

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: EMMANUEL URSU, CONTRACT PLANNER
PLANNING AND ECONOMIC DEVELOPMENT
SUBJECT: CONTINUED APPEAL OF PLANNING COMMISSION DECISION
TO APPROVE A CONDITIONAL USE PERMIT FOR FOX DEN
INC, A CANNABIS RETAIL AND DELIVERY BUSINESS IN AN
EXISTING BUILDING LOCATED AT 4036 MONTGOMERY AVE,
UNIT B, SANTA ROSA, CA; ASSESSOR'S PARCEL NUMBER
013-284-012; FILE NO. CUP18-076.

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Planning Commission and the Planning and Economic Development department that the Council, by resolution, deny the appeal and approve a Conditional Use Permit for cannabis retail (dispensary) and delivery for medical and adult use at 4036 Montgomery Ave, Unit B.

EXECUTIVE SUMMARY

Fox Den Dispensary (Project) proposes to operate a cannabis retail and delivery business for medicinal and adult use (State license Type 10) in approximately 1,500 square feet of an existing warehouse and storage building located at the rear of the property addressed as 4036 Montgomery Avenue (the "property"). Retail and delivery operations of the dispensary are proposed seven days a week between 9 a.m. and 9 p.m. No on-site consumption is proposed.

Six parking spaces are required for the proposed Project. Five parking spaces are proposed inside the warehouse and will be accessed through a roll-up door and one parking space will be accommodated in the parking lot. Four off-site employee parking spaces are also proposed.

Portions of the warehouse at the rear of the property not proposed to be used by Fox Den Dispensary and the building at the front of the property are occupied by Trail House, a café, bar and bicycle demo and repair shop. Kiwi Preschool is located behind the proposed dispensary on a multi-tenant commercial property south of the proposed dispensary at 573 Summerfield Road. There is no pedestrian or vehicular connection

between the preschool property and the proposed dispensary and there are no openings (doors or windows) on the south wall of the dispensary. Opposition to the proposed dispensary was voiced by owners and customers of both the Trail House and Kiwi Preschool.

On January 24, 2019, after considering public input from approximately 47 speakers, and after considering information provided in the staff report, the Project plans and submittals, the Planning Commission unanimously approved the Conditional Use Permit for the Project.

Public comments provided to the Planning Commission were both in support and in opposition to the Project. Opponents cited the Project's incompatibility with the Trail House and with the Kiwi Preschool. Specific concerns included a lack of on-site parking, constricted on-site vehicular circulation, and incompatibility with events at Trail House, especially those that cater to children. Operators of the Kiwi preschool and parents of children that attend the preschool expressed concern about crime, exposure of children to cannabis, and other deleterious effects the dispensary could have on the preschool. Supporters noted the lack of cannabis dispensaries on the eastern side of Santa Rosa, and the economic and medicinal benefits of locating a dispensary near neighborhoods and other neighborhood serving uses.

Appeal of the Planning Commission approval of the Project was filed on February 1, 2019 by the Kiwi Preschool and Childcare. (Attachment 3). In sum, the grounds for the appeal are that:

- the proposed dispensary is not compatible with the Kiwi Preschool which is located on abutting property
 - In addition to being a preschool, Kiwi is a licensed daycare center which provides tutoring and after-school care for school-aged children and therefore, the City should exercise its discretion and apply the setback that protects school-aged children to this project.
- Increased traffic will create an unsafe environment for children on the Trail House site.
- The dispensary would be detrimental to Kiwi's welfare in that the "stigma associated with marijuana and fear of increased crime may diminish the appeal of Kiwi..."

At its April 9, 2019 meeting, the City Council held a public hearing to consider the appeal. After hearing testimony from 35 speakers and deliberating on the merits of the application, the Council continued the hearing to allow the applicant to respond to comments and concerns raised at the hearing. Council's concerns and the applicant's responses are provided below in the "Prior City Council Review" section of this Staff Report.

BACKGROUND

On December 19, 2017, the City Council unanimously adopted the City's Comprehensive Cannabis Ordinance. The regulations address the locational and

operational requirements for commercial cannabis related businesses, identifying the permit compliance path for both medical and adult cannabis uses. The ordinance allows the City to direct these land uses to appropriate areas of the City, and also establishes a public review process for permits and locational and operational requirements to address land use compatibility, odor, security, safety, health, lighting, parking and noise. The ordinance specifically addresses cannabis retail and delivery business, requiring a Major Conditional Use Permit in the Neighborhood Commercial (CN) Zoning District.

1. Project Description

The Project is in the northeast quadrant of Santa Rosa on a 0.44-acre site in the Neighborhood Commercial (CN) zoning district. Two existing buildings are developed on the Project site and the proposed operations will be in a 1,500 square foot portion of an existing one-story building used for warehouse and storage uses located at the rear of the property. Among other changes made to the project in response to the Council's comments at the April 9, 2019 appeal hearing, the size of the proposed dispensary was reduced by 273 square feet (from 1,773 SF to 1,500 SF). An existing café, bar and bicycle shop, Trail House, occupies the front building on the property and approximately 2,772 square feet of the warehouse and storage building at the rear of the site.

