



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 015-19 35 NORTH CALLE CESAR CHAVEZ COASTAL DEVELOPMENT PERMIT AND CONDITIONAL USE PERMIT SEPTEMBER 19, 2019

APPLICATION OF JOHN CUYKENDALL, DUDEK, AGENT FOR VERDE VENTURES, LLC, PROPERTY OWNER OF 35 N. CALLE CESAR CHAVEZ, APN 017-113-004, OM-1 (OCEAN-ORIENTED LIGHT MANUFACTURING) AND SD-3 (COASTAL OVERLAY) ZONES, LOCAL COASTAL PROGRAM LAND USE PLAN DESIGNATION: OCEAN-ORIENTED INDUSTRIAL (PLN2019-00336)

The project consists of a request for a new Coastal Development Permit for warehouse buildings that were previously approved by the Staff Hearing Officer on April 30, 2014, and a Conditional Use Permit to allow a building materials supply company and a lumber yard to operate out of said buildings located at 35 N. Calle Cesar Chavez. The 28,350 square foot lot is located within the City's Ocean-Oriented Light Manufacturing (OM-1) Zone in the appealable and non-appealable jurisdictions of the Coastal Zone, and has a Coastal Land Use Designation of Ocean Oriented Industrial.

The discretionary applications required for this project are:

1. A Coastal Development Permit (CDP2019-00020) to allow the proposed development and use in the Appealable and Non-Appealable Jurisdictions of the City's Coastal Zone (SBMC §28.44); and
2. A Conditional Use Permit to allow the development in the OM-1 Zone to be used as a building materials supply company and lumber yard (SBMC §28.73.030 and §28.94.030.X).

The project requires an environmental finding pursuant to California Environmental Quality Act Guidelines Section 15183.

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, two people appeared to speak and the following exhibits were presented for the record:

1. Staff Report with Attachments, September 12, 2019
2. Site Plans
3. Correspondence received:
 - a. William Rehling, Santa Barbara CA
 - b. Carolyn Groves, California Coastal Commission
 - c. Beth Collins, Santa Barbara CA, representing applicant
 - d. Anna Marie Gott

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

I. Approved the subject application, making the following findings and determinations:

A. CEQA ENVIRONMENTAL DETERMINATION

The Planning Commission finds that the project qualifies for an exemption from further environmental review under CEQA Guidelines Section 15183, based on the City staff analysis and the CEQA certificate of determination on file for this project.

B. COASTAL DEVELOPMENT PERMIT (SBMC §28.44.150)

1. The project is consistent with the policies of the California Coastal Act.

Coastal Act Policy 30234 encourages development of facilities that serve the commercial fishing and recreational boating industries, and Policy 30255 gives priority to coastal-dependent uses near the shoreline. Establishment of the OM-1 zone implements these Coastal Act policies. However, that zone also provides an “out” in the event coastal-dependent and ocean-related uses would result in “no feasible economic value” for the property. Therefore, the project could be found consistent with these policies based on making the required CUP findings and because allowing the proposed industrial uses would not preclude any future commercial fishing or recreational boating type of use to operate on the site.

Coastal Act Section 30250 requires that new development shall be located within existing developed areas able to accommodate it. The project site is located in an urban industrial neighborhood of the City surrounded by the El Estero Water Resource Center to the west, the Rescue Mission to the north, the Vercal Building (mixed commercial and industrial uses) adjacent on the south and other industrial uses across Calle Cesar Chavez to the east. Public services are adequate to serve the redevelopment of the project site and the development would not be a burden on coastal resources.

Coastal Act Section 30251 requires the scenic and visual qualities of coastal areas to be considered and protected. The proposed project would not impact views to or along the ocean given its location in an industrial neighborhood surrounded by one-and two-story buildings. The proposed new buildings were reviewed by the Architectural Board of Review several times in 2014. The ABR found that the design of the project would be visually compatible with the surrounding area, would be an enhancement to the project site, and that the proposed site plan maximized mountain views from the street and the neighborhood. Therefore, the project can be found consistent with this policy.

Coastal Act Section 30252 requires that the location and amount of new development should maintain and enhance public access to the coast. In this case, providing adequate on-site parking is the way in which development of this site can implement this policy. The project provides the required parking on site, such that existing public parking would not be affected. Additionally, the project provides four bicycle parking spaces, one in excess of ordinance requirements, which promotes alternative transportation to and from the site. Therefore, the project would maintain coastal access and can be found consistent with this policy.

