



Agenda Report

Item #: 23-1326

Meeting Date: 8/01/2023

TITLE: APPEAL OF PLANNING APPLICATION 22-04 FOR A RETAIL CANNABIS STOREFRONT BUSINESS LOCATED AT 2790 HARBOR BOULEVARD, SUITES 107, 109, AND 115 (FROM THE EARTH)

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

PRESENTED BY: MICHELLE HALLIGAN, CONTRACT PLANNER

CONTACT INFORMATION: MICHELLE HALLIGAN, CONTRACT PLANNER, (714) 754-5608

RECOMMENDATION:

Staff recommends the City Council:

1. Uphold the Planning Commission's decision and adopt a Resolution to deny Planning Application 22-04; or
2. Overturn the Planning Commission's decision and adopt a Resolution to approve Planning Application 22-04, subject to City Council findings and conditions of approval.

APPLICANT OR AUTHORIZED AGENT:

The authorized agent is Dan Zaharoni on behalf of DBO Investments CM dba From the Earth, and the property owner, Tri-Harmony Properties, LLC.

BACKGROUND:

Project Site / Environs

The subject property is located at 2790 Harbor Boulevard, Suites 107, 109, and 115. The property is bounded by Harbor Boulevard to the west, Adams Avenue to the north, and Peterson Place to the east. The site is zoned C1 (Local Business District) and is surrounded by commercially-zoned properties (C1 and C2, General Business District) and a residentially-zoned property across Peterson Place (R3 – Multi-Family Residential High Density and R3 – Multiple Family Residential District). The site has a General Plan Land Use Designation of General Commercial.

Existing development on the subject property consists of a 24,603-square-foot, three-story multi-tenant commercial building. The subject property shares a surface parking lot with the adjacent commercially zoned properties at 2706, 2710, 2730, and 2750 Harbor Boulevard. Vehicular access is provided to these properties by multiple driveways, including two along Harbor Boulevard, one along Adams Avenue, and three along Peterson Place.

Application Request

The applicant requests a Conditional Use Permit (CUP) to establish "From the Earth," a retail cannabis storefront business with delivery. The proposed storefront would occupy three contiguous first floor suites totaling 2,157 square feet (Suites 107, 109, and 115). The combined suites have frontage on both Harbor Boulevard and Adams Avenue. The proposed hours of operation are 9 AM to 9 PM, seven days a week.

Planning Commission Denial

The application was heard by the Planning Commission on May 22, 2023. After receiving staff's presentation, the Planning Commission asked staff questions and then opened the public hearing. During the public hearing, the applicant provided a PowerPoint presentation and the Planning Commission subsequently asked the applicant questions. The Planning Commission then opened the public hearing and considered public comment.

Public Comment

During the public hearing, approximately ten members of the public spoke in opposition to the project, expressing concerns regarding retail cannabis operations at this location, and displacement of the existing Beauty Salon that currently occupies Suite 115. One member of the public spoke in support of the application. In addition, the Planning Commission considered written public comments. The applicant provided three letters of support that were attached to the staff report as part of the Applicant Letter. Two comment letters were also submitted to the City prior to the Planning Commission hearing, one in opposition to the proposed use and one that requested adding several conditions of approval (see Attachment 6 – Planning Commission Public Comments).

Decision

After considering public comment and closing the public hearing, the Planning Commission voiced specific concerns in regard to non-compliance with the Conditional Use Permit required findings [CMMC Section 13-29 (g)(2)(b)] in that: (1) during the public hearing, the applicant presented (both verbally and in presentation form) that the cannabis use would associate with a local youth sporting organization, and the Commission believed that this constituted a conflict with the health, safety and general welfare of the public by associating a business that specializes in the sale of cannabis with the City's youth population; and (2) the Commission raised a concern that the proposed new business operation would result in a currently operating business (Angel's Beauty Salon) to cease operation at its existing location. When the Planning Commission requested clarification about the status of the existing business during the public hearing, the applicant was unclear of the existing business' future status. The Commission further indicated that granting the Conditional Use Permit would not be consistent with General Plan Land Use Element Policy LU-6.7, to "Encourage new and retain existing businesses that provide local shopping and services", in that an existing business would not be retained as a result of the proposed new business.

After careful consideration, the Planning Commission Chairman made a motion which was seconded by the Vice-Chairman to continue the item to investigate further the Planning Commission's aforementioned concerns prior to making a final decision. However, that motion failed and an alternative motion was made for denial of the project. The application was denied on a five to two vote.

The final denial Resolution reflecting the May 22, 2023 Planning Commission action is provided as Attachment 4 to this report. The meeting minutes and public comments considered by the Planning Commission are provided as Attachment 5 and Attachment 6, respectively.

