



City of Santa Barbara California

STAFF HEARING OFFICER STAFF REPORT

REPORT DATE: February 22, 2017
AGENDA DATE: March 1, 2017
PROJECT ADDRESS: 2609 De La Vina Street (MST2016-00202)
TO: Susan Reardon, Senior Planner, Staff Hearing Officer
FROM: Planning Division, (805) 564-5470
 Beatriz Gularte, Senior Planner *BEG*
 Tony Boughman, Assistant Planner *TB*

I. PROJECT DESCRIPTION

The project consists of a tenant improvement for a Medical Marijuana Storefront Collective Dispensary in an existing commercial space, and includes interior floor plan improvements, minor exterior alterations, and security improvements for the existing commercial building. The proposal was revised based on comments from the Planning Commission at an appeal hearing on a previous application on January 14, 2016.

II. REQUIRED APPLICATION

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



Vicinity Map 2609 De La Vina Street

III. SITE INFORMATION AND PROJECT STATISTICS

A. SITE INFORMATION

Applicant:	Ihab Ghannam		
Property Owner:	Josiah F. Jenkins Trust		
Site Information			
Parcel Number:	051-292-003	Lot Area:	9,058 square feet
General Plan:	Commercial/Med High Residential	Zoning:	C-2
Existing Use:	Vacant Commercial Tenant Space	Topography:	5% slope
Adjacent Land Uses			
	North - Commercial		East - Commercial
	South - Commercial		West - Residential

IV. BACKGROUND

A previous application at this location was submitted by this applicant and his previous attorney. That application was reviewed and denied by the Staff Hearing Officer on November 11, 2015 (Exhibit C). The applicant and his current attorney appealed the Staff Hearing Officer decision to the Planning Commission (Exhibit D). The Planning Commission determined that the application was not supportable with the information provided, and denied the applicant’s appeal. They indicated the location could possibly be approvable with sufficient operational measures in place to provide access and security, and directed an amended application to return to the Staff Hearing Officer. The current application seeks to respond to the comments of the Staff Hearing Officer and the Planning Commission, and comply with the Criteria for Issuance for a Storefront Collective Dispensary Permit.

The current application (MST2016-00202) is a complete revision, and replaces the previous application (MST2015-00117), with the changes outlined in a preliminary statement on Page 1 of the revised application (Exhibit A). In addition, a list of goods is provided (Exhibit B).

V. ISSUES

Staff recommends that the Staff Hearing Officer focus on the applicant’s revised responses to the reasons for the denial of the previous application, and the comments from the Planning Commission at the appeal hearing, and consider the Criteria for Issuance in Section VI.C. The previous application was found out of compliance with Criteria 1, 7, 8, and 9. The revised responses to these criteria are discussed below.

VI. ZONING ORDINANCE CONSISTENCY

Medical Cannabis Dispensaries are governed by Chapter 28.80 of the Santa Barbara Municipal Code (SBMC). The following discussion provides an analysis of the project's consistency with applicable sections of that Chapter.

A. STOREFRONT COLLECTIVE DISPENSARY LIMITATIONS

1. The parcel is commercially zoned with C-2, General Commercial and located in the allowed 2600 to 2900 blocks of De La Vina Street.
2. The tenant space is a storefront location which affords good public views of the entrance door with glass and the front window, approximately 17 feet from the street curb at De La Vina Street (28.80.050.B).
3. The location is approximately one mile from the approved dispensary located at 3617 State Street, and over two and a half miles from the approved dispensary at 118 North Milpas Street. Therefore, the location is not within 1,000 feet of another dispensary.
4. It would be the only dispensary in the Upper De La Vina Street area, and it would not result in more than three permitted dispensaries in the City. The two other locations at 3617 State Street and 118 North Milpas Street have been approved but are not open and operating.
5. The City has not issued more than three dispensary permits at any one time. Currently a building permit has been issued for 118 North Milpas Street. When the project is ready for Certificate of Occupancy, the Storefront Collective Dispensary Permit will be issued.

B. FILING REQUIREMENTS – INFORMATION REGARDING STOREFRONT COLLECTIVE DISPENSARY MANAGEMENT

SBMC §28.80.060.F.5 requires that if a Storefront Collective Dispensary is an unincorporated association, the applicant provide a copy of the Collective's Secretary of State Articles of Incorporation. The applicant submitted Articles of Incorporation that meet ordinance requirements (Exhibit A).

