



City of Santa Barbara California

PLANNING COMMISSION STAFF REPORT

REPORT DATE: March 10, 2016
AGENDA DATE: March 17, 2016
PROJECT ADDRESS: 118 North Milpas Street (MST2015-00319)
 “The Canopy”
TO: Planning Commission
FROM: Planning Division, (805) 564-5470, extension 4539
 Beatriz Gularte, Senior Planner
 Tony Boughman, Assistant Planner

I. PURPOSE OF HEARING

The purpose of this hearing is for the Planning Commission to consider the appeal of the Staff Hearing Officer (SHO) approval on January 20, 2016 of a Medical Marijuana Storefront Collective Dispensary Permit at 118 North Milpas Street.

II. PROJECT DESCRIPTION

The project approved by the SHO consists of a proposal for a Medical Marijuana Storefront Collective Dispensary Permit. The dispensary would be located in an existing 2,264 square foot commercial building. Interior and exterior improvements are proposed.

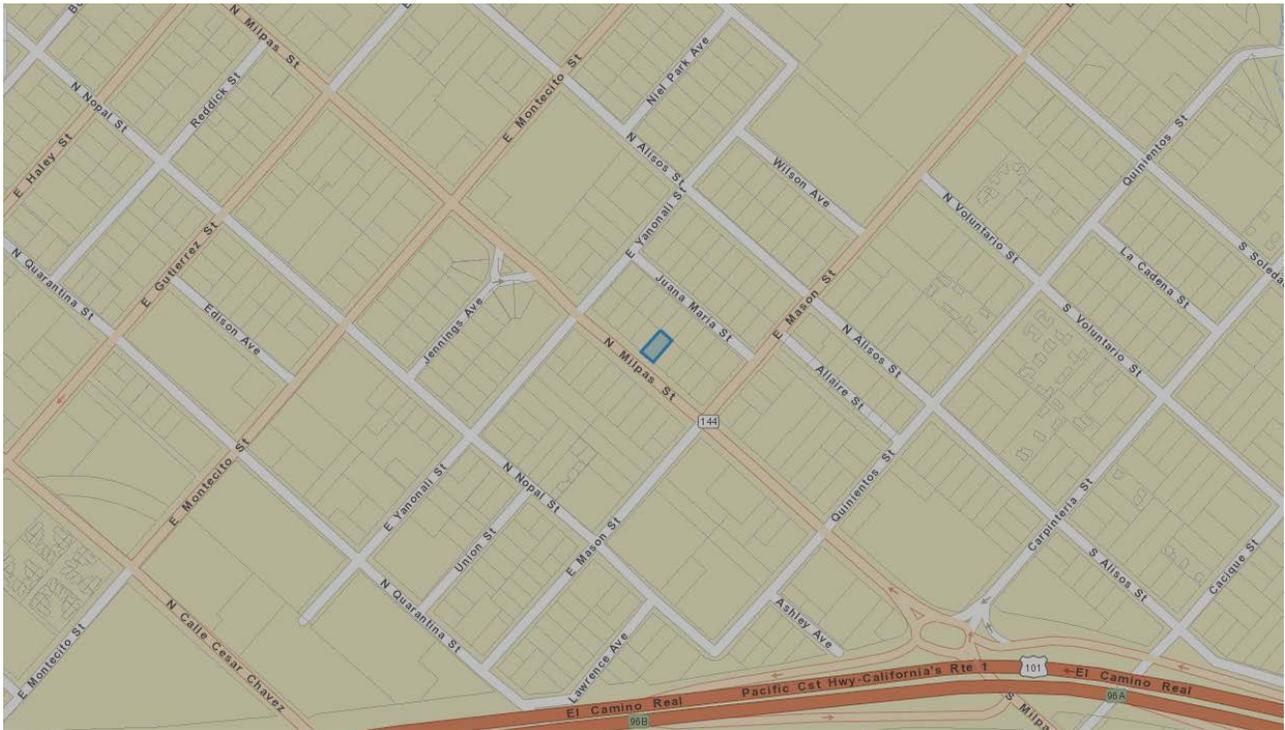
The discretionary application required for this project is a Medical Marijuana Storefront Collective Dispensary Permit (SBMC §28.80.030).

The appellant, Pete Dal Bello, requests that the Planning Commission deny the project (refer to Exhibit A, Appellant’s Letter).

III. RECOMMENDATION

That the Planning Commission consider whether the application meets the twelve criteria for issuance of a Storefront Collective Dispensary permit in SBMC §28.80.070.B in determining whether to affirm, reverse, or modify the decision of the SHO. Please refer to the SHO staff report (Exhibit B) for staff’s analysis of the application and the complete list of criteria for issuance which the Planning Commission must consider in deciding on the appeal.

Staff recommends that the Planning Commission denies the appeal and approves the Storefront Collective Dispensary Permit, including the Conditions of Approval as shown in SHO Resolution 006-16 (Exhibit C).



