

MASTER APPEAL FORM

City of Los Angeles – Department of City Planning

APPEAL TO THE: City Planning Commission
(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: ZA 2010-0977 (ZAI)

PROJECT ADDRESS: Citywide

FINAL DATE TO APPEAL: May 21, 2010

- TYPE OF APPEAL:**
1. Appeal by Applicant
 2. Appeal by a person, other than the applicant, claiming to be aggrieved
 3. Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION – Please print clearly

Name: Americans for Safe Access Foundation

- Are you filing for yourself or on behalf of another party, organization or company?

Self Other: Purelife Alternative Wellness Center

Address: 1649 S. La Cienega Blvd.

Los Angeles, CA Zip: 90035

Telephone: (310) 246-9358 E-mail: yamibolanos@yahoo.com

- Are you filing to support the original applicant's position?

Yes No

REPRESENTATIVE INFORMATION

Name: Americans for Safe Access Foundation

Address: 1322 Webster Street, Suite 402

Oakland, CA Zip: 94612

Telephone: 510-251-1856 x.308 E-mail: joelford@safeaccessnow.org

This application is to be used for any appeals authorized by the Los Angeles Municipal Code for discretionary actions administered by the Department of City Planning.

JUSTIFICATION/REASON FOR APPEALING – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

- Entire Part

Your justification/reason must state:

- The reasons for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

ADDITIONAL INFORMATION/REQUIREMENTS

- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
 - Master Appeal Form
 - Justification/Reason for Appealing document
 - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

*"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."
 --CA Public Resources Code § 21151 (c)*

I certify that the statements contained in this application are complete and true:

Appellant Signature:  Date: 5/21/2010

Planning Staff Use Only

Amount	Reviewed and Accepted by	Date
Receipt No.	Deemed Complete by	Date

- Determination Authority Notified Original Receipt and BTC Receipt (if original applicant)

RE: Case ZA 2010-0977 (ZAI)
Americans for safe Access Foundation on behalf of
Purelife Alternative Wellness Center

Justifications/Reasons for Appeal

1. This appeal challenges the Zoning Administrator's Determination, dated May 6, 2010 (Case No. ZA 2010-0977 (ZAI)), that "[p]arking shall be provided [by Medical Marijuana Collectives] at a ration of one (1) parking space per 200 square feet of floor area, as provided in LAMC Section 12.21-A,4(d)(3)." (*Id.* at p.3) For mixed use establishments, parking should be apportioned based on the portion of the establishment devoted to a particular use, *i.e.*, a 2,000 square foot building, which is used fifty percent for medical services and fifty percent for storage would be required to have seven parking spaces based on the following allocation: five parking spaces for the medical services portion and two parking spaces for the storage portion. The Zoning Administrator's Determination that Medical Marijuana Collectives must provide one parking space for every 200 square feet of use fails to make such allocation, which results in the imposition of an unnecessarily onerous parking requirement. This harms appellant because she will have to provide more parking spaces than is required by law.
2. This appeal also challenges the Zoning Administrator's Determination, dated May 6, 2010 (Case No. ZA 2010-0977 (ZAI)), that "nonconforming rights are not applicable to Medical Marijuana Collectives." (*Id.* at p.4) Under established case law, property owners acquire vested rights in legal nonconforming uses of buildings and appellant has acquired such rights by investing substantial resources into her property to operate a medical marijuana collective. Appellant is harmed by the Zoning Administrator's Determination because it upsets her vested property rights. The Zoning Administrator's Determination that "nonconforming rights are not applicable to Medical Marijuana Collectives" conflicts with applicable case law interpreting the constitutional requirement of due process.

