

BOARD OF ZONING ADJUSTMENTS MEMORANDUM FOR CONTINUED ITEM

DATE: March 28, 2024
ITEM: No. 1 - 1:05 pm
FROM: Cecily Condon, Project Planner

SUBJECT: File No.: **UPE07-0112**; Revocation
Applicant: Farrow Readymix
Address: 3660 Copperhill Lane
APN(s): 059-250-004

SUMMARY

Property Owner: CMS Properties LLC
Operator: John Farrow, Farrow Ready Mix
Address: 3660 Copperhill Lane, Santa Rosa
Supervisory District: District Four
APN: 059-250-004
Description: Permit Sonoma request for revocation for noncompliance of UPE07-0112, a Use Permit for a concrete manufacturing plant on a 6.78 ac parcel including a batch plant, 250 sq ft mobile office, and on-site truck storage for up to 8 trucks. Hours of operation are from 5 am until 5 pm with up to 5 employees and 45 estimated truck trips per day.
CEQA Review: Categorically Exempt Sec. 15321, Enforcement Actions
General Plan Land Use: General Industrial (GI)
Specific/Area Plan Land Use: Airport Area Specific Plan, General Industrial (GI)
Ordinance Reference: Sonoma County Code, Chapters 7, and 26 Sec. 26-92-120 Revocations
Zoning: Heavy Industrial, (M2 40000 SQ FT AVG), Valley Oak Habitat (VOH)

BACKGROUND

The subject permit UPE07-0112 was previously scheduled for public hearing before the Board of Zoning Adjustments on October 26, 2023. The item was continued off calendar without opening the public hearing. No action was taken on the permit at the time of the originally scheduled hearing.

RECOMMENDATION

The Permit Resource and Management Department (Permit Sonoma) recommends that the Board of Zoning Adjustments hold a public hearing and adopt a resolution to revoke Permit UPE07-0112, a Use Permit for a concrete manufacturing plant on a 6.78 ac parcel approved on April 21, 2008.



EXECUTIVE SUMMARY

On October 26th 2023 the Board of Zoning Adjustments was scheduled to hear this item and voted to continue the item without opening the public hearing for consideration of revocation on UPE07-0112. No Action was taken on the permit at that time and the Board of Zoning Adjustments made suggestion that the parties continue to work toward Condition Compliance.

Permit Sonoma requests the Board of Zoning Adjustments hold a public hearing and revoke UPE07-0112 for noncompliance with the Conditions of Approval and violations of the Sonoma County Code; including Chapter 7, Building Code, and Chapter 26, Zoning Code. The Use Permit, UPE07-0112 was conditionally approved on April 22, 2008, with approval extended to June 29, 2011, for a concrete manufacturing plant on a 1.2 acre portion of a 6.78 ac parcel including a batch plant, 250 sq ft mobile office, and on site truck storage for up to 8 trucks. Hours of operation are from 5 am until 5 pm with up to 5 employees and 45 estimated truck trips per day. Preoperational conditions on the Permit were never fully satisfied and no use permit certificate was issued on the subject parcel.

Complaints related to unpermitted construction and violation of the Conditions of approval for this project were initially reported in March of 2011. Violations were verified by site visit conducted by Code Enforcement Staff in April of 2011. Despite several efforts and multiple applications to achieve compliance with the subject permit violations remain unresolved. As the project has resulted in ongoing Code Enforcement actions in attempt to abate the violations for several years Permits Sonoma recommends revocation of the permit, UPE07-0112. Revocation of this permit would not preclude future Use Permit application on the project site.

Since the originally scheduled hearing date to consider the revocation, additional measures have been taken by the applicant to improve condition compliance including the submittal of development Permits through Permit Sonoma and permitting through outside resource agency.