The proposed dispensary will be located in the western portion of the warehouse and storage building at the rear of the property. Both interior and exterior modifications are required to accommodate the proposed dispensary and delivery operations. Five of the required parking spaces are proposed inside the building behind a roll-up door and one of the required spaces will be accommodated in the parking lot. Four off-site parking spaces will also be provided for employees at 4325 Montgomery Dr.

Floor area will be allocated as follows: lobby 295 square feet; retail 789 square feet; and office, storage, and restroom make up the balance of the space. A total of 21 parking spaces are provided on the property to meet the parking required for the existing uses and the proposed dispensary. Six of the 21 spaces are required for the dispensary. Five spaces for the dispensary will be located within a portion of the existing warehouse building and the remaining spaces will be in the existing parking lot. To address circulation and traffic safety concerns, the direction of the one-way driveway around the Trail House building will be reversed to clock-wise circulation and mirrors are proposed at the rear corners of the Trail House building to allow motorists to see the drive aisle around the building corners.

Dispensary

In compliance with Zoning Code Section 20-46.080(f)(4), the applicant proposes the dispensary to be open to the public from 9:00 a.m. to 9:00 p.m. seven days per week. Deliveries of cannabis products are also proposed during the same hours that the dispensary operates.

Cultivation and Distribution

Cannabis cultivation and distribution are not a part of the proposed application.

Building Modifications

Exterior modifications include replacing the existing batten and board exterior finish with stucco for the main body of the building and a wide band of weathered barn wood around the top of the walls, replacing an existing roll-up door with a wider roll-up door to provide access to five new parking spaces, adding a new entry door, new tenant sign and illuminated address sign, lighting, security-monitoring equipment (cameras), traffic directional signs (“Entry Only” “Do Not Enter” and “Stop”) and restriping the parking lot to accommodate an additional parking space and change the pavement directional arrows for the reversed on-site circulation. New landscaping is also proposed adjacent to the building. Tenant improvements inside the building will create a new tenant space to separate the proposed dispensary from the storage/warehouse areas used by the Trail House and from the new parking spaces and to create the various rooms in the dispensary.

Signs for the business will be required to comply with Zoning Code Section 20-46.080(F) which prohibits cannabis retail facilities from advertising or marketing cannabis products within 1,000 feet of a day care, a school providing instruction in kindergarten or any grades 1 through 12, playground or youth center.

State Requirements

The applicant will hold a Type 10 State license which allows retail sales and delivery of cannabis products. The Project will be required to adhere to State Bureau of Cannabis Control licensing and operating procedures in addition to operational provisions of Zoning Code Chapter 20-46.

2. Surrounding Land Uses

North: Commercial (Restaurant)

South: Commercial (Pre-school, service, restaurant, theatre)

East: Commercial (Service and retail)

West: Commercial (Service)

A variety of commercial uses surrounds the project site on all sides including commercial services, restaurants, retail shops and a pre-school. The Kiwi Pre-school is located immediately behind the proposed dispensary building and

Howarth Park is located east of the Project site approximately 450 feet.

There are no other cannabis related uses near the Project.

3. Existing Land Use – Project Site

A low-lying, single-story warehouse building occupies the rear portion of the property where the dispensary is proposed. The easterly portion of the rear building is currently used by the Trail House business for warehouse and storage purposes. Trail House also utilizes the building at the front of the property for retail and restaurant/café uses. The portion of the rear building proposed for the Fox Den dispensary is has been occupied by an electrical contractor. According to the Trail House website, its café and bar hours are Sunday through Thursday from 7 am to 11 pm and on Friday and Saturday from 7 am to 11 pm and the bike service hours are Monday through Saturday from 9:30 am to 6 pm and on Sunday from 10 am to 5 pm.

4. Project History

- On April 18, 2018, the Conditional Use Permit application was submitted to Planning and Economic Development.
- On June 4, 2018, a Neighborhood Meeting was held. Comments are summarized in the Public Comments section of this report.
- On May 31, 2018 the application was deemed incomplete.
- The applicant submitted supplemental information dated June 19, 2018
- On July 2, 2018 the application was deemed complete.
- On October 15, 2018 the application was revised changing the operator from Gravenstein 116, LLC (Soful) to Fox Den, Inc.
- On January 24, 2019 the Planning Commission approved the application.
- On February 1, 2019 appeal of the Planning Commission approval was filed by Kiwi Preschool.
- On April 9, 2019 the City Council held a public hearing to consider the appeal and after taking public testimony and deliberating the merits of the application, continued the hearing to allow the applicant to address concerns raised at the meeting.
- On August 2, 2019 the applicant submitted a response to address Council concerns.

PRIOR CITY COUNCIL REVIEW

At its April 9, 2019 meeting the City Council opened the public hearing on the subject Project and after hearing public comment, the Council discussed the Project and unanimously voted to continue the hearing to allow the applicant to prepare a response to the concerns raised at the meeting.

