

Appeal of Fox Den, Inc. Cannabis Dispensary & Delivery

4036 Montgomery Rd., Unit B

December 3, 2019

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Planning and Economic Development

- **Cannabis Ordinance**
 - State & Local Regulations
 - Conditional Use Permit Criteria
- **Project Description**
 - Context
 - Site and Floor Plan Revisions
 - Operations
- **Public Comment and City Council Concerns (April 9, 2019 meeting)**
 - Basis of appeal
 - Council concerns
 - Applicant response
- **Environmental Review**
- **Staff Recommendation**

Cannabis Ordinance Overview

- **Personal Use**
 - 6 plants per residence
- **Commercial Cannabis Businesses**
 - Medical & Adult Use
 - Cultivation
 - Manufacturing (Level 1 & Level 2)
 - Testing Laboratory
 - Distribution
 - [Retail \(Dispensaries & Delivery\)](#)
 - Microbusiness
 - Special Events
- **Effective January 19, 2018**



Cannabis Ordinance

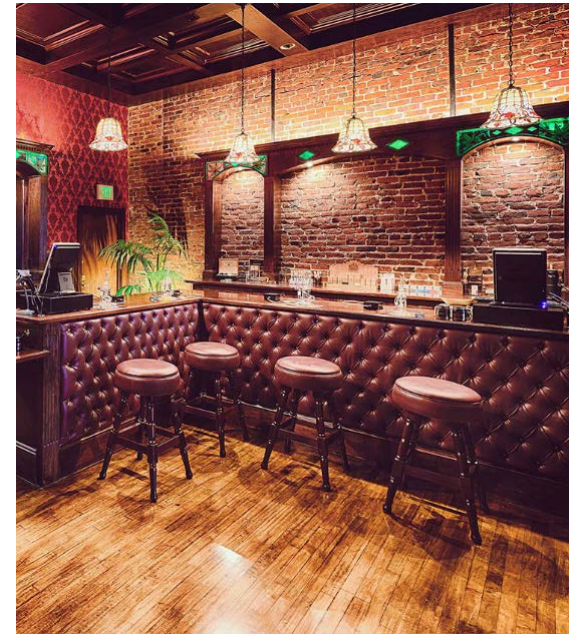
Retail Specific Requirements

- **Eligible Zoning Districts**
 - Commercial – CO, CN, CG, & CSC
 - Industrial – BP, IL & IG
- **Setbacks to Sensitive Receptors**
 - 600 feet to a K-12 school [CA Health & Safety Code § 11362.768(h)]
- **Overconcentration**
 - 600 feet to another Cannabis Retail facility
- **Conditional Use Permit**
 - Neighborhood Meeting
 - Public Hearing – Planning Commission
 - Appeal – City Council

Cannabis Ordinance

Retail Specific Requirements

- **Deliveries** - Allowed only from a Cannabis Retail facility with a storefront
- **Drive-through** – Not permitted
- **Hours of Operation** – 9:00 am to 9:00 pm
- **Security** – entry must be visible from street, secured entry, products, & cash
- **On-Site Consumption (not proposed)** – subject to state and local law; and use permit



State Law and Local Ordinance

Proximity to a School

- **Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)**
 - No cannabis business is allowed within 600 feet of a K-12 school, day care center, or youth center... unless a licensing authority or a local jurisdiction specifies a different radius" including a zero setback.
- **City of Santa Rosa Chapter 20-46 (Cannabis)**
 - City of Santa Rosa asserted its right to establish different setbacks through City Code Section 20-46.040(B)
 - City Code requires that Cannabis retail be setback 600 feet from a K-12 school as defined by Health and Safety Code section 11362.768
 - In addition, the City Code relies on the public review and hearing process and the requirement for six Conditional Use Permit findings.

Conditional Use Permit

Required Findings a - c

- 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;

