

Mayor Davis and Council Members:

Re: Item 6 A.

Appeal 19ENT-0032 of the Planning Commission's Approval of 15ENT-0230 request for a Conditional Use Permit and 18ENT-0342 (Fence/Wall/Hedge Height Modification for the Rainbow Garden at 401 Montana Ave.

The NOMA Board is supportive of the concept of an organic garden school for children at 401 Montana however we support the Appeal of the Rainbow Garden appeal Group. The Rainbow Garden needs to be a good neighbor. The Council needs to add additional provisions to make sure that the conditions placed on the Conditional Use Permit are measurable and can be enforced. The responsibility for enforcement of the conditions is not the neighbors but rather the City and the Aesop Montana, LLC. When the City Council or the Planning Commission include conditions in the Statement of Official Action (or any other City designated official) there is no enforcement. The City needs to have a more effective manner to ensure compliance.

The Draft Statement of Official Action states that:

???The proposed use is consistent with the General Plan and any applicable specific plan in that the school use is identified as a use that may be conducted so as to 15ENT-0230 & 18ENT-0342 Draft Council Statement of Official Action 3 be compatible with multi-family residential uses. Additionally, LUCE Neighborhood Policy N1.3 calls for ???creat(ing) active places in existing neighborhoods to promote sociability and human interaction.??? The proposed garden learning center will serve children throughout the city and as such creates a center to promote sociability and interaction. In addition, the proposed gardens will add green space and foster community interest in organic gardening, consistent with LUCE Chapter 3.1, which seeks to promote sustainability objectives through increasing the number of community gardens.

It is hard to understand what the program will be since there has not been a ???program or plan of action???. There are platitudes about the goals but there is no written plan shared with the City. Perhaps the approval for the ???conditional use permit??? should be tabled until there is a ???plan???

The Draft Statement states: *Use of the facility for the primary school use with children present shall only be permitted between 8:00 am. and 6:00 pm. Monday through Friday and from 9:00 am. to 6:00 pm. on the weekends.*

There is no reason for a school to have a program on weekends and since there is no stated ???program??? that justifies the need for weekend programs such hours are unnecessary. The other schools along Montana Ave. do not have weekend schedules.

The most troubling aspect of the conditions are the allowance of multiple evening and weekend ???events???

Any and all special events need to be related to the Rainbow Garden as an educational institution. The issuance of a Conditional Use Permit for a school must have all of its ???conditions??? related to the school. Special events, small or large, need to be specifically related. The use of this property is not conditioned as an ???event center??? for non-related programs. The draft states the following:

*In addition to the regular school use permitted herein, meetings of the non-profit's board of directors and special events may also be held on the premises. A Special Event is described as: A fund-raising event or activity held specifically to support the Rainbow Garden, or an educational class consistent with the primary use of the space, such as an adult or neighborhood gardening class. **Other events that are not consistent with this definition shall be considered unrelated activities and shall require a Temporary Use Permit per the standard City application process. No more than two (2) Temporary Use Permits may be issued at the subject site per calendar year. A maximum of one (1) Small Special Event per week and one (1) Large Special Event per month may be held at the site and shall be allowed either during the permitted hours or outside of those hours. Special events must conclude by 10:00 pm Sundays through Thursdays, with use of the outdoor area prohibited after 9:00 pm; and by 11:00 pm on Fridays and Saturdays, with use of the outdoor area prohibited after 10:00 pm.***

There is the potential for a slippery slope to exist if the special events that are not related to the Rainbow Garden on request to the Planning Department are allowed. This is not an event space but rather a Garden for teaching children. Limits must be made. No special events that are not related to the garden. If the City decides that this is an event space, beyond the garden then they must consider a different type of application within the City's zoning. Do not allow this property to morph into a different usage by allowing the Planning Staff to record/allow a specific request an event.

The Rainbow Garden shall maintain a record of all Special Events and provide this information to City staff upon request. Written notice for Large Special Events at which more than 50 people are expected to participate must be mailed or e-mailed to property owners/occupants within a 200' radius of the property a minimum of 45 days prior to the proposed event. All Special Events shall comply with these conditions of approval and with all applicable provisions of the Municipal Code including, but not limited to, the City's Noise Ordinance (SMMC 4.12). 6.

Again the notion that the Rainbow Garden will maintain a record and give it to the see is not realistic. The list needs to be given in a more timely fashion such as monthly so that the City is made aware of the number of events and number of people attending such functions. These should be related to the Rainbow Garden's program, that is yet undefined.

The Mobility Division's requirements are important but speaks to what is required, but again needs to be monitored closely. There is to be an approved plan, but enforcement is left to neighbors. Will the Planning Department be out there to see what happens on any particular day or more importantly when there are special events of more than 50 on a Saturday night? While the requirement that the applicant file a compliance report two years after the issuance of the certificate of occupancy. Self-reporting is not sufficient. Perhaps a 6 month period as the project opens and there after to make sure that the conditions are being followed.

Fiona Ma came to a NOMA meeting several months ago to share some of the ideas about the Rainbow Garden and show some of the drawings. The drawings presented did not show the closed off high fences/barriers but those presented at the ARB clearly block the view of the garden from both Montana and 4th St. While the request for a Variance hedge heights is common it should not be automatically granted. The application and the staff report say that the Rainbow Garden will make a cultural contribution to the community and be viewed by the surrounding neighbors. If the height requested, with the material shown at the ARB are to prevail the garden will be walled off from the sidewalk. The wall between the adjacent apartment building may be appropriate, the wall on Montana is not. The Ordinance calls for a set-back and within the front set-back it is to be 42 inches. Please do not grant this request and allow the public a view of the garden.

The NOMA Board supports the Rainbow Garden but asks that there be consideration for the issues raised:

1. Only special events related to the Rainbow Garden
2. No activities on weekends
3. Consideration of parking as outlined in the Appeal
4. Limits on Hedge heights and walls to what is allowed by Ordinance.

Please consider the positions raised by the Rainbow Garden Appeal Group: Appeal 19ENT-0032

The NOMA Board