



City of Santa Barbara California

PLANNING COMMISSION STAFF REPORT

REPORT DATE: January 27, 2011

AGENDA DATE: February 3, 2011

PROJECT ADDRESS: 2915 De la Vina Street (MST2009-00497)
"Compassion Center of Santa Barbara County"

TO: Planning Commission

FROM: Planning Division, (805) 564-5470
Danny Kato, Senior Planner *DJK*
Allison De Busk, Project Planner *AD*
Daniel Gullett, Associate Planner

I. PROJECT DESCRIPTION

The project consists of an application to permit a Storefront Medical Marijuana Dispensary in a commercial building located at 2915 De la Vina Street. This is an appeal of a Staff Hearing Officer denial of the requested Dispensary permit on December 15, 2010. The appellant/applicant, Patrick Fourmy, requests that the Planning Commission approve the project (refer to Exhibit A – Appellant's Letter).

Pursuant to the recently updated SBMC Chapter 28.80 (the "Medical Marijuana Storefront Collective Dispensary Ordinance,") the Planning Commission's decision on this appeal may be appealed to the City Council (SBMC §28.80.110).

II. REQUIRED APPLICATIONS

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

III. RECOMMENDATION

Staff's position is that the findings to support approval of the Dispensary cannot be made because the proposed Dispensary does not meet some of the criteria for granting a Storefront Collective Dispensary permit. Therefore, Staff recommends that the Planning Commission deny the appeal, making the finding contained in Section VIII of this report.

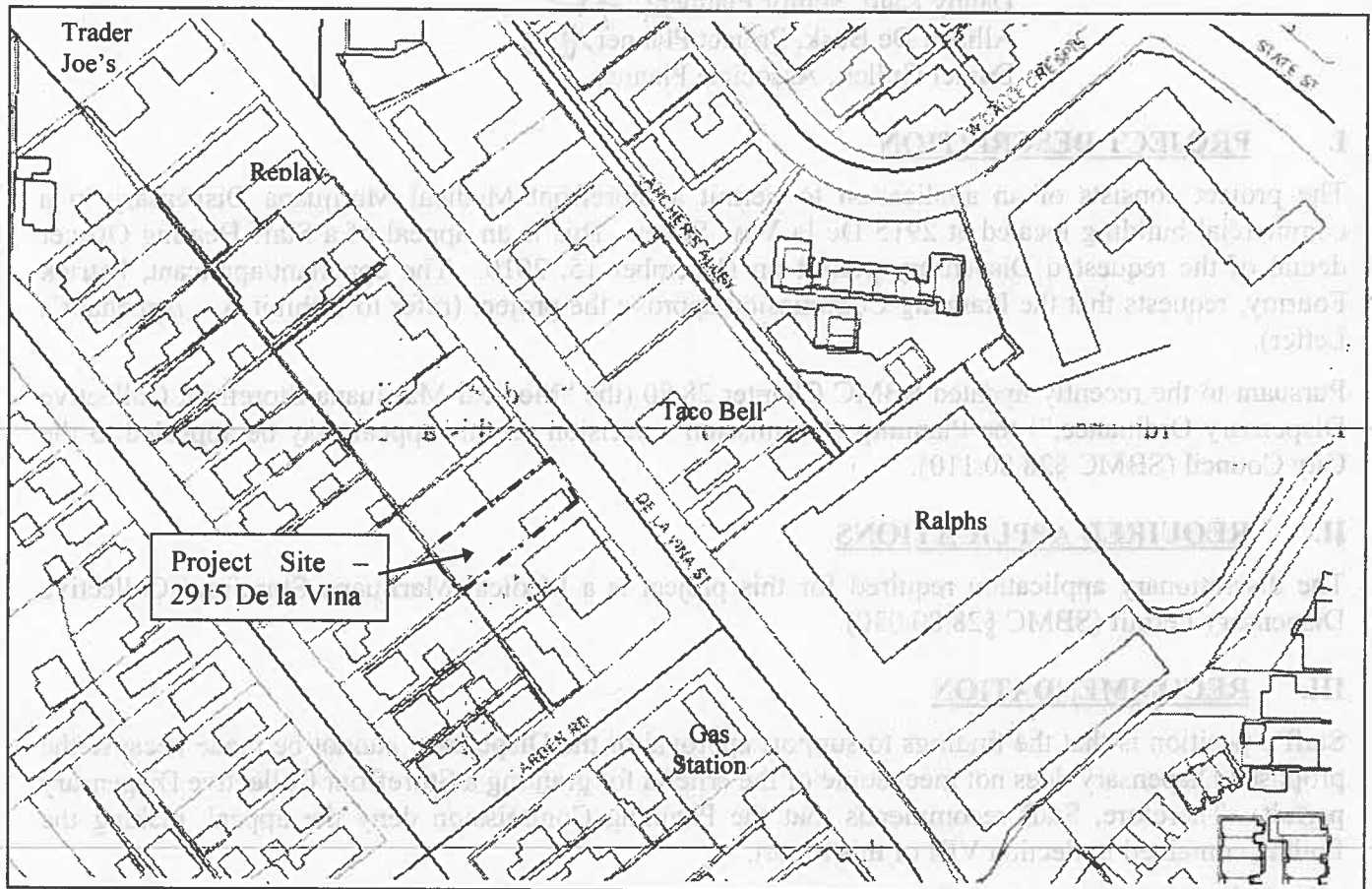
Should the Planning Commission find that the dispensary conforms to the required issuance criteria and vote to approve the Storefront Collective Dispensary Permit, staff has included recommended conditions of approval as Exhibit D.