Vicinity Map - 118 North Milpas Street

IV. SITE INFORMATION

Applicant:	Ryan Howe		
Property Owner:	Merry Milpas LLC		
Site Information			
Parcel Number:	017-091-016	Lot Area:	4,449 sq. ft.
General Plan:	Commercial/High Density Residential	Zoning:	C-2, Commercial
Existing Use:	Vacant commercial building	Topography:	Flat
Adjacent Land Uses			
North	Residential	East	Residential
South	Residential	West	Residential and Commercial

V. STAFF HEARING OFFICER DECISION

On January 20, 2016, the SHO approved the request for a Medical Marijuana Storefront Collective Dispensary permit. The application was found to meet the location criteria, and the criteria for issuance of a permit (Exhibit D). The SHO imposed additional conditions of approval on the project at the hearing.

The following is a summary of SHO Conditions of Approval that were added at the hearing:

A. Elimination of Curb Cut to provide additional on-street parking

B. Operating Plan shall be amended as follows:

1. A minimum of two security guards on duty during operating hours
2. Security camera monitoring shall have 24 hour remote live feed offsite
3. Explain that a member may obtain medical marijuana only after an initial waiting period
4. A complete list of available products, merchandise, and services to City staff
5. Marketing concepts will be conducted at offsite locations
6. Clarify what rules of conduct will be displayed in the waiting room
7. Post inside the dispensary a State Law Compliance Warning
8. All patients and caregivers enter through the front doors outside of the fenced area
9. Dispensary Management shall place trash outside of the fenced area on pickup day

C. Patient Agreement Form shall be amended as follows:

1. Add zero tolerance policy regarding loitering and using cannabis or alcohol on the property. In the event of infraction, membership shall be terminated
2. Add that membership is limited to only one collective within the City

D. Interior Signage with rules, state law, minors, and hours shall be approved by City staff

The full text of the conditions of approval in SHO Resolution 006-16 is shown in Exhibit C.

VI. APPEAL ISSUES

Mr. Dal Bello's appeal letter provides a narrative of neighborhood history, relates events that occurred during the application process, and expresses concerns about:

- Allowing a medical marijuana dispensary in this neighborhood;
- Crime and safety in the area;
- Impacts to on-street parking; and
- Notification of the SHO hearing.

Below is staff's discussion of the appellant's concerns and how those concerns relate to criteria to be considered in issuing a Storefront Collective Dispensary Permit.

A. Dispensary in Milpas Area

The appellant spoke in opposition to having a dispensary at this location. Concerns were expressed by 21 of the 23 members of the public who spoke and/or submitted written comments that a dispensary should not be allowed in the Milpas area (Exhibit E). As described in the SHO staff report and SHO hearing, the application complies with the "Limitations on the Permitted

Location of a Storefront Collective Dispensary” in SBMC §28.80.050. In brief, these limitations are:

- Parcel is zoned for commercial use and located on the 00 to 400 blocks of North Milpas Street;
- Visible, ground floor storefront location with good public views of the entrance and windows;
- Not within 1000 feet of another dispensary;
- No other Storefront Collective Dispensaries in the Milpas area; and
- No more than three Collective Dispensary permits in the City.

The ordinance, SBMC Chapter 28.80, which allows this use at this location was adopted by the City Council on March 25, 2008 and a revised ordinance was adopted by the City Council on June 29, 2010. The revised ordinance specifies the five areas of the City where a dispensary could be allowed. How were the 00 to 400 blocks of N. Milpas selected as an allowed area for a dispensary? The history of the ordinance shows that locational limitations for dispensaries had much review during the drafting process, and throughout reviews at public hearings by the Planning Commission, Ordinance Committee, and adoption by the City Council. Appropriate zoning was determined to be the commercial zones, particularly the General Commercial (C-2) zone. Within the City’s commercial zones, the downtown area, as well as areas in close proximity to parks and schools were excluded, and five areas of allowed locations were specified in the ordinance: Outer State Street, Upper De La Vina, Mission Street, West Pueblo Medical Facility, and Milpas Street. The portion of North Milpas Street in proximity to Santa Barbara Junior High School was excluded. The considerations about locational limitations included discussion about locating dispensaries in proximity to residential areas. A limitation to stay some distance away from residential zones was rejected, in part to allow dispensaries on the narrow commercially zoned North Milpas Street corridor. A buffer prohibiting dispensaries any significant distance from the adjoining residential zones would have deleted much of the Milpas area. At this time, excluding the Milpas area from the ordinance would require an ordinance amendment to SBMC Chapter 28.80 approved by the City Council.

B. Neighborhood Safety

The appellant provided a report listing police calls for service at the vicinity of the subject property to demonstrate that this location has crime issues even without an operating dispensary. Attached to his appeal letter is a report of 911 calls dated January 25, 2008 to January 21, 2015. None of these calls were related to the current dispensary applicant or new property owner (since May 28, 2015).

