



City of Santa Barbara California

ATTACHMENT 3

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 001-11

2915 DE LA VINA STREET

MEDICAL MARIJUANA STOREFRONT COLLECTIVE DISPENSARY PERMIT

FEBRUARY 3, 2011

APPEAL BY PATRICK FOURMY OF THE STAFF HEARING OFFICER'S DENIAL OF THE APPLICATION OF PATRICK FOURMY (HEREINAFTER THE "APPLICANT" OR THE "APPELLANT") FOR A PERMIT TO OPERATE THE "COMPASSION CENTER OF SANTA BARBARA COUNTY" AT 2915 DE LA VINA STREET, APN 051-202-007, C-2 AND SD-2 ZONES, GENERAL PLAN DESIGNATION: GENERAL COMMERCE/BUFFER (CITY APPLICATION MST2009-00497)

The proposed storefront medical marijuana dispensary project involves the permitting of an existing Medical Marijuana Storefront Collective Dispensary within a 1,060 square foot commercial building located at 2915 De la Vina Street under the authority of Santa Barbara Municipal Code Chapter 28.80;

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

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

WHEREAS, the Planning Commission conducted a site visit at the Applicant's existing dispensary facility on Monday, January 31, 2011 and viewed both the exterior of the premises upon which the existing dispensary is located and the interior of the Facility.

WHEREAS, the Planning Commission has held the required public hearing on the above application on February 3, 2011, where the Applicant/Appellant and his attorney, Gilbert Gaynor, were present and allowed the opportunity to make a comprehensive Powerpoint and video presentation to the Commission in support of and to explain the application.

WHEREAS, seven people appeared at the Commission hearing in order to speak in favor of the appeal, and no one appeared to speak in opposition to the appeal, and the following documents and exhibits were presented for the record:

1. Staff Report with Attachments, January 27, 2011.
2. Site Plans for the Application
3. Correspondence received in support of the appeal:
 - a. Gilbert Gaynor, Santa Barbara, CA attorney for the Appellant
 - b. Dr. David Bearman, Goleta, CA
4. Correspondence received in opposition to the appeal:
 - a. Paula Westbury, Santa Barbara, CA

NOW, THEREFORE BE IT RESOLVED that the Santa Barbara City Planning Commission finds and determines as follows with respect to the subject appeal by the Applicant:

- I. The Commission denies the subject appeal and upholds the decision of the Staff Hearing Officer to not issue the requested storefront dispensary permit under SBMC Chapter 28.80 based on the following evidentiary findings and land use determinations and considerations:
 - a. The Applicant has apparently engaged in the improper operation of a storefront collective medical marijuana dispensary at 2915 De La Vina Street in violation of the Santa Barbara Municipal Code since April 2009 after the Applicant's dispensary at De La Vina Street location ceased to be a pre-existing legal nonconforming dispensary under section three of City Ordinance No. 5449 because it was discontinued in operation during 2008 for a period of time well in excess of thirty (30) days.
 - b. The loss of pre-existing legal non-conforming status for Applicant's 2915 De La Vina dispensary is established; in part, by the Applicant's own written admission under penalty of perjury that, between November 1, 2007 and April 2009, he and his brother operated a music store known as the "Harmonic Alliance" at the 2915 De La Vina store location and, as a result, the Commission concludes that the Applicant apparently discontinued the dispensary operation at the De La Vina Street location for a substantial period of time and, instead, operated a music store at the De La Vina location.
 - c. The discontinuance of the Applicant's dispensary operation at 2915 De La Vina location between November 1, 2007 and April 2009 is, in the Commission's view, further supported by the Applicant's admission to the Commission during the February 3, 2011 public hearing (as well as in written materials the Applicant submitted to the Staff Hearing Officer in support of his application), that, during this same period of time, he opened and operated a medical marijuana dispensary located at 3532 State Street, which dispensary was also not operated pursuant to the required City dispensary permit and, thus, in apparent violation of Santa Barbara City Ordinance No. 5436 and Ordinance No. 5449.
 - d. The apparent discontinuance of the Applicant's dispensary operation at 2915 De La Vina location between November 1, 2007 and April 2009 is, in the Commission's view, further supported by evidence provided to the City by representatives of the federal Drug Enforcement Administration indicating that the DEA personally inspected the Applicant's De La Vina dispensary location on two occasions (November 21, 2007 and January 9, 2008) and did not find the dispensary to be in operation at that location during those inspections and by an inspection by conducted by a City Code Enforcement officer on September 22, 2008 who only found a music store operating at the 2915 De La Vina location.
 - e. The Commission also believes that the Applicant, when questioned by Planning Commissioners Schwartz and Jacobs at the Commission's public hearing about his asserted continuous operation of the De La Vina Street dispensary during 2008, did not provide credible or believable explanations for why he was, by his own admission, operating a music store at the De La Vina location or why, by his own admission, he also opened a dispensary at 3532 State Street during this same 2008 period of time. In addition, the Applicant provided no good explanation for why he opened a dispensary at 3532 State Street without having obtained a City permit to do so.
 - f. The Commission also finds that the Applicant failed to provide any good or reasonable explanation of why he apparently negligently stored a substantial amount of medical marijuana

