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CITY OF COSTA MESA
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Appeal of Planning Commission Decision:

\$1,220.00 (Tier 1)¹\$3,825.00 (Tier 2)²

Appeal of Non-Planning Commission Decision:

\$690.00 (Tier 1)¹\$3,825.00 (Tier 2)²

APPLICATION FOR APPEAL OR REVIEW

Applicant Name* Appellant: VMA Harbor Place Holding Company, represented by Carney Mehr, ALC

Address 1902-A, 1902-B, 1904, 1906 Harbor Boulevard, and 440-446 West 19th Street, Costa Mesa

Phone 949-629-4676

REQUEST FOR: ☒ APPEAL ☐ REVIEW**

Decision of which appeal or review is requested: (give application number, if applicable, and the date of the decision, if known.)

February 24, 2025 Planning Commission Approval of PCUP-24-0011

Decision by: Planning Commission

Reasons for requesting appeal or review:

Please see attached letter for basis for appeal.

Date: March 3, 2025

Signature: [Signature]

*If you are serving as the agent for another person, please identify the person you represent and provide proof of authorization.

**Review may be requested only by the City Council or City Council Member.

For office use only – do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

If appeal or review is for a person or body other than City Council/Planning Commission, date of hearing of appeal or review

Updated April 2020

¹ Includes owners and/or occupants of a property located within 500 feet of project site (excluding owners and/or occupants of the project site).

² Includes the project applicant, owners and/or occupants of the project site, and owners and/or occupants of a property located greater than 500 feet from the project site.



CARNEY MEHR LAW

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March 3, 2025

City of San Costa Mesa
City Council
Attn: Honorable Mayor John Stephens
77 Fair Driver
Costa Mesa, California 92626
Via Costa Mesa Planning Division
(email address)

Sent via email

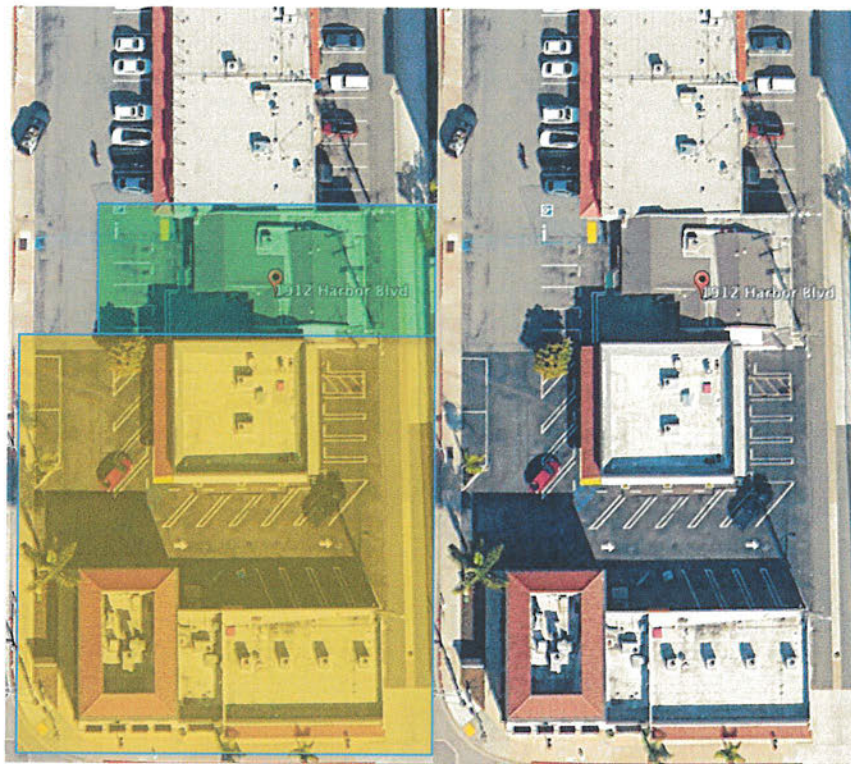
Re: Appeal of Planning Commission February 24, 2025 Approval of PCUP-24-0011
Address: 1912 Harbor Boulevard
Application No.: PCUP-24-0011

To the Honorable Mayor and Members of the City Council:

This firm represents VMA Harbor Place Holding Company, the owner of the real property located at 1902-A, 1902-B, 1904, 1906 Harbor Boulevard, and 440-446 West 19th Street in the City of Costa Mesa, commonly called Harbor Place ("Harbor Place"), with regard to the Appeal of the Planning Commission's February 24, 2025 Approval of the Application for CUP identified above. Please note, at the appeal deadline today, seven days after the Planning Commission hearing, neither the City staff's nor the Applicant's PowerPoint presentations from the hearing were available, despite requests for them. Therefore, we anticipate submitting supplemental comments once these are provided.

