



SAN FRANCISCO PLANNING DEPARTMENT

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Conditional Use Authorization Appeal *PK* 2161-2165 Irving Street

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DATE: November 3, 2017
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: John Rahaim, Planning Director – Planning Department (415) 558-6411
Nancy Tran, Case Planner – Planning Department (415) 575-9174
RE: File No. 171128, Planning Case No. 2016-002424CUA - Appeal of the approval of Conditional Use Authorization for 2161-2165 Irving Street
HEARING DATE: November 14, 2017
ATTACHMENTS:
A. Planning Commission Motion No. 20027

PROJECT SPONSOR: Brendan Hallinan, 345 Franklin Street, San Francisco, CA 94102
APPELLANT: Flo Kimmerling, on behalf of Mid-Sunset Neighborhood Association, 1282 26th Avenue, San Francisco, CA 94112

INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the “Board”) regarding the Planning Commission’s (“Commission”) approval of the application for Conditional Use Authorization pursuant to Planning Code Sections 303 (Conditional Use Authorization) and 732 (Medical Cannabis Dispensaries), to establish a Medical Cannabis Dispensary (“MCD”) (d.b.a. “Barbary Coast Dispensary”) within existing vacant ground floor retail spaces at 2161-2165 Irving Street within the Irving Street Neighborhood Commercial District (“NCD”) and a 65-A Height and Bulk District (“the project”).

This response addresses the appeal (“Appeal Letter”) to the Board filed on October 17, 2017 by Flo Kimmerling, on behalf of Mid-Sunset Neighborhood Association located at 1282 26th Avenue. The Appeal Letter referenced the proposed project in Case No. 2016-002424CUA.

The decision before the Board is whether to uphold, overturn, or amend the Planning Commission’s approval of Conditional Use Authorization to allow the establishment of a Medical Cannabis Dispensary located at 2161-2165 Irving Street.

SITE DESCRIPTION & PRESENT USE

The project is located at the corner of Irving Street and 23rd Avenue, Block 1777, Lot 037. The subject property is located within the Irving Street Neighborhood Commercial District (“NCD”) and the 65-A Height and Bulk District. The property is developed with a two-story commercial building. There is a massage establishment and professional office on the second floor and two ground floor restaurants. The MCD is proposed in two ground floor tenant spaces that have been vacant for several years and

previously occupied by an internet cafe and a grocery store. The subject property measures approximately 85 feet by 100 feet, with 8,500 square feet of lot area, and approximately 65% lot coverage.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The subject property is located within the Irving Street Neighborhood Commercial District (NCD). The Irving Street NCD is located in the Outer Sunset neighborhood and stretches along Irving Street from 19th to 27th Avenues. The District provides a selection of convenience goods and services for the residents of the Outer Sunset District. There is a high concentration of restaurants, drawing customers from throughout the City and the region. There are also a significant number of professional, realty, and business offices as well as financial institutions. The area surrounding this part of the Irving Street NCD is zoned RH-2 (Residential House, Two-Family).

The project site is located on the Irving Street commercial corridor between 22nd and 23rd Avenues. A variety of commercial establishments are located within ground floor storefronts in the Irving Street NCD, including restaurants, apparel stores, personal service, office and other types of retailers. Buildings in the vicinity range from two to three stories in height. Upper floors of buildings are generally occupied by offices or residential units. The subject location along Irving Street is served by the 7 and 7X MUNI Bus lines. It is also in proximity to 28, 28R, 29, N, NX lines as well as bicycle routes along 20th Avenue and Kirkham Street. The immediate area is not identified as part of the Vision Zero High Injury Network for pedestrians and cyclists.

There are no other MCDs currently located in proximity to the subject property; the nearest established MCD is located two miles away at 4811 Geary Boulevard within the Inner Richmond neighborhood.

PROJECT DESCRIPTION

The Project Sponsor proposes to establish a new Medical Cannabis Dispensary (MCD) for on-site sales of medical cannabis (d.b.a Barbary Coast Dispensary) at 2161-2165 Irving Street. The project does not propose on-site medication (e.g. smoking, vaporizing, or consumption of edibles) or on-site cultivation for harvesting of medical product. The proposed hours of operation are 8:00AM to 10:00PM, seven days a week.

The proposal includes tenant improvements to the two retail spaces, which combined consist of approximately 2,600 square feet and 44 linear feet of frontage along Irving Street. No physical expansion of the building is proposed and exterior work would be limited to signage only. No parking would be required for the change of use. The Project Sponsor will maintain security guard presence during business hours and will install cameras within and around the facility.

The Project Sponsor's goal is to provide medical cannabis to registered patients within the Outer Sunset and other nearby neighborhoods, as there are currently no MCDs in the surrounding area. The Project Sponsor currently operates an MCD within San Francisco at 952 Mission Street (western South of Market).