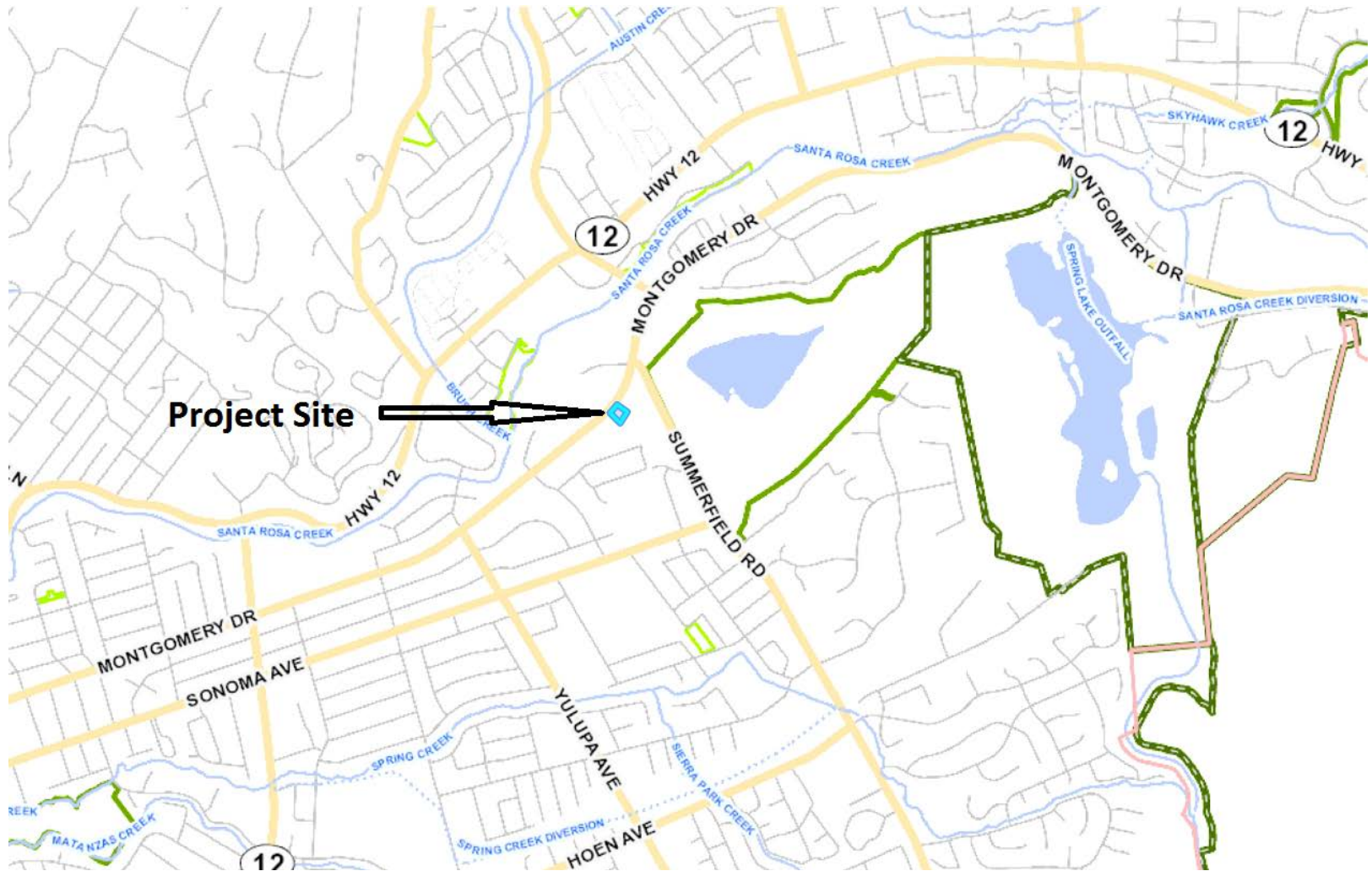
Conditional Use Permit

Required Findings d - f

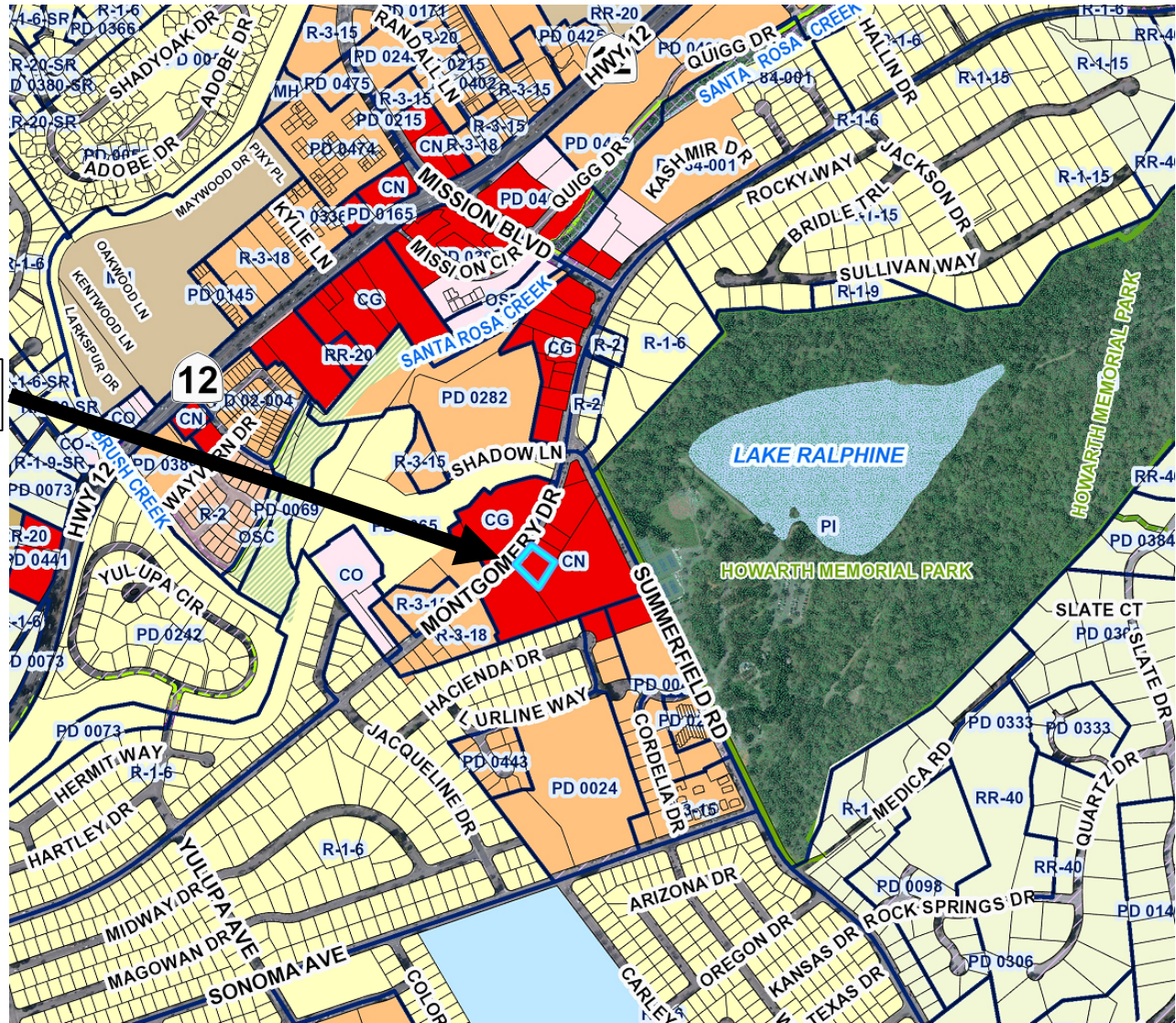
- d) The site is **physically suitable for the type, density, and intensity of use** being proposed, including access, utilities, and the absence of physical constraints;
- e) Granting the permit **would not constitute a nuisance** or be injurious or detrimental to the public interest, health, safety, 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)**.

