



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: RES 20-173, **Version:** 1

Public Hearing to consider an appeal by Don and Barbara Chapin from the August 12, 2020 Planning Commission decision denying an application for commercial cannabis retail activities, commercial cannabis non-volatile manufacturing activities, and cannabis cultivation within an existing greenhouse and associated buildings in the Farmland zoning district.

Project Title: PLN170296 - CABRERA (THE CHAPIN LIVING TRUST)

Project Location: 115 & 115 A Monterey Salinas Highway, Greater Salinas Area Plan (APN: 207-131-004-000 and 207-131-005-000)

Proposed CEQA action: Statutorily exempt pursuant to Section 15270 of the CEQA Guidelines - Projects that are not approved

RECOMMENDATION:

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

- a. Find that denial of the project is statutorily exempt pursuant to Section 15270 of the CEQA Guidelines; and
- b. Deny the appeal by Don and Barbara Chapin from the August 12, 2020 Planning Commission's decision denying an application requesting to amend a previously approved General Development Plan (PLN090138) and Use Permit PLN050366 (as amended by PLN060174) to allow commercial cannabis retail activities, commercial cannabis non-volatile manufacturing activities, and cannabis cultivation within the existing greenhouse and associated buildings.

PROJECT INFORMATION:

Applicant: Ricky Cabrera

Agent: Cerissa Skinner

Property Owner: The Chapin Living Trust

APNs: 207-131-004-000; 207-131-005-000

Parcel Size: 0.79 acres and 2.0 acres respectively

Zoning: Farmlands/40 acre [F/40]

Plan Area: Greater Salinas Area Plan

SUMMARY:

Mr. Ricky Cabrera is leasing a portion the McShane's Landscape Supply property located on Highway 68, south of the City of Salinas. On August 12, 2020, the Planning Commission accepted staff's recommendation to deny an application requesting to operate a retail cannabis facility, a manufacturing facility to make edible products, and in addition to cannabis cultivation on this site due to inconsistency with the property's Farmland zoning designation. Don and Barbara Chapin submitted an appeal to the Board of Supervisors on August 26, 2020.

Prior to McShane's Nursery, Graber Gardens was located on the property and it sold landscaping materials. Graber Gardens was considered a legal, non-conforming use because landscaping is not specifically listed as an allowed use in the Farmland zone. While a General Development Plan (GDP) is not required in the Farmland zone, staff at the time suggested creating a GDP to provide an avenue to memorialize continuation of the non-conforming landscaping business. Non-conforming uses are restricted from expanding, or changing the nature

of the use, so the GDP also helped to memorialize pre-existing structures on the site. A new 1,080 square foot greenhouse was permitted for nursery use, subject to restriction that no retail operation occur within that building (limiting the retail component to the nursery operation only).

Commercial cannabis cultivation is permitted within the Farmland zoning designation. Also, commercial cannabis manufacturing is permitted in the Farmland zoning designation, if it is coupled with cannabis cultivation and is non-volatile. Here, the project applicants have applied for use of their property for cultivation and non-volatile manufacturing of edible products. As such, these uses are currently supported under the Monterey County Code (“MCC”) with an amendment to the GDP, and an administrative permit.

However, the project applicants are also applying for a cannabis retail facility on the property. Retail cannabis facilities are specifically prohibited in the Farmlands zoning designation. Prior to the Planning Commission Hearing, the project applicants were informed throughout the application process in writing on multiple occasions, including at a DRC meeting, that the proposed use is inconsistent with the underlying zoning. However, the applicant has expressed they wish to pursue decision on their application that includes both the retail, manufacturing, and cultivation components. In that context, staff recommends the Board uphold the Planning Commission’s denial of the application, finding that retail cannabis is not an allowed use in the Farmland zone.

If the Board finds that a retail cannabis facility would be appropriate in this location, this would require either amending the Zoning Code to allow retail cannabis facilities in the Farmland zoning district, changing the zoning of the parcel from Farmland to Commercial, or adopting a Special Treatment Area to specifically allow retail cannabis at this site. Amending the Zoning Code to allow retail cannabis in the Farmland zone would apply countywide and could have broad reaching implications. Changing the zoning designation to allow retail cannabis on this site would effectively be spot-zoning. If the Board desires a path forward for this application, staff would be most supportive of adopting a Special Treatment Area.

DISCUSSION:

The first recorded permit on this site in 1984 was for expansion of an existing retail nursery and an accessory landscape materials business (Permit No. 3402). Subsequent permits in 1995, 2005 and 2006 recognized minor modifications including expansions of the business and construction of a 35-foot-tall ornamental windmill structure, 3,024 sq ft greenhouse, 200 sq ft concrete batch plant, new parking lot and signage. In 2012, a General Development Plan approved under PLN060138 cleared a code enforcement case, legalized the non-conforming uses on the site, allowed a produce stand in an existing unoccupied building, and authorized a lighting plan and a sign program in addition to the existing nursery and ornamental landscape business. This permit also included a list of industry-related and seasonal events that would occur on the property. Commercial retail uses other than nursery related operations were not permitted as part of this entitlement. The General Development Plan (GDP) specified that no retail space would be added, meaning no further expansion of the retail use past what was recognized in the GDP. In 2018, nursery operations at the site were closed, but the landscape supply portion of the business has continued to present day.