Harbor Place is immediately adjacent to the proposed "Green Mart" retail cannabis storefront and delivery service use at 1912 Harbor Boulevard (the "Green Mart"). Harbor Place is shown shaded in orange on the first aerial image below and Green Mart, as

proposed, is shown shaded in green. The second image is identical to the first but without the shading.



The purpose of this correspondence is to appeal the Planning Commission's February 24, 2025, approval of PCUP 2024-0011 which permits a retail and delivery cannabis use at 1912 Harbor Boulevard. For the reasons listed herein, our client and its tenants' submitted comments to the Planning Commission and continue to strongly oppose the approval of Conditional Use Permit PCUP-24-0011.

Harbor Place incorporates several longstanding, family-friendly restaurants and specialty food shops such as Il Dolce and Cinderella Cakes, as well as Phra Nakhon Thai, BobaPop, and a nutritional center. While we recognize that the City of Costa Mesa allows for dispensaries to locate within commercial zoning, the conditions currently proposed do not protect existing businesses or properties and instead defer mitigation of recognized negative impacts. As discussed further herein, the conditions of approval are not sufficient to negate the propensity for this use to create safety issues. While we urge the City Council to deny this application, should the Council intend to allow the use, we request the City Council consider and address the following outstanding issues:

Lack of Basic Plan Information and Resulting Deferred Mitigation

The Costa Mesa Planning Commission approved the cannabis project with a vote of three to two while expressing significant reservations about the project's potential

parking and circulation impacts, lack of plan clarity, and certain outstanding operational characteristics, including design failures, delivery questions, and the uncertainty as to the ultimate location of a bicycle rack. The Planning Commission indicated that not much could be done to address these impacts due to state and local regulation limits. However, according to Zoning Code Section 9-494 (Conditional Use Permit Required) a CUP is required to conduct a cannabis business, and Section 13-29(f) (Planning Application Review Process, Conditions) indicates that the City, via the Planning Commission, can "impose reasonable conditions to assure compliance with the applicable provisions of this Zoning Code," and to assure compatibility with surrounding properties and uses, and to protect the public health, safety, and general welfare. Essentially, the CUP is the permitting tool within the larger application process to address these operational and design deficiencies.

The Planning Commission is tasked with the obligation to deny, approve with conditions, or continue the CUP application to ensure neighborhood compatibility and effective circulation and parking that will mitigate the detrimental impacts to the health, safety, and welfare of the public and surrounding properties. Despite this, the Planning Commission approved Green Mart's application, even though the application left outstanding design and operational problems on the table and deferred them to the plan check phase or worse, to an uncertain future date when the problems actually arise.

For example, General Condition No. 1 (Planning Condition) of the approved resolution, requires the applicant to "...comply with the approved plans...". Yet, the presentation to the Planning Commission by City staff made clear the plans are not yet final or ready to be approved. Neither Planning staff nor the applicant nor his architect were able to explain how employees access the employee only portion of the business or even how employees transition from customer side of the retail counter to the employee side. How is it possible to comply with Condition No.1 with incomplete plans?

These plans do not provide adequate and basic plan information to conduct a proper Planning Commission assessment or to be able to utilize them in the development of construction-level drawings. The plans do not have a legend to show basic information such as a door swing detail (for access from the counter area to the customer area), walls that are to be demolished, or new walls to be erected (to determine the extent of the building improvements and the building's legal non-conforming standing). Moreover, the plans do not show a lounge area or shelving plan to justify the purpose and need for the chimney, which is not yet required to be made inoperable and creates a potential odor emission problem. Additionally, the bicycle area was generally shown on the site plan, but a specific location was not identified, and improvements to mitigate circulation and parking conflicts between vehicle parking and bicyclists was not shown. Perhaps the most concerning evidence of this was staff admissions that plans were "not fully flushed out", and that these plan details would be addressed at the plan check phase – well after the conditions were approved by the Planning Commission.

