

FAIRFAX PLANNING COMMISSION MEETING MINUTES
VIA TELECONFERENCE DUE TO COVID-19
THURSDAY, SEPTEMBER 16, 2021

Call to Order/Roll Call:

Chair Newton called the meeting to order at 7:00 p.m.

Commissioners Present: Norma Fragoso
Robert Jansen
Brett Kelly
Mimi Newton (Chair)
Cindy Swift

Commissioners Absent: Esther Gonzalez-Parber
Philip Green

Staff Present: Ben Berto, Planning Director
Linda Neal, Principal Planner

APPROVAL OF AGENDA

M/s, Swift/Kelly, motion to approve the agenda as posted.

AYES: Fragoso, Jansen, Kelly, Swift, Chair Newton

ABSENT: Gonzalez-Parber, Green

PUBLIC COMMENTS ON NON-AGENDA ITEMS

John thanked the Commission for their service.

CONSENT CALENDAR

There were no Consent Calendar Items.

PUBLIC HEARINGS

- 1. 1930 Sir Francis Drake; Application #20-02
Consideration of a Cannabis Business permit application, Formula Business Conditional Use Permit, Design Review permit, and Sign Permit for a medical cannabis dispensary/adult delivery business permit for business permit scoring and recommendation on the required Design Review and Sign discretionary permits to the Town Council. Assessor's Parcel No. 001-223-10; Central Commercial CC Zone; Element 7 Fairfax LLC, Applicant; Adham Nasser, owner; CEQA categorically exempt per section 15301(a), 15303(c) and 15304(b).**

Principal Planner Neal presented the staff report.

Chair Newton referred to the Formula Business Conditional Use Permit and asked if there were six findings that need to be made. Principal Planner Neal stated "yes". Chair Newton asked what year the building was constructed. Principal Planner Neal stated it was built in 1939.

Commissioner Fragoso asked if there is a record of the owners of the LLC. Principal Planner Neal that information is in the supplemental information provided by the applicants that is part of the

public packet. Commissioner Fragoso asked if the two proposed services, a medical dispensary and an adult retail delivery program, need to be physically separated. Principal Planner Neal stated the Town Attorney is of the opinion that they can have both services in one location. Commissioner Fragoso asked if the existing business ((Mana Bowl) had a tentative agreement for a continued lease or purchase of the property. Principal Planner Neal stated she did not know but the property owner has been in contact with staff about this hearing date.

Commissioner Jansen asked about the applicability of Chapter 17.032, General Use Permits. Principal Planner Neal advised that the Commission has to make the findings contained in the General Use Permit section and the Formula Business Permit section to approve the use and she read the required findings. Commissioner Jansen asked if the Formula Business Ordinance says anything about the size of the company or the number of locations. Principal Planner Neal stated “no”.

Commissioner Swift referred to Exhibit 1, #3, and asked if changes would be reviewed and approved by the Planning Commission or the Town Council. Principal Planner Neal stated they would be reviewed by the Commission. Commissioner Swift asked about current exterior lighting requirements for a storefront and what the existing dispensary does in terms of lighting. Principal Planner Neal stated the lighting fixture location and fixture cut sheets are contained in the submitted plan sets.

Chair Newton asked if the Formula Business Ordinance does not necessarily ban a formula business but rather allows the Planning Commission to make findings to approve the permit. Principal Planner Neal stated “yes”. Chair Newton asked if the Commission would review the other applications (Design Review, etc.) if they first decide they could not make the findings. Principal Planner Neal stated “yes”. Chair Newton asked about the proposed sign. Principal Planner Neal stated it is shown on the elevations.

Chair Newton opened the Public Hearing.

Mr. Josh Black, Head of Operations for Element 7 made the following comments:

- He gave a PowerPoint presentation.

Mr. Nicholas Pommier made the following comments:

- He will be the General Manager at the proposed location.
- This is a difficult industry to be a part of and he wanted to partner with people who had a background.
- He wants to be legal and protected.

Mr. Stuart Summers, architect, made the following comments:

- The only changes to the building would be to make it ADA accessible.
- The other changes are minor in nature and give a “nod” to the original character of the building.

Commissioner Jansen noted the application indicates different owners. Mr. Black stated they look for a strong local who understands retail and the local community. He explained the ownership split.

Commissioner Jansen had a question about the renderings.

Commissioner Swift asked about the personnel and benefit packages, other stores, the number of parking spaces, the delivery model, insurance and licensing, recycling of packaging, work the company has done in terms of “public benefit”, local hiring and the “surrounding community”. Mr. Black responded.