It is worth noting that in 2016, Monterey County adopted regulations for commercial cannabis operations, Chapter 21.67 of County Code. These regulations specifically limited the types of cannabis activities in each of the zoning areas of Monterey County. Retail operations (dispensaries), were initially limited to the Commercial Zoning Districts, and then in 2020 this was expanded to include the Mixed-Use Zoning areas.

Proposed Project:

The project proposes to use existing structures for new cannabis-related uses. An existing 4,760 square foot

building, portions of which had previously been used for retail nursery sales, would be used as a commercial dispensary and edibles manufacturing building. This building had also been previously used for other commercial retail operations, not specifically related to the nursery, but those uses were not permitted. An existing 42'x72' barn structure, which has not been previously used for retail space, would be used as an overflow commercial dispensary building. Also on the site is an existing office building that would continue to be used as an office, and two additional 360 square foot and 480 square foot buildings would continue to be used for non-cannabis retail sales and to house non-cannabis accessories. An existing 1,080 square foot greenhouse, which was constructed prior to January 1, 2016, would be used to cultivate cannabis for demonstration and education purposes only. This greenhouse is not proposed to produce cannabis that would be sold commercially.

Zoning Regulations:

The property is zoned Farmlands/40 acres per unit (F/40). Allowed uses in the F/40 zoning district (MCC Chapter 21.30) do not include retail shops, with the exception of stands for the sale of agricultural products grown on the premises. A nursery and landscape business have existed at this site since prior to 1984. Approval of a General Development Plan in 2012 entitled the nursery use at this site. That action included discussion that there was to be no expansion of retail use beyond the legal non-conforming nursery and landscape supply that already existed on the site. The general development plan was subsequently approved with language to formalize that no commercial retail uses outside nursery related operations were allowed, and that no additional retail space would be added.

When the County adopted regulations for Commercial Cannabis Activities in 2016, MCC section 21.67.040 limits cannabis retail use only in Light Commercial, Heavy Commercial, and Mixed-Use zoning districts. Cannabis regulations explicitly state that "Cannabis retailers shall not be allowed in any other zoning district." Therefore, the project is not considered a change to a use of a similar nature because the County regulations do not consider cannabis retail similar to any other use. As such, retail cannabis is a use that cannot currently be permitted on the Farmlands-zoned property. However, cultivation and non-volatile cannabis manufacturing (also included as part of this application) are allowed uses in the F/40 zoning designation with an administrative permit. If the proposed project was modified to only include the cultivation components in the existing greenhouse on-site, then it would be consistent with the zoning regulations and could be supported by staff.

Should the Board desire a path forward to allow retail cannabis sales at this site, three options exist: 1) Amend the Zoning Code to allow retail cannabis in the Farmland Zoning district; 2) Re-zone the property to a designation that allows retail cannabis; or 3) Create a Special Treatment Area that would allow retail cannabis in that specific area. These options are discussed in more detail below. In all cases, CEQA analysis would be required on the project before it can be considered. There has been no CEQA analysis since the staff recommendation thus far has been for denial, which is statutorily exempt.

Option 1 - Amend the Zoning Code to allow retail cannabis facilities in the Farmland Zoning District.

Section 21.67.040 allows cannabis retail facilities in Light Commercial, Heavy Commercial, and Mixed Use zoning districts and specifically states that "cannabis retailers shall not be allowed in any other zoning district". Allowing cannabis retailers in the Farmland zoning district would require an ordinance amending Section 21.67.040 to add Farmland as a zoning district where retail cannabis is allowed. Such a change would have implications for Farmland zoned properties throughout Monterey County. Where retail cannabis is allowed was carefully considered when cannabis regulations were developed; however, the industry has evolved since that time.

Option 2 - Rezone the property to a designation that allows retail cannabis facilities: either Light Commercial, Heavy Commercial, or Mixed Use.

The subject parcels are within a broader Farmland area that is not identified for commercial expansion by the County. When the County consulted the City of Salinas on our General Plan update, the City specifically expressed opposition to commercializing this corridor. The Greater Salinas Area Memorandum of Understanding (GSA MOU) speaks to neither agency expanding development south of the City. Staff would not recommend rezoning a single property surrounding by the Farmland designation as it would effectively be spot-zoning. Staff finds that the site is not deprived of all economically beneficial use to justify a spot-zoning action.

Option 3 - Create a Special Treatment Area to encompass existing commercial properties in the area south of the City of Salinas.