In another example, the elevations approved by the Planning Commission cannot be realized as illustrated. The elevations indicate that parapets will surround the existing sloped roof. How can stormwater drain from the sloped roofs, especially when blocked by the parapets? It is not possible to determine whether the applicant is proposing, if anything, new flat roofs (which are not illustrated), holes within the parapets (which are not illustrated), or roof crickets with rain gutters that run down the exterior walls to appropriately drain the water. Again, basic plan information is needed to determine if the elevation can actually be built as illustrated and, more importantly, to conduct a proper compatibility determination as required by the CUP process. Please note that HDL Companies, the City's consultant for cannabis projects, is charged with plan review in accordance with the provisions of CCR Section 55006 "process diagram," which is largely focused on storage and access points. Staff indicated at this presentation that HDL is not responsible for the City's plan review for all other concerns and purposes.

Additionally, adequate operational information was not provided to the Planning Commission to address the actual operational impacts, which include, but are not limited to, blocked access to the rear parking spaces, designated loading areas, and the "convenience store" operating concept. While there are no parking spaces immediately behind the proposed project, the project shares parking with the shopping center to its immediate north, which includes several parking spaces in the alley.

At the meeting Keith Scheinberg, Founder, testified that this storefront will be "different" than the typical cannabis storefront. He indicated that the Green Mart storefront will be fast-paced and designed for quick "in and out" service. He indicated that the development will not have "a back store feel" and will provide more product in the customer area not offered in any store for an "ease of convenience process." Mr. Scheinberg also illustrated examples of the customer service area that consists of refrigerators along the perimeter of the store with shelving racks located within the middle of the customer area. The customer area appeared to be similar to a convenience store; hence, the "convenience store" operation concept. He also testified that two of three non-ADA parking spaces directly in front of the store would be designated for deliveries and vendor deliveries/unloading. The fourth space is reserved for ADA use, leaving one space directly in front of Green Mart for customer parking.

The convenience store concept was not discussed or assessed in the staff report. Since this concept would appear to cater directly to customer visits and less to deliveries, an assessment is needed to identify potential parking and circulation impacts, and related mitigation to address these impacts. For example, the staff report did not identify nor prohibit parking within the Harbor Place parking lot which is immediately adjacent, shares ingress and egress, and but is also entirely separate from the parking spaces available to Green Mart. The staff report indicates that if "parking shortages or other parking-related problems occur that are related to the proposed cannabis storefront, the business owner or operator will be required to monitor the parking lot and institute appropriate operational measures necessary to minimize or eliminate the problem." Staff

has not analyzed the convenience store operation concept and similarly has not defined a "parking shortage" or thresholds for defining "parking-related problems." Furthermore, staff is allowing the *operator* to determine when its own operations become a problem. The City cannot actually expect the operator and/or its employees to monitor itself and come up with appropriate "parking demand management techniques." This is a deviation from the purpose of a Conditional Use Permit.

In reality, the surrounding property owners and their tenants will now be obligated to monitor the site and report issues to the City's Code Enforcement. This poses its own concerns as there are no regulations in the City's cannabis-related codes to address a complaint-based revocation process for cannabis storefronts. There is no certainty as to when, if ever, a cannabis CUP would be revoked as all mitigation efforts are deferred until after problems arise. Quite simply, the plan is inadequate to properly assess the magnitude of development improvements and to identify impacts from the development.

Increased Traffic and Parking Concerns:

As raised to the Planning Commission, a retail storefront and delivery cannabis business is likely to attract a significant number of customers, leading to increased vehicular and pedestrian traffic. The parking is already extremely limited on both Harbor Place and Green Mart properties. This surge may exacerbate existing parking shortages and contribute to congestion, adversely affecting both residents and local businesses.

- Shared ingress and egress: Harbor Place and Green Mart (and the adjoining center) share ingress and egress to their respective parking lots. This should be identified and addressed within the conditions to protect access.
- Loading area: The loading area is not illustrated on the plans. The conditions indicate deliveries are only allowed during operating hours, and with "pre-committed" scheduled deliveries. How will this be enforced/monitored? Does the City intend to monitor this? Does the City utilize an enforcement entity for this purpose? Alternatively, is the Applicant intended to self-monitor? And, is there any limitation on the size of delivery trucks or the hours deliveries are permitted?
- Deliveries: Similarly, the delivery area is not illustrated on the plans. The conditions indicate deliveries are only allowed during operating hours, and with "pre-committed" scheduled deliveries. How will this be enforced/monitored? Does the City intend to monitor this? Does the City utilize an enforcement entity for this purpose? Alternatively, is the Applicant intended to self-monitor? And, is there any limitation on the size of delivery trucks or the hours deliveries are permitted?