- April 18, 2018 - Application submitted
- May 31, 2018 - Application deemed incomplete
- June 4, 2018 - Neighborhood Meeting
- June 19, 2018 – Supplemental application information submitted.
- July 2, 2018 – Application deemed complete
- October 15, 2018 – Application revised changing operator from Solful to Fox Den, Inc.
- January 24, 2019 – Planning Commission approved application
- April 9, 2019 – City Council appeal hearing
- August 2, 2019 – Application revised to respond to CC comment
- December 3, 2019 – City Council continued public hearing

4036 Montgomery Rd., Unit B

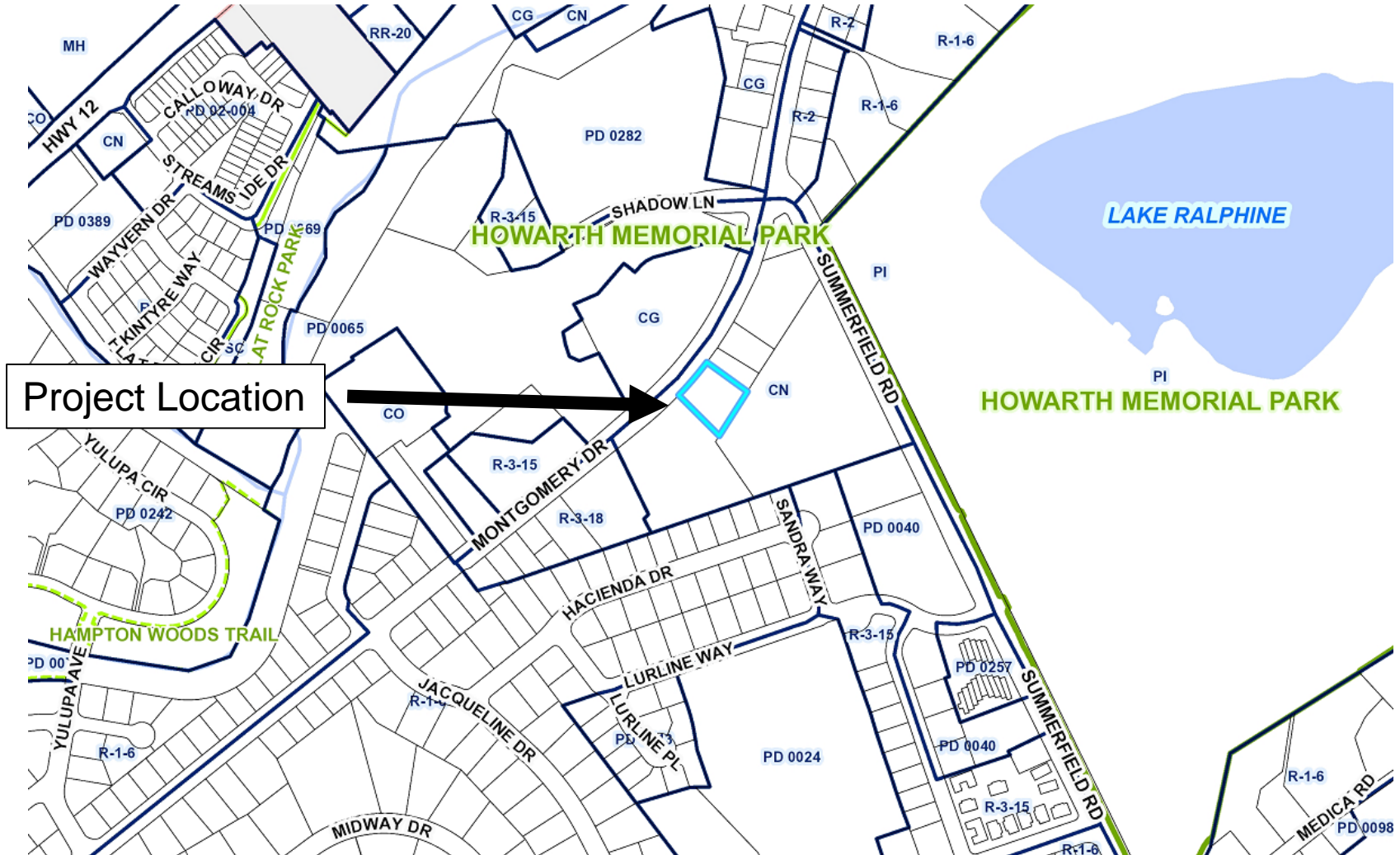


Land Use Designation: Retail and Business Services

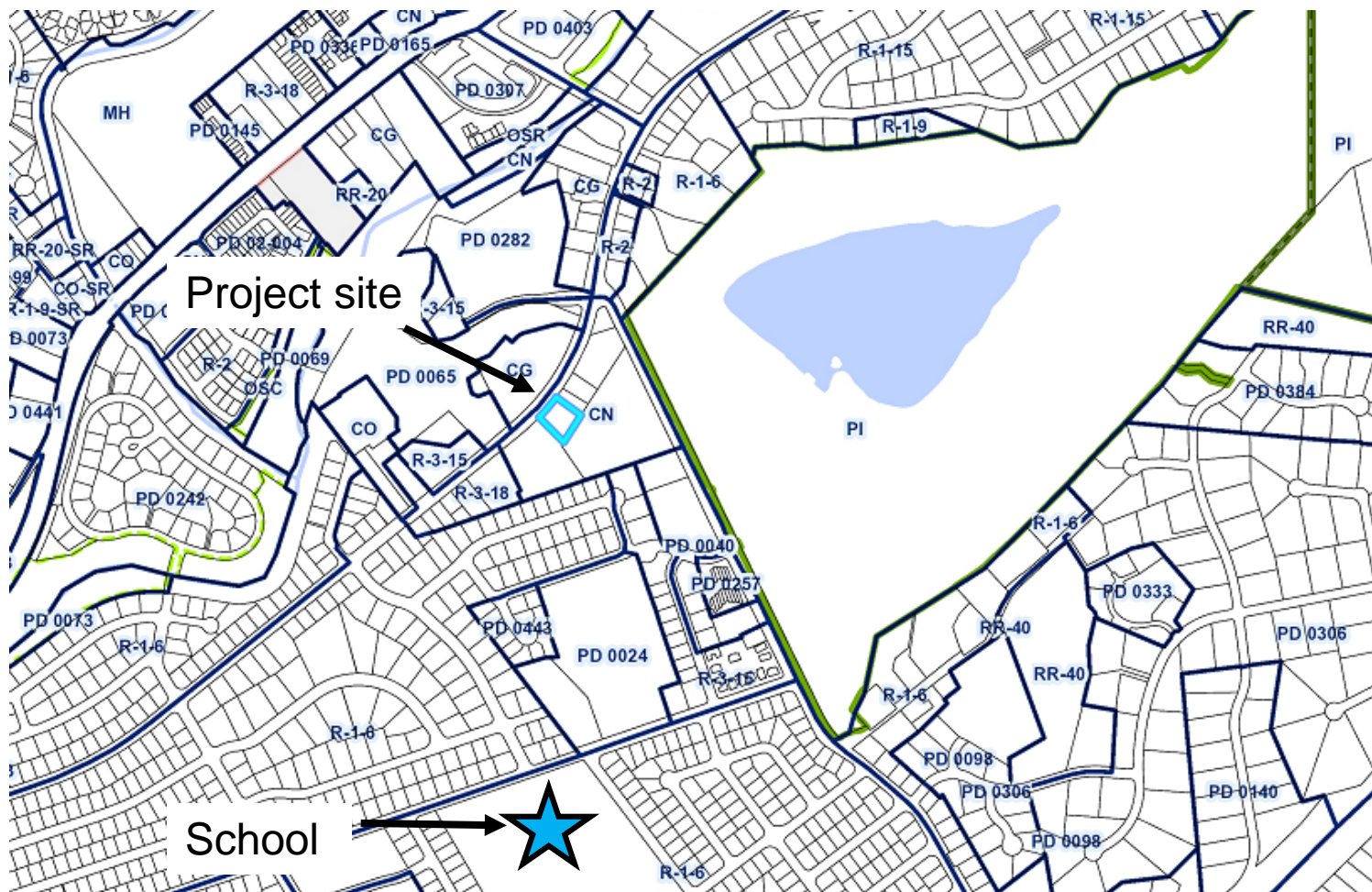


Project Location

Zoning Neighborhood Commercial (CN)



Proximity To Schools



Site Photograph

Aerial View



Site Photograph

Street View



Conditional Use Permit: Retail (dispensary) and Delivery, Type 10 State License

April 9, 2019

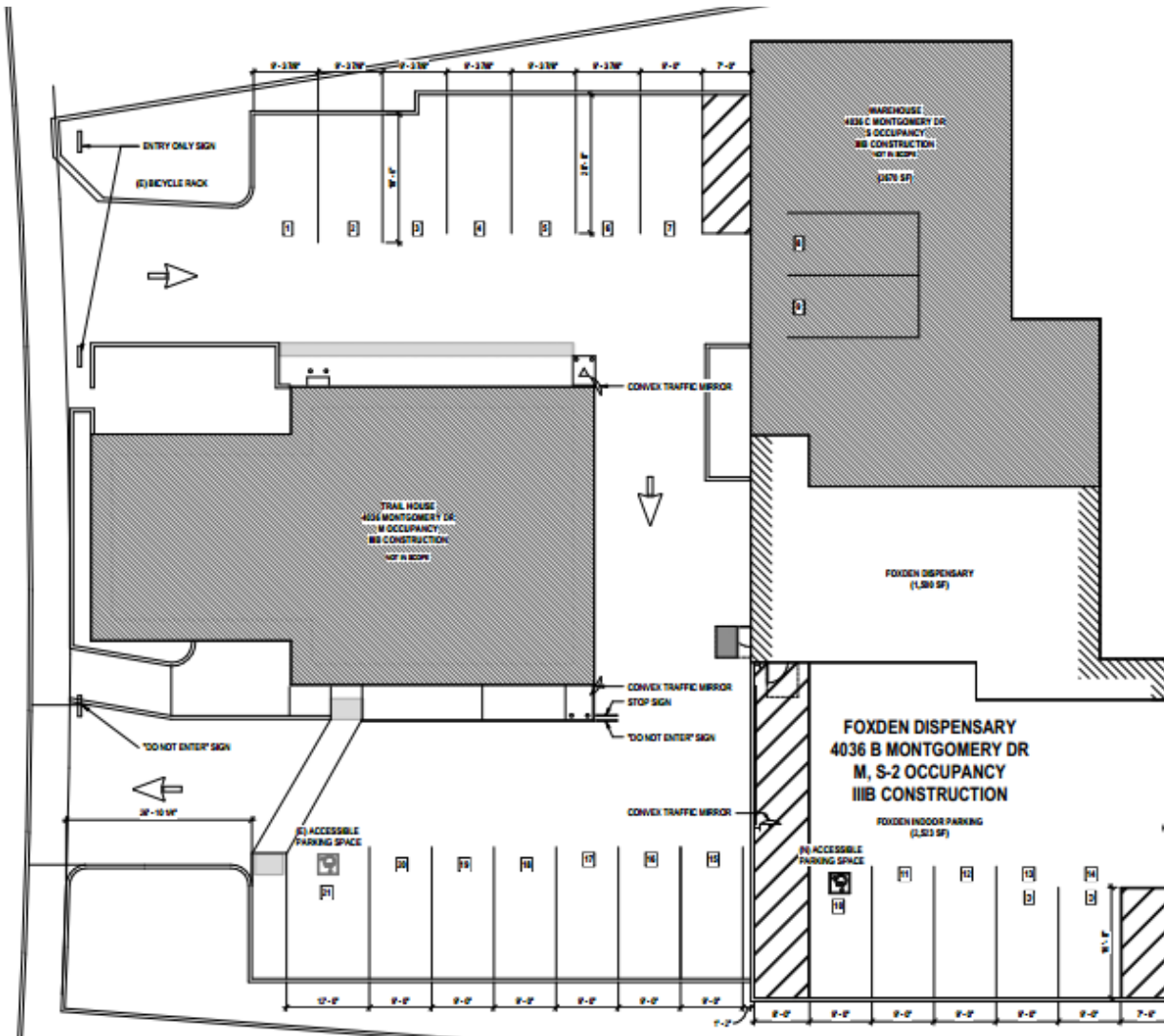
- 1,773 square feet of existing building
 - Retail – 918 square feet
 - Lobby– 288 square feet
 - Support Functions – 567 square feet
 - Office, storage, prep, vault, hallway, bathroom, etc.