PROJECT SITE AND CONTEXT

Background

The Use Permit, UPE07-0112 was conditionally approved on April 22, 2008, and an extension was approved June 29, 2011, to delay expiration of approval for the concrete manufacturing plant on a 1.2 acre portion of a 6.78 acre parcel including a batch plant, 250 sq ft mobile office, and on site truck storage for up to 8 trucks. Hours of operation are from 5 am until 5 pm with up to 5 employees and 45 estimated truck trips per day. Permit Sonoma Records conclude that Preoperational Conditions of Approval were never fully satisfied and no use permit certificate was issued on the subject parcel.

Violations on the project site were first identified in 2011 for construction without building permit and violation of the approved Conditions of Approval. On May 11, 2011, a Notice and Order was provided to the owner of record for construction without building permits of a batch plant structure, a commercial coach, and a tank exceeding 5,000 gallons, in violation of Chapter 7 the Building Code, and declaring such as dangerous and a public nuisance by the authority of Sonoma County Code Chapter 1. Further, Conditions of Approval for the Use Permit, UPE07-0112 require a building permit be obtained for such work and included additional conditions required to be met prior to building permit issuance. As such, the unpermitted construction also violated the approval for the Use Permit. On December 2, 2011 a



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Notice of Abatement Proceedings was recorded on the subject parcel due to the outstanding violations for construction without permit.

Efforts to correct the outstanding violations have included application for multiple permit applications including three demolition permits, and a Use Permit application. The demolition permits were issued but never executed or finalized before expiring in 2020, and the Use Permit to correct the violations was withdrawn prior to any approval action in 2018. In December 2018, to improve local construction efforts resulting from the 2017 Sonoma Complex Fire Farrow Ready Mix was authorized to operate the Use Permit subject to the existing Conditions of Approval.

Despite continued operation of the site neither the operators nor property owner brought the site into compliance with the Use Permit or met the outstanding preoperational conditions and a reminder letter of the Recorded Notice of Abatement Proceedings was sent in 2019. On August 28, 2023 notice was issued to the current Operator of the intent to revoke the Use Permit for outstanding violation and noncompliance with the Conditions of Approval if inspection could not be called by September 15, 2023. In response to the notice, building permits were applied for by the operator to correct the violations however they could not be accepted and issued within the time period allowed by the notice to avoid the first scheduled revocation hearing on the Use Permit.

The hearing originally scheduled on October 26, 2023 was never opened and the item was continued off calendar. Since that time a building permit and sewer permit were initialized to resolve outstanding violations. Additional submittals include information regarding sewer conditions, the Town of Windsor Water Permit, and Water Resourced Control Board and Air Quality Permits.

Area Context and Surrounding Land Uses

The project is located within the boundaries of the Airport Industrial Area Specific Plan approximately one mile west of Highway 101 and half a mile south of the Town of Windsor. Surrounding uses are developed with various industrial and office uses. The Charles M Schultz Sonoma County Airport is half a mile east of the project site. Mark West Creek runs east to west approximately 2,000 feet south of the subject parcel. The nearest residence to the project site is located on Airport Boulevard on an industrially zoned parcel.

PROJECT DESCRIPTION

The subject Use Permit allows a concrete manufacturing plant on a 1.2 acre portion of a 6.78 ac parcel including a batch plant, 250 sq ft mobile office, and on site truck storage for up to 8 trucks subject to the Conditions of Approval located in Attachment 7, UPE07-0112 File. The request for a Use Permit was to establish a ready-mix concrete batch plant on a 1.2 acre portion of a 6.78 acre site on the east side of Copperhill Lane, a private road located between Brickway Boulevard and Copperhill Parkway. The batch plant and associated equipment and materials storage are located in the central portion of the site on an existing paved area. The batch plant replaced a ready-mix operation located in the Town of Windsor and operates from 5:00 a.m. to 5:00 p.m., Monday through Friday and from 5:00 a.m. to 3:00 p.m. on Saturday, with occasional operations at other times to meet customer needs. The operation has 5 employees and includes a 250 square foot modular office, eight customer parking spaces and parking for seven concrete trucks and one gravel truck. Access is provided by a driveway from Copperhill Lane, a private road, with primary access being from Copperhill Parkway, a public roadway.