Monterey County has applied a Special Treatment Area (STA) Overlay designation where there are unique conditions that warrant different uses from what is otherwise allowed in the underlying (surrounding) land use designation. STA could be considered for only the subject property, or include other properties in the area that have been developed with existing commercial uses. Existing businesses in the area include a tattoo shop directly adjacent to the north of the subject property, and multiple businesses approximately 250 yards north of the subject property, on the opposite side of Highway 68. Businesses in that area include a gas station, a convenience store, a car wash, a music store, a nursery, a butcher shop, a seed supply company, a sound company, a psychic, and a Montessori childcare center. MCC Chapter 21.67 would need to be amended to state that retail cannabis may be allowed if specifically stated in an applicable Special Treatment Area.

Considering the descriptions above and the technical issues detailed below, staff would be most supportive of Option 3, creating a Special Treatment Area, if the Board desires a path forward for this applicant. This option avoids a broader effect of allowing retail cannabis in all Farmland Zoning designations. It also limits the commercial areas to what is already existing, thereby reducing potential conflicts with City and County intentions to avoid expansion of commercial areas and conversion of farmland south of the City, in accordance with the Greater Salinas Area Memorandum of Understanding. Creation of a Special Treatment Area would require Board Direction to initiate a General Plan Amendment and Zone Change, subject to review as a project under the California Environmental Quality Act (CEQA). General Plan Amendments are limited by state law to four per year, and by County policy to two per year (GP Policies LU-9.6 and 9.7). Estimated timeline for completion for creation of a Special Treatment Area would be 1 to 2 years.

Technical Issues

Should the Board direct staff to pursue one of the options above to move towards allowing retail cannabis on the subject property, technical issues with the project remain unexplored. Traffic impacts have not yet been fully evaluated. Caltrans preliminarily reviewed a submitted traffic report for the proposed project and would require additional analysis should the project move forward. This analysis and review have not been completed due to the previous staff recommendation for denial.

Additionally, the Environmental Health Bureau has evaluated the proposal for retail cannabis at this location with an established Risk Assessment Matrix and found that it would result in a score of 8, which falls into the range of a high risk for increased public health impacts due to potential exposures and/or increased use by at risk groups due to normalization of cannabis. Based on the score and thus the potential for public health risk, the Monterey County Health Department does not support the issuance of a retail permit for the facility at this time.

The property consists of two separate parcels. Currently, the smaller of the two lots, APN 207-131-004-000 exceeds coverage requirements for the Farmland zoning. The project proposes to add an additional 381 square foot covered walkway to this lot. Allowed coverage for Farmland zoned parcels is 5 percent, and with the new walkway total coverage would be 14 percent (excluding the existing greenhouse). The increase in coverage would not be approvable since the existing coverage is legal nonconforming. A possible solution would be to merge the two parcels via the lot line adjustment process, but this option needs to be explored further.

Public Comment:

Multiple public comment letters were received both in support of and in opposition to the project in advance of the Planning Commission hearing. In summary, the letters in opposition are concerned about traffic, the potential hazards of a cannabis dispensary, and inconsistency with zoning. Letters in support generally spoke about a need for more access to cannabis products and continuing a previously existing retail use. All correspondence received have been included as Attachment E.

CEQA

CEQA Guidelines Section 15270 states that denial of a project is statutorily exempt. Should the Board desire a path forward to allow retail cannabis sales at this site, CEQA analysis will be required.

OTHER AGENCY INVOLVEMENT:

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

Environmental Health Bureau

RMA-Public Works

RMA-Environmental Services

Monterey Regional Fire Protection District

Monterey County Health Department

Agricultural Advisory Committee

The project was reviewed by the Agricultural Advisory Committee on June 27, 2019. The committee voted 4:2 to support staff's recommendation for denial, with two members abstaining, one recused, and four members absent.

LUAC

The project is not within the jurisdiction of a designated land use advisory committee; however, it does appear under the jurisdiction of the Spreckels Neighborhood Design Review Committee, and staff referred it to this committee seeking any feedback on the proposed project on July 17, 2019. The committee passed a motion of "no opinion or not applicable", noting that the project is not within the town of Spreckels and is of no concern related to historical review.

FINANCING:

Funding for staff time associated with this project is included in the FY 2020/21 Adopted Budget for RMA-Planning, Appropriation Unit RMA110.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely responses 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.

Check the related Board of Supervisors Strategic Initiatives:

Economic Development

X Administration

Health & Human Services

Infrastructure

Public Safety

Prepared by: Cheryl Ku, Senior Planner

Reviewed by: Brandon Swanson, RMA Planning Services Manager

Approved by: Carl P. Holm, AICP, RMA Director

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

Attachment A - Draft Resolution for Denial, including;

- Site Plans

Attachment B - Ag Advisory Committee Minutes

Attachment C - Vicinity Map

Attachment D - Notice of Appeal

Attachment E - Correspondence Received Prior to PC Hearing

Attachment F - PC Resolution 20-026

Attachment G - PC Resolution 05035 - PLN050366

Attachment H - PC Resolution 06042 - PLN060174

Attachment I - PC Resolution 12-023 - PLN090138

cc: Front Counter Copy; Planning Commission, Brandon Swanson, RMA Planning Services Manager; Cheryl Ku, Planner; Cerisa Skinner, Agent; Ricky Cabrera and the Chapin Living Trust, Owners; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); Project File PLN170296.