



City of San Juan Bautista

The "City of History"

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AGENDA

HISTORIC RESOURCES BOARD MEETING

CITY HALL COUNCIL CHAMBERS
311 Second Street
San Juan Bautista, California

MONDAY ~ JULY 10, 2017

In compliance with the American with Disabilities Act, if you need special assistance to attend or participate in the meeting, please call the City Clerk's Office at (831) 623-4661, extension 13 at least 48 hours prior to the meeting.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the meeting and City Hall at 311 Second Street, San Juan Bautista, California during normal business hours.

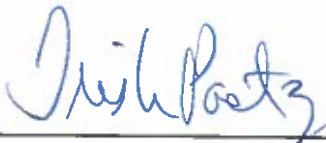
- 1. Call to Order** **6:00 PM**
Pledge of Allegiance
Roll Call
- 2. Public Comment**
- 3. Informal Project Review**
Any potential and/or future project applicant may present their project to the HRB for Informal Project Review for the purpose of gaining information as preliminary feedback only. No formal application is required and no action will be taken by the HRB on any item at this time.
- 4. Action Items**
All matters listed under the Consent Agenda may be enacted by one motion authorizing actions indicated for those items so designated. There will be no separate discussion of these items unless requested by a member of the HRB, a staff member, or a citizen.
 - A. Approve Affidavit of Posting Agenda**
- 5. Public Hearing Items**
 - A. Make a Use Determination for a Proposed Business at 301 Third Street (APN 002-170-005) in the Historic District and Recommend to the Planning Commission. Applicant: Mandisa Snodey**
- 6. Comments**
 - A. Historic Resources Board**
 - B. City Manager**
 - C. Community Development Director**
- 7. Adjournment**

AFFIDAVIT OF POSTING

I, TRISH PAETZ, DO NOW DECLARE, UNDER THE PENALTIES OF PERJURY THAT I AM THE DEPUTY CITY CLERK IN THE CITY OF SAN JUAN BAUTISTA, AND THAT I POSTED THREE (3) TRUE COPIES OF THE ATTACHED HISTORIC RESOURCES BOARD MEETING AGENDA. I FURTHER DECLARE THAT I POSTED SAID AGENDA ON THE 3rd DAY OF JULY 2017, AND I POSTED THEM IN THE FOLLOWING LOCATIONS IN SAID CITY OF SAN JUAN BAUTISTA, COUNTY OF SAN BENITO, CALIFORNIA.

1. ON THE BULLETIN BOARD AT CITY HALL, 311 SECOND STREET.
2. ON THE BULLETIN BOARD AT THE CITY LIBRARY, 801 SECOND STREET.
3. ON THE BULLETIN BOARD AT THE ENTRANCE TO THE UNITED STATES POST OFFICE, 301 THE ALAMEDA

SIGNED AT SAN JUAN BAUTISTA, COUNTY OF SAN BENITO, CALIFORNIA, ON THE 3rd DAY OF JULY 2017.



Trish Paetz, Deputy City Clerk

CITY OF SAN JUAN BAUTISTA

HISTORIC RESOURCES BOARD

STAFF REPORT

DATE: July 10th, 2017

SUBJECT: Use Determination/Conditional Use Permit – 301 Third Street

Applicant: Mandisa Snodey

Zoning: Mixed Use/Historic District/Nationally Recognized Historic District

Assessor Parcel No.: 002-170-005

Size: 0.3636 acres

Existing Land Use: Commercial

Environmental Review: This Conditional Use Permit is Categorically Exempt under Section 15332 of the California Environmental Quality Act, "In-Fill Development Projects."

Details: The applicant is requesting a use determination for her proposed business at 301 Third Street. Upon request, she submitted the following description of the proposed business:

Closest Under the Stairs Apothecarium is a business promoting a holistic plant based lifestyle with referral and consulting services. Specifically offering consultation services, education, recommendation services by a licensed physician, as well as retail sales of nutritional supplements. No medical services will be offered onsite, including but not limited to, massage, chiropractic, acupuncture, primary care services.

Background: The applicant's request for a use determination was tabled by the Planning Commission at their regular meeting on June 6th, 2017, pending the Marijuana Forum that was scheduled for June 14th, 2017, guidance from the City Attorney (who was not present at the June 6th meeting), and the preliminary City Council review of current and proposed ordinances and policies related to marijuana.

Subsequently, the applicant asked if she could have her request for a use determination put before the City Council so that she would not experience a delay in opening her proposed business. The applicant's use determination request was put on the City Council agenda for their regular meeting on June 20th, 2017, as Item 7F under Action Items.

At the June 20th, 2017, meeting, the City Council declined to take up Item 7F, stating that it was a land use issue and therefore should be ruled on by the Planning Commission first. They directed the Planning Commission to take up this item at their next meeting (special or regular) and make a determination. If the applicant disagrees with the ruling she can then appeal the decision to the City Council.