BACKGROUND

On December 18, 2015, Brendan Hallinan, on behalf of Barbary Coast Dispensary (hereinafter "Project Sponsor"), filed Building Permit Application Number 2015.12.18.5450 with the Department of Building Inspection to authorize a change of use and establish a Medical Cannabis Dispensary (MCD) within existing, vacant ground floor retail spaces at 2161-2165 Irving Street, located within the Irving Street Neighborhood Commercial District and a 65-A Height and Bulk District. On March 30, 2017, the Project Sponsor filed Application No. 2016-002424CUA seeking Conditional Use Authorization pursuant to subject Planning Code Sections 303 and 732 to establish an MCD (d.b.a. Barbary Coast Dispensary) at the location.

On October 12, 2017, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2016-002424CUA. The Commission heard the request for Conditional Use Authorization and voted 6-0 (Moore absent) to approve the request to establish an MCD at 2161-2165 Irving Street. Over two hours of public testimony was heard on this item, both in support and in opposition to the proposed project.

Opponents of the proposed MCD stated concerns that the business would result in an increase in the amount of traffic, would be detrimental to other businesses in the area, reduce the quality of life in the neighborhood, and imperil the safety of children and other residents. Many opponents noted the nearby elementary school, believing that this should disqualify an MCD from locating at the project site. Supporters of the proposed MCD attempted to quell those fears by discussing Barbary Coast Dispensary's existing business practices for their location on Mission Street; the business's commitment to the community, especially through charitable giving; and patients' needs for a well-run MCD located in their Sunset neighborhood, where there are currently no MCDs.

On October 17, 2017, Flo Kimmerling, on behalf of Mid-Sunset Neighborhood Association located at 1282 26th Avenue, filed the Appeal Letter challenging the Conditional Use Authorization decision by the Planning Commission.

On September 12, 2017, the Board of Supervisors approved a moratorium on new MCDs [Board File Number 170865, v5]. The moratorium prohibits the Planning Commission from approving any new MCD, except for those MCDs whose application had been scheduled to be heard by the Commission as of September 11, 2017. The existing moratorium explicitly contemplated and allowed the proposed MCD at 2161-2165 Irving Street to be considered for approval. Therefore, the Board maintains their full authority and discretion to approve, disapprove, or modify this Conditional Use Authorization when the appeal is heard by the Board, tentatively scheduled for November 14, 2017.

CONDITIONAL USE AUTHORIZATION REQUIREMENTS

Planning Code Section 303 establishes criteria for the Commission to consider when reviewing all applications for Conditional Use approval. To approve the project, the Commission must find that these criteria have been met:

1. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community; and
2. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:
 - a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;
 - b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;
 - c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;
 - d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs; and
3. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.
4. That such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Use District.

In addition, Planning Code Section 202.2(e)(1) sets forth the following criteria that must be met by all MCDs and considered by the Planning Commission in evaluating the proposed use.

1. That the proposed site is located not less than 1,000 feet from a parcel containing the grounds of an elementary or secondary school, public or private, nor less than 1,000 feet from a community facility and/or recreation center that primarily serves persons under 18 years of age.
2. That the parcel containing the MCD cannot be located on the same parcel as a facility providing substance abuse services that is licensed or certified by the State of California or funded by the Department of Public Health.
3. No alcohol is sold or distributed on the premises for on or off site consumption.
4. If Medical Cannabis is smoked on the premises the dispensary shall provide adequate ventilation within the structure such that doors and/or windows are not left open for such purposes resulting in odor emission from the premises.
5. The Medical Cannabis Dispensary has applied for a permit from the Department of Public Health pursuant to Section 3304 of the San Francisco Health Code.
6. A notice shall be sent out to all properties within 300-feet of the subject lot and individuals or groups that have made a written request for notice or regarding specific properties, areas or Medical Cannabis Dispensaries. Such notice shall be held for 30 days.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

The concerns raised in the Appeal Letter are cited in a summary below and are followed by the Department's response:

ISSUE 1: The Appellant proposes that restrictions or conditions developed under the current 45 day moratorium (or any extensions thereof) should be applied retroactively for the proposed MCD.

RESPONSE 1: As described above, the existing moratorium enacted by the Board of Supervisors explicitly contemplated and allowed certain pending MCD proposals to be considered for approval. The proposed MCD at 2161-2165 Irving Street fit the Board's criteria to be exempt from the moratorium in that it had been duly scheduled for Planning Commission consideration. Therefore, the Board maintains their full authority and discretion to approve, disapprove, or modify this Conditional Use Authorization when the appeal is heard by the Board, tentatively scheduled for November 14, 2017.

ISSUE 2: The Appellant contends that the proposed MCD would operate along a thoroughfare used by children walking to/from nearby Jefferson Elementary School (located within four blocks). The Appellant proposes prohibiting operational hours before 9A.M. or between 2:30P.M. to 4P.M. on weekdays and any product display visible from outside the dispensary. The Appellant also proposes requiring an 8P.M. close time to be in line with local pharmacy hours.

RESPONSE 2: Minors are not permitted into any MCD and any operator or patient that chooses to distribute medical cannabis to minors risks the loss of their operating or patient license. To ensure adherence to regulations, trained security personnel for the MCD will be vigilant in verifying that patients have valid identification and recommendation for medical cannabis.

