

Appeal of Use Permit PLN20-0160 at 2416 Lincoln Ave

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A word to the city from your residents

As we heard about the new business trying to be established at 2416 Lincoln Ave, immediately concerns about safety, traffic and parking came to mind.

After watching the hearing and reading through the provided documents and plans, it has become clear that there was not much, if any, thought put into what impact this new business would have on the neighborhood beyond 100 feet from the business.

The submitted plan was missing several details, as planning members mentioned during the session; however, the plan was approved despite these shortcomings, with promises from the business to remedy them. No process was established to ensure compliance.

In reaching out to the neighborhood in the days after the meeting, the concerns expressed are widespread, and center primarily around safety, parking, traffic, and this not being the desired type of business for families residing nearby.

Several residents reached out to the planning commission before the hearing expressing concerns, but none of these concerns have been addressed, to date.

Residents from more than 30 properties who would be **directly impacted** by this new business have reached out to me and **support this appeal** because of the non-compliance and perceived negative impact on the neighborhood. In addition, shared with by stories from many supporters, there are current concerns/complaints about overwhelmed infrastructure in the neighborhood, adding another high-traffic business would exacerbate these existing issues. 20 supporters contributed to pay the appeal fee.

Residents certainly do not want to keep the current deteriorated building as it is on 2416 Lincoln Ave, we support beautification, but not the way it is proposed and not without addressing/fixing already existing issues and not without causing more issues.

Date: August 27 2020
Appellant: Enrico Meier

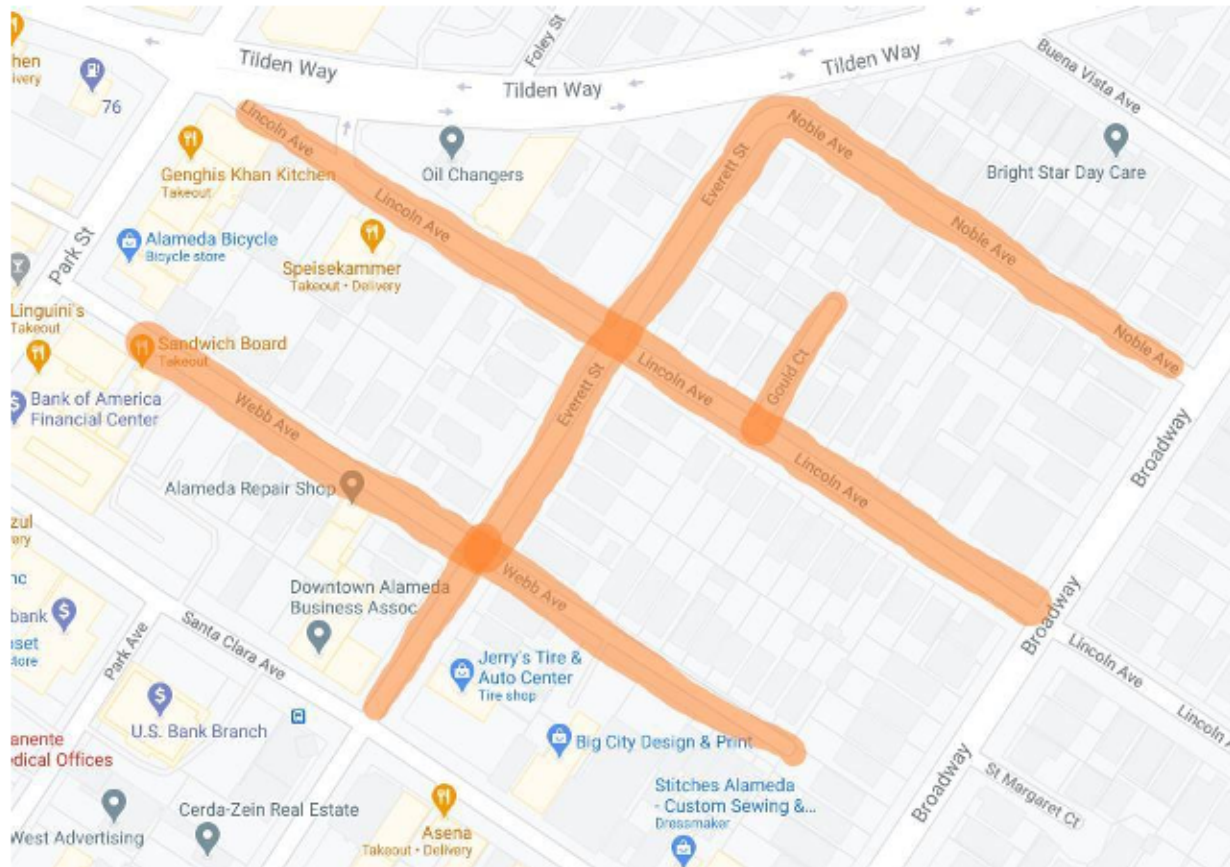
Signature:



Notes to this appeal document:

Codes and law: Unless stated otherwise, code numbers refer to Alameda Municipal Code.

Directly affected neighborhood is as marked in orange below:



This Use permit may affect more areas, but this could not be researched within the limited time frame and limited resources available.

Really, the onus is on the applicant and the planning department to research that.

The following Use Permit documents available and used for the appeal are:

Exhibit 1 Project Plans, Exhibit 2 Operation Narrative from Applicant, Exhibit 3 Good Neighbor Policies, Exhibit 4 Draft Resolution, Item 7-B Public Comment rev 8-18-20

Accessed and downloaded from here:

<https://alameda.legistar.com/LegislationDetail.aspx?ID=4608423&GUID=EB3218F2-023C-45DD-9A82-B046AA01D323&Options=&Search=>

Including the August 17th hearing recording:

http://alameda.granicus.com/MediaPlayer.php?view_id=6&clip_id=2646

Any other documents for the Use Permit were not found.

Parking insufficiency

Parking argument 1 (code 30-7.1):

Alameda Municipal Code for Off street parking, 30-7.1 Intent:

“a. To relieve congestion on streets, and to provide more fully for the flow of traffic, including improving maneuvering of transit and emergency vehicles or street maintenance equipment;

b. To protect neighborhoods from parking and vehicular traffic congestion generated by the adjacent nonresidential districts;”

Since these conditions are not met even without the new business on 2416 Lincoln, and the number of spaces designed in the new business plans are inadequate to improve the parking and traffic situation, the Use permit as it is now has to be rejected.

Parking argument 2 (code 30-7.6):

NUG Shop (proposed):

- Lower floor 1348 sqft x 2.9, required minimum parking spaces = 3.9
- upper floor 1403 sqft x 2.5, required minimum parking spaces = 3.5
- **Total required Minimum off-street parking according to code 30-7.6 = 7**
- **planned parking spaces = 5**

Speisekammer:

- around 4900sqft
- **established off street parking spaces = 12**
- **required Minimum off-street parking according to 30-7.6 = 30**

AVN Motor Sports:

- around 3600 sqft
- **according to PLN18-0324, off street parking space 0**
- **required Minimum off-street parking according to 30-7.6 = 10**

Dentist:

- around 4800sqft
- off street parking 12
- **required Minimum off-street parking according to 30-7.6 = 12**

The requirements for 2416 Lincoln do not comply with the code as it is 2 spaces short.

According to municipal code, the off-street parking on 2400 Lincoln block is 30 spaces short in total. And while the applicant argued that the maximum spaces it had to provide is 5, it provided exactly zero support for that interpretation.

The few off-street parking spaces are mainly for customers, employees still have to park on the street. Strangely, an off-hand suggestion by the applicant at the hearing that it might request employees to consider alternative forms of transportation seemed to carry some weight with the board. It's unclear why.

Parking argument 3 (code 30-4.22 d. 1.):

2416 Lincoln Ave is in a C-C-T -zoned district, thus the parking would require a study, especially with expecting 223 customer visits a day as estimated by the business owner and with customers visits expected to peak during same peak times as existing businesses (evenings and weekends):

According to 30-4.22 d. 1.

"Special Parking Requirements. In addition to the findings in subsection [30-21.3](#), the Planning Board may authorize the **issuance of a use permit only** if the proposed parking:

1. Is adequate to serve the use's peak parking demand as estimated by a study satisfactory to the Planning and Building Director;"

No documents submitted for the Use permit show the applicant had carried out such required study.

