



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: May 20, 2015 **REPORT NO.** PC-15-053

ATTENTION: Planning Commission, Agenda of May 28, 2015

SUBJECT: APPEAL OF THE HEARING OFFICER'S DECISION TO DENY
A CONDITIONAL USE PERMIT FOR 3486 KURTZ STREET MMCC -
PROJECT NO. 368321 (PROCESS 3).

REFERENCE: Report to the Hearing Officer; Report No. HO-15-029 (Attachment 1-12).

**OWNER/
APPLICANT:** KURTZ STREET PARTNERS /
Dana Gagnon

SUMMARY

Issue: Should the Planning Commission approve or deny an appeal of the Hearing Officer's decision to deny a Conditional Use Permit (CUP) to allow a Medical Marijuana Consumer Cooperative (MMCC) to operate in a 4,367 square-foot tenant space within an existing 13,950 square-foot building on a 0.45-acre site within the Midway/Pacific Highway Corridor Community Plan area?

Staff Recommendation: Deny the appeal and Uphold the Hearing Officer's decision to Deny Conditional Use Permit No. 1292271.

Community Planning Group Recommendation: On July 9, 2014, the Midway Community Planning Group voted 7-1-0 to approve the project with conditions (Attachment 10).

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on September 2, 2014 (Attachment 8). An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015.

Fiscal Impact Statement: None with this action. All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact: None with this action.

Housing Impact Statement: None with this action.

BACKGROUND

In 1996 the people of the State of California passed Proposition 215, the Compassionate Use Act, which allows the use of marijuana for medical purposes when recommended by a physician and excludes the patient and the primary caregiver from criminal prosecution. In 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP) became law. The MMP requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. In 2008 the California Attorney General established guidelines for Medical Marijuana Collective Operations and allowed cities to adopt and enforce laws consistent with the MMP.

On March 25, 2014 the City of San Diego adopted Ordinance No. O-20356, to implement zoning regulations for Medical Marijuana Consumer Cooperatives (MMCC). MMCCs are allowed with a Conditional Use Permit, Process 3, Hearing Officer Decision. A limit of four MMCCs per Council District (36 city-wide) was adopted in order to minimize the impact on the City and residential neighborhoods.

The proposed project is a request for a Conditional Use Permit (CUP) to operate a MMCC in a 4,367 square-foot tenant space within an existing 13,950 square-foot building located at 3486 Kurtz Street.

MMCCs must comply with San Diego Municipal Code (SDMC) Section 141.0614 which requires a 1,000 foot separation, measured between property lines, from; public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone.

On March 19, 2015, the Planning Commission approved the 3452 Hancock Street MMCC, Project No. 368344. The proposed MMCC located at 3486 Kurtz Street is within 1,000 feet of the approved 3452 Hancock Street MMCC and therefore, on March 25, 2015, the Hearing Officer denied the project as it does not meet the minimum separation distance requirement of the SDMC.

DISCUSSION

Appeal: An appeal of the Hearing Officer's decision was filed on April 8, 2015 by Dana Gagnon on the grounds of Factual Error, Conflict with other matters, and Findings not supported (Attachment 13).

The appellant's summarized grounds for appeal issues and staff responses are as follows:

Appeal Issues:

1. *The MMCC located at 3452 Hancock Street cannot serve to disqualify this application (3486 Kurtz Street) pursuant to SDMC Section 141.0614(a)(1) until and unless 3452 Hancock Street commences to validly transfer medical marijuana to its patients at that location. Consequently, the Hearing Officer's denial was based on factual error.*

Staff Response: San Diego Municipal Code (SDMC) Section 126.0108 grants the applicant of a development permit 36 months to initiate utilization of the permit. The approved Conditional Use Permit (CUP) for 3452 Hancock Street MMCC was recorded by the San Diego County Recorder's Office on April 3, 2015, the MMCC Permit (background checks) was approved and issued on May 1, 2015, and ministerial permits for building, electrical, mechanical and plumbing are currently being reviewed by City staff.