Links to the staff report and meeting video for the May 22, 2023 Planning Commission hearing are provided below:

- Staff Report & Attachments –
<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6214490&GUID=729E7C3B-A5BD-480D-9590-5A06C301479F>
- Video –
https://costamesa.granicus.com/player/clip/3995?view_id=14&redirect=true&h=4da1bd57d4293cb8a9aad3a18ccf31c7

Appeal of Planning Commission's Decision to Deny the Application

On May 30, 2023, an appeal of Planning Commission's denial of the project was filed by Dan Zaharoni, an owner of the proposed cannabis establishment. The appeal application and supplemental information is included as Attachment 3 to this report

ANALYSIS:

Pursuant to CMMC Section 13-10(i)(2)(c), the Planning Commission has the authority to "approve, conditionally approve or deny applications for conditional use permits..." Additionally and pursuant to CMMC Sections 13-28(B) and 13-200.93(c)(1), subject to the approval of the Planning Commission, a CUP is required for the establishment of cannabis retail storefronts in a commercial zone. All cannabis operators in Costa Mesa are required to obtain a Conditional Use Permit (CUP). As defined in the CMMC, a CUP is "a discretionary approval usually granted by the Planning Commission which allows a use or activity not allowed as a matter of right, based on specified findings". Unlike uses that are listed in the CMMC that are permitted "by-right", a use that requires a CUP necessitates the Planning Commission to use their collective judgment to determine whether a proposed project meets the required CUP findings and should be approved.

Required CUP Findings

CMMC Title 13, Section 13-29(g), requires that the Planning Commission consider and make the following specific findings in conjunction with a CUP review:

- *The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area;*
- *Granting the conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood; and*
- *Granting the conditional use permit will not allow a use, density or intensity which is not in*

accordance with the General Plan designation and any applicable specific plan for the property.

If all of the above findings cannot be made, the Planning Commission is obligated to deny the request. In this case, the Planning Commission determined that they could not make two of the required Conditional Use Permit findings. Specifically, the Planning Commission could not make the finding that granting the conditional use permit would not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood, and granting the conditional use permit would not allow a use, density or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property.

Issued Raised In The Appeal

The applicant submitted an appeal of the Planning Commission decision to deny the application (refer to Attachment 3). In summary, the applicant (appellant) has stated four reasons for the appeal, which include: (1) that the Beauty Salon is on a month-to-month lease and has no right to stay beyond 30 days; (2) that one of the Commissioners had an impermissible conflict of interest; (3) that one of the Commissioners had a personal relationship with the Beauty Salon which was not disclosed and that Commissioner should have recused himself; and (4) the basis of the Planning Commission denying the application because of the applicant's association with the City's youth organization is not an appropriate basis for denial.

It should be noted after receiving the appeal application which indicated the existing Beauty Salon had a new lease arrangement, staff requested more information from the applicant. On Wednesday, June 28, 2023, the property owner provided a relocation and lease extension agreement that allows the existing Salon to relocate to another first-floor space at the subject property for a five-year term. The applicant did not provide this information previously because the relocation and lease extension agreement was not signed until June 28, 2023. However, the Council may consider this information in their "de novo" review of the application.

City Council "De Novo" Hearing

Pursuant to CMMC Title 2, Chapter 9, Appeal and Review Procedures, the City Council shall conduct a new or "de novo" review of the matter being appealed. The City Council may exercise its independent judgment and discretion in making a decision, and the appeal hearing is not limited to the grounds stated for the appeal or the evidence that was previously presented to the Planning Commission. Nevertheless, there shall be a presumption that the decision made by the Planning Commission was reasonable, valid, and not an abuse of discretion; and the appellant shall have the burden of proof of demonstrating otherwise by a preponderance of the evidence presented. The City Council's decision on the matter is the final decision.

ENVIRONMENTAL DETERMINATION:

Per CEQA Guidelines Section 15270(a), CEQA does not apply to projects which a public agency rejects or disapproves. However, if the City Council desires to approve the proposed use, the project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15301 for the permitting and/or minor alteration of Existing Facilities, involving negligible or no expansion of the existing use. This project site contains an existing commercial building that has been used for commercial activities and the application does not propose an increase in floor area. The project also

complies with all applicable business operational standards of Title 9 and 13 of the CMMC. Furthermore, none of the exceptions that bar the application from a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. Specifically, the project would not result in a significant cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location; and would not impact any historic resources.

ALTERNATIVES:

The City Council has the following alternatives:

1. *Deny the request.* The City Council may uphold the Planning Commission's decision and adopt a Resolution to deny the request (refer to Attachment 1);
2. *Approve the request, subject to conditions of approval.* The City Council may overturn the Planning Commission's decision and approve the request subject to findings as identified by the City Council. A Resolution for approval is provided as Attachment 2 and includes staff recommended conditions of approval;
3. *Remand the request back to the Planning Commission.*

FISCAL REVIEW:

There are no fiscal impacts to the City's General Fund with this agenda item.

LEGAL REVIEW:

The City Attorney's Office has reviewed this report and approves it as to form.

PUBLIC NOTICE:

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-foot radius of the project site. The required notice radius is measured from the external boundaries of the property. (See attached Notification Radius Map.)
2. **On-site posting.** A public notice was posted on each street frontage of the project site.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper.

As of the date this report was completed, no written public comments were received in response to the City Council hearing notice. Any additional public comments received prior to the August 1, 2023 City Council meeting will be provided separately.

CITY COUNCIL GOALS AND PRIORITIES:

This item is administrative in nature.

CONCLUSION:

The proposed use is a cannabis storefront business with delivery that would be located at 2790 Harbor Boulevard, Suites 107, 109, and 115. The application was denied by the City's Planning Commission on the basis that it could not make the required findings for granting a Conditional Use Permit. Subsequently, the applicant appealed that decision and provided supplemental information.

The City Council's review of the application is "de novo". Staff recommends that the City Council uphold the Planning Commission's decision and adopt a Resolution to deny the request; or overturn the Planning Commission's decision and adopt a Resolution to approve the request, subject to findings and conditions of approval.