C. ISSUANCE CRITERIA

The Zoning Ordinance requires that the Staff Hearing Officer consider the following issuance criteria in determining whether to grant or deny a Storefront Collective Dispensary permit (SBMC §28.80.070.B):

- 1. That the Collective Dispensary permit and the operation of the proposed Dispensary will be consistent with the intent of the Compassionate Use Act of 1996 and the SB 420 Statutes for providing medical marijuana to qualified patients and primary caregivers, and with the provisions of this Chapter and the Municipal Code, including the application submittal and operating requirements herein.*

The Staff Hearing Officer found the previous application inconsistent with this Criterion because it gave the appearance of intending to be a profit-making business venture rather than operated as a nonprofit collective as required by the Zoning Ordinance. The revised application includes Articles of Association which indicate the proposed dispensary will be set up as a local nonprofit association. The revised operations plan and membership agreement indicate the dispensary will serve qualified patients and primary caregivers (Exhibit A).

2. That the proposed location of the Storefront Collective Dispensary is not identified by the City Chief of Police as an area of increased or high crime activity.

The location is not identified by the City Police Department as an area of increased or high crime activity.

3. For those applicants who have operated other Storefront Collective Dispensaries within the City, that there have not been significant numbers of calls for police service, crimes or arrests in the area of the applicant's former location.

The applicant has not operated any other Storefront Collective Dispensaries in the City.

4. That issuance of a Collective Dispensary permit for the Collective Dispensary size requested is appropriate to meet needs of the community for access to medical marijuana.

The proposal involves a tenant improvement in the existing 850 square foot commercial space in a two-tenant building. The proposed size is appropriate to safely and efficiently operate a dispensary to meet the needs of the community.

5. That issuance of the Collective Dispensary permit would serve needs of City residents within a proximity to this location.

The dispensary would be located in the Upper De La Vina area as allowed in the Ordinance, in the Oak Park neighborhood and centrally located among the Samarkand, East San Roque, the eastern end of Upper State, and Upper East neighborhoods, and would serve the needs of City residents within a proximity to this location. There is no other operating dispensary in this area of the City.

6. That the location is not prohibited by the provisions of this Chapter or any local or state law, statute, rule, or regulation, and no significant nuisance issues or problems are likely or anticipated, and that compliance with other applicable requirements of the City's Zoning Ordinance will be accomplished.

The proposed location is not prohibited, and it complies with the location limitations in SBMC §28.80.050. The parcel is in the C-2, General Commercial zone and located in the area of upper De La Vina Street where dispensaries are specifically allowed. The tenant space has good public visibility and no significant nuisance issues or problems are likely or anticipated with regard to this location.

7. That the Dispensary's Operations Plan, its site plan, its floor plan, the proposed hours of operation, and a security plan have incorporated features necessary to assist in reducing

potential crime-related problems and as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises; the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

The Staff Hearing Officer found the previous application inconsistent with this Criterion because of inconsistencies in the proposed operations and security plans, and because of security and access concerns regarding the site configuration. The previous application contained contradictions among the submitted operations plan, the site plan, and statements by the applicant in the hearing on how the lobby waiting area and intake process would occur. In addition, there were questions regarding the number of security personnel on site during operating hours and their duties beyond checking in patients. Furthermore, the application was not clear on how the dispensary would assist in reducing crime-related problems. Rather than providing details of the proposed operations, the application included descriptions of operations copied from another City dispensary application at another location.

The on-site parking lot is behind the rear of the building, accessed by an alley from Constance Avenue. This location requires members to walk around to Constance Avenue and De La Vina Street to access the front entry. It is infeasible to alter the site configuration. The revised application addresses concerns about the site configuration by providing security escorts for members. The security escort is proposed to be required for members exiting the dispensary who park in the rear parking lot, and may be requested by those who park on the street. The security escort may be requested for members arriving at the dispensary who park in the rear parking lot or on the streets by calling ahead. Wheelchair assistance will be available for those who request it and the dispensary will have a wheelchair available.

The proposed physical improvements to the property remain basically the same as previously shown. The site plan, floor plan, and security plan have the features needed to comply with this criterion. The floor plan controls entry into the premises, and from the waiting area into the dispensing area. Adequate cameras and lighting are provided. Secure storage is provided. One exterior rear door is proposed to be removed and infilled with a wall which will eliminate security concerns. The door currently leads outside to a narrow corridor between buildings without good visibility. The remaining rear door is proposed to be used only for emergencies. In addition, the proposed security plan, membership information, membership agreement, and interior informational signage incorporate reasonable measures to control the conduct of patrons. The security plan includes adequate cameras, lighting, door locks, information for patrons regarding expected behavior, and security personnel to comply with this criterion.