For Additional Information:

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Headquarters

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PHONE: 202.857.4272 FAX: 202.857.4273

General Information

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TOLL FREE: 1.888.929.4367

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CALIFORNIA



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DEPARTMENT OF
CITY PLANNING

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DIRECTOR

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ZONING ADMINISTRATION

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May 6, 2010

Public Counter
Department of Building and Safety
Office of the City Clerk
All Interested Parties

CASE NO. ZA 2010-0977(ZAI)
ZONING ADMINISTRATOR'S
INTERPRETATION

Chapter I of the Los Angeles Municipal
Code – Medical Marijuana Collectives

CITYWIDE

On January 26, 2010, the City Council adopted Ordinance No. 181, 069, amending Chapter IV of the Los Angeles Municipal Code (Public Welfare Code) regulating Medical Marijuana Collectives. LAMC Section 45.19.6.3.A.1 requires Medical Marijuana Collectives to comply with the provisions of Chapter I of the Los Angeles Municipal Code (Zoning Code). This ZAI clarifies the applicability of Chapter I to such Collectives. This ZAI also establishes that a Medical Marijuana Collective is an allowed use of land in all zones provided it complies with State law and the location, distance and other requirements of Chapter 5.1 as well as all applicable provisions of the Zoning Code, as clarified herein.

Section 12.21-A, 2 of the Code provides in pertinent part as follows:

“2. Other Uses Determined by Administrator- The Administrator shall have the authority to determine other uses, in addition to those specifically listed in this Article, which may be permitted in each of the various zones, when in his judgment, such other uses are similar to and no more objectionable to the public welfare than those listed. The Zoning Administrator shall also have the authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation.”

These provisions have also been interpreted to permit resolution of conflicts between disparate sections of the Code, and to provide clarity where ambiguity exists.

Discussion

The establishment and operation of Medical Marijuana Collectives are regulated both by State and Local laws. The City Council adopted Ordinance No. 181,069 which amends Chapter IV of the Los Angeles Municipal Code (commencing with Section 45.19.6) by adding new provisions in Article 5.1 titled: Medical Marijuana Collectives.



Permitted Use and Zones. The Zoning Code is permissive. Only the uses specifically enumerated either in the Code or the Official Use List [Case No. ZA 2003-4842(ZAI)] are permitted. All other uses are prohibited. By adopting Ordinance No. 181,069, Council intended to permit Medical Marijuana Collectives, in furtherance of the Compassionate Use Act and to promote the public safety through appropriate location, distance and other requirements. Based on Council's action, I find that such Collectives are now a permitted use of land in any zone in the City of Los Angeles, so long as these Collectives comply with State law, the regulations set forth in Ordinance No. 181,069, and all applicable provisions of the Zoning Code.

Relief. Medical Marijuana Collectives may apply for relief from those provisions of the Zoning Code, such as parking, that apply to them. Medical Marijuana Collectives may not apply for relief from the regulations set forth in Ordinance No. 181,069.

Parking. Medical Marijuana Collectives operate in a way that is similar to medical offices and clinics and therefore generate the same demand for parking. Accordingly, pursuant to LAMC Section 12.21-A,4(d)(3), Medical Marijuana Collectives shall provide parking at a ratio of one parking space per 200 square feet of floor area. For purposes of applying the parking ratio, the floor area of the Medical Marijuana Collective must include the areas dedicated to all activities of the collective, such as cultivation, storage, packaging, dispensing, etc. The parking requirement for retail establishments, including pharmacies (LAMC Section 12.21-A,4(d)(5)) cannot be applied to Medical Marijuana Collectives because they are expressly prohibited to operate as retail establishments as provided by LAMC Section 45.19.6.4.

Relationship to Other Land Use Regulations. As stated in part in LAMC Chapter IV, Section 45.19.6 (Purposes and Intent), "... medical marijuana collectives shall comply with all provisions of the Los Angeles Municipal Code ("Code"), State Law, and all other applicable local and state laws. Nothing in this article purports to permit activities that are otherwise illegal under state or local law." Medical Marijuana Collectives are thus subject to all applicable regulations contained in the Zoning Code and any other applicable land use regulations, such as Specific Plans, Community Design Overlay Districts, Historic Preservation Overlay Districts, as well as design guidelines. Should there be a conflict between the requirements of Article 5.1 of the LAMC, Public Welfare Code and land use regulations, including design standards, the provisions of Article 5.1 shall prevail.

Nuisance Abatement: LAMC Section 11.00(n) states in part: "Pursuant to Government Code Section 38773, the City may summarily abate any nuisance at the expense of the persons creating, causing, committing, or maintaining it and the expense of the abatement of the nuisance may be a lien against the property on which it is maintained and a personal obligation against the property owner."