- ADA site access and parking: The conditions require ADA access to the center and an ADA parking space is provided in front of the storefront. Parking in an ADA space without proper permits is illegal, but there should be a provision for the business to monitor it against deliveries or other unpermitted uses to ensure accessibility.
- Rear parking: The proposal prohibits the use of the rear "alley" parking, despite the availability of striped parking in the alley to the immediate north of the proposed use. Eliminating this shared parking area may result in further parking impacts to the surrounding businesses.
- Circulation and Parking: The staff report indicates that the shared parking is between 1912 through 1942 Harbor Blvd.; while Harbor Place is not considered for this purpose, it is highly likely that consumers will utilize Harbor Place parking to access Green Mart. What is the recourse for Harbor Place?

Incompatibility with Surrounding Uses and Potential for Nuisance and Safety Issues:

There is currently a dispensary immediately across Harbor Boulevard from the proposed location. The introduction of another cannabis retail operation in this area is inconsistent with the existing character of Harbor Place. Harbor Place comprises family-oriented businesses which are in turn adjacent to residential properties, and the presence of a cannabis storefront could alter the community's atmosphere and deter patrons from neighboring establishments.

- Modern design: The applicant proposes a modern white stucco covered box with a black fabric awning over the storefront door. However, all surrounding projects, both Harbor Place and the existing shopping center to the north of the proposed use, incorporate a tile eyebrow canopy with a flat parapet. How is the proposed modern design compatible with the existing shopping center(s)? The project should be revised accordingly to incorporate these elements to be aesthetically compatible with the existing, surrounding uses.
- Tenant improvements: The proposed improvements are minimal and basic improvements. According to the floor plan schematic, the Applicant intends to maintain an existing fireplace and chimney. Allowing this to remain suggests a use is anticipated beyond that proposed. A retail and delivery cannabis use should be required to remove this feature. Additionally, if the project is conditioned to eliminate rear access, then the existing rear staircase and rear access points should be addressed. Staff and the Commission should further consider specifying a wrought iron fence that is consistent with the final architectural style required.

- Landscaping: The landscape plan should be reviewed and approved by the Police Department to make certain that it does not encourage encampments and/or create the propensity for other safety concerns.
- Odor Attenuation: The City's staff report requires that all cannabis products will be sealed, and that odor control devices and other techniques will also be used to prevent odor attenuation. And, that if odor is detected further measures will be required. How will this be monitored and enforced? The Director is listed, but does the City have proactive enforcement or is enforcement entirely reactive and complaint driven?
- Safety: The operation of a cannabis dispensary may lead to increased loitering and other public safety concerns. Such activities will compromise the sense of security for residents and business owners in the area.

Character of Applicant and Absentee Landlord

Letters and public comments presented to the Planning Commission demonstrated the applicant, Keith Scheinberg's poor character and history of flagrant disrespect for municipal regulations. The administrative record shows Mr. Scheinberg previously operated a Chronic Cantina in Upland, California. In 2009, approximately one year after opening, the City of Upland revoked the CUP for Mr. Scheinberg's bar and restaurant on the grounds that the use for which approval was granted is not in compliance with the conditions set forth in approving it. Specifically, the CUP itself provided that it may be revoked "if the permittee has violated any rule, regulation or condition of approval or if the operation permitted under the conditional use permit is operated in a manner contrary to the peace, safety and general welfare of the public or which results in undesirable activities creating an increased demand for public services[.]"

Mr. Scheinberg and his associates filed a writ to challenge the revocation. The court affirmed the City of Upland's decision to revoke the Conditional Use Permit (CUP) for Chronic Cantina, a restaurant and bar owned by the plaintiffs. The revocation was based on excessive police calls, overcrowding, and violations of CUP conditions.

