



Legislation Text

File #: 12-079, **Version:** 3

Staff Report for Matter of Appeal by D. McKinney, Appellant, of the Decision of the Board of Zoning Adjustments' Revocation of **PLN2011-00021**; Conditional Use Permit (CUP) to Operate a Trailer Rental and Sales Business at 2661 Alvarado Street, Unit 22. The property referenced in the CUP was used for an unauthorized activity other than the operation of the trailer rental business through rental to an entity that conducted a public assembly in the trailer business location. The unauthorized occupancy violated the PLN2011-00021 Conditions of Approval. Assessor's Parcel Number 77A-648-3-11; R. Legallet, 2661 Alvarado LLC (property owner); IG Industrial General District. (Continued from the March 5, 2012 City Council Meeting)

RECOMMENDATIONS

The Board of Zoning Adjustments and staff recommend that the City Council make a motion to uphold the revocation of the CUP and deny the appeal.

BACKGROUND

This matter was scheduled and noticed for the City Council meeting date of March 5, 2012. Prior to the meeting date, the appellant requested postponing the matter to the April 19, 2012 City Council agenda. At the March 5th meeting the City Council, by motion, continued the matter to its April 19th meeting.

On January 5, 2012, the Board of Zoning Adjustments (BZA) revoked a conditional use permit (CUP) that was approved September 1, 2011 to C&M Trailer Rental, operated by Mr. Damon McKinney, and the property owner, Mr. Robert Legallet, 2661 Alvarado LLC to have a trailer rental and sales business at 2661 Alvarado Street, Unit 22 (BZA Findings of Fact for Revocation Resolution No. 2012-01 is attached). The Agreement to Conditions for the use permit, the BZA Staff Reports and the excerpts of the BZA meeting minutes from September 1, 2011 and January 5, 2012 are also included as attachments.

The BZA found that the property referenced in the CUP was used for an unauthorized activity other than the operation of the trailer rental business through rental to an entity that conducted a public assembly in the trailer business location from Friday evening, September 30, 2011 to early Saturday morning, October 1, 2011. The unauthorized occupancy violated PLN2011-00021. In addition, the CUP was issued on misleading information and misrepresentation, as the City of San Leandro Police Department in its investigation found that the business owner advertised the space for rent for uses other than a place for the trailer rental business. Pursuant to Zoning Code Article 29 Enforcement, the City scheduled a public hearing similar to the September 1st BZA meeting to consider revoking the original CUP. After conducting the duly noticed public hearing the BZA made the necessary findings and revoked the CUP.

Analysis

The subject property is zoned IG Industrial General and is located on the northwest corner of Alvarado Street and Aladdin Avenue. Properties surrounding the property are all zoned IG and contain primarily warehouse uses with manufacturing and/or distribution businesses, and building contractors. The subject parcel is a 5.4 acre site developed with a 95,860 square-foot multi-tenanted industrial building.

September 1, 2011, C&M Trailer Rental was granted a CUP by the BZA to operate a rental facility on a portion of the property that specializes in trailers for transporting vehicles only. All of the trailers are stored inside the building until they are rented out by a customer. The business operates in a 3,945 square-foot in-line space facing Aladdin Avenue (south side of the building). The hours of operation are Monday through Saturday, by appointment only.

Friday evening, September 30, 2011 to early Saturday morning, October 1, 2011, the property specified in the CUP was used for an unauthorized activity other than the operation of the trailer rental business through rental to an entity that conducted a public assembly in the trailer business location. A triple homicide occurred in the immediate area shortly after the unauthorized occupancy.

City of San Leandro Police Department report states the unauthorized assembly occurred at 2661 Alvarado Street, Unit 22, C&M Trailer Rentals and that the business owner advertised the space for rent for other activities other than a place for trailer rentals (see attached City of San Leandro Police Department Report, dated October 21, 2011). The advertisement shows that the business owner had intentions to use the property for purposes other than the proposed and conditionally approved use.

November 5, 2011, the City sent a letter to the applicant and property owner (see attached) citing the property in the CUP was used for an unauthorized activity other than the operation of the trailer rental business through rental to an entity that conducted a public assembly in the trailer business location from Friday evening, September 30, 2011 to early Saturday morning, October 1, 2011. The unauthorized occupancy violated the Conditions of Approval because it was not approved by the BZA as a permitted use and it was not permitted by the BZA as a modification to the use permit.

In the same letter the City stated that pursuant to Article 29, "Enforcement" of the Zoning Code, the City would duly notice a BZA meeting where it would conduct a public hearing to consider revoking the CUP by making one or more findings listed in Article 29.

On January 5, 2012, the BZA conducted the public hearing and at the conclusion found that the activity at 2661 Alvarado Street, Unit 22 operated in violation of the terms and conditions of PLN2011-00021. In addition, the advertisement to rent the space for other activities other than a place for trailer rentals shows that the permit was issued on the basis of erroneous information and misrepresentation. These findings complied with the requirements of Section 5-2906 of the Zoning Code and allowed the Board of Zoning Adjustments to revoke the CUP.

The appellant is appealing the decision to revoke the CUP stating that it was not true that erroneous information or information that was misleading had been provided to the City (see attached). The appellant states that the triple homicide was not related to C&M Trailer rentals being out of compliance with the use of the facility, although he did rent out the facility. The homicides occurred after the facility was closed and had nothing to do with the owner of the business. The appellant or the business should not be connected to tragedy that he did not cause or in which he was not involved. The advertisement to rent the space for parties was due to the City's Development Fee for

Street Improvements (DFSI) of approximately \$8,600. Had he known this at the beginning of the application process he would not have located his business at this location. He believes these events would have not occurred if he was told about the cost of the DFSI, which he describes as a reason for needing to rent out the facility. Lastly, he believes his business owner investment rights are being violated.

The facility was not permitted to be rented out for parties under his approved CUP. The hours of the unauthorized event occurred after 5:00 p.m. At the BZA public hearing on September 1, 2011, the appellant stated that business operations would not occur any later than 5:00 p.m. (see attached excerpt of minutes).

Permits and/or Variances Granted

On May 17, 2006 Site Plan Approval (PLN2006-00017) was granted by the Zoning Enforcement Official (ZEO) to allow for the division of the existing single-tenant industrial building (formerly Gardco Lighting) into 26 individual tenant spaces, for rent, for light industrial, office and warehouse uses. (Note: The Conditions of Approval for PLN2006-00017 included a requirement that the DFSI would be required on any new uses on the property and as a condition to the issuance of any building permit for each of the spaces. The new use would pay the DFSI fee based on the proposed use; however it would receive credit for the previous use established by Gardco Lighting.)

September 1, 2011, C&M Trailer Rental was granted a CUP by the BZA to operate a rental facility on a portion of the property that specializes in trailers for transporting vehicles only. All of the trailers are stored inside the building until they are rented out by a customer. The hours of operation are Monday through Saturday, by appointment only.

On January 5, 2012, the BZA conducted the public hearing and at the conclusion found that the activity at 2661 Alvarado Street, Unit 22 operated in violation of the terms and conditions of PLN2011-00021.

Environmental Review

This project to appeal the revocation of PLN2011-00021 is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines, Article 19, Section 15321 as enforcement actions by regulatory agencies do not require environmental review.

Board/Commission Review and Actions

September 1, 2011, C&M Trailer Rental was granted a CUP by the BZA to operate a rental facility on a portion of an industrial property. It found that a specialized business providing rental of a limited number of towing trailers for motorcycles and cars would be compatible at the subject property and immediate industrial area. All of the trailers were to be stored inside the building until they were rented out by a customer. The business operated by appointment only. The proposed use would take place inside the building.

On January 5, 2012, the BZA conducted the public hearing and at the conclusion found that the activity at 2661 Alvarado Street, Unit 22 operated in violation of the terms and conditions of PLN2011-00021. In addition, the advertisement to rent the space for other activities other than a place for trailer rentals shows that the permit was issued on the basis of erroneous information and misrepresentation. These findings complied with the requirements of Section 5-2906 of the Zoning Code and allowed the Board of Zoning Adjustments to revoke the CUP

Summary of Public Outreach Efforts

For the January 5, 2012, Board of Zoning Adjustments meeting, the following public outreach was performed: a legal advertisement for the public hearing was placed in the *Daily Review* newspaper; public hearing notification letters were mailed to property owners and business owners within 300 feet of the project site, and public notification placards were posted on the utility poles adjacent to the subject property. Similar notification measures were performed for the City Council's public hearing of the appeal on March 5, 2012. Since the matter was continued on March 5th by motion to the April 19th meeting, no further noticing was required.

ATTACHMENTS

- Vicinity Map
- Application for Appeal with the Appellant's Statement to the City Clerk and City Council, dated January 20, 2012
- BZA Findings of Fact for Revocation (Resolution No. 2012-01)
- City of San Leandro Police Department Report
- Board of Zoning Adjustments Staff Report, dated January 5, 2012
- Excerpts from the Minutes of the Board of Zoning Adjustments Meeting of January 5, 2012
- Excerpts from the Minutes of the Board of Zoning Adjustments Meeting of September 1, 2011
- City Letter to Mr. Damon McKinney, C&M Trailer Rental, and Mr. Robert Legallet (Property Owner), dated November 3, 2011
- Agreement to Conditions (unsigned COA)
- Business Owner's Statement, dated November 28, 2011
- Property Owner's Statement, dated November 23, 2011
- Board of Zoning Adjustments Report, dated September 1, 2011
- BZA Findings of Fact for Approval
- Applicant's Supporting Statement, dated June 1, 2011

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