In deciding on issuance of a dispensary permit, consideration must be given to Criterion 2, that the proposed location is not identified by the City Chief of Police as an area of increased or high crime activity. The City Police Department did confirm that 118 North Milpas Street is not an area of increased or high crime activity. Staff considers the proposed operations and security plans to be responsive to safety concerns, and consistent with Criteria 7, 8, and 9 as described in the SHO staff report (Exhibit B), and the SHO approved the application.

C. Parking

The appellant is concerned that, by not providing any on-site parking, this operation will have negative impacts to the availability of surrounding on-street parking for businesses and residents. Similar concerns were expressed by 12 of the 23 public commenters. The parking requirement for a dispensary is stated in the dispensary ordinance to be the “commercial” parking requirement (SBMC §28.80.080.D.6). The commercial parking requirement does not consider the popularity of a particular tenant or operation, it is determined by the square footage of the building, and the commercial use category in the City’s Parking Ordinance, SBMC §28.90.100.I.

The requirement for commercial use is one parking space per 250 square feet of net floor area of the building. Both the previous retail use, and the proposed dispensary use in this building fall under the commercial parking requirement, and both are conforming commercial uses in the C-2 Commercial zone. Since both are commercial uses, provision SBMC §28.90.001.N in the parking ordinance regarding change of use does not apply. For this building, the conforming parking requirement would be nine spaces, however this property is legal, nonconforming with no onsite parking. For properties which are nonconforming to the required parking, the parking ordinance provides that the nonconforming situation may continue, except that additional parking must be provided if the building square footage is increased, or the use of the building is changed to a use that requires more parking (SBMC §28.90.001.B). Because the application does not involve new square footage or a change in use that requires more parking, no new parking is required. The conforming parking requirement for bicycles would be one space, and the site plan includes bicycle racks for four bicycles.

Parking is a zoning requirement; it is not a criterion for consideration in the issuance of a dispensary permit. However, as a practical matter, staff requested that the applicant be able to explain how he envisions parking to work for his proposed operation. The applicant provided a “parking plan” to staff to show how he will advise employee members and patient members of the availability of surrounding on-street parking, and of alternatives such as buses and bicycling. Because parking is not a criterion for issuance, this parking plan was not included in the proposed application. The parking plan was discussed at the SHO hearing but was not made a part of the approved application.

During the application review process, the applicant consulted with staff about closing the existing driveway in front of his property in order to provide more on-street parking. Because of the expense, he did not include this work in his proposal but said he would consider doing it once the dispensary was operating. The elimination of the curb cut and installation of new curb would result in the addition of one or two on-street public parking spaces, depending upon vehicle size and driver behavior. The SHO made completion of this work with a Public Works permit a condition of approval.

Criterion 8 refers to controlling patrons’ conduct with regard to traffic control problems, or interference of the operation of another business. Criterion 9 refers to no adverse effect, not overly burdening a specific neighborhood, and not resulting in nuisance activities including illegal parking. Staff does not consider these criteria applicable to this property’s nonconforming parking situation.

D. Public Notification

Proper notification was done in accordance with the Brown Act, and with City requirements in SBMC 28.87.380 (Notice of Hearing), and consistent with Government Code Sections 65090 and 65091. The application had public hearings at the Architectural Board of Review Consent Agenda (ABR), and the SHO. Ten days prior to both hearings, notices were mailed to owners of property within 300 feet, and a sign was posted at the site. Five to six days prior to the ABR and SHO hearings, meeting agendas were posted at 630 Garden Street and on the City website. Twelve days prior to the SHO hearing, a legal ad appeared in the Santa Barbara News Press.

Two notices were sent to Dal Bello properties prior to the ABR and SHO hearings. Mr. Dal Bello was added to the mailing list as an interested party for the SHO hearing as a result of making public comment at the ABR hearing. Mailed notification to neighboring tenants is not required or City policy, however, the standard large yellow Notice of Development sign was posted at the front of the site at least 10 days prior to ABR and SHO hearings. Prior to the SHO hearing, the Staff Hearing Officer and planning staff read all written public comments received.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the project qualifies for a categorical exemption from further environmental review under Section 15301(a) (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines. The project involves a tenant improvement in an existing commercial building.

VIII. FINDINGS

The Planning Commission finds the following:

The application complies with the location criteria of SBMC §28.80.050, as outlined in Section V.A of the SHO staff report, and with the criteria for issuance of a Storefront Collective Dispensary permit set forth in SBMC §28.80.070.B, as explained in Section V.B of the SHO staff report and the applicant's submittal.

Exhibits:

- A. Appellant's Letter, dated January 26, 2016
- B. SHO Staff Report, January 20, 2016
- C. SHO Resolution 006-16
- D. SHO Minutes, January 20, 2016, and Written Public Comment
- E. Application, Executive Summary, and Operating Plan
- F. Medical Cannabis Dispensaries Ordinance (SBMC Chapter 28.80)