2. *The City's approval process in the Midway area has been implemented in a fundamentally unfair manner. A competitor arranged to have someone file frivolous appeals of the Environmental Determination. Additionally, 3452 Hancock Street is substandard, the applicant submitted inaccurate information, and was involved in the operation of an ongoing illegal medical marijuana facility.*

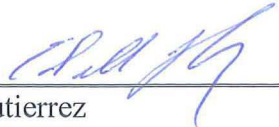
Staff Response: The newly adopted MMCC Ordinance does not provide guidelines on how to process competing applications, therefore staff has managed all MMCC applications on a first-come, first served basis. Environmental appeals are processed per SDMC Section 112.0520 guidelines. The CUP for 3452 Hancock MMCC was approved by the Planning Commission on March 19, 2015, and that project met all development regulations and findings pursuant to the San Diego Municipal Code.

Conclusion:

Staff is recommending denial of the project as it fails to meet the SDMC's minimum separation requirement prohibiting MMCCs from operating within 1,000 feet of another MMCC. The proposed MMCC is not consistent with the SDMC's purpose and intent to protect public safety, does not comply with the regulations of the Land Development Code and is not located at an appropriate location.

Respectfully submitted,


Mike Westlake
Assistant Deputy Director
Development Services Department


Edith Gutierrez
Development Project Manager
Development Services Department

Attachments:

- 1-12 Report to the Hearing Officer – Report HO-15-029
- 13. Appeal Application, Dana Gagnon
- 14. CUP Resolution with findings



THE CITY OF SAN DIEGO

REPORT TO THE HEARING OFFICER

HEARING DATE: March 25, 2015

REPORT NO. HO-15-029

ATTENTION: Hearing Officer

SUBJECT: 3486 KURTZ STREET MMCC
PROJECT NUMBER: 368321

LOCATION: 3486 Kurtz Street

APPLICANT: Dana Gagnon

SUMMARY

Issue(s): Should the Hearing Officer approve a Conditional Use Permit to allow a Medical Marijuana Consumer Cooperative (MMCC) to operate in a 4,367 square foot tenant space within an existing 13,950 square foot building within the Midway/Pacific Highway Corridor Community Plan Area?

Staff Recommendation: APPROVE Conditional Use Permit No. 1292271.

(NOTE: There are four competing MMCCs within 1,000 feet of each other on today's docket. The Hearing Officer can approve only one of these MMCC's pursuant to the San Diego Municipal Code's 1,000 foot minimum distance separation requirement).

Community Planning Group Recommendation: On July 9, 2014, the Midway Community Planning Group voted 7-1-0 to approve the project with the conditions (attachment 10).

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on September 2, 2014 (Attachment 8). An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination.

BACKGROUND

In 1996 the people of the State of California passed Proposition 215, the Compassionate Use Act, which allows the use of marijuana for medical purposes when recommended by a physician

and excludes the patient and the primary caregiver from criminal prosecution. In 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP) became law. The MMP requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. In 2008 the California Attorney General established guidelines for Medical Marijuana Collective Operations and allowed cities to adopt and enforce laws consistent with the MMP.

On March 25, 2014 the City of San Diego adopted Ordinance No. O-20356, to implement zoning regulations for Medical Marijuana Consumer Cooperatives (MMCC). MMCC's are allowed with a Conditional Use Permit, Process 3, Hearing Officer Decision. A limit of four MMCC's per Council District (36 city-wide) was adopted in order to minimize the impact on the City and residential neighborhoods.

This proposed project is a request for a Conditional Use Permit (CUP) to operate a MMCC in a 4,367 square foot tenant space within an existing 13,950 square foot building on a 0.45-acre site. The MMCC site is located at 3486 Kurtz Street, south of Interstate 8, west of Interstate 5 and north of Sport Arena Boulevard (Attachment 2). The site is in the IS-1-1 Zone, Airport Influence Area (San Diego International Airport) and Coastal Height Limitation Overlay Zone within the Midway/Pacific Highway Corridor Community Plan Area. The site was developed with a two-story building in 1988 per Building Permit No. B003695-88.