Coastal Act Section 30253 requires that new development shall minimize adverse impacts related to geologic, flood and fire risk, assure stability and structural integrity, be consistent with air quality requirements, and minimize energy consumption and vehicle miles travelled. The new warehouse buildings are consistent with this policy because they were constructed in compliance with Flood Zone

requirements, Fire Department requirements and the current building code. Additionally, the project site is not located on a bluff and is located within an existing urban area such that vehicle miles travelled are minimized.

2. The project is consistent with all applicable policies of the City's Local Coastal Plan, all applicable implementing guidelines, and all applicable provisions of the Municipal Code.

The project site is located in the Industrial Component Area of the City's Coastal Zone. The LUP describes this area as 112 acres of low-lying land, which was once an estuary known as El Estero and was filled with debris from structures destroyed in the 1925 earthquake. This Industrial Area includes the area south of Highway 101 and north of the railroad tracks, between Garden Street to the west and Milpas Street and Nopalitos Way to the east. Laguna Channel runs through the westerly portion of this area. A large portion of this area is occupied by City facilities including El Estero Water Resource Center, the Charles E. Meyer Desalination Plant and a Fire Department training facility.

Land uses in this area include public works facilities, manufacturing, building supply firms, open yard storage, a homeless shelter and general commercial, office and storage facilities. The project site is designated as Coastal-Oriented Industrial. This designation strives to provide for appropriate coastal-dependent and related industrial uses in close proximity to the Harbor and Stearns Wharf. Existing non-coastal-oriented industrial uses are allowed to be maintained, but coastal-dependent and coastal-related industrial uses are encouraged. There are a large number of buildings and uses that are nonconforming to this designation.

Coastal issues in this area of the coastal zone are creek and coastal flooding, in addition to the liquefaction hazard due to underlying soils. Existing flooding hazards could be exacerbated by sea level rise and increased storms.

The LUP states that the demand for coastal-related industrial uses has not materialized, but that it is important that this land area continue to be zoned for such uses to prevent the potential for gentrification, as is occurring in the Lower State area.

Liquefaction concerns were addressed through implementation of the recommendations from the project's geotechnical engineering report as part of the building permit.

The site is identified in the City's MEA as within the tsunami "run-up" area. Available data indicates that the probability of a significant tsunami event in the Santa Barbara coastal area is low. In 2009, the California Emergency Management Agency (CalEMA) and the California Geological Survey completed inundation maps for all the at-risk portions of the California coastline. These maps show the maximum inundation predicted from an event, either historical or based on a scenario, from many different sources. Assumptions included credible source scenarios for both distant and local events, at mean high tide, to produce a worst case scenario inundation line. Run-ups go to about 10 feet in elevation onshore for the maximum distant event, and up to 20+ feet from a potential local off-shore earthquake/landslide source. Based on these projections and review of local mapping, a tsunami generated from a distant event (significant earthquake) would potentially reach the site, as it is located at approximately 10 feet above sea level. In the unlikely case of a significant local off-shore event (earthquake triggering undersea landslide), the site could be surrounded by sea water at a depth of about 10 feet, but because the buildings are large, primarily open industrial buildings with relatively large openings and are proposed to be used primarily for storage of construction materials, potential impacts would be less than significant.

Due to the project's location in the flood zone, the new buildings comply with current building codes and meet the requirements of the Flood Zone.

Additionally, sea level rise (SLR) has been a growing concern at both a global and local level. The most recent available data indicates that during the estimated 75-year life expectancy of the proposed project, a rise in sea level between 3.1 – 6.6 feet by the year 2100 is expected (Ocean Protection Council 2018, "State of California Sea-Level Rise Guidance"). Based on these projections and review of local SLR mapping, although there would likely be an increase in occurrences of significant storm events over the next 75 years, the site would not be significantly impacted.

The project includes improvements to pedestrian circulation through widening of the sidewalk, and provides the required number of parking spaces to avoid impacts to coastal access.

LUP policies 4.3-1 and 4.3-5 state that development shall restore and enhance visual quality in visually degraded areas and shall be sited and designed to avoid impacts to scenic resources and public scenic views. The buildings replaced existing visually degraded structures on the site. Through the Design Review process, the Architectural Board of Review found that the new buildings would not block views of the ocean or views of the mountains from public scenic vistas. Therefore, the project can be found consistent with these LUP policies related to visual quality.