8. That all reasonable measures have been incorporated into the Dispensary security plan or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, marijuana use in public, or creation of a public or private nuisance, or interference of the operation of another business.

The Staff Hearing Officer found the previous application inconsistent with this Criterion for reasons including: concerns that the site configuration with the parking lot in the rear lacks good public visibility; the lack of security patrolling the rear of the property; and, the lack of clear information on how the dispensary will reduce the potential for disturbances, loitering, marijuana use in public, and creation of a public or private nuisance.

The revised application provides a detailed operations plan describing measures to control patrons' conduct via enhanced security patrols covering the rear of the property; clear communication to members; and signage describing expected member behavior, as well as a stated zero tolerance policy regarding misbehavior. The proposed physical improvements to the property remain basically the same as previously shown. The site plan, floor plan, and security plan show the features needed to comply with this criterion. The floor plan controls entry into the premises, and from the waiting area into the dispensing area. Adequate cameras and lighting are provided. Secure storage is proposed in a safe in a rear office.

9. That the Storefront Collective Dispensary is likely to have no potentially adverse effect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance, and that the Dispensary will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

The Staff Hearing Officer found the previous application inconsistent with this Criterion because the site configuration with the parking located in the rear, and the long path of travel without direct access to the entry, could result in nuisance activities and adverse effects on the surrounding area. The lack of security patrolling the rear of the property was also a concern with this criterion.

The revised application responds to the security concerns by including a full-time security guard patrolling the outside and rear of the property, and security escorts. The operations plan also includes a "designated Community Relations Manager" as a point of contact for those with security, nuisance, and community-related concerns. At the appeal hearing on January 14, 2016, the applicant/appellant requested that the Planning Commission consider if this property is an acceptable location for a dispensary. Four of the seven Commissioners indicated that, given the information presented, the site could be an approvable location, and directed the applicant to return to the Staff Hearing Officer for review of a revised application. The location is an existing commercial building in a commercial district with on-site parking meeting the requirement for commercial parking. The physical improvements to the building demonstrating compliance with Criterion 8 are intended to help avoid adverse effects in the surrounding area. Hours of operation would be limited to 8 AM to 6 PM Monday through Saturday, thereby avoiding late night and early morning disturbances.

10. That any provision of the Municipal Code or condition imposed by a City-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws, will not be violated.

No violations of municipal code provisions, conditions of any City-issued permits, or any other local or state law, regulation or order, or any condition imposed by permits issued in compliance with any local or state law have been identified. The Staff Hearing Officer has the authority to suspend or revoke the Storefront Collective Dispensary Permit pursuant to SBMC Section 28.80.120 if it appears to that Officer that the Dispensary permittee has violated any of the requirements of Chapter 28.80, or the dispensary is being operated in a manner which violates the operational requirements or operational plan required by the Dispensary Ordinance, or it is operated in a manner which conflicts with state law.

11. That the Applicant has not made a false statement of material fact or has omitted to state a material fact in the application for a permit.

The applicant signed a statement in the application that he has personal knowledge of the information contained in the application, and that the information is true and correct. Staff is not aware of any false statements or omissions of material facts in the application.

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.

The applicant repeated the required background check in 2017. The applicant provided a signed statement as part of his application that he has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices with respect to the operation of another business within the City.

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

STOREFRONT COLLECTIVE DISPENSARY PERMIT (SBMC §28.80.070)

The Ordinance states that upon an application for a Storefront Collective Dispensary permit being deemed complete, the Staff Hearing Officer shall either issue a Storefront Collective Dispensary permit, issue a Storefront Collective Dispensary permit with conditions in accordance with this Chapter, or deny a Storefront Collective Dispensary permit.

The application complies with the location criteria of SBMC §28.80.050, as outlined in Section VI.A of the staff report. The Staff Hearing Officer must determine that the application complies with the criteria for issuance of a Storefront Collective Dispensary permit set forth in SBMC §28.80.070.B, as discussed in Section VI.C of the Staff Report and in the applicant's submittal.

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Exhibits:

- A. Revised Application and Operations Plan for Santa Barbara Collective
- B. Santa Barbara Collective Proposed Menu
- C. Staff Hearing Officer Minutes November 11, 2015
- D. Planning Commission Minutes January 14, 2016
- E. Preliminary Conditions of Approval

Project Plans – distributed separately