The Council specifically directed the applicant to address concerns regarding (1) the safety of on-site vehicular circulation, (2) parking supply, (3) management of deliveries and (4) ADA ingress and egress. The council encouraged the applicant to seek solutions to address these concerns and also suggested the applicant acquire off-site parking to help alleviate concern that the on-site parking will be insufficient.

In response to the Council's comments regarding parking and circulation matters, the applicant's traffic consultant, W-Trans prepare an *Updated Focused Traffic Study for the Fox Den Dispensary*, dated August 1, 2019 and prepared responses to the March 25, 2019 letter TJKM prepared on behalf of the appellants. The applicant also submitted a *Peer Review for Fox Den Cannabis Dispensary Project* prepared by Transpedia Consulting Engineers (TCE) dated August 2, 2019.

To address ADA compliance questions, the applicant team conferred with the City's Building Official and Plans Examiner.

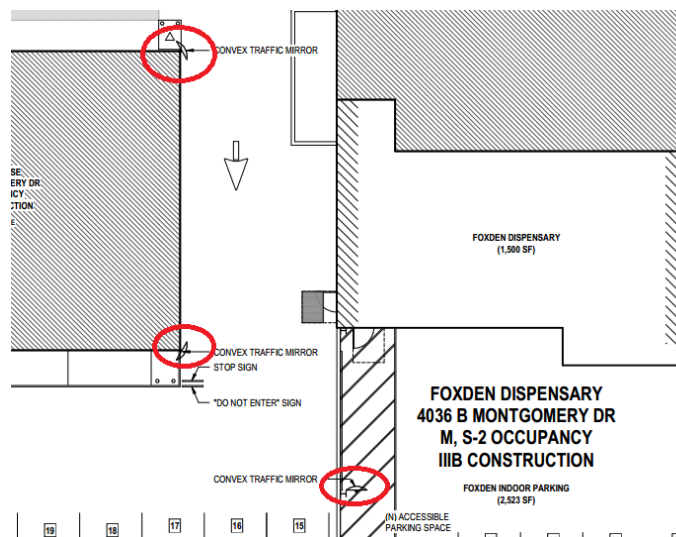
Revised submittals were referred for review and comment to the City's Building and Engineering staff.

On-site Circulation- Currently, traffic circulation on-site is one-way in a counter clockwise direction around the Trail House building. Concerns were raised regarding (1) the short line-of-sight for motorists as they exit the property when cars are parked in the street parking spaces on the left (westerly) side of the exit driveway, (2) the blind corners at the rear of the Trail House building, and (3) potential conflicts between motorists exiting the dispensary garage and vehicles in the drive aisle.

To improve the line-of-sight for motorists exiting the driveway, the applicant proposes reversing to clockwise the direction of the on-site one-way circulation. By reversing the direction, the line-of-sight for motorists increases from 70 feet to 250 feet without the loss of any street parking spaces, as shown in Figure 1.



Figure 1. Existing and Proposed Line-of-sight



To address the blind corners that currently exist at the rear of the Trail House building, and potential conflicts at the garage exit, the applicant proposes installing convex mirrors at the back corners of the Trail House building, adding a “Stop” sign at the southwesterly corner of the Trail House building and adding a convex mirror on the westerly side of the dispensary’s garage door, as shown in Figure 2.

Figure 2. Mirror and Stop Sign Locations

As noted above, the applicant’s transportation consultant updated the parking study for the Project and included turning exhibits demonstrating adequate maneuvering space in the drive aisles and parking garage for both passenger cars and SUVs. The revised traffic analysis prepared for the project concludes that “on-site circulation would be expected to continue operating acceptably. The addition of mirrors to the corners of the Trail House building, as proposed, would improve sight lines within the site.”

Parking Supply – The applicant revised the proposal reducing the size of the dispensary by 273 square feet (resulting in the need for six instead of seven parking spaces), and providing four off-site employee parking spaces at 4325 Montgomery Dr. In addition, the size of the parking garage was increased to provide greater back-out space, wider parking stalls and extra space between the wall of the garage and the side of the last space in the garage.

The revised parking analysis reflects the reduced size of the dispensary and concludes that with the provision of four off-site parking spaces for employees, there would be a surplus of four parking spaces compared to the minimum number of spaces required by the City.

To efficiently manage use of all the parking spaces on the site, including those used by patrons of the Trail House, the parking analysis recommends the applicant install signs on-site informing customers that the parking lot is to be used while on-site only (the traffic engineer observed patrons of the Trail House park on-site, unload bicycles from their vehicles, and then leave for an extended period on their bikes.) Signs identifying spaces for Trail House and Fox Den are also recommended.

Delivery Vehicle –

Opponents of the Project noted that the proposed delivery vehicle will take away from parking available for customers and therefore, the parking need is understated. The applicant's Traffic Engineer's response is that the delivery service results in a reduction in the number of parking spaces required in that the delivery vehicle will only use one parking space for a short period of time to pick up product to be delivered to several clients that would otherwise have to come to the dispensary and create a demand for more parking.

