

RESOLUTION NO. 17-002

**A RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS
OF THE CITY OF SAN LEANDRO**

**A RESOLUTION DENYING CONDITIONAL USE PERMIT PLN17-0012
3089 TEAGARDEN STREET**

WHEREAS, California's Medical Cannabis Regulation and Safety Act establishes a comprehensive licensing system for the sale and distribution of medical cannabis; and

WHEREAS, on December 16, 2013, the City Council of the City of San Leandro adopted Ordinance 2013-020 to enable and regulate medical cannabis dispensaries subject to selection and performance standards, in conjunction with State licensing requirements; and

WHEREAS, on April 21, 2014, the City Council of the City of San Leandro adopted Ordinance 2014-003, implementing performance standards for medical cannabis dispensaries, by amending the Zoning Code to enable the use of medical cannabis dispensaries; and

WHEREAS, it is in the interest of the City of San Leandro to ensure that the medical dispensation of cannabis is responsibly established and compatible with other uses in the City; and

WHEREAS, following a comprehensive review process, on July 18, 2017 the San Leandro City Council granted Davis Street Wellness Center approval to operate a medical cannabis dispensary at a location to be determined and evaluated at a later date; and

WHEREAS, Davis Street Wellness Center Inc. ("Applicant") submitted an application for a Conditional Use Permit to operate a medical cannabis dispensary at 3089 Teagarden Street (PLN17-0012) ("Project"); and

WHEREAS, the proposed Project site is a multi-tenant building currently zoned IG Industrial General District and has a General Plan designation of Light Industrial; and

WHEREAS, it is the policy of the City's General Plan to consider the setting and context of each site when evaluating proposals for development in the industrial areas for potential impacts on adjacent uses, including land use conflicts, health and safety, and increased parking demand; and

WHEREAS, Zoning Code section 1-104 provides the broad purposes of the Zoning Code is intended to “[f]oster convenient, harmonious, and workable relationships among land uses”; and

WHEREAS, Zoning Code section 2-700.G provides that the specific purpose of the industrial district regulations are to “[e]nsure the provision of adequate off-street parking and loading facilities”; and

WHEREAS, the Board of Zoning Adjustments held a duly noticed public hearing regarding the proposed Project on October 5, 2017, at which time all interested parties had the opportunity to be heard; and

WHEREAS, the Board of Zoning Adjustments fully considered the Project application, the applicant’s statements, the staff report, public comments, and all other testimony and evidence presented at the public hearing; and

WHEREAS, the Board of Zoning Adjustments finds that the staff report and standards for denial reflects the City’s independent judgement and analysis of the Project; and

WHEREAS, the Board of Zoning Adjustments finds that the proposed Project does not satisfy the requisite findings of fact necessary for approval as further explained in the staff report and findings of fact associated with this Resolution, as identified in Exhibit A attached to this Resolution; and

WHEREAS, the proposed Project is statutorily exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines, Article 18, Section 15270 “Projects Which Are Disapproved”; and

WHEREAS, the City’s General Plan, the Zoning Code, and the City’s Engineering Standard Plans are incorporated herein by reference, and are available for review at City Hall during normal business hours and on the City’s website.

NOW, THEREFORE, BE IT RESOLVED THAT: The above recitals are true and correct and made a part of this resolution.

BE IT FURTHER RESOLVED THAT: The Board of Zoning Adjustments of the City of San Leandro has determined that it is unable to make the necessary findings and determinations required by Section 5-2212 of the City of San Leandro Zoning Code to approve the requested Conditional Use Permit for a medical cannabis dispensary at 3089 Teagarden Street, as further explained in the staff report and findings of fact for denial set forth in Exhibit A attached hereto and incorporated herein by this reference.

PASSED, APPROVED, AND ADOPTED, on this 5th day of October, 2017
by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Michael Santos, Chairperson

ATTEST:

Andrew J. Mogensen, AICP
Secretary to the Board of Zoning Adjustments

Exhibit A

RECOMMENDED FINDINGS OF FACT

PLN17-0012

Davis Street Wellness Center Inc. (applicant)

The Davis Street Community Center Inc. (property owner)

3089 Teagarden Street; Assessor's Parcel Number 077B-1201-027-15

The Board of Zoning Adjustments hereby denies the Conditional Use Permit for the medical cannabis dispensary use for the Davis Street Wellness Center at 3089 Teagarden Street, based on the following findings:

Findings for Denial of the Conditional Use Permit

- 1. That the proposed location of the use is in accord with the objectives of this Code and the purposes of the district in which the site is located.**

The Board of Zoning Adjustments finds that the proposed location for Davis Street Wellness Center Inc., a medical cannabis dispensary requesting a Conditional Use Permit to operate at 3089 Teagarden Street on property zoned Industrial General (IG), is not appropriate because the location of the proposed medical cannabis dispensary use conflicts with the Broad Purposes of the Zoning Code as stated in Article 1 Section 1-104 and conflicts with the Specific Purposes of the Industrial General Zoning District as stated in Article 7, Section 2-700.