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 California

IV. SITE INFORMATION

Applicant: Compassion Center of Santa Barbara County	Property Owner: Bernard Friedman
Parcel Number: 051-202-007	Lot Area: 7,500 sf
General Plan: General Commerce/Buffer	Zoning: C-2/SD-2
Existing Use: Storefront Collective Dispensary	Topography: 6% average slope
Adjacent Land Uses:	
North - Commercial South - Commercial	East - Commercial West - Single Family Residential

VICINITY MAP



V. ENVIRONMENTAL REVIEW

Should the Planning Commission overturn the Staff Hearing Officer's decision and approve the Dispensary Permit, staff has determined that the project would qualify for a categorical exemption

from environmental review under Section 15301 (Existing Development) of the California Environmental Quality Act (CEQA) Guidelines. The project involves a tenant improvement in an existing commercial building and, as such, will clearly not have a significant effect on the environment.

VI. STAFF HEARING OFFICER DECISION

On December 15, 2010, the Staff Hearing Officer reviewed and denied the appellant's request for a Medical Marijuana Storefront Collective Dispensary Permit. At that hearing, planning staff and the Police Department staff expressed concerns regarding the applicant's past negligence with regard to security, and therefore determined that the Storefront Collective Dispensary could have a potentially adverse affect relative to the safety of persons living in the surrounding area due to crime and nuisance activities (refer to Criterion 9). The Staff Hearing Officer also determined that the appellant's business practices in regards to the legal status of the applicant's existing dispensary meant that the findings for Criterion 12 could not be made. The Staff Hearing Officer Minutes are attached as Exhibit C.

Please refer to the Staff Hearing Officer Staff Report (Exhibit B) for a complete analysis and history of the project. This staff report discusses the issues most relevant to the appeal.

VII. APPEAL ISSUES

The appellant claims that the Staff Hearing Officer's denial of the Permit was erroneous because Criterion 12 of SBMC §28.80.070.B was inappropriately applied to his previous operation of a dispensary since this dispensary began operation prior to the effective date of the City's March 2008 ordinance (the "Original Ordinance.") The appellant also claims that requiring the Dispensary to close now would violate his constitutional rights.