ADA Compliance –

Owners of Trail House and their architect believe the Project is not compliant with ADA-access requirements in that there is no ADA accessible route between the public sidewalk and business entrance. The City's Chief Building Official reviewed the plans and noted that proper ADA-compliance is provided, in that a compliant accessible path is proposed from the accessible parking space to the entrance to the facility and the regulations provide for an exception to the requirement to provide an accessible route between the public street and business entrance "if the only means of access" to business entrance "is a vehicular way not providing pedestrian access." There is no pedestrian access (sidewalks or walks) from the public street to the building entrance.

ANALYSIS

1. Santa Rosa General Plan 2035

The site is designated Retail and Business Services on the General Plan Land Use Diagram. This classification is intended to accommodate retail, service, office and restaurant uses. (General Plan p. 2-12)

The following General Plan goals and policies are applicable to the Project:

LAND USE AND LIVABILITY

LUL-I-1 Provide a range of commercial services that are easily accessible and attractive, that satisfies the needs of people who live and work in Santa Rosa and that also attracts a regional clientele.

ECONOMIC VITALITY

EV-A-1 Continue to promote Santa Rosa as the North Bay's premier location for technology, clean/green technologies, and entrepreneurial businesses, which create new products and business models that will attract national and international markets.

EV-A-5 Maintain diversity in the types of jobs available in Santa Rosa to lessen the impact of economic cycles.

EV-D Maintain the economic vitality of the downtown, business parks, offices and industrial areas.

The Zoning Code specifically identifies the Neighborhood Commercial zoning district as a district appropriate for cannabis retail (dispensary) and delivery. Although Cannabis uses are not explicitly addressed in the General Plan, the Neighborhood Commercial zoning district is intended for retail uses with operational patterns similar to the operational patterns (i.e. traffic, parking, hours of operation) of cannabis retail and delivery, including restaurants, bars, medical uses, pharmacies, and neighborhood centers.

Medical and adult use cannabis retail and delivery are consistent with the General Plan goals and policies of the Retail and Business Services land use designation. Specifically, the proposed dispensary would assist in maintaining the economic viability of the area; broaden the available positions for both full- and part-time employment within the City; and provide a viable commercial service, while ensuring compatibility with the surrounding neighborhoods through proposed conditions of approval and operational and security measures.

2. Other Applicable Plans

Not applicable.

3. Zoning

The Project site is within the Neighborhood Commercial (CN) zoning district, which is consistent with the Retail and Business Services General Plan land use designation. Surrounding zoning districts include:

North: General Commercial

South: Neighborhood Commercial

East: Neighborhood Commercial

West: Neighborhood Commercial

Zoning Code Section 20-23.020(B) describes the purposes of the Neighborhood Commercial zoning district and the manner in which the district is applied as follows:

“The CN zoning district is applied to areas within and adjacent to residential neighborhoods appropriate for limited retail and service centers for convenience shopping. Uses in these centers are intended to provide for the day-to-day needs of local neighborhoods and workplaces, but not to be of such scope and variety as to attract substantial traffic volumes from outside the neighborhood.”

New development is encouraged to include both a residential and nonresidential component as noted by Section [20-23.030](#) (Commercial Land Uses and Permit Requirements). The CN zoning district is consistent with and implements the Neighborhood Shopping Center land use classification of the General Plan.”

Cannabis retail (dispensary) and delivery is an allowed use in the CN zoning district subject to discretionary approval of a conditional use permit when setback no less than 600 feet from a school and from any other cannabis retail use within and permitted by the City of Santa Rosa. “School” as defined by Health and Safety Code Section 11362.768 applies to this section of the Zoning Code.

Zoning Code Chapter 20-46 provides operational requirements for commercial cannabis facilities. The project narrative demonstrates the applicant’s building improvement plan and operational plan complies with standards relating to requirements of the Zoning Code including security, lighting, odor control and noise.

Proximity to Schools

Under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), no state license will be granted to any commercial cannabis business that is "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." including a zero setback. ([Business & Professions Code 26054\(b\)](#), *emphasis added*.) Under state law, these distances are measured by the shortest distance between the parcel containing the school/youth center and the parcel containing the cannabis business. ([Health and Safety Code Section 11362.768](#).)

The City’s cannabis ordinance specifically invokes Business and Professions Code section 26054(b) to assert the City’s right to establish different setback requirements than set forth in the state law. (Ordinance, section 20-46.040(B).) The city’s ordinance requires that cannabis retail uses shall be set back at least 600 feet from any K-12 school as defined by Health and Safety Code section 11362.768. (Ordinance, section 20-46.080(D)(2).) No setback is required by the City’s ordinance for cannabis retail from a preschool or daycare.

The distance between the cannabis retail business and a school shall be measured in a straight line from the boundary line of the property on which the cannabis retail is located to the closest boundary line of the property on which a school is located (Ordinance, §20-46.080(D)(3). Outdoor cultivation for personal use is prohibited on parcels located adjacent to school property. (Ordinance, section 20-46.030(C)(3).) No additional setback from a school is required, and

the ordinance does not require any buffers between non-retail cannabis businesses and schools or other youth-oriented facilities.

The ordinance also precludes cannabis retail facilities from advertising or marketing cannabis or cannabis products on an advertising sign within 1,000 feet of a day care center, K-12 school, playground or youth center. (Ordinance, § 20-46.080(F).