C. CONDITIONAL USE PERMIT (SBMC §§28.94.020 AND 28.94.030.X):

1. The use is deemed essential or desirable to the public convenience or welfare and is in harmony with the various elements or objectives of the Santa Barbara General Plan.

The use as a building materials supply company and lumber yard is an allowable use under the M-1 zone district and will provide a desirable and convenient service to the community in that there is little land available for such industrial uses. The use is in harmony with applicable policies of the Santa Barbara General Plan, including Land Use Element Policy LG.8 and Economic Policy EF15 to encourage and protect the long-term integrity of light manufacturing uses and zoning.

2. The use(s) will not be materially detrimental to the public peace, health, safety, comfort and general welfare and will not materially affect property values in the particular neighborhood involved.

Before the applicant applied to redevelop the property in 2014, the site was used for M-1 zone type uses for over 30 years. The use as a building materials supply company and lumber yard will not be materially detrimental to the public health and safety of the neighborhood and will not affect property values since the surrounding parcels are currently developed with similar industrial type uses.

3. The total area of the site and the setbacks of all facilities from property and street lines are of sufficient magnitude in view of the character of the land and of the proposed development that significant detrimental impact on surrounding properties is avoided.

The 28,370 square foot property is located within an existing industrial type area and the existing buildings onsite respect all required setbacks. The site also provides adequate on-site parking to meet the parking demand of the proposed building materials supply company and lumber yard

use. The use is compatible with adjacent uses and would not have a detrimental impact on surrounding properties in that the area has a mix of uses, most of which are industrial in nature.

4. Adequate access and off-street parking including parking for guests is provided in a manner and amount so that the demands of the development for such facilities are adequately met without altering the character of the public streets in the area at any time.

A building materials supply company and lumber yard are not expected to result in traffic impacts as the use is consistent with historical uses on the property and a majority of the square footage (92%) will be used as warehouse. Transportation Division staff analyzed the redeveloped site in 2014 and found that the anticipated amount of additional traffic generated from the development will not have a project-specific traffic impact. The use as a building materials supply company and lumber yard will generate similar traffic as that analyzed in 2014.

Access to the site will remain unchanged and is adequate for the use. Adequate space is available on-site for required parking and for delivery and pick-up of materials. The parking demands of the use are met on-site. The use will not negatively alter the character of the public streets.

5. The appearance of the developed site in terms of the arrangement, height, scale and architectural style of the buildings, location of parking areas, landscaping and other features is compatible with the character of the area. The Planning Commission shall have the authority to approve the design of open space. Design shall mean size, shape, location and usability for proposed private, public, or quasi-public purposed and development. Approval of such open spaces may be expressly conditioned upon an offer of conveyance by the owner to the City of Santa Barbara of the development rights, the right to prohibit the construction of additional buildings, or other property rights, necessary to achieve the purpose set forth in this title.

The design of the buildings was reviewed and approved by the City's Architectural Board of Review to ensure consistency with applicable design and landscape guidelines. The use as a building materials supply company and lumber yard will not require additional site design changes.

6. Compliance with any additional specific requirements for a conditional use permit.

- (a) The use is compatible with ocean-dependent or ocean-related uses.

The OM-1 Zone allows for industrial uses as does the M-1 Zone. The property has historically been used for non-ocean-related light industrial type uses for more than 30 years. The use as a building materials supply company and lumber yard will not conflict with, and will be compatible with, existing or future ocean-dependent or ocean-related uses as the use does not represent an intensification of use and will not generate significant noise, smoke or traffic. Additionally, the use does not include sensitive receptors that may object to the potential nuisance-related impacts (such as noise or odor) of ocean-dependent or ocean-related uses. The use also has many ocean-related applications that include marine construction materials and equipment for piers, docks, shoring, boardwalk and a variety of building structures (e.g., naval, fire stations, boatyards, etc.), as evidenced by the company's supplying of materials for the following marine projects: Channel Islands National Park, Ventura Harbor Marina, Carpinteria Beach, Ventura Pier, Point Mugu, Port Hueneme Naval Base and the Colony at Mandalay Beach).

- (b) The property would have no feasible economic value if limited to ocean-dependent or ocean-related uses. This finding shall be substantiated by competent evidence determined by the Planning Commission to be objective which includes no present or future demand for ocean-dependent or ocean-related uses.