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The Use Permit and subsequent one year extension were both approved via hearing waiver. Notice of the County’s intent to waive the hearing requirement for the requested Use Permit was posted for 20 days and no protests were received. Pursuant to Section 26-92-040(d) of the Sonoma County Code, no public hearing was required and the Use Permit was issued subject to conformance with the attached conditions. A Negative Declaration was prepared and adopted for the subject permit. Many preoperational conditions were never met for the project and no building permit was issued for the installation of the concrete batch plant, tank exceeding 5,000 gallons, or 250 square foot mobile office. One of the preoperational conditions, which must be satisfied prior to issuance of a building permit is for sewer improvements and toilet facilities. A sewer permit (SEW20-0485) was filed by the operator in 2020 to satisfy this condition but was never issued and remains in Plan Check status to date.

The first condition of approval listed for this project requires that Building Permits and other corresponding development permits be issued for establishment of the use. Condition 32 of the permit provides explicit authority to consider revocation for failure to comply with the Building Code:

“This use shall be constructed, maintained, and operated in conformance with all applicable county, state, and federal statutes, ordinances, rules, and regulations. A violation of any applicable statute, ordinance, rule or regulation shall be a violation of the Use Permit, subject to revocation.”.

Project History

The table below summarizes key project milestones and enforcement events.

Date	Project Event/Milestone
10/02/2007	Application UPE07-0112 initiated
04/22/2008	UPE07-0112 was Approved via Hearing Waiver
06/29/2010	One Year Extension Granted, Citing Additional Time Required for Condition Compliance
03/2011	Violation Complaint (VCM11-0185)
04/26/2011	Code Enforcement Site Inspection
05/10/2011	Notice of Violation (VPL11-0051) Issued for Non-Compliance with UPE07-0112
05/11/2011	Notice and Order (VBU11-0102) Issued for Construction Without Permit
12/02/2011	Notice of Abatement
09/21/2016	Use Permit Application to Legalize Modifications (UPE16-0076)
12/7/2016	Demolition Permits Issued to Remove Unpermitted Improvements
01/25/2018	UPE16-0076 Withdrawn
12/27/2018	Authorization for Farrow Ready Mix to Operate Subject to Conditions of UPE07-0112
12/30/2019	Recordation Reminder Letter
01/01/2020	Demolition Permits Expire
09/02/2021	Additional Code Enforcement Site Visit Failed to Close Outstanding Violations
08/28/2023	Letter of Intent to Revoke UPE07-0112 Issued
09/15/2023	Deadline Provided for Compliance as Verified by Site Inspection
10/16/2023	Public Notice of Revocation Hearing and Applicant’s Additional Request for Continuance



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10/26/2023	Board of Zoning Adjustments Continuance to Date Uncertain
11/28/2023	BLD23-7519 Started for ADA improvements and Resolution for Violations
11/29/2023	SEW23-0141 Started for Condition compliance and to
02/08/2024	Condition Compliance Table submitted by Applicant
02/29/2024	Condition Compliance submittal package
03/18/2024	Public Notice of Continued Hearing
03/28/2024	Board of Zoning Adjustments Hearing.

Condition Compliance

The Permit, UPE07-0112 was approved subject to 56 Conditions of Approval, including operational conditions which are in effect for the life of the project. To date the Town of Windsor Water Permit, Bay Area Air Quality Management District (BAAQMD) Permit, State Water Resource Control Board (SWRCB) Permit, and Recorded Sewer Easement have been provided to staff. Building and Sewer permits have been initiated through Permit Sonoma but are still in process.

Completion of the Building permits would satisfy Condition 1 and also include verification of compliance with other Conditions of Approval. For example, to satisfy Condition 9 regarding Hazardous Materials the Fire and Emergency Services Division sign off on the Building permit(s) would be used. Similarly approval of the building plans by the Engineering division includes review of grading requirements and appropriate encroachment permits. BLD23-7519 was initiated in November of 2023, December of 2023 permit intake staff provided the following note to the applicant:

The permit will be required to be split. The Commercial Coach and ADA improvements can be on this permit but you will need to apply for - one for the batch plant, and all tank removals will require their own demo permit.