Therefore, should Medical Marijuana Collectives become a nuisance and adversely affect the public peace, health and safety of persons residing or working in the collective's surrounding area, Administrative Nuisance Abatement proceedings, pursuant to LAMC Section 12.27.1, may be undertaken.

Nonconforming Provisions: LAMC Section 45.19.6.2, "Registration" states that a medical marijuana collective, dispensary, operator, establishment, or provider that registered pursuant to Interim Control Ordinance No. 179.027 with the City Clerk's office before November 12, 2007 (and subject to certain other specified limitations) may be "eligible to register and operate if it immediately complies with all provisions of State law, and within 180 days after the effective date of this ordinance completes its compliance in full with each provision of this article."

In light of this provision, a question has been raised as to whether LAMC Section 12.23 concerning nonconforming buildings and uses confers nonconforming status on a collective, dispensary, operator, establishment, or provider just by virtue of having registered with the City Clerk before November 12, 2007, in accordance with Ordinance No. 179,027, or that otherwise existed before the operative date of Ordinance No. 181,069.

As set forth in LAMC Section 12.23-C, the Council has established unique nonconforming rules for signs; oil wells; commercial animal keeping; automobile dismantling yards, junk yards, and related uses; nonconforming hostels and transient occupancy residential structures; and equine nonconforming uses adjacent to residential buildings. In each case, the unique rules reflected the Council's legislative judgment and priority. In the same vein, the City Council adopted regulations (Ord. No. 181,069) for the establishment and operations of Medical Marijuana Collectives on January 26, 2010. However, no unique nonconforming rules have been established for Medical Marijuana Collectives. Therefore, a Medical Marijuana Collective established prior to the enactment of the ordinance cannot claim nonconforming status as to use.

Determination

Accordingly, I hereby determine that:

1. Zones and Use. Medical Marijuana Collectives are permitted in any zone, subject to all applicable provisions of State law, the Zoning Code and Ordinance No. 181,069.
2. Parking. Parking shall be provided at a ratio of one (1) parking space per 200 square feet of floor area, as provided in LAMC Section 12.21-A,4(d)(3).
3. Development Standards. All development standards, including but not limited to setbacks, yards, height, and floor area of the zone in which the Medical Marijuana Collective is located shall be complied with.
4. Relationship to Other Land Use Regulations. Medical Marijuana Collectives are subject to all applicable regulations contained in the Zoning Code and any other applicable land use regulations, including design guidelines, such as Specific Plans, Community Design Overlay Districts, Historic Preservation Overlay Districts, etc. Should there be a conflict between the requirements of Article 5.1 of the LAMC and a land use regulation, the provisions of Article 5.1 shall prevail.
5. Relief. All relief mechanisms available to applicants in Chapter One (Planning and Zoning Code) of the LAMC, such as a variance, adjustment, interpretation, etc., can

be utilized by applicants for Medical Marijuana Collectives to obtain relief from zoning provisions or any other applicable land use regulations exclusively. No relief is provided from the provisions of LAMC Article 5.1.

6. Nuisance Abatement: Medical Marijuana Collectives are subject to Administrative Nuisance Abatement, pursuant to LAMC Section 12.21.1.
7. Nonconforming Provisions. LAMC Section 12.23 - nonconforming rights are not applicable to Medical Marijuana Collectives.

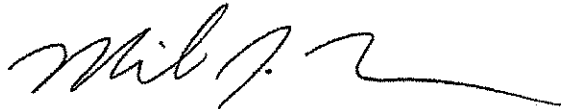
APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after MAY 21, 2010, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://planning.lacity.org>**. Public offices are located at:

Figueroa Plaza
201 North Figueroa Street,
4th Floor
Los Angeles, CA 90012
(213) 482-7077

Marvin Braude San Fernando
Valley Constituent Service Center
6262 Van Nuys Boulevard, Room 251
Van Nuys, CA 91401
(818) 374-5050

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.



MICHAEL LOGRANDE
Chief Zoning Administrator
Telephone No. (213) 978-1318

ML:AB:HB:Imc