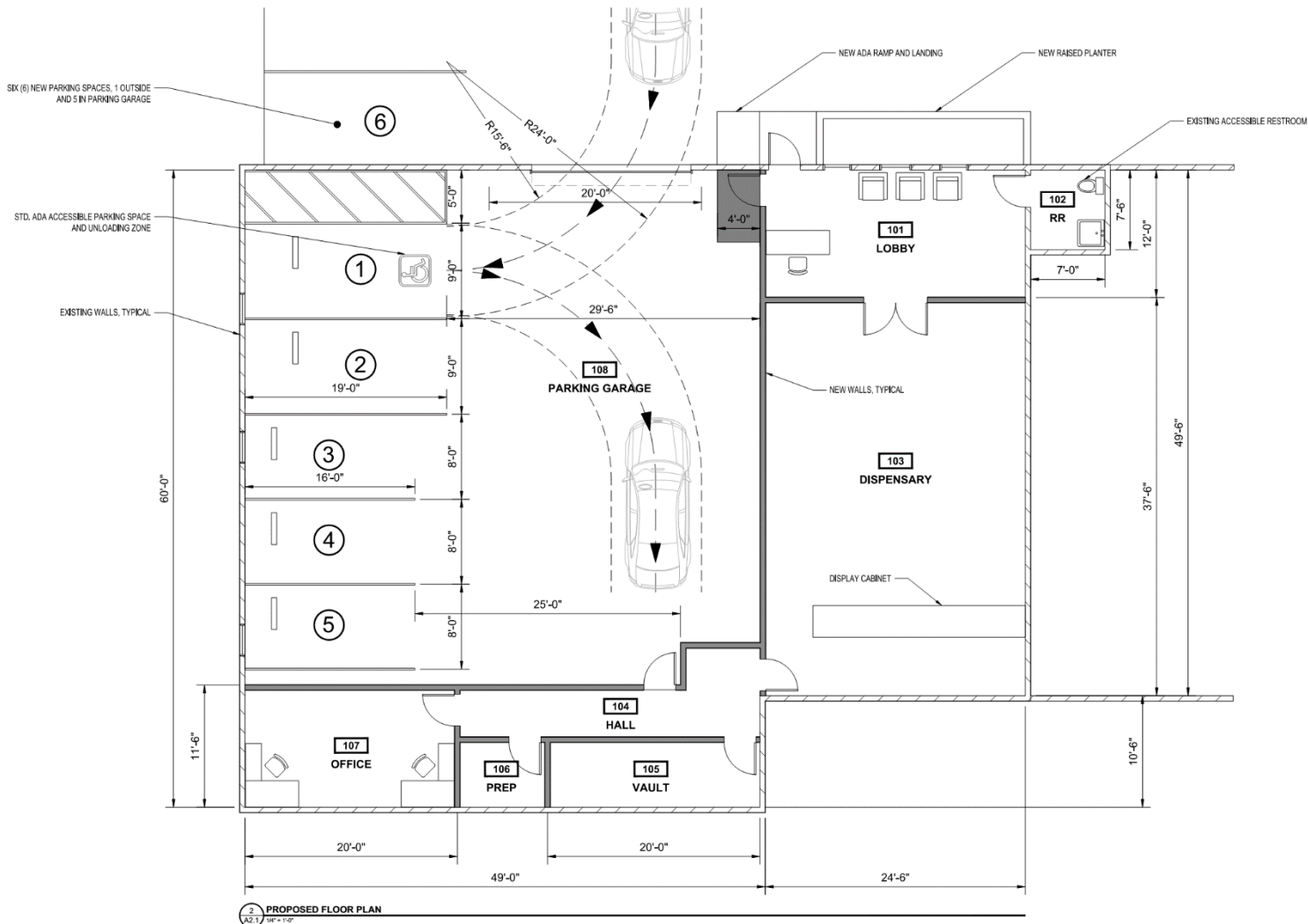
December 3, 2019

- 1,500 square feet of existing building
 - Retail - 789
 - Lobby - 295
 - Support functions - 416
 - Office, storage, & bathroom.