In addition you will need to provide a complete site plan showing all utilities, setbacks, property lines, all structures labeled as to what they are and if they are existing or proposed. cover sheets need to have square footage and occupancy use, cut sheets along with structural calcs, over/under forms for both the coach and batch plant. I will also send this with supporting documents and information. Lastly the engineer has an expired stamp.

SEW23-0141 was initiated in November of 2023 to complete work originally reviewed under SEW16-0050, the most recent staff comments were returned by the engineering division in February of 2024. The sewer connection includes utilization of as built plans for work with was already completed. Similar to the review process of Building Permit engineering review process would include clearance of related conditions.

Other conditions are considered operational conditions which will be consistent through the life of the project. For example, Condition 10 which provides provisions for Noise complaints and Condition 44 for maintenance. Additionally, many Planning conditions are related to the original CEQA document and have ongoing monitoring requirements. Fee related conditions are generally paid at the time of permit issuance.



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General Plan and Area Plans

The Project site is designated as General Industrial by the General Plan and Airport Industrial Area Specific Plan. This category provides sites for industrial activities and employment that require urban services and that primarily serve an urban population. The intent of the category is to assure that industrial development is compatible with adjacent land uses, infrastructure, and environmental quality.

Zoning

The zoning for the project site is Heavy industrial which allows heavy manufacturing and processing uses like the concrete batch plant subject to the issuance of a Use Permit. A Use Permit is a conditionally permitted use; In order to grant a use permit, it must be determined that the establishment, maintenance or operation of the use as conditioned will not be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the neighborhood or to the general welfare of the area.

Revocations Generally

Article 92 of the Sonoma County Zoning Code authorizes the Director to call for a revocation hearing before the Board of Zoning Adjustments if there is evidence that there has been a failure to comply with the Permit or if the use constitutes a nuisance. If, after the hearing, the Board of Zoning Adjustments finds that there has been or will be a substantial failure to fulfill one or more of the conditions of the permit or that exercise of the use constitutes a nuisance, the Board may either revoke the permit or modify it. Building violations leading to potentially dangerous conditions and non-compliance with the Use Permit have been well documented and the failure to comply constitutes a nuisance.

Environmental Analysis

The requested action for revocation of the Use Permit (UPE07-0112) is Categorically Exempt from the California Environmental Quality Act (CEQA) under Section 15321 of the CEQA Guidelines as it is an enforcement action by the County on condition compliance and for compliance with the California and local Building Code, Chapter 7 of the Sonoma County Code.

NEIGHBORHOOD/PUBLIC COMMENTS

The current project operator, John Farrow and corresponding legal representatives, and the property owners and those representing CMS Properties LLC, have each submitted letters to the file regarding this proceeding.

The operators' team has provided a statement confirming the intent to comply with regulations and to request a postponement of the hearing.

The property owners and representative have provided correspondence supporting revocation of the permit.

No other public comments have been received.

RECOMMENDATIONS

Staff Recommendation



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Staff recommends that the Board of Zoning Adjustments adopt a Resolution revoking Permit UPE07-0112.

Alternatively, the Board of Zoning Adjustments may deny Staff's recommendation and Permit UPE07-0112 would remain in Approved Condition Compliance status.

ATTACHMENTS

1. Draft BZA Resolution
2. Site Location Map
3. Aerial Map
4. Site Plan
5. Notice of Violation and Recorded Abatement Proceedings and Notice and Order
6. Letter of Intent to Revoke
7. Receipt and response to Notice of Intent to Revoke Permit
8. Correspondence prior to the October 26, 2023 BZA hearing
9. Correspondence received after the October 26, 2023 BZA hearing
10. UPE07-0112 Condition Compliance Submittals
11. UPE07-0112 Conditions of Approval



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