



City of Santa Barbara Planning Division

PLANNING COMMISSION MINUTES

November 5, 2009

CALL TO ORDER:

Chair Thompson called the meeting to order at 1:05 P.M.

ROLL CALL:

Present:

Vice-Chair Addison S. Thompson
Commissioners Bruce Bartlett, Charmaine Jacobs, John Jostes, Sheila Lodge, and Harwood A. White, Jr.

Absent:

Commissioner Stella Larson

STAFF PRESENT:

Danny Kato, Senior Planner
N. Scott Vincent, Assistant City Attorney
Steve Foley, Supervising Transportation Planner
Andrew Bermond, Associate Planner
Peter Lawson, Associate Planner
Julie Rodriguez, Planning Commission Secretary

I. ROLL CALL

II. PRELIMINARY MATTERS:

- A. Requests for continuances, withdrawals, postponements, or addition of ex-agenda items.
None.
- B. Announcements and appeals.

Mr. Kato announced that the Planning Commission meetings of November 12th and November 19th will be held in the David Gebhard Public Meeting room at 630 Garden Street, and not City Hall Council Chambers. Also, the November 12th meeting will begin at 5:30 P.M.

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

Chair Thompson opened the public hearing at 1:07 P.M. and, with no one wishing to speak, closed the hearing.

III. NEW ITEM:

ACTUAL TIME: 1:08 P.M.

APPLICATION OF GARRY ABBOTT, AGENT FOR MAG AVIATION FUEL, 1600 CECIL COOK PLACE, 073-450-003 A-F, SP-6, S-D-3, AVIATION FACILITIES, AIRPORT INDUSTRIAL AREA SPECIFIC PLAN AND COASTAL ZONE OVERLAY ZONES, GENERAL PLAN DESIGNATION: MAJOR PUBLIC AND INSTITUTIONAL (MST009-00323)

The proposed project involves the installation of a 12,000 gallon aviation fuel storage tank and associated self-service fueling apparatus on an 11,250 square foot leased area of an open, paved section of the northwest service ramp on Santa Barbara Airport Property. The proposed project would provide general aviation aircraft owners with an alternative to purchasing fuel from a full-service operator. The discretionary application required for this project is a Coastal Development Permit to construct an above ground fuel tank in the Appealable Jurisdiction of the Coastal Zone (SBMC § 28.45.009).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines §15303(c).

Case Planner: Andrew Bermond, Associate Planner
Email: ABermond@SantaBarbaraCA.gov

Andrew Bermond, Associate Planner, gave the Staff presentation.

Discussion was held regarding the exemption criteria from the Storm Water Management Plan. Gary Abbott, MAG Aviation Fuel, responded to the Commission's questions regarding the aviation fuel storage tank.

Chair Thompson opened the public hearing at 1:14 P.M., and with no one wishing to speak, closed the hearing.

MOTION: White/Jacobs

Assigned Resolution No. 041-09

Approved the project, making the findings for the Coastal Development Permit as outlined in the Staff Report, subject to the Conditions of Approval in Exhibit A of the Staff Report.

This motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Larson)

Chair Thompson announced the ten calendar day appeal period.

IV. **STAFF HEARING OFFICER REVOCATION:**

ACTUAL TIME: 1:16 P.M.

RECUSALS: To avoid any actual or perceived conflict of interest, Commissioner Jacobs recused herself due to her husband working at the same law firm as the applicant's representative and left the dais at 1:17 P.M.

EX PARTE COMMUNICATION:

Commissioner Jostes disclosed an ex parte communication with Mr. Amerikaner regarding the letter submitted by Mr. Amerikaner.

Commissioner Bartlett disclosed an ex parte communication with the Applicant's legal team and the operator of the school at 7 E. Mission Street.

Commissioner Thompson disclosed an ex parte communication with Mr. Amerikaner regarding speaking at today's meeting, and also spoke with the operator of the school during the site visit.

Commissioner Lodge also disclosed speaking with the school operator during the site visit.