The site is designated Light Industrial within the Midway/Pacific Highway Corridor Community Plan. The Midway/Pacific Highway Corridor Community Plan area includes a variety of commercial uses such as retail shopping centers, discount stores, adult entertainment uses, hotels, motels, restaurants and both heavy and light industrial uses. This community portion contains little residential development. The adjacent parcels to the MMCC are in the IS-1-1 zone and the existing uses are consistent with the Light Industrial designation of the community plan. The proposed MMCC, classified as commercial services, is a compatible use for this location with a Conditional Use Permit within this community plan.

DISCUSSION

The project site located at 3486 Kurtz Street is a 0.45-acre site developed with a 13,950 square foot two story building. The proposed tenant space is currently vacant. The MMCC proposes interior improvements that include a reception area, dispensary area, cashier area, conference room, storage room and restroom. No public improvements are required for this site.

MMCC's must comply with San Diego Municipal Code (SDMC), Section 141.0614 which requires a 1,000 foot separation, measured between property lines, from; public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCC's prohibit consultations by medical professionals on site and do not allow certain types

of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard for the tenant/facility space and directly adjacent area. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCC Conditional Use Permits expire five years from date of issuance. MMCC's must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The applicant has voluntarily agreed to the following conditions in order avoid adverse impact to the community: 1) operable surveillance cameras and a metal detector to the satisfaction of the San Diego Police Department 2) the cameras shall have and use a recording device that maintains the records for a minimum of 30 days 3) an armed security guard to the extent the possession of a firearm by the security guard is not in conflict with 18 U. S.C. § 922(g) and 27 C.F.R. § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws 4) the security guard is required to be on the premises 24 hours a day, seven days a week and 5) graffiti must be removed within 24 hours (Attachment 4, Conditions Number 16 & 20).

The City of San Diego, Development Services staff has reviewed the 1,000 foot radius map (Attachment 6) and 1,000 foot spreadsheet exhibit (Attachment 7) provided by the applicant identifying all the existing uses. Staff has determined that the proposed MMCC meets all applicable development regulations, including the minimum distance requirements. The permit has been conditioned to include all development restrictions and the applicant has willingly proposed additional conditions in order to avoid adverse impacts upon the health, safety and general welfare of persons patronizing, residing or working within the surrounding area.

CONCLUSION

The Conditional Use Permit for the proposed MMCC may be approved if the Hearing Officer finds that the MMCC meets all applicable regulations. Staff has reviewed the proposed MMCC and has determined that it meets all applicable sections of the San Diego Municipal Code, the Midway/Pacific Highway Corridor Community Plan and the General Plan. Additionally, the required findings can be made and therefore, staff is recommending approval of the project as proposed.

ALTERNATIVE

1. Approve Conditional Use Permit No. 1292271, with modifications.
2. Deny Conditional Use Permit No. 1292271, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



Edith Gutierrez, Development Project Manager

Attachments:

1. Aerial Photograph
2. Project Location Map
3. Community Plan Land Use Map
4. Draft Permit with Conditions
5. Draft Permit Resolution with Findings
6. 1000 Foot Radius Map
7. 1000 Foot Radius Map Spreadsheet
8. Notice of Right to Appeal
9. Project Site Plan(s)
10. Community Planning Group Recommendation
11. Ownership Disclosure Statement
12. Crime Prevention Through Environmental Design recommendations



Location Aerial Photo

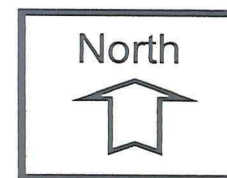
3486 Kurtz Street MMCC – 3486 Kurtz Street
PROJECT NO. 368321