Herbert Slater Middle School, located at 3500 Sonoma Ave, is the closest school to the Project site and is located approximately 1,500 feet to the south. To determine compliance with the 600-foot separation, measurements are taken from the closest property lines, not from the closest structures. The project is consistent with the state and local regulations governing setbacks to schools.

Concentration

The Zoning Code limits geographic concentration of cannabis retail facilities (dispensaries) by prohibiting dispensaries within 600 feet of each other. There are no other cannabis retail facilities within 600 feet of the subject site; therefore, the Project site is not located in an “over-concentration” area.

Employment

Fox Den will complete background checks on all employees pursuant to State and City regulations. The project narrative, attached to this report, details hiring procedures, including background checks for all new employees. The proposed employment procedures comply with Zoning Code Section 20-46.

Odor Control

Zoning Code Section 20-46.050(H) require cannabis businesses to “incorporate and maintain adequate odor control measures such that the odors of Cannabis cannot be detected from outside of the structure in which the Business operates.” To achieve compliance with Zoning Code and consistent with standard industry practices, an activated carbon inline filtration system will be installed in the exhaust systems serving spaces at risk for emitting cannabis odors. Administrative controls will be put in place to maintain the effectiveness of the carbon filtration system. Details of the filtration system and administrative controls are provided in the TEP Engineering letter dated April 13, 2018 (attached).

Lighting

As a part of the project, the applicant proposes to comply with the requirements of Zoning Code Sections 20-30.080: *Outdoor Lighting* and Section 20-46.80. According to the Project narrative, all outdoor areas of the premises will be

illuminated, including all points of ingress and egress, with stationary, fully shielded lights directed away from adjacent properties and from the public right-of-way. The Zoning Code requires (at Section 20-30.080) that exterior lights be shielded and cast downward to avoid light or glare spilling onto neighboring properties. A recommended condition of approval is that the applicant provide with the building permit submittal, a detailed lighting plan in compliance with the Zoning Code. The applicant has agreed to this condition.

Noise

Other than delivery vehicles, all operations are proposed in the fully enclosed building located on the site in the Neighborhood Commercial zoning district. Interior operations are not anticipated to generate excessive noise. There are no openings (doors or windows) on the rear side of the building which abuts the preschool site.

Mechanical equipment will be required to comply with the Noise Ordinance, City Code Chapter 17-16 (attached).

Security Plan

Zoning Code Section 20-46.050(G) requires cannabis businesses to provide adequate security to insure the public safety and safety of persons in the facility and to protect the business premises from theft. Cannabis business applications are required to provide a security plan that includes lighting and alarms, secure storage and waste, procedures for the safe transportation of products and currency, controlled building access and emergency access. To that end, a detailed Security Plan designed to prevent theft or diversion of any cannabis or currency, and to discourage loitering, crime, and illegal or nuisance activities, is included with the Project application. Details of the plan are provided in the Project narrative which includes the following key features:

- Surveillance – Video cameras will provide 24-hour surveillance and recordings will be retained for 90 days. Cameras will be oriented to allow “clear and certain identification” of all areas of the site where cannabis is stored, sold and transferred.
- Alarm – A professionally monitored alarm system will be installed and maintained.
- Access – Commercial grade security doors will be installed at all building entrances and internally at restricted areas. In compliance with the Zoning Code, the front entrance is visible from the street. Persons under the age of 21 will not be allowed in the facility, unless they are a qualified medical patient over the age of 18.
- Security Personnel – Security personnel will be on-site to ensure compliance with the age restrictions and to prevent nuisance activity on the site.

Delivery Services

Fox Den will provide delivery service within Santa Rosa and to locations within Sonoma County to the extent each local jurisdiction allows. The following procedures will apply:

- Deliveries will be made using company-owned vehicles equipped with GPS service.
- Drivers will be at least 21-years of age.
- Drivers will not carry goods or cash in excess of \$3,000 at any time.
- Customers will be required to provide valid identification and sign for all deliveries.

Special Events

A request for special events is not included with the subject Project. However, if in the future, the applicant wishes to host a special event, approval of a Temporary Use Permit, per Section 20-52.040 (Temporary Use Permit) will be required.

Parking

With the addition of five parking spaces inside the existing building and one outdoor parking space, there will be 21 spaces on the property, 15 of which are required for the existing Trail House business. One space is required for every 250 square feet of cannabis retail use resulting in a parking requirement of six spaces (per Zoning Code Table 3-4) for the proposed 1,500 square foot dispensary. The applicant is also proposing to lease four off-site spaces for its employees. The project complies with the parking requirements of the Zoning Code.

