



Commission Agenda Report

To: Chair Stack and Members of the Planning Commission

Prepared by: Adrian Fernandez, Senior Planner

Reviewed by: Bonnie Blue, AICP, Planning Director *BB*

Date prepared: September 10, 2015 Meeting date: September 21, 2015

Subject: Request for Determination of Use - Cemetery/Memorial Park with Assembly Structure in Commercial Visitor-Serving-Two Zoning District

Location: 4000 Malibu Canyon Road
APNs: 4458-028-015, 4458-028-015 and 4458-030-007
Zoning: Commercial Visitor-Serving-Two (CV-2)
Applicant: Schmitz and Associates, Inc.
Owner: Green Acres, LLC
Application No. Miscellaneous Application No. 15-001
Application Filed: April 13, 2015

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 15-89, determining the project is exempt from the California Environmental Quality Act, and approving Miscellaneous Application No. 15-001, determining that a cemetery/memorial park with assembly structure is a permitted use in the Commercial Visitor Serving-Two (CV-2) zoning district, subject to obtaining a conditional use permit (4000 Malibu Canyon Road / Green Acres, LLC).

DISCUSSION: On September 8, 2015, the Planning Commission held a duly noticed public hearing and considered a request by the applicant, Schmitz and Associates, Inc., on behalf of Green Acres, LLC (property owner), for a determination of use to be made that a cemetery or memorial park (including an assembly structure) use is a use similar to and not more objectionable than other uses currently permitted, or conditionally permitted, in the CV-2 zoning district. After considering the evidence presented, the Planning Commission determined that the memorial park/cemetery and assembly structure use described by the applicant was a use similar to, and not more objectionable than, the uses currently conditionally permitted in the CV-2 zoning district and thus is permitted in the CV-2 zoning district, subject to obtaining a conditional use permit.

Resolution No. 15-89 has been prepared to memorialize the Commission's action on September 8, 2015.

ATTACHMENT: Resolution No. 15-89

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 15-89**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU DETERMINING THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND APPROVING MISCELLANEOUS APPLICATION NO. 15-001, DETERMINING THAT A CEMETERY/MEMORIAL PARK WITH ASSEMBLY STRUCTURE IS A PERMITTED USE IN THE COMMERCIAL VISITOR SERVING-TWO ZONING DISTRICT, SUBJECT TO OBTAINING A CONDITIONAL USE PERMIT (4000 MALIBU CANYON ROAD / GREEN ACRES, LLC)

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. On April 13, 2015, Schmitz and Associates, Inc., on behalf of Green Acres, LLC, property owner, submitted Miscellaneous Application (MA) No. 15-001 to the Planning Department for a determination of use pursuant to Malibu Municipal Code (M.M.C.) Section 17.04.050. The application requests a determination that a cemetery/memorial park with assembly structure, although not specifically listed as a permitted or conditionally permitted use in the Commercial Visitor Serving-Two (CV-2) zoning district, is a conditionally permitted use in the CV-2 zone.

B. On April 13, 2015, staff deemed the application complete for processing.

C. After reviewing the application, the Planning Director referred the matter to the Planning Commission, as contemplated in M.M.C. Section 17.04.050.

D. On August 8, 2015, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

E. On September 8, 2015, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, staff presentation and written reports, public testimony, and other information in the record and requested staff to prepare a resolution approving the request for a determination of use.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposed project. The Planning Commission evaluated the determination of use and found its quasi-legislative decision on the determination of use to be exempt from review under CEQA. Pursuant to CEQA Guidelines Section 15061(b)(3), where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not governed by CEQA, and CEQA does not apply. Any future development application proposing the subject use will be evaluated in accordance with CEQA for potential environmental impacts. The

Planning Commission hereby determines that there is no possibility the decision on the determination of use application will have a significant effect on the environment and accordingly, the exemption set forth in CEQA Section 15061(b)(3) applies.

Section 3. Findings.

Based on substantial evidence contained within the record and pursuant to M.M.C. Section 17.04.050, the Planning Commission hereby makes the following findings of fact:

A. M.M.C. Section 17.04.050 enables the City to determine a specific use is permitted in a zone even if the use is not expressly permitted, permitted subject to Director's review, or conditionally permitted (collectively "permitted") in a zone if it is similar to and not more objectionable than a permitted use.

B. The cemetery/memorial park use with assembly structure is similar to and not more objectionable than other uses allowed in the CV-2 zoning district with a conditional use permit. Examples of similar uses allowed in the CV-2 zoning district by right include equestrian/hiking trails, amphitheaters, and charitable/philanthropic activities within enclosed buildings. Similar conditionally permitted uses allowed in the CV-2 zoning district include cultural and artistic uses (including performing arts venues) and parks, beaches and playgrounds.

C. The cemetery/memorial park use is visitor serving, for both visitors and residents, and also respects the rural character and natural environmental setting of Malibu consistent with M.M.C. Section 17.28.010. Similar to a park, beach or playground, it serves the needs of the community and provides outdoor space largely undeveloped with structures and preserves unobstructed views of the area and coast. It also has similar resource demands, structural impacts, parking requirements, and is friendly to many types of wildlife while respecting the natural environmental setting of Malibu. Similar to other cultural and artistic uses, it could draw visitors and provide a unique venue.

D. The cemetery/memorial park use is not more objectionable than other uses allowed in the CV-2 zoning district. Among the reasons why it is not more objectionable are the facts that compared to other uses allowed in the CV-2 zone, such as commercial businesses and hotels, the cemetery/memorial park use will generate substantially less traffic, fewer impacts on the environment, fewer visual impacts and obstructions, and will also generally use fewer resources in its development and operation. Although a cemetery has an unusual permanency distinct from other land uses, the stability associated with such permanency is desirable in a community with sensitive resources. Furthermore, while cemeteries may present land use complications unique to burials, they are part of a highly regulated industry that provides a significant measure of local control.

E. Approval of the determination of use does not approve a specific project; rather it allows an applicant to seek a conditional use permit from the City, at which time the specific merits and impacts will be evaluated to determine whether that project should be approved or denied.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby determines that a cemetery/memorial park and assembly structure is a permitted use within the CV-2 zone, subject to obtaining a conditional use permit. Section 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 21st day of September 2015.

ROOHI STACK, Planning Commission Chair

ATTEST:

KATHLEEN STECKO, Recording Secretary

LOCAL APPEAL - Pursuant to Malibu Municipal Code Section 17.04.220 (Appeal of Action), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and proper appeal fee. The appellant shall pay fees as specified in the Council adopted fee resolution in effect at the time of the appeal. Appeal forms and fee schedule may be found online at www.malibucity.org, in person at City Hall, or by calling (310) 456-2489, extension 245.