A. CRITERION 12

SBMC §28.80.070.B.12: That the Applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices with respect to the operation of another business within the City.

As identified in the Staff Hearing Officer Staff Report (Exhibit B), the primary concern associated with this criterion relates to whether or not the dispensary discontinued operations for more than 30 days: "If the dispensary discontinued operations for a period of more than 30 days since the adoption of the Medical Cannabis Dispensary Ordinance, it re-opened illegally and this criterion is not met. If the dispensary is currently legal non-conforming, this criterion is met."

The appellant contends that substantial evidence has not been provided by the City to confirm that the Dispensary closed for more that 30 days.

As proof that the dispensary did not close for more than 30 days, the appellant has provided the following:

- The declaration of Patrick Fourmy (attached to Exhibit A - Appellant's Letter), which states that the dispensary operated in its current location continuously from April 2006

through present and that the dispensary operated at the rear of the building with a lower profile from November 2007 until April 2009.

- The declaration of Sol Levitt, the property owner's attorney, corroborating the dispensary's long-term, uninterrupted tenancy for the 2915 De La Vina Street building (attached to Exhibit A - Appellant's Letter).
- Signed statements from 103 patients affirming that "During the period of January, 2007 to October, 2009, I received my medicine from 2915 De La Vina St."
- Evidence of having obtained a City Business License at 2915 De la Vina Street in April 7, 2006.

The City Attorney's office has reviewed the information submitted by the appellant and did not consider it conclusive proof that the Dispensary did not close for a period of more than 30 days. The City Attorney's office, in a letter dated April 7, 2010, indicated the types of evidence which could be considered as potentially sufficient proof that the Dispensary had operated continuously from October 1, 2007 through January 1, 2009. These included the following: 1. patient statements that individual patients purchased marijuana at 2915 De la Vina within a particular month during the specified period 2. dated cash register receipts, dated payroll tax payments, workers compensation payments, utility bills, bank statements, and delivery/shipping receipts. To date, this sort of evidence has not been submitted to the City.

The appellant also claims that because the criterion relates only to the "operation of *another* business within the City" (emphasis added), any allegations against the dispensary itself are not applicable relative to the criterion for the issuance of a new permit to Mr. Fourmy. However, staff believe that the intent of criterion 12 is to determine whether there is a known history of code compliance concerns with a proposed applicant.

B. VIOLATION PRIOR TO ORDINANCE ADOPTION

The appellant claims that the alleged violation (closing for more than 30 days) took place before the effective date of the Original Ordinance. The City contends that the Dispensary ceased operation as a storefront dispensary for an unknown but extended period of time between October 2007 and January 2009. Ordinance 5449 (Original Ordinance) was adopted by the City Council on March 25, 2008 and became effective 30 days later, on April 24, 2008; however, Ordinance 5436 (the "Interim Ordinance") was adopted on October 2, 2007, and was effectively retroactive to August 14, 2007.

The Interim Ordinance prohibited the establishment, operation or maintenance of a Medical Marijuana Dispensary unless the following was true: 1. it complied with all applicable requirements of state law; 2. it obtained a valid business tax certificate prior to August 14, 2007, and it was actually open and continuously operating prior to August 24, 2007 and was thereafter continuously providing assistance to "qualified patients" in a manner consistent with the requirements of state law. If the dispensary closed and then re-opened between October 2007 and April 24, 2008, it would have lost its nonconforming status under the Interim Ordinance. If it had closed and re-opened after April 24, 2008, it would be in violation of Ordinance 5449 (the Original Ordinance, adopted in March 2008), which stated that if a

nonconforming dispensary was closed for a period of more than 30 days, it then loses its nonconforming status, and must close and obtain a new permit.

C. DUE PROCESS

The appellant also claims that requiring his business to close after the six-month amortization period identified by the Revised (Current) Ordinance is insufficient.¹ However, the applicant was aware that the Original Ordinance provided for a three-year amortization period, which would have ended on March 24, 2011. As a result, the Current Ordinance's six-month amortization period, which requires the dispensary to close on January 24, 2011, really only reduced the previous three year amortization period by a period of 58 days.