Required Findings (as shown on the draft resolution)

Decisions on conditional use permits are based on the six discretionary standards found in Zoning Code Section 20-.52.050(F). Applicable conditional use permit standards followed by a staff analysis of the project's compliance with the standards is as follows:

- i. The proposed cannabis retail dispensary and delivery business is allowed in the Neighborhood Commercial (CN) zoning district and complies with all other applicable provisions of this Zoning Code and the City Code. Zoning Code Table 2-6 lists allowable uses within the Neighborhood

Commercial Zoning District, which implements the Retail and Business Services General Plan land use designation, and allows cannabis retail and delivery with the approval of a major Conditional Use Permit; and

- ii. The proposed cannabis dispensary and delivery facility is consistent with the General Plan land use designation of Retail and Business Services, which is applied to areas that are intended retail, restaurant and commercial service uses. On December 19, 2017, the City Council adopted Ordinance No. ORD-2017-025 finding cannabis retail (dispensaries) and delivery uses appropriate in areas designated as Retail and Business Services on the land use diagram; and
- iii. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity. The site is surrounded by commercial uses and while a pre-school is located behind the proposed dispensary to the south, there are no setback requirements to preschools and the Project is oriented to the north and away from the preschool and there are no doors, windows or other openings on the south wall of the dispensary. Therefore, the design, location, size and operating characteristics of the Project will be compatible with existing and future land uses in the vicinity; and
- iv. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints in that the Project plans demonstrate compliance with all operational standards as specified in Zoning Code Chapter 20-46, the subject site is within a fully developed area zoned for office uses, the proposed changes to the existing on-site vehicular circulation will enhance public safety for motorist exiting the site by increasing the line-of-sight from 70 feet to 250 feet, the addition of mirrors at the rear corners of the Trail House building will enhance the safety of on-site circulation, the provision of four off-site employee parking spaces and the inclusion of a delivery service will lessen the demand for on-site parking; and
- v. 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. With the proposed odor control measures; the proposed operational procedures including site and building security, storage and waste handling, inventory tracking, and age/medical restrictions; compliance with all applicable state and local regulations; and the circulation and parking improvements described above, the proposed Project is consistent with surrounding land uses, including the abutting preschool use to the south and the Trail House business. On-site security personnel will monitor the parking lot to prevent loitering, consumption of cannabis or other nuisance activities.

- vi. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA). Refer to the Environmental Review section of this report for further discussion.

4. Design Guidelines

Exterior modifications to the existing structure will require and design review approval by the City.

5. Historic Preservation Review Standards

Not applicable.

6. Public Comments

Residents and the owner/operator of the Kiwi Pre-school provided input on the proposed Project at a Neighborhood Meeting held on June 4, 2018, at the Planning Commission hearing, at the April 9, 2019 City Council appeal hearing and in written and verbal communication. Neighbors and the preschool owner raised the following concerns:

- Proximity to the Kiwi Pre-school and Howarth Memorial Park,
- Public safety,
- Lack of on-site parking;
- Lack of compliance with ADA access requirements; and
- Incompatibility with both adult and child cyclists frequenting the Trail House café, bicycle shop and bicycle-oriented events that meet at the Trail House.

The owner and operator of the Kiwi Pre-school voiced opposition to the placement of a dispensary immediately adjacent to the pre-school and the pre-school playground. While acknowledging that the pre-school does not meet the definition of a “K – 12 school,” the pre-school operator informed staff that the pre-school provides after-school tutoring and care for school-aged children and as such, the dispensary while meeting the “letter of the law” does not meet the intent of providing a buffer between cannabis dispensaries and children.

Residents and patrons of the Trail House noted that a kids cycling group routinely meets at the Trail House and stated that a dispensary at the proposed location would not be safe for groups of children on bicycles on the same property.

Public safety and neighborhood compatibility are central to decisions on conditional use permit applications and were the focus of the Planning Commission deliberations on the application. At the April 9, 2019 City Council hearing, the Council expressed concern about parking and on-site circulation. After considering the applicant’s response to the concerns, all public input, and the evidence presented in the Staff Report, including the

staff analysis, and the Planning Commission's findings, the City Council may use its discretion to determine whether the Project meets the CUP criteria including criteria pertaining to public safety and neighborhood compatibility.

Operational standards of Zoning Code Chapter 20-46 are designed to address public safety and neighborhood compatibility and the Zoning Code includes provisions for site security, lighting, and odor control, as described above in this Staff Report and in detail in the applicant's operation plan. The Project's operation plan includes on-site security personnel that will only grant access to persons over the age of 21 years and qualified patients with a state-issued medical card over the age of 18. Prospective patrons will be screened by a security guard or lobby receptionist that scans patrons' ID or cards upon entry. In addition, there will be video surveillance of the entry and parking lot.

Zoning Code Section 20-46.080(F) prohibits cannabis retail facilities from advertising or marketing cannabis products within 1,000 feet of a day care, a school providing instruction in kindergarten or any grades 1 through 12, playground or youth center, and therefore, visual exposure to minors will be limited.

A focused traffic study was prepared for the Project by W-Trans (April 17, 2018) and updated on August 1, 2019 to analyze the Project as revised. A peer review of the updated traffic study was conducted by Transpedia Consulting Engineers and the revised plans and updated traffic study were reviewed by the City's Engineering Division staff. Both TCE and the City's Engineering staff found the proposal to meet the parking requirements of the City and to provide for safe circulation. The volume of traffic expected to be generated by the project is less than 50 trips during the peak hours and therefore, a full traffic study was not warranted. To make for efficient use of the parking, the Project traffic engineer recommends signs be installed on-site informing customers that the parking lot is to be used while on-site only and signs identifying spaces for Trail House and Fox Den are also recommended.

