



Board Report

File #: RES 18-112, **Version:** 1

**Public Hearing: To consider an Appeal from Bayside Dispensary, LLC
PLN170478 - PACHECO**

Public hearing to consider an appeal by Bayside Dispensary, LLC from the Planning Commission's approval of a Use Permit and General Development Plan amendment to allow a commercial cannabis retailer.

Project Location: 10031 Reese Circle (Assessor's Parcel Number: 125-022-024-000), North County Area.

Proposed CEQA Action: Categorically exempt pursuant to Section 15303 of the CEQA Guidelines.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Find that the project is the conversion of an existing structure from one use to another which qualifies for a Class 3 Categorical Exemption per Section 15303 of the CEQA Guidelines and none of the exceptions under Section 15300.2 apply;
- b. Deny the appeal of Bayside Dispensary, LLC; and
- c. Approve a Use Permit and amendment to the General Development Plan (Pacheco, Carl R JR & Jill/ PLN170478) to allow a commercial cannabis retailer at 10031 Reese Circle, North County Area Plan area. The attached draft resolution (**Exhibit A**) includes findings and evidence for consideration. Staff recommends approval of the project subject to 10 conditions of approval.

PROJECT INFORMATION:

Owner: Pacheco, Carl R Jr & Jill

Agent: Chris Hester

Zoning: Light Commercial, with a Building Site-6 zoning overlay (LC/B-6)

Plan Area: North County Area Plan

Flagged and Staked: N/A

SUMMARY:

On January 17, 2018, Chris Hester, representing 10031 Reese Circle, LLC (dba Highways Dispensary), on behalf of the property owners Carl and Jill Pacheco (Pacheco), applied for a Use Permit to allow a commercial cannabis retailer at 10031 Reese Circle in the North County inland unincorporated area. The project site currently contains a 7,200 square foot building used as a wholesale flooring store. Staff reviewed the plans and information submitted for consistency with standards contained in Chapter 21.67 of the Monterey County Code for a cannabis retailer.

On June 27, 2018, the Planning Commission considered and approved a Use Permit and General Development Plan amendment allowing a change in use of the building from a flooring store to a commercial cannabis dispensary. The Commission's vote was 4 ayes, 3 noes, and 1 abstention (**Attachment D**). On July 9, 2018, Natalia Thurston, Attorney for Bayside Dispensary, LLC filed an appeal of the Planning Commission's decision with the Clerk of the Board of Supervisors (**Attachment C**). Bayside Dispensary, LLC, is a limited liability company that is the proposed operator of a cannabis retailer on the Villafranca, Anthony & Pat TRS (Villafranca) property at 10041 Reese Circle, the property directly to the east of the Pacheco property. The locations of the Pacheco project and Villafranca project are within 1500 feet of each other. Section 21.67.040.B.3 of Title 21 of the Monterey County Code provides that a cannabis dispensary shall not be located

within 1,500 feet of another cannabis dispensary. Thus, if the Pacheco Use Permit and General Plan amendment for a cannabis retailer is approved, the proposed Villafranca (Bayside Dispensary) cannabis retailer may not be allowed, unless findings could be made for a variance or unless the zoning ordinance were amended to change the 1500 foot setback requirement.

The Bayside Dispensary appeal centers on alleged violations of the Permit Streamlining Act which the Appellant contends has caused the hearing on its application to be delayed. After review of all of the relevant information, staff finds that both applications were treated the same with regard to processing timelines and that staff's processing of both the Pacheco and Villafranca applications complied with the Permit Streamlining Act. Staff finds that the Pacheco application is first in line and that the proposed project meets the standards contained in Chapter 21.67 of the Monterey County Code for permitting a cannabis retailer. Staff recommends that the Board deny the appeal of the Planning Commission's approval and approve the Pacheco Use Permit application (PLN170478). The hearing before the Board of Supervisors on this matter is de novo.

DISCUSSION:

The written appeal of the Pacheco Use Permit contends that the Villafranca Use Permit application was not treated equally to the Pacheco Use Permit application with respect to the completeness dates because the Environmental Health Bureau (EHB) required information and site work for the Villafranca application that was not required of the Pacheco application. At issue with these two applications is the 1,500 foot setback required between commercial cannabis dispensaries contained in Section 21.37.040.B.4 of the Inland Zoning Ordinance, Title 21 of the Monterey County Code. If the Pacheco Use Permit application is approved, it would trigger the 1,500 foot setback requirement which would directly affect the Villafranca Use Permit application.

