hearing on the proposed amendments and considerations. Ms. Reardon stated that any action taken at this hearing is in regard to the requested amendments only and not on any alleged violations of the Santa Barbara Municipal Code.

Ms. Reardon requested clarification by the applicant on changes to the security plan, proposed Management Members, the roles of other persons included in the Operation Plan, the refrigeration of edibles inside the vault storage, and the proposed products and services' compliance with the City's Ordinance regarding the retail sales of other items.

Ms. Reardon questioned whether the Police Department reviewed the revisions to the security plan. Mr. Wagner stated that he reviewed the proposed changes to the floor plan, ebb and flow of customer interaction, and changes to the security plan of the proposed dispensary; he suggested a limited entry and egress for a more clockwise rotation of customer flow, and found there were sufficient security recommendations and changes to satisfy public health and safety concerns.

Public comment opened at 9:24 a.m.

Ms. Reardon requested that all public speakers address their specific concerns regarding the proposed amendments to the approved Dispensary Permit, and to refrain from comments not relevant to the subject of this public hearing.

The following people expressed opposition or concerns:

1. Pete Dal Bello, adjacent property owner, (with donated time from Bea Molina, Jose Arturo Gallegos, Anna Marie Gott, and Michael Merenda) spoke of concerns regarding: inclusion of a member who resigned 18 months ago; a false statement that the collective had not started operation yet when the owner previously signed up a patient who lives outside Santa Barbara for cannabis delivery over six months prior to a permit being granted; a business partner who has no license to practice law in California; the undisclosed intention of the applicant to open at least three dispensaries in Santa Barbara under joint ownership with an alleged business partner; and concerns for his own lowered home and property values and personal net worth. Correspondence from Mr. Dal Bello in opposition was also acknowledged.

2. Sabastian Aldana Jr. spoke of concern regarding the amendment to include illegal marijuana edibles that conflict with state law, and the proposed location where edible products will be produced being within one block of where children are present at the Franklin Center and Eastside Library.

Public comment closed at 9:34 a.m.

Mr. Reardon requested clarification by staff and the Applicant on changes to the approved Operation Plan that implemented the Planning Commission's Conditions of Approval.

Ms. Reardon questioned Mr. Howe whether the dispensary will provide delivery services to qualified patients/caregivers. Mr. Howe indicated it would not, and Ms. Ostrenger stated that delivery services are prohibited by City Ordinance.

Ms. Reardon stated that the locations where the edible products will be produced are not under the purview of the Staff Hearing Officer. Any proposed location would need to comply with the City's Municipal Code and state law. Reference to the proposed locations shall be removed from the amended Operation Plan.

Ms. Reardon questioned whether the proposed sale of bottles and containers, oil cartridges, and batteries was in compliance with the City's Ordinance forbidding the sale of paraphernalia and the definition of "drug paraphernalia" contained in the California Health and Safety Code. Ms. Ostrenger clarified that it appears that the inclusion of those items is in conflict with the Health and Safety Code.

Mr. Velez explained how the oil cartridges and batteries work together to allow a person to ingest the product. Ms. Ostrenger stated that the proposed batteries are not considered a product if they are standard batteries, but if they are specific batteries for use to power devices like e-cigarettes, then the use of those batteries conflicts with state law.

Mr. Wagner clarified that the cartridge for the battery is the container for the e-cigarette device and the battery powers the heating element for product inhalation, and confirmed for Ms. Reardon that the proposed batteries powering the devices are not interchangeable.

Mr. Velez explained that the cartridges for the e-cigarettes are only a container to hold the liquid cannabis oil and should not be considered paraphernalia if sold separately. Ms. Ostrenger commented that she felt that since it was a product sold for the purpose of ingesting cannabis, it would be considered "drug paraphernalia," but stated she would consider the matter further if Mr. Velez had additional arguments that cartridges were not paraphernalia. Mr. Howe agreed to remove bottles and batteries from the Operating Plan, and cartridges if necessary.

After reviewing the information from the whole record of dispensaries and operation plans within Santa Barbara, the information and public testimonials provided at prior meetings, and the history of this application including the current Operation Plan, Ms. Reardon questioned who will be ultimately in charge of the dispensary operations and the role Mr. Joseph Allen in the dispensary. Ms. Reardon noted that in the revised Operation Plan, Mr. Allen is indicated as having a role in the dispensary. Ms. Reardon questioned the statement on page 60 of the amended Operation Plan that the application was prepared under the supervision of Ryan Howe and "Attorney Joseph Allen," whereas the approved Operation Plan indicated that the original application was prepared under the supervision of Ryan Howe and Sean Michael. Mr. Howe stated that he was not aware of that statement on page 60. It was noted that Mr. Howe signed the updated affidavit. Ms. Reardon also questioned the information contained on various web pages that indicates Mr. Joseph Allen is the President of The Canopy Club, Inc. Mr. Howe and Mr. Velez both indicated that the information on the websites is outdated.

Ms. Reardon questioned the connection between persons that signed the Articles of Incorporation, Articles of Association, identified Management Members, and persons listed in the Operation Plan as members of the Advisory Council and the definition of Management Members contained in the City's Ordinance. She stated that the persons listed as part of the Membership Advisory Council should be updated to remove any person no longer associated with the dispensary. Mr. Velez was going to submit to Ms. Ostrenger the proper documentation regarding the Articles of Association.

Ms. Reardon also questioned why a new Statement of Information filed was filed with the state subsequent to the SHO hearing, which was scheduled in September. Ms. Ostrenger stated that she had a conversation with Mr. Velez and it was agreed that the Applicant could revert back to the original Statement of Information, which mentions only Mr. Howe.

Mr. Velez stated that certain discrepancies in the Operation Plan were not intentional, and he is not sure why they were not clarified or caught before the amendment was requested. Mr. Velez stated that all changes on names, signees, and board members can be made prior to approval.

ACTION: **Assigned Resolution No. 070-17**
Approved the requested Amendments to the Storefront Collective Dispensary Permit, making the findings as outlined in the Staff Report dated September 6, 2017.

Said approval of the Amendments is subject to conditions added at the hearing.

IV. ADJOURNMENT

Ms. Reardon adjourned the meeting at 10:37 a.m.

Submitted by,

Kathleen Goo, Commission Secretary