The site has historically been used for non-ocean-related uses for over 30 years. The previously existing metal buildings were constructed without HVAC on a site located in a flood hazard zone subject to high liquefaction potential and with contaminated soils. Construction of new buildings requires all of these issues to be remedied at significant cost. There is currently no demand from ocean-related or ocean-dependent uses for these buildings. Radius Commercial Real Estate (“Radius”), who represents the property owner, marketed the subject property since early April 2018 and, despite over 7,000 views, received no interest from ocean-related uses. Radius marketed the three rebuilt buildings down to 1,200 square feet in size, which is the smallest division given access to restrooms and entry/roll up doors. Radius did not receive any interest from any ocean-dependent or ocean-related uses for small, large, or entire site tenants. Radius received letters from other commercial real estate firms confirming no interest from ocean-related type uses for the property and/or in general.

*An Economic Feasibility Memo dated September 6, 2019, prepared by Michael Neal Arnold, Certified Appraiser, concludes that the property as currently developed would have no feasible economic value if operated with ocean-related uses because the annual loss for any ocean related use would be \$124,250.00. The appraiser also concludes that, hypothetically, had the property not been redeveloped with the existing new buildings, but instead developed for the purpose of operating as boat storage, there would be an annual loss of \$154,861.00 resulting in no feasible economic value. Assuming a reasonable economic return of 5 percent, the Memo found that a reasonable investor would experience a return about \$220,000 per year **below** what a typical investor would expect with the “As Built” scenario and a return of about \$215,000 per year **below** what a typical investor would expect with the “Hypothetical Outdoor Boat Storage Scenario.”*

Furthermore, a supplemental analysis provided by Mr. Arnold, date September 18, 2019, indicates that even if the property owner received the property for free, given the other construction and operational costs, and the low market rents, the owner would lose money under either scenario.

The analysis of each of the scenarios used conservative rental rates.

For example, the analysis of the “As Built” scenario found that the best example of a rental rate for marine specific space in the area was a West marine boat-related retail store, located very close to the subject property. The analysis concluded that the gross equivalent rent for the West Marine space would be \$1.63 to \$1.88. This rate is well above the rental rates in other nearby buildings, such as the Vercal Building which recently rented space for \$0.77/sf NNN. The report applied a rate of \$1.75 per square foot because although the subject property has newer buildings, one of the buildings (1,347 sf) can only be used for storage. Even with this rental rate, though, as described above, the As Built scenario loses significant amounts of money.

Similarly, for the “Hypothetical Outdoor Boat Storage” scenario, Chris Voss of the Commercial Fishermen of Santa Barbara (CFSB) indicated that the rental rate for boat storage on a nearby property operated by CFSB is \$140 per month for a boat, that rate is reduced and market rate is likely closer to \$180 per month. The report uses a rate of \$200 per month and still finds, as detailed above, that the scenario loses significant amounts of money.

In fact, the supplemental memo submitted by Mr. Arnold indicates that to make the “As Built” and “Hypothetical Outdoor Boat Storage” scenarios result in a return of 5 percent (a return commonly expected by real estate investors in Santa Barbara), the market rents for OM-1 uses would need to be \$5.05/sf and \$1,401/space respectively. And to break even (avoid loses, but receive no profit or income off of the significant investment), the rents for the “As-Built” and “Hypothetical Outdoor Boat Storage” scenarios would need to be \$2.73 and \$783/space respectively. Current market rents for the OM-1 uses are nowhere near these numbers.

The buildings on the property have been offered for lease since May 2018 at a rate of \$2.64/sf NNN, divisible down to 1,200 sf (to increase marketability), and there has been no interest by any OM-1 use, at any price.

Based on this information, the Planning Commission finds that present market rental rates for ocean-dependent or ocean-related uses do not support either the “As Built” Scenario or the “Hypothetical Outdoor Boat Storage” Scenario. Thus, the property would have no feasible economic value if limited to ocean-dependent or ocean-related uses.

