
From: Pamela Stevens <Stevens@smlaw.com>
Date: November 27, 2019 at 10:10:56 PST
To: "Ursu, Emmanuel" <eursu@srcity.org>, "Hartman, Clare" <CHartman@srcity.org>, "Rose, William" <WRose@srcity.org>
Cc: Jessica Fires <Fires@smlaw.com>, Pamela Stevens <Stevens@smlaw.com>
Subject: [EXTERNAL] Appellant's Response to Re-submission of Fox Den's CUP Application for 4036 Montgomery Drive"

Dear All,

Please find attached Appellant, Kiwi Preschool's response to the resubmission of Fox Den's CUP application for 4036 Montgomery Drive. A hearing on this matter is set for Dec. 3, 2019. Can you also confirm whether the Applicant has submitted any further materials since its resubmission? Please also confirm receipt of this email, and please advise us if we should send our response to anyone else not included. We wish you all a very happy Thanksgiving.

Best,
Pamela Stevens

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PERTINENT FACTS

Background

The subject appeal concerns the conditional use permit ("CUP") that was approved on January 24, 2019 by the Planning Commission for 4036 Montgomery Dr. Fox Den, Inc. is the Applicant, and the property owner is 436 Montgomery Dr., LLC (Scott Bagala). The file number is CUP-18-076 and the City Consultant is Emmanuel Ursu.

This appeal was initially filed by Kiwi Preschool & Childcare (Kiwi) on February 1, 2019, and a hearing date was set for April 9, 2019. Five councilmembers at that hearing expressed concerns about the dispensary and stated they would not approve the Applicant's application at that time. They expressed specific reservations as to why the dispensary was not a good fit for the location, including the cumulative impact of issues related to parking, traffic flow, circulation and related safety as to both Kiwi, and additional interested party Trail House, a business that shares the property with the proposed project.

Basis of Appeal

The basis for Kiwi's continued appeal is that the project fails to meet the following three standards pursuant to Zoning Code Section 20-.52.050 (F):

1. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity; and
2. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
3. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located.¹

Appellant's Position

The Applicant's resubmission fails to provide realistic and sufficiently detailed solutions to the many issues raised by the council members, including the cumulative impact of traffic and parking; safety and security; and pedestrian access. Overall, the Applicant's resubmission confirms the council members' position that this proposed project is like trying to "fit a square peg into a round hole."

Requested Action

Affirm Kiwi's appeal and deny the CUP.

¹ In the Staff Report, dated January 24, 2019 these findings were identified as "c" "d" and "e" and were referred by the council members in this manner during the public hearing on April 9, 2019 as to why they could not approve this project.

Manis, Dina

From: Ursu, Emmanuel
Sent: Wednesday, November 27, 2019 2:08 PM
To: Manis, Dina
Subject: Fwd: [EXTERNAL] Fwd:Fox Den Dispensary Project

Hi Dina- please add to the Fox Den item in Attachment 14-Correspondence.

Thank you,
 Emmanuel

===== Forwarded Message =====

From : dwhitlock@w-trans.com
 To : RSprinkle@ci.santa-rosa.ca.us
 Cc : nick@goldenstategr.com, sweinberger@w-trans.com, cnye@w-trans.com
 Date : Tue, 26 Nov 2019 17:51:59 -0800
 Subject : Fox Den Dispensary Project

===== Forwarded Message =====

Rob, we've been asked to address a couple of the issues you've raised about the Fox Den project. I've pasted your comments into this message, followed by my thoughts and responses.

The mirrors on Trail House should actually be on the southern building across from the corners to do any good for seeing vehicles. Being placed on the inside corner will not help with visibility around a corner. If they are for pedestrian visibility, they could be reoriented on new poles at the corners of the walkways.

I concur that the mirrors need to be across from the corners and not on the Trail House building to provide visibility. I don't know that they're necessary as this is a very low-speed environment, but I believe that the applicant is willing to install them anyway as a goodwill gesture and to help alleviate any concerns the patrons of the Trail House have.

As an aside it's worth noting that drivers have been making the turns around the south end of this building without incident since the Trail House opened (at least I haven't heard of any incidents and presumably if there had been any, the opponents would've mentioned them). It's reasonable to assume that drivers associated with the Fox Den dispensary will similarly be able to negotiate the parking lot safely, and the public fears to the contrary have no basis that I can determine. We think it's reasonable to conclude that the parking lot and its drive aisle will operate acceptably with the added traffic due to the dispensary and hope that you'll be able to support that conclusion.

The trip generation used is reflective of Santa Rosa vs ITE national rates which is reasonable to me as the ITE rates do seem pretty high and taken when dispensaries in Colorado and Washington were a "new thing". The study also indicates that this is a delivery business which should produce even less trips, but they used a non-delivery

dispensary to be conservative. This may raise questions as it is different from the original report that used the ITE rate. Regardless, the number of trips on the street network is nominal.

When we initiated this study in early 2018, we had only begun to use the new standard rates for dispensaries, though even as high as they are, the estimate for such a small facility was still quite low. Because of the outcry about the project, we were asked to obtain data at local dispensaries to verify the rates used, which we did. As you noted, the Santa Rosa-specific rate ended up being lower than the ITE rate. It was noted in our update that this site will have deliveries, which would further reduce the trip generation as the delivery vehicle making one round trip would likely replace at least four or five customers each making a round trip.

The bottom line is that regardless of how we approach this project, the trip generation is well below the 50-peak-hour-trip threshold that the City has established as indicating need for additional analysis. We will be prepared to explain the progression from the original study to the updated one with local rates as having occurred over time in response to concerns raised by the appellants.

Please feel free to contact me if you have any questions or wish to discuss any of this further. Note that I'll be on vacation, so Steve Weinberger is covering this hearing for me. Anything you can do to help keep him off the hot-seat will be much appreciated!

Dalene

Dalene J. Whitlock

PE, PTOE Senior Principal



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