The Board of Zoning Adjustments finds that a harmonious and workable relationship among land uses at this location is improbable given that there are adjacent land uses that serve families, children, adolescents and other vulnerable individuals who would be adversely affected by the immediate presence of a medical cannabis dispensary. Within the same building, the adjacent tenant at 3081, 3079, and 3077 Teagarden Street is the Davis Street Family Resource Center, a social services organization that provides comprehensive family medical services including pediatric medical care, dental services for children; mental health services to children and adolescents; family support services including substance abuse service referrals; therapy & counseling; wellness workshops; support groups; food pantry; clothing assistance; case management; and workplace assistance and job training. The Davis Street Family Resource Center primarily serves underprivileged families, children, and vulnerable individuals who would be adversely affected by the presence of a medical cannabis dispensary. Davis Street Family Resource Center is the main tenant at this location, occupying 55% of the site.

The medical cannabis dispensary proposes to share a parking lot and common outdoor areas with the Davis Street Family Resource Center, requiring clients of the Davis Street Family Resource Center, including families with children, to walk past the entrance of the medical cannabis dispensary and put them in direct contact with patients entering and exiting the medical cannabis dispensary. The similarity of the names between Davis Street Family Resource Center and Davis Street Wellness Center will cause confusion when patients and clients come to visit the site. In addition, the adjacent building located to the west of the shared parking lot at 3051 Teagarden

Street houses The Kennel Boxing Gym, a fitness business that provides regular boxing classes to families and children ages 9-12 and youth ages 13-17, which makes up approximately 20% of their clientele. The operation of a family social and medical services organization and family fitness center is disparate and incompatible with a medical cannabis dispensary.

The Board of Zoning Adjustments finds that the proposed medical cannabis dispensary does not “Foster convenient, harmonious, and workable relationships among land uses (Article 1 Section 1-104).” The project is proposed to be located within an existing multi-tenant office building at 3089 Teagarden Street that, in addition to the Davis Street Family Resource Center, also houses established commercial and industrial businesses, including a wholesale business (Ribbon Connections Inc.) and a security contractor (G4S Secure Integration LLC). These commercial and industrial businesses and uses are fundamentally different from a medical cannabis dispensary and would be adversely impacted from the daily operations of a dispensary within the same building. The proposed Davis Street Wellness Center medical cannabis dispensary proposes to share an unsecured parking lot and common outdoor areas with the Davis Street Family Resource Center and the other adjacent light industrial businesses. An adjacent flooring business, a ribbon wholesaler and the Davis Street Family Resource Center’s food pantry all actively utilize loading docks within the shared parking lot. The proposed site plan for the medical cannabis dispensary reduces the space available for loading in an over-utilized shared parking lot. The addition of the medical cannabis dispensary would pose security problems because the dispensary is a sensitive land use with a cash-based operation that requires a higher level of security and monitoring that would be difficult to provide in a busy shared parking lot.

The Board of Zoning Adjustments further finds that the proposed medical cannabis dispensary does not “Ensure the provision of adequate off-street parking and loading facilities (Article 7, Section 2-700[G]).” The medical cannabis dispensary will add 10 to 12 employees on-site during business hours and 250 patient visits each day. With the combination of other disparate uses on the property, including a food pantry, family medical clinic, office, and light industrial uses that also utilize the shared parking area for loading and unloading trucks, the shared parking lot will exceed parking capacity, even with the on-site parking requirements met with the 105 vehicle parking spaces and 5 bicycle parking spaces. In addition, many of the surrounding businesses and land uses, such as service commercial, retail, and offices, have inadequate legal non-conforming on-site parking. Teagarden Street has minimal capacity available for additional on-street overflow parking during regular business hours. With on-street parking over-utilized or at capacity along Teagarden Street, parking availability will be limited for dispensary patients, resulting in additional time spent searching for parking and the need for patients and employees to park further away from the proposed dispensary in locations that are not monitored or secured by the dispensary. As a result, the proposed location does not “Ensure the provision of adequate off-street parking and loading facilities,” a stated objective of the Zoning Code.

- 2. That the proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General**

Plan; will not be detrimental to the public health, safety or welfare of persons residing, or working in, or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity, or to the general welfare of the City.