in a locked container made of wood and chicken wire within a public storage facility on Carrillo Street and, as a result, of the Applicant's apparent negligent storage, approximately 50 pounds of this marijuana (worth, according to the Applicant, approximately \$400,000) was easily stolen and presumably then became available to others for illegal use in a manner contrary to state law.

- g. The Commission also finds that the Applicant's inability and unwillingness to present the City with adequate non-confidential dispensary business or "qualified patient" records in support of his claim of he did not discontinue the operation of a storefront dispensary at 2915 De La Vina Street during 2008 leads the Commission to conclude that the operation was, in fact, discontinued and leads the Commission to further question the Applicant's trustworthiness and credibility. It also bring into question the Applicant's ability and willingness to maintain appropriate collective dispensary records in future as would be required pursuant to Subsection 28.80.080.H of the Santa Barbara Municipal Code.

Consequently, based on the above-stated evidentiary findings, the Planning Commission upholds the decision of the Staff Hearing Officer on this application, denies the Applicant the requested storefront dispensary permit and concludes that the Applicant and his Application does not merit the issuance of a City dispensary permit under the SBMC Section 28.80.070 subsection (B) criteria as follows:

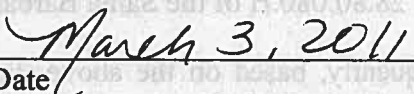
1. The Applicant's apparently willful attempt to conceal and obscure the true nature of the dispensary business operations at the 2915 De La Vina Street location and his operations at the 3532 State Street location in the past brings into serious question whether he would fully and appropriately comply with any dispensary permit conditions which might be imposed by City on a permit to be issued under SBMC Chapter 28.80 for the lawful operation of a storefront collective dispensary and this conclusion results in the Commission not being able to find that Criteria No. 11 and Criteria No. 9 are properly satisfied by this Application and by the Applicant's proposed dispensary operation.
2. The negligent storage and theft of a substantial amount of marijuana in the possession of the Applicant causes the Planning Commission to seriously question whether the Applicant would properly secure medical marijuana in a permitted dispensary in order to prevent unintended and unlawful diversion of medical marijuana in the future and this causes the Commission to be concerned that this Applicant and his proposed dispensary operation will not be able to and does not properly satisfy Criteria No. 8, Criteria No. 10 and Criteria No. 12 of the City's Ordinance.
3. The Applicant's admitted opening and operation of a second storefront collective dispensary at 3532 State Street, without the benefit of a valid City permit at a time when such a permit was required, also causes the Planning Commission to question whether the Applicant would comply with the City's prohibition against transferring a permit location (as specified in Subsection 28.80.130.A of the Santa Barbara Municipal Code) and whether the Applicant would fully and consistently comply with other permit conditions of approval. For these reasons, the Commission finds this Application also does not meet Criteria No. 10 and Criteria No. 12.

This motion was passed and adopted on the 3rd day of February, 2011 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 4 NOES: 2 (Lodge, Schwartz) ABSTAIN: 0 ABSENT: 1 (Bartlett)

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date.


Julie Rodriguez, Planning Commission Secretary


Date

PLEASE BE ADVISED:

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) CALENDAR DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.