These recommendations are included as conditions of approval and the applicant has agreed to both conditions.

7. Public Improvements/On-Site Improvements

None required.

8. Appeal Statement and Council Options

Pursuant to Zoning Code Chapter 20-62, appeals of decisions made by the Planning Commission shall be evaluated by the Council. The Council may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for appeal.

With respect to the Conditional Use Permit, the Council may:

- Affirm, affirm in part, or reverse the action, the determination, or decision that is the subject of the appeal; or

- Adopt additional conditions of approval, that may address issues or concerns other than the subject of the appeal; or
- If new or different evidence is presented on appeal, the Council may refer the matter back to the Commission for further consideration.

The appellant has provided the following three grounds for the appeal. The full appeal Statement is provided as an attachment. Staff responses follow each item.

- 1) *“The Design, Location, Size and Operating Characteristics of the Proposed Activity Would NOT Be Compatible with the Existing and Future Land Uses in the Vicinity.”*
“Public Policy Supports a Setback for All Children Regardless of Age.”

Staff Response

The City established a quantitative standard for the minimum distance a cannabis dispensary must maintain from certain uses and the location of the proposed dispensary meets this quantitative standard.

The process the City took to make the determination that 600 feet from K-12 schools and that a zero setback from preschools or daycare centers was a reasonable quantitative and objective standard to assert is summarized as follows:

The City’s comprehensive cannabis ordinance was developed publicly over a two-year period (January 2016 through December 2017) in concert with the City Council’s identifying comprehensive cannabis policy as a top priority. The issue of setbacks to sensitive land uses such as to a school, youth-oriented facility, and preschool was discussed throughout the process by staff, the public, and by the Council Cannabis Policy Subcommittee, the Planning Commission and the City Council. Examples of regulatory options, and summaries of what other jurisdictions were considering or adopting, were provided throughout the process including discussion and consideration of a 1,000-foot setback to schools. After nearly two years of discussion and analysis, the ordinance as adopted by the City Council includes a 600-foot setback between cannabis retail and a “school”, as defined by the state’s Health and Safety Code Section 11362.7-11362.83, subsection 11362.768.

“School” is defined by the statute as: “School means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.”

There are no setbacks required between a cannabis retail use and a preschool or other (non K-12) education related land use (e.g. tutoring services, day care center, or college).

Each decision maker, through the public policy making process, participated

from various perspectives. Discussions and actions balanced the community's interests in providing a legal path for commercial cannabis industries in alignment with their non-cannabis counterparts, along with interests in protecting the public's health safety and welfare. That balancing process led to the eligibility of commercial cannabis land uses in commercial and industrial zoning districts, and the consideration of cannabis retail through a conditional use permit process. The use permit process was deemed sufficient for vetting out potential compatibility issues in that it allows for staff analysis, public noticing and hearing, project specific conditioning and site by site project review and action by a seven-member council appointed Commission. In addition, the ordinance as adopted includes specific operational and locational standards to proactively and deliberately address cannabis specific impacts such as security, odor, lighting and noise.

Prior to granting a Conditional Use Permit, the Planning Commission (or City Council on an Appeal) must make all six required findings listed below. Staff analysis of the Project as it relates to the required findings is contained above on pages 10 and 11.

- a. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and the City Code;
- b. The proposed use is consistent with the General Plan and any applicable specific plan;
- c. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity;
- d. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints;
- e. 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; and
- f. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

2) *"The Proposed Project and Increased Traffic Will Create an Unsafe Environment for The Children at the Site."*

"Amount of Anticipated Traffic is Non-Compliant" with the intent of the Neighborhood Commercial zoning district because it would be the most easterly dispensary in Santa Rosa and *"Kiwi believes it will attract substantial*

volumes of people and greater traffic than anticipated in the Applicant's traffic study..."

Staff Response

W-Trans prepared a focused traffic study dated April 17, 2018 and an updated traffic study on August 1, 2019. The studies analyzed the potential change in trip generation and conditions associated with the proposed cannabis dispensary and the April 17, 2018 study, relying on ITE trip generation rates, found that the Project (as proposed prior to the 273 square foot reduction in size) can be expected to generate an average of 19 trips during the A.M. peak hour and 39 trips during the P.M. peak hour.

The August 1, 2019 traffic study analyzed the revised 1,500 square foot project and applied data collected from dispensaries in Santa Rosa. Trip generation rates during the AM and PM peak hours collected from Santa Rosa dispensaries are much lower than ITE data and result in 4 AM and 27 PM peak hour trips. Regardless of which data is used, the proposed Project would generate less than 50 peak hour trips and therefore, is below the City's threshold for a full traffic study. The focused traffic studies conclude that the Project would have a less-than-significant impact on traffic operations, on-site circulation would be expected to continue operating acceptably and would be enhanced with the addition of mirrors at the rear corners of the Trail House building, and reversing the direction of the one-way on-site circulation would address the existing inadequate line-of-sight when exiting the driveway.