In 2021, Mr. Scheinberg entered into a residential lease agreement with the understanding that the residence leased would serve as his temporary home while his house in Costa Mesa underwent remodeling. Within the first few weeks of his residency, the landlord began receiving noise complaints from neighbors regarding disruptive behavior at the property. Mr. Scheinberg explained that he was simply hosting friends. However, as the complaints persisted, the landlord conducted several property inspections. The investigation revealed that Mr. Scheinberg had, in fact, transformed the property into a nightclub on weekends and adult film studio during the weekdays.

Further evidence showed that Mr. Scheinberg was not residing at the property

himself but had granted unrestricted access to others. Mr. Scheinberg denied that the property was being used as a nightclub and adult film studio. This evidence was submitted to the City of Newport Beach, which initiated its own investigation. As a result, Mr. Scheinberg was cited for violations related to running an adult business and breaching home occupation regulations. He attempted to appeal these citations, but the appeals were unsuccessful.

Even after the citations were upheld, it was discovered that Mr. Scheinberg continued to use the property for the same activities. Additionally, during this period, Mr. Scheinberg received a violation notice from the Newport Beach Fire Department for the illegal handling and use of pyrotechnic devices indoors.

Additionally, a review of Mr. Scheinberg's social media posts reveals that he is continuing his pattern of operating businesses without required permits or licensing. Mr. Scheinberg's former landlord submitted information to the Planning Commission that Mr. Scheinberg has continued to use his home on [REDACTED] in Costa Mesa as an adult film studio. This information has been submitted to the City's Code Enforcement for further investigation and enforcement. Overall, Mr. Scheinberg's pattern of behavior should be a major concern to the City Council due to his demonstrated disregard for public health, safety, and general welfare of the surrounding community.

Finally, public comments made at the Planning Commission hearing demonstrated the landlord for the proposed project is an uninvolved owner and has not properly maintained the property proposed for Green Mart. All landlords are legally obligated to follow conditions of a CUP and this landlord has demonstrated a lack of maintenance, repair, and general care for his property over many years. It is a magnet for homeless and vagrant activity. Further, the Applicant, Mr. Scheinberg, has held a lease for the property proposed for the cannabis retail and delivery use for at least the last four years. He testified about the ongoing "nightmare" with encampments and trespassing that has continued throughout his ownership. The property has deferred maintenance and is unkept. This demonstrates a lack of attention to the property and a lack of investment. Why hasn't the Applicant made a greater effort to maintain and secure the property? It looks abandoned and it has become an attractive nuisance. Why hasn't the City taken a greater enforcement effort? Is this an example of the future condition allowed for the property?

Summary of Concerns

As presented, the application and the conditions do not give full consideration to the impacts of the use or enforcement of violations. The plan is inadequate to properly assess the magnitude of development improvements and to identify impacts from the development. The convenience store concept is not fully analyzed and may result in parking and circulation impacts. And the proposed development is not consistent with the Costa Mesa General Plan Land Use Element. The Commercial-Residential land use designation is intended to allow "a complementary mix of commercial and residential

zoning...It is anticipated that individual parcels will be developed as either a commercial or residential use..." Due to the distance proximity requirements of a cannabis storefront, approval of this use will prevent the neighboring properties from developing residential developments.

Instead, the conditions proposed appear to defer mitigation to a later time when issues are presented, instead of proactively attempting to prevent these concerns. This puts significant onus on the surrounding owners and tenants to monitor the use and report concerns. At minimum, we request the Commission consider an additional condition that will trigger the review and revocation of the CUP if three or more valid/verified complaints are received; and, consider an annual review that incorporates feedback from the surrounding community (from opening date) to review adherence to the CUP.

Again, in light of these concerns, we respectfully request the City Council deny the Conditional Use Permit PCUP-24-0011 for "Green Mart" at 1912 Harbor Boulevard. However, in the event the Council is inclined to allow the project to go forward, we request additional consideration is given to the issues presented above and further conditions put in place to proactively address these concerns. This action by the Council should send the application back to the Planning Commission with the direction to flush out the operational and design deficiencies. Preserving the integrity and safety of the community should remain a priority in evaluating such proposals.

Thank you for considering our position on this matter.

Best regards,

A handwritten signature in blue ink, appearing to read "KCM", is written over a faint, larger blue signature that appears to read "Kendra Carney Mehr".

Kendra Carney Mehr
Principal Attorney