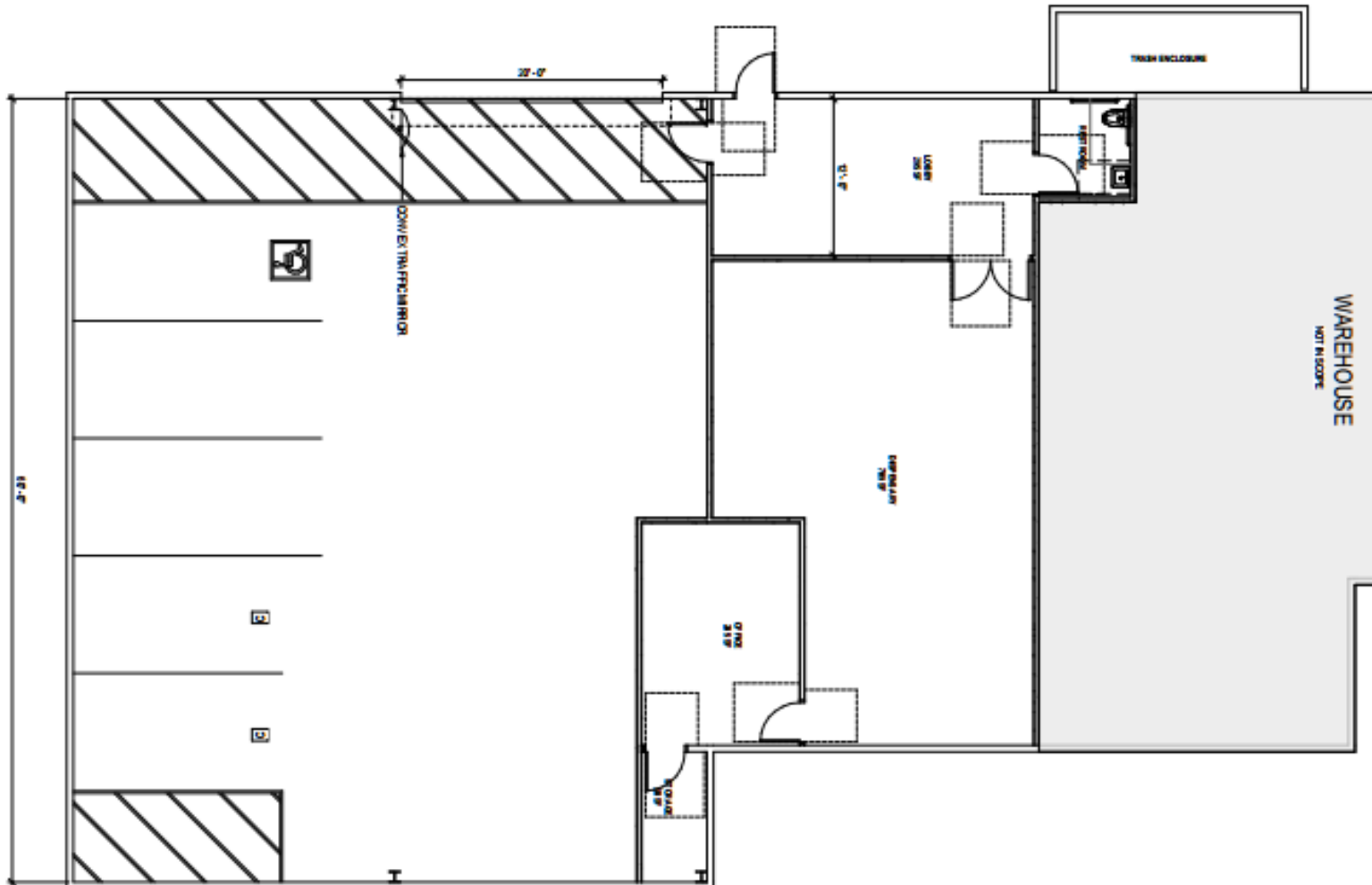


Site Plan December 2019





Floor Plan December 2019



Hours of Operation

Proposed

Retail:

9 a.m. to 9 p.m. every day

Delivery:

9 a.m. to 9 p.m. every day

- Proximity to Howarth Memorial Park
 - Children visiting park
 - Contribute to existing public nuisance problems
- Incompatible with Trail House
 - On-site circulation conflicts with cyclists
 - Bicycle-oriented events including those for children
 - Insufficient parking
- Abutting Kiwi Preschool playground
 - Safety concerns
 - Children exposed to cannabis

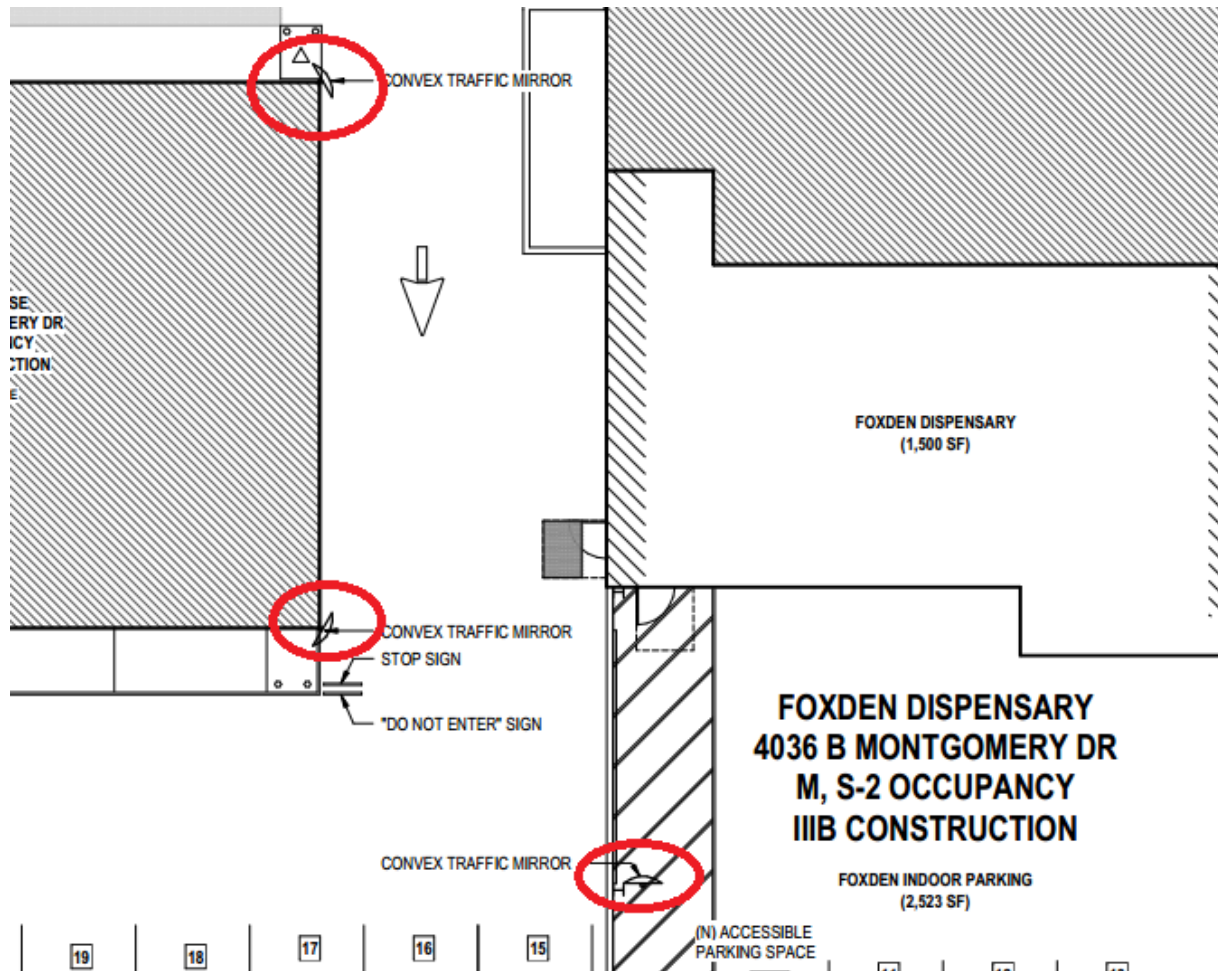
1. *“The Design, Location, Size and Operating Characteristics of the Proposed Activity Would NOT Be Compatible with the Existing and Future Land Uses in the Vicinity.”*
“Public Policy Supports a Setback for All Children Regardless of Age.”
2. *“The Proposed Project and Increased Traffic Will Create an Unsafe Environment for The Children at the Site.”*
3. *The Proposed Project Would Be Detrimental to Kiwi’s Welfare. “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.”*