Commissioner Fragoso asked where the products come from and the projected yearly sales. Mr. Black stated the products are sourced from State licensed distributors. The average dispensary in California does \$3.5 million in gross sales per year.

Chair Newton had a question about a Request for Proposal (RFP) referred to in a letter dated September 13, 2021 and sourcing of products. Mr. Black discussed the Town's process for applying for a permit and how they want to support local products whenever possible which could include San Francisco or Sonoma. Chair Newton had questions about the pesticide issue. Mr. Black stated everything is independently tested by a licensed testing company.

Jess made the following comments:

- She is not a fan of corporate businesses.
- She opposed Mana Bowls being "kicked to the curb".

Ms. Jasmine Gerrity made the following comment:

- She read a letter from Michele Leopold in support of small businesses.

Mr. Greg Morneau made the following comments:

- He has worked for Element 7 for about a year.
- They do a lot of stuff for communities and veterans.

Ms. Lisa Beauchamp made the following comments:

- She was concerned about the number of parking spaces and where employees would park.
- There is a parking issue in the surrounding residential neighborhood.

Mr. Kevin Curtis made the following comments:

- He discussed the RHNA numbers and noted this property could be in a priority allocation area.
- The preferred use could be a mix of commercial and housing.

Ms. Jane Richardson-Mack made the following comments:

- This is not a good fit for Fairfax.
- She does not see a public benefit.

Mr. John Romaidis, Fairfax, made the following comments:

- This is a corporation coming into Town to make money.
- He heard no mention of security.

Mr. Eric Moreno, Fairfax, made the following comments:

- He was concerned about the parking issue.
- This proposal does not complement the existing businesses.

Ms. Marian Craig made the following comments:

- She opposed Element 7 coming into Fairfax.
- The commercialization of cannabis is fundamentally toxic.

Ms. Kelsey Fernandez made the following comment:

- She asked about the amount of local ownership.

Ms. Debra (Dee Lee) Benson, Fairfax, made the following comment:

- This is a chain corporation and it should be opposed.

Mr. Brad Clark, Fairfax, made the following comments:

- He is opposed to this very slick, corporate business.

- It does not fit within the character of nor benefit the Town.

Jeremy made the following comment:

- The Element 7 representatives do not understand the culture and identity of Fairfax.

Ms. Bridget Clark made the following comment:

- The numbers in the traffic study do not add up.

Mr. Dustin Redman, Fairfax, made the following comments:

- He had challenges opening up an independent dispensary on Bolinas Road.
- He supported the proposal and liked the local ownership aspect.

Christopher, a longtime Sonoma resident, made the following comment:

- He is a big proponent of and supports this business.

Lauren made the following comments:

- She has been working with Element 7 for a while under Josh Black, opening other stores.
- They have two stores and she does not consider this a corporation.

Ms. Brenna Gubbins, Fairfax resident and small business owner, made the following comments:

- She opposed the idea of a large, corporate business.
- Kids gather at this location.

Mr. Matt Brown made the following comments:

- He is a real estate broker and has worked with Element 7.
- He urged careful consideration.

Mr. Black made the following comments:

- He responded to the local ownership, traffic, design, and security questions.
- There is one dispensary in Marin County servicing 258,000 residents.
- They are not a franchise and they have never sold a license.
- They have signatures of over 90 people in support.

Chair Newton closed the Public Hearing.

Chair Newton provided the following comments:

- She asked staff about the implications of approving this application in relation to the RHNA numbers and the General Plan that encourage infill. Planning Director Berto stated staff was in the middle of developing housing opportunity sites that respond to the RHNA numbers and have not specifically identified locations in the Central Commercial (CC) Zone.
- She asked about Sales Tax Revenue. Planning Director Berto stated the Town receives a small percentage of Sales Tax Revenue that is collected and it goes into the General Fund.

Commissioner Fragoso provided the following comments:

- She was not sure they would be able to provide five or six parking spaces.
- She has no association with Mr. Fragoso, a member of the team.
- She did not believe there is sufficient space on this tiny lot to develop housing.
- She referred to the General Use Permit Findings and stated the proposed business is not necessarily in the public interest, protection, or enhancement of the community. It is not necessarily equal or better development of the premises because of the community concerns.
- The trade-offs are not comparable.
- She has issues with the Formula Business and the service being compatible with the needs of the area.