The Board of Zoning Adjustments finds that the operation and conditions of the proposed medical cannabis dispensary at 3089 Teagarden Street would not be consistent with established General Plan policies. The subject property is designated Light Industrial in the City's General Plan Land Use Diagram. The General Plan provides that uses in the Light Industrial area should produce minimal off-site impacts. The location of the proposed medical cannabis dispensary would be in conflict with the policy of the City's General Plan related to off-site impacts:

Policy LU-10.2 - Off-Site Impacts. "Consider the setting and context of each site when evaluating proposals for development in industrial areas. The potential for impacts on adjacent uses, including the potential for land use conflicts and increased parking demand and truck traffic, should be a key consideration."

Chapter 3 of the General Plan further states that "Light Industrial areas may contain wholesale activities, distribution facilities, research and development or e-commerce uses, business services, technology, and manufacturing operations which produce minimal off-site impacts. Campus-style industrial parks and professional offices also are permitted. A limited range of commercial uses also is permitted in these areas."

Further, the eastern half of the shared parking lot's driveway is shared with the rear of the adjacent Sunway Floors Cabinets Inc., a flooring and building materials business that fronts Alvarado Street. This business's outdoor storage yard and loading bay faces the side and rear of the proposed dispensary location. The loading bay is only accessible from the dispensary's shared parking lot and staff has noted the driving aisle is regularly used to load and unloading truck trailers. Patients and employees will share the parking lot with forklifts and trucks providing deliveries to the rear of the flooring business, the food pantry operated by the Davis Street Family Resource Center and the adjacent ribbon wholesaler. The Board of Zoning Adjustment finds that this condition is detrimental to the public health, safety and welfare of persons working in proximity to the proposed medical cannabis dispensary.

- 3. That the proposed use will comply with the provisions of this Code, including any specific condition required for the proposed use in the district in which it would be located.**

The Board of Zoning Adjustments finds that the proposed medical cannabis dispensary does not fully comply with the provisions of the Zoning Code because it would not contribute to a suitable environment for various types of industrial uses nor protect them from the adverse impacts of inharmonious uses, nor is the proposal compatible with the character of the area in which it is proposed. The project as proposed does not comply with the Specific Purposes of the Industrial District as stated in Section 2-700 of the Zoning Code. The property was developed for multi-tenant light industrial uses and was

not specifically designed or developed for a medical cannabis dispensary, a sensitive land use which has unique needs for security, discretion, and secure parking for patients and employees.

4. That the proposed use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities, which cannot be mitigated.

The Board of Zoning Adjustments finds that the proposed medical cannabis dispensary would create an adverse demand for parking in the shared parking lot. According to the applicant's statement, Davis Street Wellness Center expects to have 10 to 12 employees working on-site, processing 7,000 patient transactions each month and 250 patient transactions each day once the business is established. Each of these patients would have appointments scheduled within a 30 minute window. Staff is concerned that, although the minimum parking requirements will be met, the scale of patient and employee activities involved at this location will put a strain on parking availability. The limited pool of available on-site parking for the dispensary will be shared with three other tenants. The site plan submitted by the applicant does not indicate if any specific parking spaces would be assigned or allocated to the proposed dispensary or the other tenants. Ideally, a medical cannabis dispensary would have a private secure parking area for the exclusive use of patients and employees. The proposal has not been able to provide secured or gated private on-site parking.

Although the minimum parking requirements will be met, the scale of patient and employee activities involved at this location by the proposed medical cannabis dispensary will put a strain on traffic circulation and parking availability. The limited pool of available on-site parking for the dispensary will be shared with three other tenants. Street parking on Teagarden Street is the most convenient location for dispensary patients to park, but it will be a challenge for the proposed cannabis dispensary to provide security in this area. There will be limited overflow parking available for dispensary patients and employees during regular business hours, should the shared parking lot exceed capacity, since Teagarden Street has a high concentration of employment and customer traffic due to the combination of light industrial, office and retail uses, some of which have inadequate on-site parking. The medical cannabis dispensary is unable to provide security for patients and employees that park in areas which it does not control.

In addition, Teagarden Street has a high concentration of employment and customer traffic due to the combination of light industrial, office and retail uses, some of which have inadequate on-site parking. This is exacerbated by a number of older legal non-conforming uses and buildings in the vicinity. This places a burden on parking and limits the number of available parking spaces along Teagarden Street. Staff believes that there will be very limited overflow parking available for dispensary patients and employees during regular business hours, should the shared parking lot exceed capacity. The dispensary patients searching for street parking during business hours may further impact traffic on Teagarden Street.

California Environmental Quality Act Finding

This item (PLN17-0012) is statutorily exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines, Article 18, Section 15270, "Projects Which Are Disapproved."

2824607.2