1. On-site Circulation –
 - (a) short line-of-sight when exiting property,
 - (b) blind corners at rear of building, and
 - (c) potential pedestrian/vehicle conflicts at dispensary garage exit.
2. Parking – Inadequate supply
3. Delivery Vehicle – Use of parking for delivery vehicle
4. ADA Compliance – Accessible route from street to building

1. On-site Circulation – (a) Line-of-sight



1. On-site Circulation – (b) On-site circulation and (c) garage exit

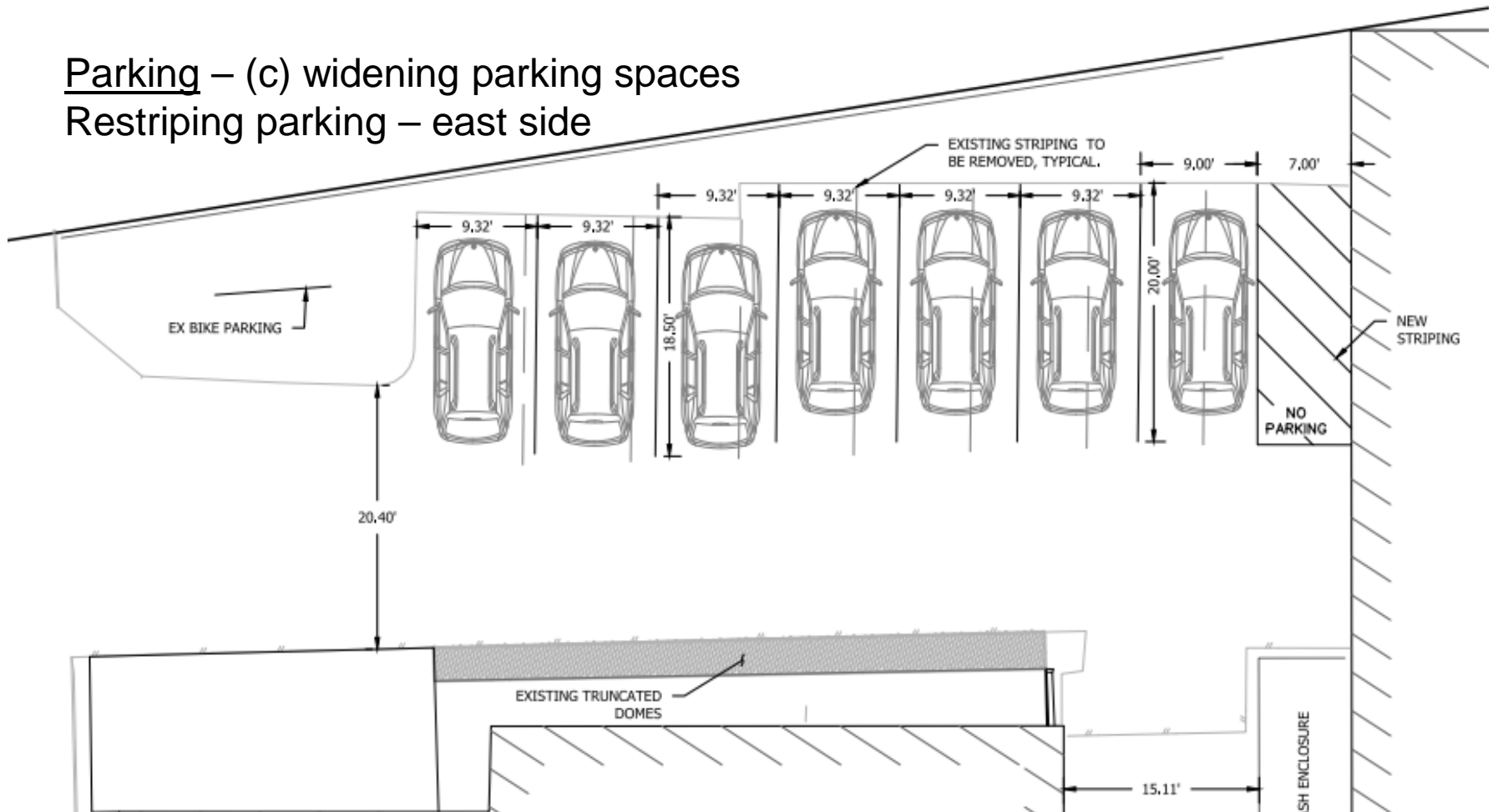


2. Parking – Inadequate supply.

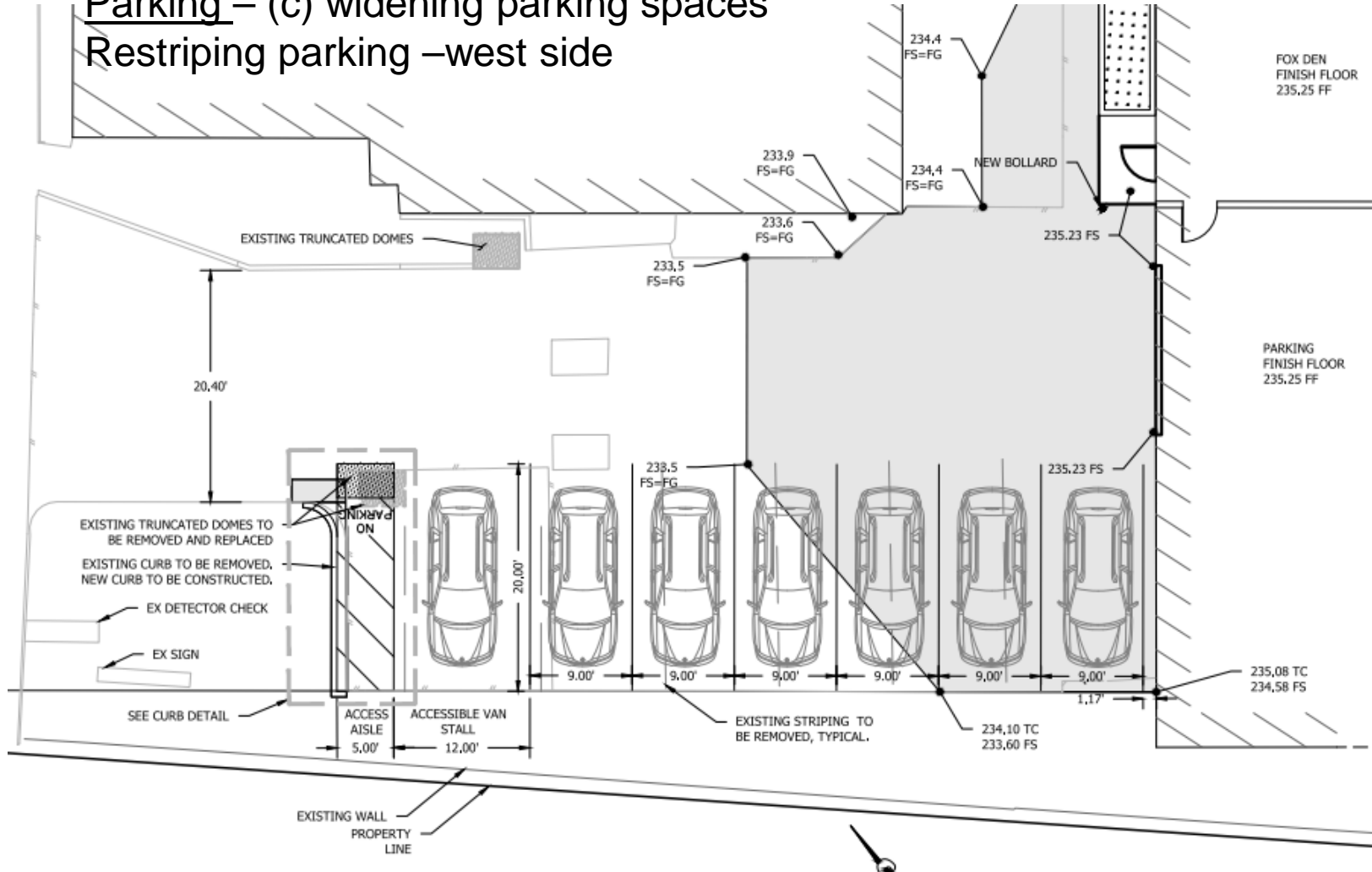
Applicant Response –

- (a) Lease four off-site parking spaces for employees
- (b) Reduce size of dispensary 253 square feet and thereby the required parking from 7 to 6 spaces
- (c) Widen existing parking area and restripe existing spaces to meet minimum parking dimension standards.
- (d) Assigned parking (with signs) for Trail House and for Fox Den
- (e) Restrict parking to use by patrons while on-site only

Parking – (c) widening parking spaces
Restriping parking – east side



Parking – (c) widening parking spaces Restriping parking –west side



3. Delivery Vehicle – Use of parking for delivery vehicle.

According to applicant's Traffic Engineer delivery vehicle results in a *reduction* in the number of parking spaces required.

It will use one parking space for a short period of time and then deliver product to multiple clients that would otherwise drive to the dispensary and create a demand for more parking.

4. ADA Compliance – Accessible route from street to building.

According to City's Chief Building Official, proper ADA-compliance is provided with accessible path from the accessible parking space to the business entrance. Code provides exception to requirement for accessible path from street to building when there is not a pedestrian walk provided. Consistent with other recent City approvals.

Environmental Review

California Environmental Quality Act (CEQA)

Found in compliance with CEQA:

- Pursuant to CEQA Guidelines Section 15183 – Consistent with General Plan and Zoning
- Pursuant to CEQA Guidelines Section 15303 – Involves a change of use
- Pursuant to CEQA Guidelines Section 15301 – Involves minor modifications to an existing facility
- Pursuant to CEQA Guidelines Section 15332 – Infill development

The Planning Commission and Planning & Economic Development Department recommend that the City Council approve a resolution to allow Fox Den, Inc. to operate a cannabis retail (dispensary) and delivery business for medical and adult use at 4036 Montgomery Rd, Unit B.

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