MEDICAL CANNABIS DISPENSARY PERMIT REVOCATION HEARING CONCERNING SANTA BARBARA GREENCARE COLLECTIVE, 2 WEST MISSION STREET, 025-311-013, C-2 ZONE, GENERAL PLAN DESIGNATION: GENERAL COMMERCE AND OFFICE (MST2009-00314)

On September 9, 2009, the Staff Hearing Officer approved the subject medical cannabis dispensary permit. On September 15, 2009, the City was informed that a school may exist within 500 feet of the dispensary and that the school was operating in that location at the time the subject medical cannabis dispensary permit was approved. The purpose of this revocation hearing is to determine whether the Mission Community School, located at 7 E. Mission Street, meets the definition of a school under the City's Medical Cannabis Dispensary Ordinance (MCDO). If the Mission Community School is determined to be a school pursuant to SBMC Section 28.80.020.K, the approved dispensary permit shall be revoked for violating the location requirement found in SBMC Section 28.80.060.C.

(The mailed notice and legal ad's reference to a suspension hearing pursuant to SBMC Section 28.05.020.C. was incorrect. The proceeding is a revocation hearing pursuant to SBMC Section 28.80.110.)

Case Planner: Danny Kato, Senior Planner

Email: DKato@SantaBarbaraCA.gov

Danny Kato, Senior Planner, gave the Staff presentation.

Mr. Steve Amerikaner, representing Hans and Francisca Edwards, gave the Applicant presentation, joined by the Applicants and Gil Garcia, Architect.

Chair Thompson opened the public hearing at 1:40 P.M.

The following people spoke in support of the revocation, or with concerns:

1. Ben Romo, Director of Community Education, Santa Barbara County Education Office, expressed concern that the Planning Commission be consistent with City Council's directive to protect all school students equally from the negative effects of medical cannabis dispensaries.
2. Sharon Brownnett was concerned with children going to and from the nearby Storyteller nursery and child care center accompanied by elementary school children.
3. Lynn Rodriguez was concerned with the dispensary's close proximity to a special needs school.
4. Florene Bednersh, Assistant Superintendent, Santa Barbara County Education Office, advocated that the Mission Community School did meet the definition of a school.
5. Patty Moore shared insight on the rights of students with disabilities.
6. Casie Killgore, Principal, Franklin Elementary School, lobbied for equal access to public education for all students, including Mission Community School.
7. Michele Carbone is a parent of a Mission Community School and advocated for equal protection, under the law, of all students from the negative effects of cannabis dispensaries.
8. David Hughes asked that the Commission defer to the State Department of Education's definition of a school.
9. Shereen Khatapoush, Council on Alcoholism and Drug Abuse and Fighting Back, supports a ban on medical marijuana dispensaries and supports the revocation of the permit for a dispensary that is too close to a school.
10. Joe Sholder, Santa Barbara County Education Office, provided clarification on Mission Community School fitting the definition of a school and asked for revocation of the permit for non-compliance of the ordinance.

The following people spoke in opposition to the revocation:

1. Cheryl Keyes
2. Sue McKnight
3. Barbara Ellis
4. John Stenmo
5. Marti Correa de Garcia
6. Chris Weber
7. Nathaniel Reinke
8. James Lee

With no one else wishing to speak, the public hearing was closed at 2:22 P.M.

Mr. Sholder, Counsel for the Santa Barbara County Education Office, stated that prior notice of the applicant's dispensary permit may not have been received due to the notice being sent to a 300' radius and the possibility that landlords did not inform tenants; also

stated that they will provide Staff with a compilation of all special needs schools within the City of Santa Barbara.

Discussion was held regarding posting of the yellow development notice sign at the project site; clarification of permit issuance revocations and vested rights; due process; and the 14 medical marijuana dispensaries in the city that range from approved to pending approval to illegal.