A primary defining characteristic of neighborhood serving uses is their size. General retail uses with up to 50,000 square feet are allowed in the Neighborhood Commercial zoning district, subject to a Minor Conditional Use Permit and up to 20,000 square feet without a Conditional Use Permit (e.g. by right). In contrast, the Project will occupy a total of 1,500 square feet.

3) *The Proposed Project Would Be Detrimental to Kiwi's Welfare*

"...even a brief internet search demonstrates that unfortunately violence and crime have been documented in association with cannabis dispensaries specifically."

"The stigma associated with marijuana and the fear of increased crime may diminish the appeal of Kiwi in the eyes of prospective parents who may not wish to enroll their child in a preschool located directly behind a dispensary."

Staff Response

The City Council unanimously adopted the City's Comprehensive Cannabis

Ordinance. The regulations address the locational and operational requirements for commercial cannabis related businesses. The ordinance specifically addresses locational and operational requirements to address land use compatibility, odor, security, safety, health, lighting, parking and noise. The project will also be subject to strict State licensing and inspection requirements.

Planning staff consulted with the City's Police Department. They had no objections to the proposed project so long as the operator employs best practices with regard to security measures.

FISCAL IMPACT

Approval or denial of this appeal action does not have a fiscal impact on the General Fund.

ENVIRONMENTAL IMPACT

The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA):

- The proposed project qualifies for a Class 3 Categorical Exemption pursuant to CEQA Guidelines Section 15303 in that it involves a change of use, which will require minor exterior modifications to the structure/site.
- The proposed project qualifies for a Class 1 Categorical Exemption pursuant to CEQA Guidelines Section 15301 in that it involves minor modifications to an existing facility, with no expansion of use.
- Pursuant to CEQA Guidelines Section 15332, the project qualifies for a categorical exemption as infill development as it is located on a site of less than five acres, within City limits, substantially surrounded by urban uses, with no value as habitat for endangered, rare or threatened species, adequately served by necessary utilities and public services, and the project has no foreseeable significant adverse impacts to traffic, noise, air quality or water quality:
 - Traffic - According to the April 17, 2018 Focused Traffic Study and the November 11, 2019 update prepared by W-Trans, the project will have a less-than-significant impact on traffic in that it will generate between two fewer and 13 more trips during the AM peak and between 27 and 32 more trips during the PM peak than warehouse use.
 - Biology. The Project site is covered by an existing building and parking lot and has no habitat value. No trees or other vegetation will be removed from the site as a part of the Project;

- Noise - The proposed Project will operate within an existing building, which will not result in excessive noise on the exterior of the building and will operate within hours established for Retail Cannabis in Zoning Code Section 20-46.080(4);
 - Air Quality/Odor - The letter addressed to the City of Santa Rosa, dated April 13, 2018, from TEP Engineering, Inc. discusses in detail the design of the carbon filtration system that will be installed, pursuant to Zoning Code Section 20-46, at the Project site; and
 - Water – There are no changes in impervious surfaces or storm water drainage proposed. In addition, the site has municipal water and wastewater service.
- No exceptions to the exemptions apply and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (CEQA Guidelines section 15300.2.).

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

On January 24, 2019, a Conditional Use Permit for the Project was considered by the Planning Commission. At the meeting, members of the Planning Commission discussed the proximity of the proposed use to the Kiwi Preschool and the Trail House. Following the public hearing, the Planning Commission voted unanimously to approve the Conditional Use Permit for the Project.

NOTIFICATION

The project was noticed as a Public Hearing per the requirements of Chapter 20-66 of the City Code. Notification of this public hearing was provided by posting an on-site sign; publishing a notice in a newspaper of general circulation; mailed notice to surrounding property owners within 600-feet; electronic notice to parties that expressed interest in projects taking place in this geographic area of Santa Rosa; and, bulletin board postings at City Hall and on the City website.

ISSUES

Owners/operators and parents of children remain concerned with potential crime and stigma associated with a dispensary in the proposed location given its location behind the Kiwi Preschool and with parking and traffic impacts on the Trail House. This is discussed in the Public Comments Section of this Report.

ATTACHMENTS

- Attachment 1: Disclosure Form
- Attachment 2: Location Map
- Attachment 3: Appeal

- Attachment 3b: Appeal Supplement
- Attachment 4: Revised Project Narrative dated July 1, 2019
- Attachment 5: Project Plans, prepared by WIX Architecture, September 18, 2018
- Attachment 6: Updated Project Plans, August 2019
- Attachment 7: Focused Traffic Study prepared by W-Trans, April 17, 2018
- Attachment 8: Updated Focused Traffic Study, November 11, 2019 with attachments
- Attachment 9: Odor Control Plan, prepared by TEP Engineering, Inc., April 13, 2018
- Attachment 10: City Council Ordinance ORD-2017-025
- Attachment 11: Zoning Code Chapter 20-46
- Attachment 12: Noise Ordinance (City Code Chapter 17-16)
- Attachment 13: Resolution No. 11935, adopted on January 24, 2019
- Attachment 14: Correspondence

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