With the business owners own calculation of 223 customer visits a day, translating to 18 customers per hour, if visits were steady across a 12h day, 7 days a week. However customer visits are expected to **peak during evenings and weekends as that is shown in exhibit 2 section IV.1.A of the use permit**. Additional on-street parking spaces would be needed to satisfy this requirement.

Parking Argument 4 (code 30-21.3 b.):

30-21.3 b. "Standards. The City Planning Board shall authorize the **issuance of a use permit only** if the evidence presented at the hearing is such as to establish:

2. The proposed use **will be served by adequate transportation** and service facilities including pedestrian, bicycle, and transit facilities.

3. The proposed use, if it complies with all conditions upon which approval is made contingent, **will not adversely affect other property in the vicinity and will not have substantial deleterious effects on existing business districts or the local economy."**

With having already insufficient parking, this new business will impact street parking not just for residents but also customers of existing business.

Neighbors and staff were not informed of the actual order of magnitude of the parking impact based on the documents provided by the applicant.

Had this been presented, many more objections would likely have been presented to the Board.

Parking insufficiencies--Exacerbating circumstances:

As bad as it is at normal times (bad), it's even worse on Friday evening and weekends (doubtless popular times for this business) **when the only street parking spot available is a few blocks away.**

In addition, the street cleaning schedule currently in place on Thursday and Friday every few weeks or weekly puts an extra burden on residential parking if we will need to compete with the customers and employees of the dispensary during these hours.

Already, even without the additional business, people park and block driveways. Delivery trucks double park on a routine basis. **Blocking** driveways and double parking hinders traffic flow and **access for emergency vehicles. This obstruction puts residents at risk, especially during these difficult times when they may need emergency medical help.**

One supporter gave a real-life example when several weeks ago a customer from a nearby business blocked their driveway and they couldn't leave for a medical emergency.

Onus on applicant:

The fact is that the onus is on the applicant to show how a permitted use under its plans would not negatively affect current parking in the neighborhood or to provide workable solutions (at its cost) that will admit an amount of on-street parking to residents that is at least as much as is available now. It has not done any of that.

Impact on traffic

The impact on traffic from a Cannabis Retail dispensary or what any high-volume retail business may have at 2416 Lincoln Ave has **not** been addressed.

The location is in a notoriously tight spot, although the rules published prohibit double parking, it is not allowed anywhere anyway and double parking in the area of the business would block the whole street.

Currently, cars coming from the other side of Park St down on Lincoln Ave speed, many times indeed, which is a hazard to any residents living on Lincoln Ave and any customers crossing the street to get to whatever business they want to go to.

With establishing an additional business on this street, especially retail, the traffic increases, creating more hazardous situations and/or more potentially dangerous situations for anyone on the street.

Vehicle operators for cars and trucks need to slow down. The following could be options:

- Setup speed humps
- Make crossing of Lincoln Ave/Everett St a 4-way stop instead of 2-way stop as it is now
- Put up speed limit signs: in front of Speisekammer, the Dentist and on Lincoln Ave between Everett and Broadway.

But again, the onus is on the applicant to show at least neutral impact on traffic. It has not done this.

Safety and crime impact

Insufficient security precautions

According to the study below found during our research, the safety and crime impact closer to marijuana outlets, such as a few houses away, might be lower, but this is not because of the type of business; rather it is because a limited security presence is in the immediate vicinity of the business.

The study suggests that criminal and otherwise unlawful/harmful activity farther away actually increases because of the existence of such a business. The fact is, such a business brings a clientele to the neighborhood that otherwise would not visit it.

Conclusions.

This study suggests that the effects of the availability of marijuana outlets on crime do not necessarily occur within the specific areas within which outlets are located, but are occurring in adjacent areas. Thus studies assessing the effects in local areas are underestimating their true effects.

Read: From Medical to Recreational Marijuana Sales: Marijuana Outlets and Crime in an Era of Changing Marijuana Legislation (2017 Study)

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6651729/>

Security guard:

The applicant's solution is a security guard. Indeed, the applicant described the security as offered to the "neighborhood". But when asked what that meant, the applicant admitted that it means only within a 100' radius--not much of a "neighborhood" patrol. We're talking about an unarmed patrol covering the business next over. Despite this, and despite families (plural) with young children living a mere 200' from the business, the board moved on.