The Commissioners made the following comments:

1. Commissioners White, Lodge, and Thompson regretted that the Applicant had gotten so far into the permit process, but supported the definition of school under the City's ordinance.
2. Commissioner Bartlett did not feel that the school in question met the definition of school under the local municipal code, specifically when looking at chronological age. Also did not find that it was fair to penalize the Applicant for Staff not knowing that the school existed, especially given that the school was not on any known record. Cannot support Staff position.
3. Commissioner Jostes felt that the Applicant will have incurred significant expense at the City's expense and wondered if there would be a way to separate the uses of space between the school and cannabis dispensary.
4. Commissioner Thompson felt that the ordinance was unfair to this applicant, but did need to support the ordinance as it is written and supported a revocation of the permit. Questioned the public's concern for student's safety and wondered what it was that the public sought protection from.

Deliberation was conducted on possible remedies that could be explored by the Applicant. Staff stated that if the applicant were to start again, it would not be at ground zero: the existing operational plan could be transferred to a new site and a new site plan and security plan would be submitted, followed by a review of the Staff Hearing Officer. Regarding transferability of a permit, permits are site and owner specific and cannot be transferred. The question for the Commission is whether the school meets the definition of school under the city's ordinance.

Discussion was also exchanged on the possibility of continuing the decision for further discussion between the Applicant's legal team and the city's legal team. The Commission was in agreement that the only decision that needed to be made was whether the Mission Community School fit the definition of a school and felt capable of making the decision.

MOTION: Lodge/White

Assigned Resolution No. 042-09

Find that the Mission Community School is categorized as a school for the purposes of the MDCO for the following reasons: 1) The facility serves students between the ages of 16 and 22 ;2) The student's individualized Education Programs include an education component that is required by the California Education Code; 3) The purpose of the school is to allow disabled students to complete their high school education, and 4) On the whole, the educational and mental development of the students attending Mission Community School

is more similar to elementary and secondary schools than community colleges or other educational institutions geared for adults; and finds the 2 W. Mission Street dispensary in violation of SBMC §28.80.060.C., because it is located less than 500 feet from a school, and revoke the MCDP approved by the Staff Hearing Officer on September 9, 2009.

This motion carried by the following vote:

Ayes: 3 Noes: 2 (Bartlett, Jostes) Abstain: 0 Absent: 1 (Jacobs, Larson)

Chair Thompson announced that there is no appeal period and called for a recess at 2:59 P.M.

Chair Thompson resumed the meeting at 3:20 P.M. Commissioner Jacobs returned to the dais after the break.

V. **CONTINUED ITEM:**

ACTUAL TIME: 3:21 P.M.

RECUSALS: To avoid any actual or perceived conflict of interest, Commissioner Bartlett recused himself due to his architectural firm working on the project and left the dais at 3:22 P.M.

APPLICATION OF JARRETT GORIN AGENT FOR 803 N MILPAS STREET LLC, 803 N MILPAS STREET, 031-042-028 COMMERCIAL (C-2) ZONE DISTRICTY, GENERAL PLAN DESIGNATION: GENERAL COMMERCE (MST2006-00510)

The proposed project consists of a mixed use development containing five mixed use residential/commercial condominiums, one live/work unit, two residential units and one commercial condominium. The development would be split among three buildings totaling 19,886 net square feet. The overall height of the proposed development would be between 37 feet and 38 feet, 6 inches. Parking would be located within eight two-car garages and on the interior of the lot for a total of 26 parking spaces. Access to the garages and parking lot would be via a driveway from De la Guerra Street, located between two of the buildings. Pedestrian access to the site would also be provided from Milpas Street. A landscaped area would be provided in the northwest corner of the site, behind the open parking. An area along the northern property line has been reserved for the location of secured remediation equipment, if required.

The discretionary applications required for this project are:

1. A Tentative Subdivision Map for a one-lot subdivision with nine condominium units (eight residential, one commercial) per SBMC Chapters 27.07 and 27.13;
2. A Modification to allow less than the required number of parking spaces (SBMC §28.92.110.A.1);

3. A Development Plan to allow the construction of 2,851 net square feet of nonresidential development on APN 031-042-028 (SBMC §28.87.300); and
4. Design Review by the Architectural Board of Review (ABR).

The Planning Commission will consider approval of the Negative Declaration prepared for the project pursuant to the California Environmental Quality Act Guidelines Section 15074.