II. Said approval is subject to the following conditions:

In consideration of the project approval granted by the Planning Commission and for the benefit of the owners and occupants of the Real Property, the owners and occupants of adjacent real property and the public generally, the following terms and conditions are imposed on the use, possession, and enjoyment of the real property:

- A. **ORDER OF DEVELOPMENT.** In order to accomplish the proposed development, the following steps shall occur in the order identified:
 - 1. Pay Land Development Team Recovery Fee (30% of all planning fees, as calculated by staff).
 - 2. Record any required documents (see Recorded Conditions Agreement section).
- B. **RECORDED CONDITIONS AGREEMENT.** The Owner shall execute a *written instrument*, which shall be prepared by Planning staff, reviewed as to form and content by the City Attorney, Community Development Director and Public Works Director, recorded in the Office of the County Recorder, and shall include the following:
 - 1. **Approved Development.** The development of the Real Property reviewed and approved by the Planning Commission on August 15, 2019 is limited to the structures and improvements shown on the plans signed by the chairperson of the Planning Commission on said date and on file at the City of Santa Barbara, and use of the project site as a building materials supply company and lumber yard. Prior to initiating a change of use to anything other than an OM-1-allowed use, the Owner shall submit a letter to the Community

Development Director detailing the proposal, and the Director shall determine the appropriate review procedure.

2. **Tsunami Liability.** The Owner understands and acknowledges that the project site may be subject to hazards from tsunamis. The Owner assumes the risks of injury, damage, and liability from such hazards in connection with the permitted development. The Owner unconditionally waives any present, future, and unforeseen claims of damage or liability against the City and its employees for injury or damage from such hazards. Further, the Owner agrees to indemnify and hold harmless the City and its employees for any alleged or proven acts or omissions and related cost of defense related to the City's approval of this permit and arising from the aforementioned or other natural hazards, whether such claims should be stated by the Owner's successor-in-interest or third parties. In the event of a tsunami hazard event that damages the development, the Owner shall remove all recoverable debris associated with the development from the beach and the ocean (if applicable) and lawfully dispose of the material at an approved disposal site. Such removal shall require authorization through an emergency and/or regular Coastal Development Permit process.
3. **BMP Training.** Training on the implementation of Best Management Practices (BMPs) shall be provided to every employee by the property owner/management in order to prevent or reduce the discharge of pollutants to storm water from buildings and ground maintenance. The training shall include using good housekeeping practices, preventive maintenance and spill prevention and control at outdoor loading/unloading areas in order to keep debris from entering the storm water collection system.

C. **GENERAL CONDITIONS.**

1. **Prior Conditions.** These conditions are in addition to the conditions identified in Staff Hearing Officer Resolution No. 024-14.
2. **Compliance with Requirements.** All requirements of the city of Santa Barbara and any other applicable requirements of any law or agency of the State and/or any government entity or District shall be met. This includes, but is not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.), the 1979 Air Quality Attainment Plan, and the California Code of Regulations.
3. Approval Limitations.
 - a. The conditions of this approval supersede all conflicting notations, specifications, dimensions, and the like which may be shown on submitted plans.
 - b. Any deviations from the project description, approved plans or conditions must be reviewed and approved by the City, in accordance with the Planning Commission Guidelines. Deviations may require changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.
4. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal

and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/Owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of being notified of a lawsuit regarding the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

III. Said approval is subject to the following time Limits:

A. NOTICE OF CONDITIONAL USE PERMIT APPROVAL TIME LIMITS:

The Planning Commission action approving the Conditional Use Permit shall terminate three (3) years from the effective date of the approval, unless:

1. An extension is granted by the Community Development Director prior to the expiration of the approval; or
2. Operations of the use have commenced.

B. NOTICE OF COASTAL DEVELOPMENT PERMIT TIME LIMITS (SBMC §28.44.230):

The Planning Commission action approving the Coastal Development Permit shall expire two (2) years from the date of final action upon the application, per Santa Barbara Municipal Code §28.44.230, unless:

1. A Building permit for the work authorized by the coastal development permit is issued prior to the expiration date of the approval.
2. The Community Development Director grants an extension of the coastal development permit approval. The Community Development Director may grant up to three (3) one-year extensions of the coastal development permit approval. Each extension may be granted upon the Director finding that: (i) the development continues to conform to the Local Coastal Program, (ii) the applicant has demonstrated due diligence in completing the development, and (iii) there are no changed circumstances that affect the consistency of the development with the General Plan or any other applicable ordinances, resolutions, or other laws.

C. NOTICE OF TIME LIMITS FOR PROJECTS WITH MULTIPLE APPROVALS (SBMC §28.87.370):

If a project requires multiple discretionary permits or approvals, the expiration date shall be measured from date of final action of the City on the longest discretionary approval permit or approval related to the application (excluding design review approval), unless otherwise specified by State or federal law.

This motion was passed and adopted on the 19th day of September, 2019 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 0 ABSTAIN: 0 ABSENT: 1 (Schwartz)

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.

Heidi Reidel, 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.