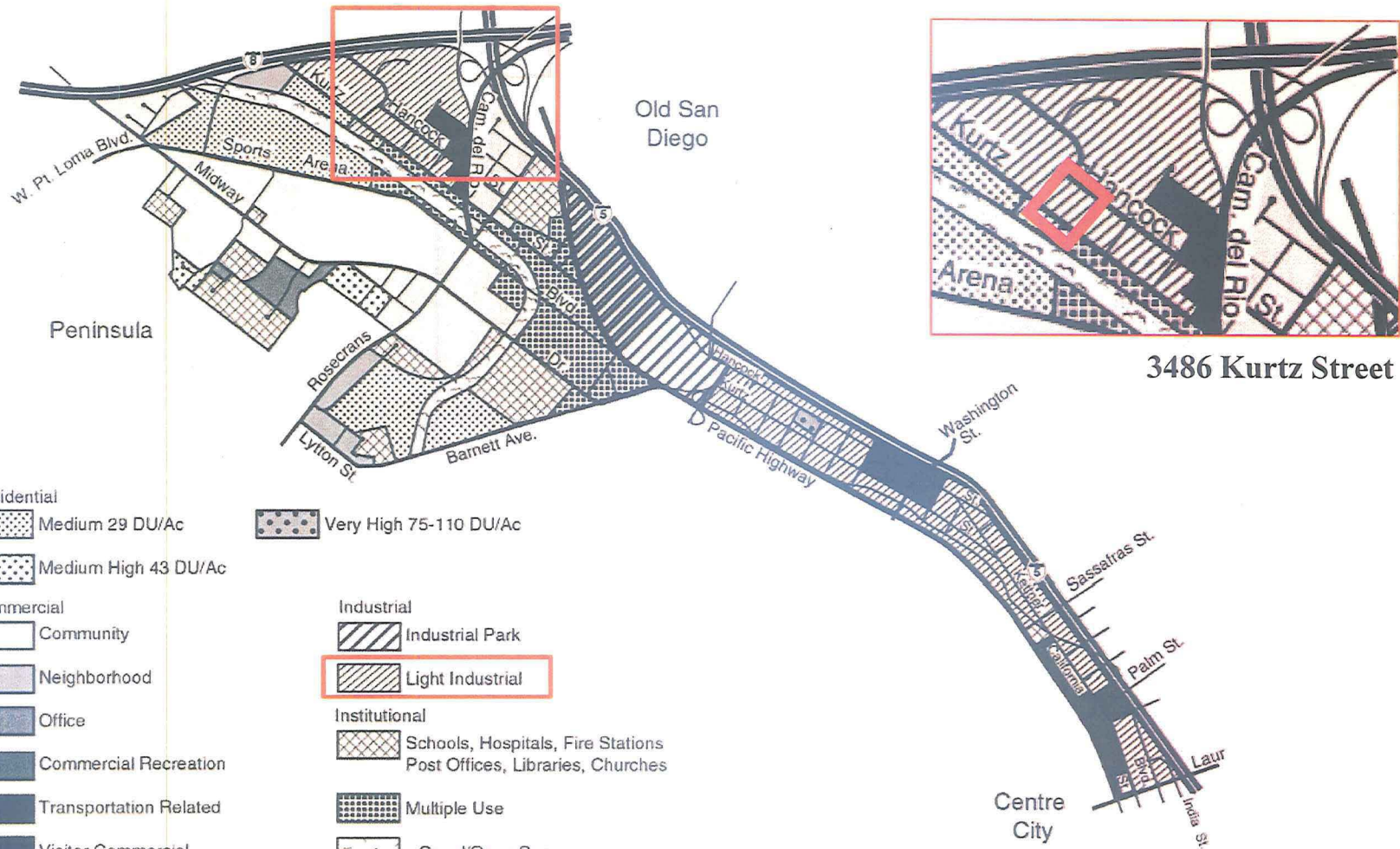




Project Location Map

3486 Kurtz Street MMCC – 3486 Kurtz Street
PROJECT NO. 368321





Proposed Land Uses

Midway / Pacific Highway Corridor Community Plan

City of San Diego • Community and Economic Development



Land Use Map

3486 Kurtz Street MMCC – 3486 Kurtz Street
PROJECT NO. 368321