Analysis: Based on the description of the proposed business submitted by the applicant, the use of the site could possibly fall into several categories listed in San Juan Bautista Municipal Code §11-02-050 "Permitted and conditional uses by zoning district, use matrix," three of which are permitted and one of which is not: (1) Drug stores, retail (Permitted); (2) Personal services (Permitted); (3) Medical clinics and laboratories (Not Permitted); and possibly (4) Offices (business, professional, administrative, and executive) (Permitted). The Planning Commission could also decide that the use is best described by a category not listed in the use matrix. The case for each classification is stated below.

Drug stores, retail. One component of the proposed business would offer "retail sales of nutritional supplements," which could fall under the "Drug stores, retail" use category. This category, however, does not cover the other components of the proposed use.

Personal services. It could also fit in the "Personal services" category, because the staff recommending nutritional supplements and the licensed physician could be considered, generically, to be providing "a service based on the intellectual or manual efforts of an individual (as for salary or wages) rather than a salable product of his or her skills" (Merriam-Webster). In SJBMC §11-07-040, however, "offices for personal services" include only personal services such as "janitorial service, gardening service, office services, etc.," none of which require a license from the state. Therefore the presence of a licensed physician requires separate consideration.

Medical clinics and laboratories. While the description explicitly states that "medical services" will not be offered, it also states that a "licensed physician" will be on site offering "consultation services" and "recommendation services." The San Juan Bautista Municipal Code does not contain a definition of "medical clinic" that would help resolve this uncertainty surrounding whether or not the

presence of a licensed physician dispensing medical advice constitutes a "medical clinic."

The first three definitions of 'clinic' in the Merriam-Webster dictionary apply to one-time clinics or medical clinics that have multiple physicians and provide outpatient services, such as:

1. A class of medical instruction in which patients are examined and discussed
2. A group meeting devoted to the analysis and solution of concrete problems or to the acquiring of specific skills or knowledge
3. a. A facility (as of a hospital) for diagnosis and treatment of outpatients
b. A group practice in which several physicians work cooperatively

The fourth definition of 'clinic,' however, defines a clinic as:

4. A facility that offers professional services or consultation usually at discounted rates

This definition is intentionally broad, because it is meant to include many miscellaneous types of clinics such as legal clinics, tennis clinics, etc. Under this definition, however, "a facility that offers professional services or consultation" where the "professional services" and "consultation" are provided by a licensed physician could easily be considered to be a medical clinic.

In addition, three other sections of the SJBMC refer to "medical offices" (§11-07-050, §11-11-160, and §5-27-110), in conjunction with 'clinics and laboratories.' It is not clear whether the term 'offices' was left out of the "Medical clinics and laboratories" row of the use matrix in SJBMC §11-02-050 intentionally or by accident. This business could easily be classified as a medical office, similar to a psychiatrist's or therapist's office, but that use does not appear in the use matrix.

Offices (business, professional, administrative, and executive). Another more creative interpretation of the use could involve looking at the use using the definitions provided for business license categories found in SJBMC §3-3-100. SJBMC §3-3-100(G) defines "Profession" as:

"Any business conducted or carried on by any person engaged in an occupation or vocation requiring special knowledge and training and a license by the State of California to practice. A profession includes but is not limited to an accountant, architect, attorney, auditor, certified public accountant, chiropractor, dentist, landscape architect, optometrist, physician, registered engineer, surgeon, and veterinarian."

SJBMC §3-3-615(B) also includes “Doctor” on the list of professionals who are required to pay a flat tax of \$150 per year for their business license.

Following that rationale, the use of an office space by a doctor could classify that office as a “professional office” and would be a permitted use under SJBMC §11-02-050.

As pointed out in the previous section, however, medical offices are singled out for regulation that does not apply to other ‘professional offices’ in three other sections of the SJBMC, so while medical offices may be professional offices for the intents and purposes of obtaining a business license, not all professional offices are subject to the same land use regulations and restrictions as medical offices.

Along those same lines, the purpose of a business license is different from that of a zoning designation. As stated in SJBMC §3-3-200:

“The payment of a business tax required by this Chapter, and its acceptance by the City, and the issuance of a business license to any person shall not entitle the holder thereof to carry on any business unless he has complied with all of the requirements of the San Juan Bautista Municipal Code and all other applicable laws, nor does the issuance of a license allow a business to be carried on in any building or on any premises designated in such business license where such building or premises are situated in a zone or locality in which the conduct of such business is in violation of this code or any law.”

Not Listed. The list of uses that could be included in the use matrix is infinite. The list of uses currently included in the matrix, however, is not. The normal procedure when an applicant proposes a use that is not listed in the use matrix in SJBMC §11-02-050 is to have them apply for a Conditional Use Permit. The rationale being that, if the use is not currently included in the matrix, the Planning Commission and City Council have not officially made a decision on whether or not that use is Permitted or Conditional in any of the zoning districts. If the Planning Commission believes that the proposed business fits best in a category that is not currently included in SJBMC §11-02-050 (e.g. - “Medical Office”), then the best course of action would be to require the applicant to obtain a Conditional Use Permit.

Procedure: The Planning Commission should discuss whether or not the proposed business fits under any of the permitted and conditional land uses provided in the matrix in SJBMC §11-02-050 for the Mixed-Use zone or whether it

should be classified as a use that is not included in the matrix and make a determination based on findings established during the discussion of this item.