From an enforcement standpoint, on October 30, 2009, the subject Dispensary was given notice by Community Development Code Enforcement Staff to cease operating a dispensary without a permit. On April 7, 2010, the City Attorney sent another letter noting that the Dispensary was apparently operating in violation of the Municipal Code and requested that they cease operations or provide adequate written documentation to the City to confirm that it was open and operating throughout the relevant period.

VIII. FINDINGS

The Planning Commission finds the following:

A. STOREFRONT COLLECTIVE DISPENSARY PERMIT (SBMC §28.80.070)

The proposed dispensary applicant does not comply with the criteria set forth in Section 28.80.070 (Criteria for Review of Collective Dispensary Applications by the City Staff Hearing Officer) of the Zoning Ordinance, in that the applicant has been apparently operating a nonconforming dispensary without the required City permits and in violation of the Municipal Code.

WJS

Exhibits:

- A. Appellant's Letter
- B. Staff Hearing Officer Staff Report, December 15, 2010
- C. Staff Hearing Officer Minutes, December 15, 2010
- D. Draft Conditions of Approval
- E. Ordinance 5436 (Interim Ordinance)
- F. Ordinance 5449 (Original Ordinance)
- G. Ordinance 5526 (Current Ordinance)

¹ Ordinance No. 5526 ("Current Ordinance"), approved by City Council on June 29, 2010, revised the City's Medical Cannabis Dispensaries Ordinance (Ordinance 5449) and changed the permitted locations for dispensaries. This Ordinance also established a 180-day amortization period for those dispensaries that were open and operating in a manner consistent with state law and the SBMC prior to the effective date of the Ordinance 5526.

nonconforming dispensary was closed for a period of more than 30 days. It then loses its nonconforming status and must close and obtain a new permit.

C. Due Process

The applicant also claims that requiring his business to close after the six-month amortization period identified by the Revised Current Ordinance is unjustified. However, the applicant was aware that the Original Ordinance provided for a three-year amortization period, which would have ended on March 24, 2011. As a result, the Current Ordinance's six-month amortization period, which requires the dispensary to close on January 24, 2011, really only reduced the previous three-year amortization period by a period of 38 days.

From an enforcement standpoint, on October 30, 2009, the subject Dispensary was given notice by Community Development Code Enforcement Staff to cease operating a dispensary without a permit. On April 7, 2010, the City Attorney sent another letter noting that the Dispensary was apparently operating in violation of the Municipal Code and requested that they cease operations or provide address written documentation to the City to confirm that it was open and operating throughout the relevant period.

VIII. FINDINGS

The Planning Commission finds the following:

A. STORERWAT COLLECTIVE DISPENSARY PERMIT (SRMC 228.25.070)

The proposed dispensary applicant does not comply with the criteria set forth in Section 228.25.070 (Criteria for Review of Collective Dispensary Application). Specifically, the City Staff Hearing Officer of the zoning Ordinance is that the applicant has been operating a nonconforming dispensary without the required City permits and in violation of the Municipal Code.

Exhibits

- A. Applicant's Letter
- B. Staff Hearing Officer Staff Report, December 13, 2010
- C. Staff Hearing Officer Minutes, December 13, 2010
- D. Draft Conditions of Approval
- E. Ordinance 2480 (Interim Ordinance)
- F. Ordinance 2449 (Original Ordinance)
- G. Ordinance 2225 (Current Ordinance)

* Ordinance No. 2225 ("Current Ordinance") approved by City Council on June 29, 2010, revised the City's Municipal Cannabis Dispensary Ordinance (Ordinance 2449) and changed the permitted locations for dispensaries. The Ordinance also established a 180-day amortization period for those dispensaries that were open and operating in a manner consistent with state law and the SRMC prior to the effective date of the Ordinance (225).