The project complies with Section 303(c) Conditional Use criteria and all provisions of the Planning Code, including operating hours.

Planning Commission Findings: The parcel containing the proposed MCD is not located within 1,000 feet of a primary or secondary school, public or private, nor a community facility and/or recreation center that primarily serves persons under 18 years of age.

Staff Discussion: Existing required buffers for sensitive uses (i.e., 1000 feet from a school/community facility and not located on the same parcel as a facility providing substance abuse services) significantly limit the available locations for MCDs. The Commission noted that this causes an equity issue within the City where there is an overconcentration of MCDs in areas while other areas have none. The Commission also expressed disagreement that outright prohibition would limit risks to children, stating that improved education and discussion on the matter is more effective.

Planning Commission Findings: The proposed MCD operational hours, between 8 A.M. and 10 P.M., are principally permitted within the District and would also comply with Section 3308 of the San Francisco Health Code. With respect to the Appellant's product display concerns, the proposed MCD would be required to comply with the SF Health and California Health and Safety Codes concerning signage, advertisement and display regulations.

Staff Discussion: The appellant's suggested hours are unusual and not consistent with the law which already limits MCDs hours of operation as compared to other businesses. Existing regulations establish a required distance from schools and other community facilities that

primarily serve persons under 18 years of age; the proposed MCD complies with the required distance. Such restrictions to hours would set a precedent that medical cannabis uses create a particular harm to children. With respect to pharmacies, there is no limit to operational hours as Planning Code allows for 24-hour operation if there is a licensed pharmacist on duty, prescription drugs for sale and adequate light/security for safety between 11P.M. and 6A.M.

ISSUE 3: The Appellant proposes that the MCD provide security patrol during operational hours to ensure general safety and adherence to the law.

RESPONSE 3: The proposed MCD would employ a security guard on site during business hours and will install cameras within and around the facility.

Planning Commission Findings: The proposed MCD would meet all the performance standards and requirements identified in Planning Code Section 202.2(e)(1). The MCD will utilize a mechanical system designed to keep any potential odors from passing into pedestrian space, and will employ security personnel to help mitigate any undesirable activities and ensure that patients are not consuming once immediately outside the building.

ISSUE 4: The Appellant proposes prohibiting the MCD from expanding its use size or scope of services offered, specifically future adult use cannabis retail and delivery.

RESPONSE 4: Significant changes to the approved MCD use or its conditions such as size expansion or delivery require Planning Commission approval of a new Conditional Use Authorization. Under proposed commercial cannabis legislation, conversion from MCD to cannabis retail would be subject to neighborhood notification in Districts where notification requirements apply.

SUMMARY RESPONSE: Contrary to the appeal, the Planning Commission found the proposed MCD to be necessary and desirable for the community as it would provide goods and services that are not otherwise available within the District, nor beyond the immediate District and within the surrounding, broader Sunset neighborhood. The Commission considered it to be a benefit because the vacant storefront would be activated and occupied by an operator that has earned a positive reputation within the City while operating at its Mission Street location.

Planning Commission Findings: The size of the proposed use is in keeping with other storefronts on the block face, and is a principally permitted use size within the District. While a merger with the adjacent storefront is proposed on the same lot, it does not exceed the use size limitation allowed. The proposed Medical Cannabis Dispensary (MCD) will add a unique business type and would provide goods and services that are not otherwise available within the District, nor beyond the immediate District and within the surrounding, broader Sunset neighborhood. The nearest MCD to the project site is approximately 2 miles away, located along Geary Street in the Inner Richmond neighborhood.

The proposed MCD will be located within an existing building that has been vacant for several years. No new construction, additions, or expansion of the building envelope or storefront are proposed. The existing storefront will be replaced and upgraded with high-quality materials, and should serve to enhance the District.

The proposed MCD would not permit any cultivation or processing of medical cannabis on site, nor would the proposed MCD permit any smoking, vaporization, or other means of consumption of medical cannabis on site. The MCD will employ a security guard on site who can help to ensure that patients are not medicating once immediately exiting the premises. The proposed MCD will have a mechanical system designed to keep any potential odors from passing into pedestrian space, and as such, should not generate any noxious or offensive emissions such as noise, glare, dust and odor.

The proposed project is consistent with the stated purposes of the Irving Neighborhood Commercial District in that the intended use is located at the ground floor, will provide compatible convenience goods and services for the residents of the Outer Sunset District during daytime hours, and will encourage the street's active retail frontage. The District controls acknowledge that there are a high concentration of restaurants in the District, drawing customers from throughout the City and region. The proposed MCD, while primarily intended to serve those residents of the Outer Sunset neighborhood, does have some potential to draw patients from around the City and region; however, these trips are likely to be limited due to the availability of MCDs in other neighborhoods throughout the City and due to the proposed location's site away from highways.

CONCLUSION

For the reasons stated above, the Planning Department recommends that the Board uphold the Planning Commission's decision in approving the Conditional Use authorization to establish an MCD in the existing vacant ground floor retail spaces at 2161-2165 Irving Street within the Irving Street NCD and a 65-A Height and Bulk District, and deny the Appellant's request for appeal.