Recommendation: Due to the medical nature of the services being provided by the licensed physician at the business, City staff recommends that the Planning Commission determine that the use either be classified under the "Medical clinics and laboratories" category or classified as a "Medical Office," which is not in SJBMC §11-02-050. Either one of those options would require the applicant to obtain a conditional use permit for the proposed use at 301 Third Street.

Findings: If the Planning Commission decides to issue a conditional use permit, they must make the findings listed in SJBMC §11-20-030 based on substantial evidence in view of the whole record. The Planning Commission must find that:

- A. That the use is necessary or desirable in relation to the purposes and intent of the San Juan Bautista General Plan, zoning ordinance, and the economic, social, and environmental status of the City;
- B. That the use will be properly related to other uses, transportation facilities, and other public facilities in the area, and will not cause undue environmental impacts relating to noise, odor, pollution, etc.; and
- C. That the use will not adversely affect the health or safety of persons living or working in the vicinity, or be materially detrimental to the public welfare of the City and its residents.

Conditions of Approval: Due to the fact that medical marijuana dispensaries are currently illegal in the City of San Juan Bautista and the proposed use provides services closely linked to those of medical marijuana dispensaries, if the Planning Commission chooses to issue a Conditional Use Permit for this use, they should consider the possibility of attaching conditions of approval to the permit that will ensure those uses remain separate. The conditions can also include provisions that allow for easier and more effective monitoring and enforcement. Those conditions could include:

- A condition stating that the permit will be revoked if any marijuana or marijuana product is sold or changes hands on the site.
- A condition requiring that the exterior storefront windows along the Mariposa Street and Third Street frontage shall be kept free from obstructions or non-transparent materials (such as display cases, posters, applied window tint, etc.) to a degree that provides public safety officers with direct lines of sight into the establishment.
- A condition, based on the items listed in California Health and Safety Code §11014.5 (of the Uniform Controlled Substances Act), prohibiting "drug paraphernalia" on the site.

- Any other conditions that either limit the allowed activities or define/clarify the parameters within which the use will be allowed.

It is City Staff's understanding that the owner of the property will be including some similar conditions in the terms of the lease for the building. Attaching conditions to the use permit, however, gives the City the ability to enforce the conditions even if the owner does not.

Action Required:

1. Verify posting of notice of public hearing
2. Open the Public Hearing
3. Receive staff report and supporting documents
4. Receive written comments, e-mail communication, oral testimony and public input.
5. Close the public hearing
6. If, based upon independent review and judgment of the staff report, written comments, email communication, and oral testimony on the project, the Historic Resources Board supports the proposed use of 301 Third Street as a (use determination), they should take the following actions.
 - A. Recommend that the Planning Commission adopt Resolution 2017-XX, "A Resolution of the Planning Commission of the City of San Juan Bautista making a determination for a categorical exemption for a Conditional Use Permit (CUP 2017-61) for a (use determination) at 301 Third Street" under Section 15332, "In-Fill Development Projects," of the California Environmental Quality Act.
 - B. Recommend that the Planning Commission adopt Resolution 2017-XX, "A Resolution of the Planning Commission of the City of San Juan Bautista approving a Conditional Use Permit (CUP 2017-61) for a (use determination) at 301 Third Street. (APN 002-160-003) Applicant: Mandisa Snodey"

Attachments:

California Health and Safety Code §11014.5

HEALTH AND SAFETY CODE - HSC

DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT [11000 - 11651]

(Division 10 repealed and added by Stats. 1972, Ch. 1407.)

CHAPTER 1. General Provisions and Definitions [11000 - 11033]

(Chapter 1 added by Stats. 1972, Ch. 1407.)

11014.5.

(a) "Drug paraphernalia" means all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this division. It includes, but is not limited to:

- (1) Kits designed for use or marketed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- (3) Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant which is a controlled substance.
- (4) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.
- (5) Scales and balances designed for use or marketed for use in weighing or measuring controlled substances.
- (6) Containers and other objects designed for use or marketed for use in storing or concealing controlled substances.
- (7) Hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body.
- (8) Objects designed for use or marketed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - (A) Carburetion tubes and devices.
 - (B) Smoking and carburetion masks.
 - (C) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
 - (D) Miniature cocaine spoons, and cocaine vials.

- (E) Chamber pipes.
- (F) Carburetor pipes.
- (G) Electric pipes.
- (H) Air-driven pipes.
- (I) Chillums.
- (J) Bonges.
- (K) Ice pipes or chillers.

(b) For the purposes of this section, the phrase "marketed for use" means advertising, distributing, offering for sale, displaying for sale, or selling in a manner which promotes the use of equipment, products, or materials with controlled substances.

(c) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use.
- (2) Instructions, oral or written, provided with the object concerning its use for ingesting, inhaling, or otherwise introducing a controlled substance into the human body.
- (3) Descriptive materials accompanying the object which explain or depict its use.
- (4) National and local advertising concerning its use.
- (5) The manner in which the object is displayed for sale.
- (6) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
- (7) Expert testimony concerning its use.

(d) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

(Added by Stats. 1982, Ch. 1278, Sec. 1.)