Staff presented an ordinance amending set back standards to the Board for consideration on March 13, 2018. Based on Board direction, staff has been working with the Board's Cannabis Committee to revise the draft ordinance. Because the changes to the draft ordinance are substantial compared to the draft previously considered by the Planning Commission, staff will bring the revised draft ordinance to the Planning Commission for its recommendation and then return to the Board for consideration of the revised ordinance. The tentative schedule is to bring the draft ordinance to the Planning Commission on September 12th. If the Planning Commission makes a recommendation at that hearing, staff plans to schedule a public hearing at the Board on the ordinance on October 2, 2018.

Under the current ordinance, to address circumstances where two applications for a cannabis dispensary are submitted within 1,500 feet of one-another (as is the case with Pacheco and Villafranca), staff is scheduling cannabis retailer applications for consideration at the Planning Commission based on the date the application is deemed complete. Staff has written several communications regarding the completeness date for the Pacheco and Villafranca Use Permit applications in advance of the Planning Commission hearing (**See Attachment E**). Staff has determined that the Pacheco application was deemed complete before the Villafranca application and that both applications have been treated the same (See **Attachment A** for more explanation). The Planning Commission concurred with the assessment of the submission timelines for the respective applications, and found that the Pacheco application was deemed complete on April 7, 2018.

In addition to the appeal contentions from Bayside Dispensary, LLC, several neighbors in the vicinity the Pacheco property attended the Planning Commission hearing and voiced concern that the proposed cannabis dispensary would increase traffic within the nearby residential neighborhood, may increase crime, and that it is located too close to the Central Bay Continuation School and the Prunedale Elementary school. Those concerns have been considered and are addressed in more detail in the project Discussion (**Attachment A.**)

A detailed discussion, including full appellant contention and staff response, is provided in **Attachment A**.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- County of Monterey Health Department
- Monterey County Environmental Health Bureau
- Monterey County Waste Management
- North County Fire Protection District
- North County Land Use Advisory Committee

North County Land Use Advisory Committee:

The proposed project was reviewed by the North County Land Use Advisory Committee (LUAC) on February 21, 2018. The LUAC had a tie vote of 3-3, with two members absent. (**Attachment F**) Four neighbors commented on the project with concerns about an insufficient fire protection system in place, inadequate water supply, and concerns about the application being heard prematurely. The applicant indicated the Fire Department had signed off on the application with a finding that the fire system was sufficient. County Staff verified that North County Fire Protection District reviewed the application and deemed it complete.

Staff recommends approval because the project complies with all of the County and State requirements for cannabis activity permitting and licensing including zoning, setbacks, security provisions, and operational standards. From the exterior, the retailer should look no different from any other retail use that may occupy the site.

FINANCING:

Funding for staff time associated with this project is included in the FY18-19 Adopted Budget for RMA-Planning.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our RMA customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources. Adherence to Monterey County Cannabis Regulations also ensures the health and safety of County Residents.

Check the related Board of Supervisors Strategic Initiatives:

- ☐ Economic Development
- ☒ Administration
- ☒ Health & Human Services
- ☐ Infrastructure
- ☒ Public Safety

Prepared by: Craig W. Spencer, Supervising Planner ext. 5233

Reviewed by: Brandon Swanson, Planning Services Manager

Approved by: John M. Dugan, FAICP, RMA Deputy Director of Land Use and
Development Services

The following attachments are on file with the Clerk of the Board:

- Attachment A - Discussion
- Attachment B - Draft Board Resolution including

- Exhibit 1: Recommend Conditions of Approval and
- Exhibit 2: Project Plans

Attachment C - Notice of Appeal

Attachment D - Planning Commission Resolution

Attachment E - Correspondence

Attachment F - North County Land Use Advisory Committee minutes

Attachment G - Vicinity Map

cc: Front Counter Copy; Brandon Swanson, RMA Services Manager; Craig Spencer, Project Planner; County of Monterey Health Department, Monterey County Environmental Health Bureau; Monterey County Waste Management; North County Fire Protection District; Carl Pacheco, applicant; Brad and Kate Dixon, neighbors; Chris Hester, Agent; Natalia Thurston, Appellant; Project File PLN170145