Case Planner: Peter Lawson, Associate Planner

Email: PLawson@SantaBarbaraCA.gov

Peter Lawson, Associate Planner, gave the Staff presentation, joined by Steve Foley, Supervising Transportation Planner.

Jarret Gorrin, Vanguard Planning, gave the Applicant presentation.

Applicant expressed concern that the project was subject to the updated inclusionary fees, which was adopted after the project was deemed complete. N. Scott Vincent, Assistant City Attorney, stated that under the Subdivision Map Act if a project is deemed complete prior to any changes to an ordinance or a new ordinance, then the project is not subject to those changes. Therefore the project was not subject to the inclusionary housing fees and the condition of approval requiring the payment of fees shall be removed.

Chair Thompson opened the public hearing at 3:47 P.M. and, with no one wishing to speak, closed the hearing.

Commissioner Jostes was not present at the August 20, 2009 Planning Commission meeting, but reviewed the meeting video and felt qualified to participate in the Commission's decision.

The Commissioners made the following comments:

1. Commissioners White and Lodge appreciated the work done on widening the sidewalk and the elimination of the mid-block bulb-out.
2. Commissioners Lodge, Jacobs, and Jostes would like to see 3' of planters and a zero inch curb.
3. Commissioner Jacobs supports the project and thinks that it sets a new standard for Milpas Street.

MOTION: Jacobs/Lodge

Assigned Resolution No. 043-09

Approved the project, making the findings for the Tentative Subdivision Map, Development Plan, and Modification as outlined in the Staff Report, subject to the Conditions of Approval in Exhibit A of the Staff Report with the following revisions to the Conditions of Approval: 1) Eliminate the Inclusionary Housing Fees and delete Condition D. 15 and Condition F.8.; and 2) Return language D.2.a and D.14 to previous language allowing for a larger planter along the Milpas Street portion of the building.

This motion carried by the following vote:

Ayes: 5 Noes: 0 Abstain: 0 Absent: 2 (Bartlett, Larson)

Chair Thompson announced the ten calendar day appeal period.

VI. ADMINISTRATIVE AGENDA

ACTUAL TIME: 3:56 P.M.

A. Committee and Liaison Reports.

1. Staff Hearing Officer Liaison Report

Danny Kato reported on the Staff Hearing Officer meeting held on November 3, 2009.

2. Other Committee and Liaison Reports

Commissioner Thompson reported on two recent Transportation events. Hot Springs Roundabout and Ground Breaking ceremony on Airport Terminal.

B. Action on the review and consideration of the following Draft Minutes and Resolutions listed in B.3. of this Agenda:

a. Draft Minutes of September 17, 2009

b. Resolution 037-09
617 Bradbury Avenue

c. Draft Minutes of October 1, 2009

d. Draft Minutes of October 8, 2009

e. Resolution 038-09
520 E. Yanonali Street

f. Resolution 039-09
705 Norman Firestone Road

g. Resolution 040-09
1712 Anacapa Street

MOTION: White/Jostes

Continue the draft minutes of September 17, 2009 until November 19, 2009.

This motion carried by the following vote:

Ayes: 5 Noes: 0 Abstain: As noted. Absent: 2 (Bartlett, Larson)

MOTION: White/Jacobs

Approve the minutes and resolutions of October 1 and October 8, 2009 as corrected.

This motion carried by the following vote:

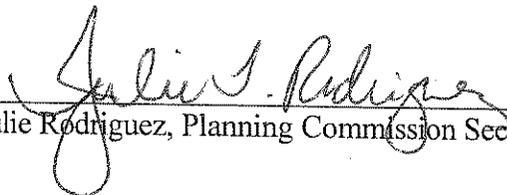
Ayes: 5 Noes: 0 Abstain: As noted. Absent: 2 (Bartlett, Larson)

Commissioner Jostes abstained from the Minutes of October 1, 2009.

VII. ADJOURNMENT

Chair Thompson adjourned the meeting at 4:08 P.M.

Submitted by,



Julie Rodriguez, Planning Commission Secretary