- The proposal would shift the quality and nature of the space.
- The public benefit is diminished.

Commissioner Jansen provided the following comments:

- One of the purposes of the Formula Business Ordinance is to preserve opportunities for owner operated businesses.
- They are offering a hybrid model.
- He referred to Code Section 17.032.060 (D) (General Use Permit Findings) and stated he was not sure he could make this finding.

Commissioner Kelly provided the following comments:

- He noted there is a pedestrian nature to the existing business compared to what has been described tonight.
- He was concerned that the security aspects of the incoming business are going to be insular.
- The proposal will encourage people to come and go and not be a part of the streetscape.
- They need to consider the “front and center” nature of the location.

Commissioner Swift provided the following comments:

- She is concerned about the location and the number of customers it plans to serve.
- The Traffic Study looked at the current use of a “fast/casual” restaurant and not what is being proposed.
- This is a Formula Business under the Ordinance.

Chair Newton asked if the Findings for a General Use Permit and Formula Business would need to be made. Principal Planner Neal stated “yes”.

Chair Newton provided the following comments

- She referred to the proposed location and the limited areas within which a retail dispensary can be located and stated some Commissioners want “another bite of the apple”.
- A lot of time was spent on coming up with these locations.
- Location is not a good basis for rejecting the application and a denial would need to hold up to legal scrutiny.

Chair Newton referred to Code Section 17.032.060, Findings for the Conditional Use Permit, and asked if the Commission could make the first finding. Commissioners Frago, Jansen, Swift, Kelly, and Chair Newton stated “yes”

Chair Newton referred to Code Section 17.032.060, Findings for the Conditional Use Permit, and asked if the Commission could make the second finding. Commissioner Frago and Swift stated “no”.

Commissioner Jansen and Chair Newton stated “yes” Commissioner Kelly stated “maybe”.

Chair Newton referred to Code Section 17.032.060, Findings for the Conditional Use Permit, and asked if the Commission could make the third finding. Commissioners Frago, Jansen, Swift, and Chair Newton stated “yes”. Commissioner Kelly stated “maybe”.

Chair Newton referred to Code Section 17.032.060, Findings for the Conditional Use Permit, and asked if the Commission could make the fourth finding. Commissioners Frago, Jansen, Swift, and Kelly stated “no”. Chair Newton stated “yes”.

Chair Newton referred to Code Section 17.040.220, Formula Business Findings, and asked the Commission if there were any findings that they could not make. Chair Newton stated she could make all six findings. Commissioner Jansen stated he has concerns about Finding (C) but could

agree with all six findings. Commissioner Swift stated she could not make Finding (D). Commissioner Fragoso stated she could not make Findings (D) or (F). Commissioner Kelly stated he could not make Finding (D).

Principal Planner Neal noted based on the previous discussion, staff would need to re-write the Resolution for denial of the two Use Permits. This item would need to be continued.

Chair Newton asked for comments about how the Commission would make recommendations to the Town Council regarding the other applications (Design Review, Sign Permit, Scoring the Business). She asked for a straw poll of the Commission of who could support the Design Review Permit (17.020.040, Design Review Criteria). Chair Newton stated she could make all the findings; Commissioner Swift stated she could not make Findings (K) or (M); Commissioner Jansen stated he was concerned about the lighting and the traffic; Commissioner Fragoso stated she has an issue with Finding (H); Commissioner Kelly stated he had an issue with Finding (M).

Chair Newton asked for a straw poll of the Commission who could support the Sign Permit Exception. Commissioner Fragoso stated she had a problem granting a Sign Exception for two different signs on two different sides of the building; Commissioner Swift stated she could not support the Sign Permit because it conflicts with Section 17.110.064(d)(5) and the Cannabis Ordinance; Commissioner Kelly agreed with Commissioner Swift; Chair Newton stated she could make the Findings to support the Sign Permit for both signs; Commissioner Jansen agreed with Chair Newton.