Impact on minors and families (code 30-21.3 a. and 30-21.3.b.3.):

As noted, several families with a total of 8 children with the age from infant to toddler, pre-teen and teenagers live within 200' of the proposed business. Having a recreational adult drug store so close by without protection should not be permitted as it violates 30-21.3 a. and 30-21.3.b.3 . And there are many more families with minors living nearby that are affected by this too.

Also, the increased traffic statistically increases the amount of accidents, and with 223 new customers driving to the new business per day, that is significant.

Covid19:

In the current situation with 223 customer visits a day, this business seems questionable to open any time soon or not without heavy restriction and/or burden and impact on the neighborhood.

Sensitive use area too close to 2416 Lincoln Ave to be a Cannabis Retails Dispensary

Violation of Alameda code 6-59.10 e. 1. from submission

The project's own plan drawing two facilities within 600ft radius of 2416:



VICINITY MAP

N.T.S.

During the initial planning process and location finding, Super Scholars was located on 2415 Santa Clara Ave. With around 554ft that is within 600ft of 2416 Lincoln Ave. They were a commercial Day Care center until around June 2020. This clearly violates Alameda code 6-59.10 e. 1. Making the application with this knowledge, the applicant was also in violation of 6-59.5.n. and 6-59.5.r.

David Sablan from the Planning Board stated on August 20 in an email to me:
"Ultimately, the decision to allow a cannabis dispensary at 2416 Lincoln Avenue was made by the City Council in May 2019."

The Alameda Free Library, which provides tutoring and children activities, is also within that 600ft radius from 2416 Lincoln Ave.

While the Library in the Alameda Municipal Code is not clearly defined as a "sensitive use", it still raises very real concerns for residents.

The City of Hayward, for example, has explicitly included libraries as sensitive use areas, see Hayward code SEC. 6-14.13 a. 1.

There is no remedy for this, other than not approving the use permit for Cannabis Retail at this location.

Dispensaries locations and future impact:

What will happen when someone wants to open a day care center or youth center, or any other facility considered a sensitive use after the Dispensary is established? Will you deny them the permit and you rather have a Cannabis Dispensary than a place taking care of residents' children?

The Cannabis Retail Dispensary is too close to a residential area. If it were more centered in a bigger business district that would be fine. The current Tobacco shops, for example, are all far away from residential areas.

There was no long-term thinking in approving this.

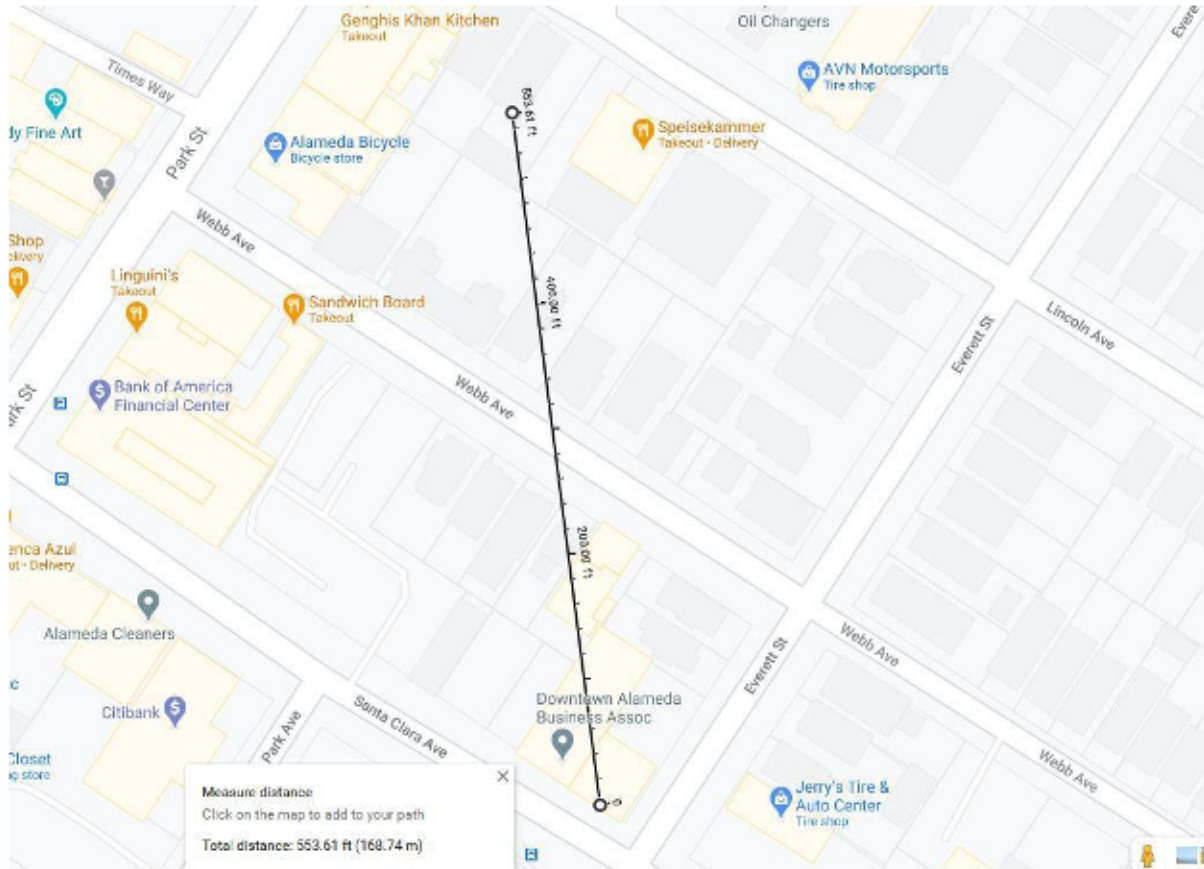
AMC's measurement of distance contrary to state law:

As for definitions, this is what the Alameda Municipal Code says:

"No cannabis business engaging in dispensary/retail or dispensary/delivery shall locate within a one thousand (1,000) foot **radius** of a public or private school providing instruction in kindergarten or any grades 1 through 12. Further, no such cannabis business shall locate within a six hundred (600) foot **radius** of a youth center, tutoring center, or day care center.

The distance shall be measured via a path of travel from the nearest door of the nearest foregoing sensitive uses known when the RFP is issued to the nearest door of the dispensary."

The clause "The distance shall be measured via a path of travel from the nearest door of the nearest foregoing sensitive uses known when the RFP is issued to the nearest door of the dispensary" directly conflicts with the measurement mandated by the state of California Health and Safety Code 11362.768 (c), by which the measurement the distance to Super Scholars is LESS THAN 600 FEET:



State of California Proposition 64 26054. (b):

“No licensee under this division shall be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.”

California Health and Safety Code 11362.768 (c):

“The distance specified in this section shall be the horizontal distance measured in a **straight line from the property line of the school to the closest property line of the lot** on which the medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider is to be located **without regard to intervening structures.**”

While local law could expand the relevant radius, what it can't do is make it smaller.

Questionable approval; flawed hearing

Discussion and Approval during the August 17 hearing:

During the August 17th hearing, board members raised questions that were missing from the plan and not clearly documented. A certain board member pushed for an exception to give approval despite those concerns.

And after some arguing, the Use Permit was approved with the only condition that if one board member has objection that the concerns have not been addressed/fixed to simply request a new design review. This does not seem to be the proper procedure for this process and approval.

Also, the planning board itself decided to extended the hours of operation to 10pm, when the applicant request hours until 9pm. It was never made clear what law afforded the board this discretion--they just did it.

Use permit guidance (30-21.3 a.):

30-21.3 a. "When Permitted. Approval of a use in any district which is listed as a use requiring a **use permit shall be granted only** when the use **will favorably relate to other property**, uses and intensities in the vicinity and to the General Plan of the City and **will not cause any damage, hazard, nuisance or other detriment to persons or property in the vicinity.**"

Parking, safety and other arguments pointed out throughout this appeal document show that the new business with its current plan will have demonstrably negative effects on this neighborhood and its residents.

No Conditional Approval (30-10.1 g. 4.):

According to Municipal Code, a Cannabis Dispensary may get a conditional approval:

30-10.1 g. 4.

Cannabis Retail, to the extent permitted by the Alameda Municipal Code, may be conditionally permitted in the following zoning districts and locations:

ii. C-C, Community Commercial Zone

That means it is not allowed by default, as per also 30-4.9A .

So, what is the conditional approval for this business to allow a Cannabis Retail Dispensary at 2416 Lincoln Ave in a CCT zone? What are the additional requirements or restrictions to be allowed in this zone compared to other business or zones?

You won't find it in the applicant's submissions, nor raised by the board at the hearing.

For this reason alone the Use Permit should have been denied.

Delivery or no delivery: impact of trucks:

The documents provided before the hearing and available online show no intent for cannabis delivery. But during the meeting on August 17th, it was mentioned in the presentation that they do want to do delivery. This was accepted by the board without comment or question.

Delivery or no delivery plays a big role in how much traffic and trucks will be coming to this location. **At 2416 Lincoln Ave there is no space for double parking, traffic would be blocked.**

Even without delivery as part the business (and ignoring how delivery somehow added during the hearing), **are delivery/parcel trucks small enough to drive on the property, if not how are they going to deliver or pick things up? We don't know because it wasn't addressed by the applicant or the board.**

Applicant confuses 223/day and 223/month, board moves on:

In Exhibit 2 Operation Narrative from Applicant:

1.A Patient Volume

NUG projects the potential patient pool to be 3%⁺ of the total population within a 10-minute drive from the intersection of Park and Lincoln Street. Considering the population of the City of Alameda (79,000 total pop., Market Section 25%), plus a 25,000 section of the Oakland population, we expect a customer pool of 3,120 customers visiting twice per 28-day business month, for a total of 223 customers per month. To be conservative, NUG has assumed a reduced patient volume for the first 18 months of operation. NUG anticipates that patient visits will be busiest on weekends and evenings when most neighboring businesses are closed.

3120 customers visiting twice in 28 days = 6240 visits in 28 days = 223 visits per day.

But in the same sentence it says 223 customers per month.

Which one is right?

If it is 223 per day, then this has a severe impact on the neighborhood especially since restaurants have the same peak hours (evenings and weekends) as this business.

If it is 223 per month, then it raises doubts of the business plan and its success.

Again, none of this seemed to matter to the board for some reason.

Exhibit 4 Draft Resolution Use Permit 3.:

- 3. The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity and will not have substantial deleterious effects on existing business districts or the local economy.**

The proposed use with all conditions will not adversely affect property in the vicinity and will not have substantial deleterious effects on existing business districts or the local economy. The project, through the conditions of approval of this use permit and the Cannabis Business Operator's Permit, will implement a series of Good Neighbor Policies and a security plan to address any potential impacts or nuisances to the surrounding neighborhood. These policies address potential outdoor nuisances including safe exterior lighting; odor control; on-site noticing for patrons to deter smoking, cannabis consumption in public spaces, and littering; and at least one security guard to enforce these policies. Inside the building, the applicant is also required to install odor control, filtration, and ventilation system(s) to control odors, humidity, and mold so that odor generated inside the property is not detected outside the property. Violations of the conditions herein or of the general conditions in AMC Section 6-59.10 are grounds for the City to take enforcement action, including the issuance of administrative citations, and to revoke or modify this use permit.

A conclusory statement that does not even bother to mention anything about impact on parking and traffic.

Exhibit 4 Draft Resolution Use Permit 4.:

4. The proposed use relates favorably to the General Plan.

The project relates favorably to General Plan Policy 2.5.a, which calls for providing enough retail business and services to provide Alameda residents with a full range of services. The project conditions of approval require funding for two new bicycle racks and membership with the Alameda Transportation Management Association, which relates favorably to Implementing Policy 2.5.s, which calls for improving public transit service and transit facilities in retail areas. The funding for bicycle racks will provide new transit facilities within the Park Street business district and membership in the Alameda Transportation Management Association will result in the distribution of an ACTransit EasyPass to each employee and increase demand for public transit in the Webster Street business district.

Where's the lack of a full range of services? Again, conclusory. And there is already a Cannabis Retail Dispensary approved on 1222 Park St.

Where is the necessity to have this Cannabis Retail Dispensary at this location?

Public hearing:

Insufficient notice has been given as only very few properties received notice of the hearing. And the notice of the hearing did not provide any documentation or how it can be accessed before the hearing, thus leaving the neighborhood misinformed on potential impact to them.

Rules and enforcement

Having a “Good Neighbor Policy” sounds great, but what matters is what can actually be done.

How are rules enforced and what are the penalties for the owner/manager not enforcing them and clients not obeying them? We don't know because the applicant didn't explain, and the board didn't ask.

Requirements for posting signs must also include a minimum fine amount.

The owner/manager and security guard should be liable for neglecting enforcement and be penalized as a required part of the Use Permit.

Also, there is no point in having a security guard empowered to do nothing. The security guard should have proper screening, training and given the power to at least report in a timely manner (call right away) to law enforcement and provide sufficient details to identify the perpetrator. Nothing in the applicant's submissions or argument at the hearing spoke to this.

Security cameras would need to be positioned so that people can be seen and identified. Yet there appears to be no exterior security camera in the plan/design; what we got instead, and what the board accepted, was a say-so that they would have some.

There is no reference or direct documentation that the security is adequate even to keep crime at its current (already intolerable) level or reduce crime opportunities for crime so obviously engendered by a retail cannabis operation.

But there's bike racks!

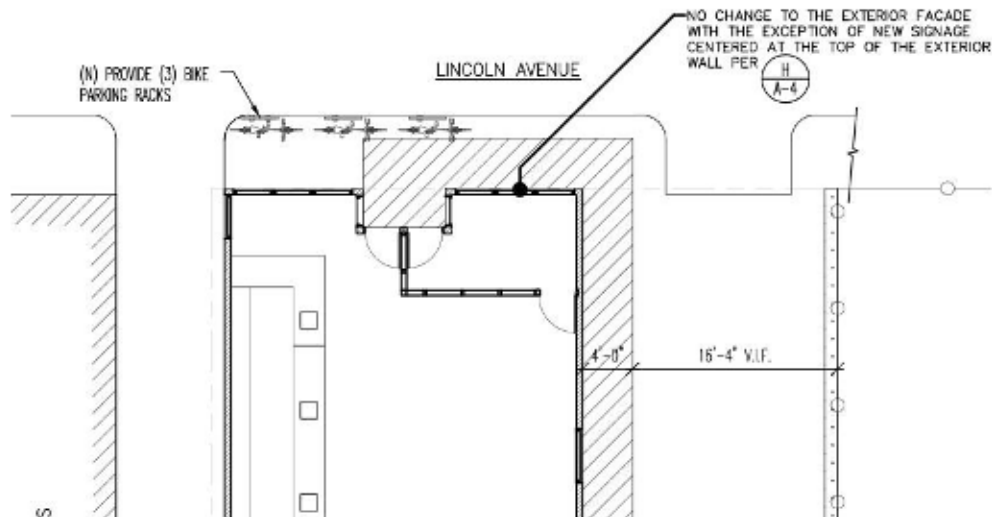
Much was made of the proposed **bike rack that would cover** what appears to be a **utility shaft**, see metal plate below. So ecological and all that.



Unfortunately, the proposed bike racks would also be next to parking spots, which would not allow people in the car to get out on the sidewalk when parked.

BIS DISPENSARY

ALAMEDA



There's more, though.

The proposed bike rack would make the sidewalk narrower than it already is, with many people walking during business hours it would hinder people from getting through.

According to the **Alameda Municipal Code 22-20.5 c.**, concrete sidewalks shall be **not less than five (5') feet in width**. And, in any event, placing objects on the sidewalk that obstruct the sidewalk is unlawful by 22-21.5.

Looking at the proposed plan, there would be **only around 4 feet** or less of space between the occupied bike rack and building exterior wall. While this might be acceptable for a utility pole or lighting pole, this is not acceptable for 3 back racks narrowing a large length of the sidewalk.

None of this was addressed by the applicant or the board, even though it is obvious from the proposed plans.

Supporters of Appeal

As mentioned in the beginning many households reached out to me to support the appeal. Some voicing they support, contributing money to pay for the appeal fee and others helping wherever they can.

Within the very short amount of time frame to submit the appeal after the design review, it restricted to more broadly reach out and be better organized.

With no information before the design review on August 17, put pressure on us to research and write our objections in a very short time.

Below a list of supporter's signatures, again more than 30 support it, but not all want to be on public record for this, and the time to go around and collect them.

Support for Appeal of PLN020-0160

"Use permit for Cannabis Retail Dispensary at 2416 Lincoln Ave"

Support for Appeal because of:

- insufficient parking in design plan and inadequate existing parking according to code on 2400 block of Lincoln Ave which also heavily impacts Noble Ave, Lincoln Ave 2500's, Gould Ct, Webb Ave and Everett St
- use permit is inconsiderate to residential neighborhoods and families living there
- There is no proof that this won't have a negative impact to crime in residential neighborhood
- negative impact to safety because of increased traffic and traffic already being a concern because of large amounts of vehicles traveling Lincoln Ave and some of them speeding
- flawed business plan, no mention of resources to finance the project and being profitable
- flaws and violations in the permit approval process, not complaint with sensitive use requirement
- other flaws in the design, like bike rack block walkway and parking

Below a list property owners on Lincoln Ave 2400's & 2500's, Noble Ave, Gould Ct, Webb Ave and Everett St supporting this appeal:

Name:	Signature
Karink Jensen	Karink Jensen
JOHN JENSEN	JOHN JENSEN

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Name:	Signature
Ramchandani Ramu	Ramchandani
Scott Deskin	Scott Deskin
Gabriel Longoria	Gabriel Longoria
DORA CALHOUN	Dora Calhoun
GENE CALHOUN	Daniel Sheridan
Lissa Long	Lissa Long
Jason Battista	Jason Battista
CHRY NORMAN - GARCIA	Chry Norman - Garcia
MEL GARCIA	Mel Garcia
SEAN BRADSHAW	Sean Bradshaw



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Name:	Signature
Lita Yung	
KATSUMA ROKUTANZONO	

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Name:	Signature
Allan Freeman	Allan Freeman
Alli Freeman	Alli Freeman

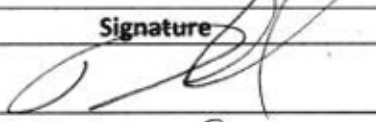
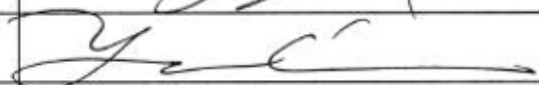
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Name:	Signature
Dan McDonald	
Yumiko Eshima	

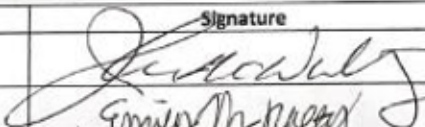
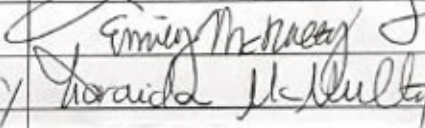
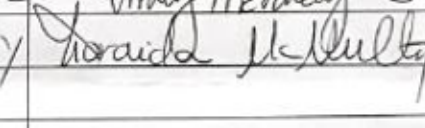
Support for Appeal of PLN020-0160

"Use permit for Cannabis Retail Dispensary at 2416 Lincoln Ave"

Support for Appeal because of:

- insufficient parking in design plan and inadequate existing parking according to code on 2400 block of Lincoln Ave which also heavily impacts Noble Ave, Lincoln Ave 2500's, Gould Ct, Webb Ave and Everett St
- use permit is inconsiderate to residential neighborhoods and families living there
- There is no proof that this won't have a negative impact to crime in residential neighborhood
- negative impact to safety because of increased traffic and traffic already being a concern because of large amounts of vehicles traveling Lincoln Ave and some of them speeding
- flawed business plan, no mention of resources to finance the project and being profitable
- flaws and violations in the permit approval process, not compliant with sensitive use requirement
- other flaws in the design, like bike rack block walkway and parking

Below a list property owners on Lincoln Ave 2400's & 2500's, Noble Ave, Gould Ct, Webb Ave and Everett St supporting this appeal:

Name:	Signature
John McNulty	
Emily McNulty	
Zoraida McNulty 2500 Noble Av. Alameda, CA	

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Name:	Signature
Mark Edson - Noble Ave	Mark Edson
Cherie Edson	Cherie Edson

* Why is the city of Alameda endorsing the sale of dope 3 blocks from Edison Elementary School?

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Name:	Signature
Leslie HOOD 1616 EVERETT STREET	Leslie Hood