Chair Newton referred to Attachment G, Exhibit A, and asked the Commission to assign points on the scoring criteria for in accordance with Council Resolution No. 19-43 which set forth the scoring criteria for commercial cannabis business permits: (i), "Business Qualifications and Business Plan". Commissioner Fragoso assigned 30 points, Commissioner Kelly assigned 21 points, Commissioner Jansen assigned 30 points, Commissioner Swift assigned 35 points, and Chair Newton assigned 27 points. Chair Newton asked the Commission to assign points for (ii), "Quality of Operating Plan". Commissioner Fragoso assigned 27 points, Commissioner Kelly assigned 24 points, Commissioner Jansen assigned 28 points, Commissioner Swift assigned 25 points, and Chair Newton assigned 32 points. Chair Newton asked the Commission to assign points for (iii), "Public Benefits". Commissioner Fragoso assigned between 20 and 23 points, Commissioner Kelly assigned 22 points, Commissioner Jansen assigned 20 points, Commissioner Swift assigned 30 points and Chair Newton assigned 28 points

M/s, Fragoso/Swift, motion on Application 001-223-10, Creation of a medical cannabis dispensary/ adult retail delivery business in an existing commercial building, Formula Business Conditional Use Permit and recommendations to the Town Council on Design Review, Sign Permits and scoring of the Element 7 Fairfax LLC Cannabis Business Permit Application #21-02, the Commission has taken a poll of the different findings that were to be made considering the Use Permit Findings required by Chapter 17.032 the Formula Business Findings required by Section 17.040.220 and the Findings regarding the Design Review, the Signage, and the ratings. The Commission provided a straw poll on all of those items and it is recommended that the item be continued for one month so that staff has an opportunity to draft a resolution for denial documenting the findings and reasons to bring back to the Commission at the next meeting to finalize.

AYES: Fragoso, Kelly, Swift

NOES: Jansen, Chair Newton

ABSENT: Gonzalez-Parber, Green

The Commission took a 5-minute break at 11:15 p.m.

M/s, Fragoso/Kelly, motion to rearrange the order of the agenda and hear item #3 prior to item #2, and continue the other items.

AYES: Fragoso, Jansen, Kelly, Swift, Chair Newton
ABSENT: Gonzalez-Parber, Green

3. 169 Ridgeway Avenue; Application #21-19

Request for a modification of an approved Hill Area Residential Development, Design Review and Ridgeline Scenic Corridor permits to convert an area previously approved as a laundry/mechanical room into a den along with minor window/door changes; Assessor's Parcel No. 001-280-01; Residential Single Family RD 5.5-7 Zone; Alex Riley, Architect; Dylan Riley, owner; CEQA categorically exempt per section 15301(e).

M/s, Fragoso/Jansen, motion to continue this item to the next meeting.

AYES: Fragoso, Jansen, Kelly, Swift, Chair Newton
ABSENT: Gonzalez-Parber, Green

2. 100 Cascade Drive; Application #21-20

Request for a Conditional Use Permit and Minimum Side and Rear and Combined Front/Rear Setback Variance to construct a bay window addition to the south, front, side of an existing single-family residence and for an existing rear deck; APN 003-203-22; Residential Single Family RS-6 Zone; Christopher Schrader, Designer; Daniel Neal, owner; CEQA categorically exempt per Section 15301(e).

Commissioner Kelly stated he would need to recuse himself from this application.

Principal Planner Neal presented the staff report.

Commissioner Jansen asked if the neighbor at 104 Cascade had comments on the project. Principal Planner Neal stated they received a notice and staff had not heard from them.

Chair Newton opened the Public Hearing.

Mr. Daniel Neal made the following comment:

- His kids love the deck.

Chair Newton closed the Public Hearing.

Commissioner Fragoso provided the following comments:

- She is in total agreement with the staff report in all respects.
- This is the type of project that would be appropriate for an administrative approval.

Commissioner Swift provided the following comment:

- She could approve the project.

M/s, Swift/Fragoso, motion to adopt Resolution No. 2021-21 with the following changes: 1) On page 1, third "Whereas" should say: "Whereas...Combined Front/Rear Setback Variance, *Side Setback Variance, and Rear Setback Variance...*", 2) On page 3, Condition #8, the reference to the Design Review Board should be deleted; 3) On page 4, under "Now, Therefore Be it Resolved", the first paragraph should read: "The approval of... Combined Front/Rear Setback Variance, *Side Setback Variance, and Rear Setback Variance...*".

AYES: Fragoso, Jansen, Swift, Chair Newton

RECUSED: Kelly

ABSENT: Gonzalez-Parber, Green

Chair Newton stated there was a 10-day appeal period.

MINUTES

4. Minutes from the August 19, 2021 Planning Commission meetings

Chair Newton noted this item has been continued to the next meeting.

Planning Directors Report

5. Housing Element and Objective Design and Development Standards Update

Chair Newton noted this item has been continued to the next meeting.

Commissioner Comments and Requests

Chair Newton noted this item has been continued to the next meeting.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:42 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary