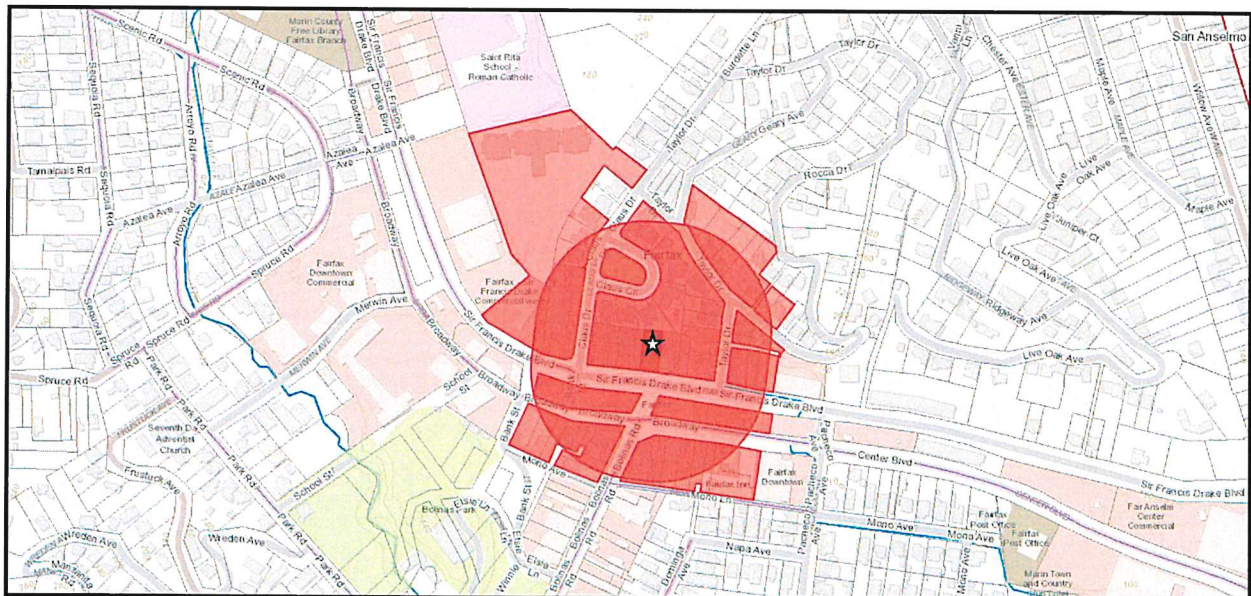


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: October 21, 2021
FROM: Linda Neal, Principal Planner
LOCATION: 1930 Sir Francis Drake Boulevard; APN # 001-223-10
PROJECT: Creation of a medical cannabis storefront retailer/adult retail delivery business in an existing commercial building
ACTION: Formula Business Conditional Use Permit and recommendations to the Town Council on Design Review and Sign Permits and scoring on the Element 7 Fairfax LLC Cannabis Business Permit; Application # 21-02
APPLICANT: Element 7 Fairfax, LLC
OWNER: Adham Nasser
CEQA STATUS: Categorically exempt, § 15301(a), 15303(a), 15304(b).



1930 SIR FRANCIS DRAKE BLVD.

DESCRIPTION

The project is for a medical cannabis storefront retailer/adult delivery business, upon which the Planning Commission, pursuant to Zoning Chapter 17.110 Cannabis Uses, §§ 17.110.040(3) and (5) will be making recommendations to the Town Council on a Design Review permit, Sign Permit, and scoring criteria for a cannabis business permit in accordance with Town Code Chapter 5.56, Cannabis Businesses, § 5.56.070B)(1),

and acting on a Formula Business Conditional Use Permit per Town Code § 17.040.220. Building exterior changes include reconfiguration and reconstruction of the front entry deck, and ADA accessible ramp in conformance with building code and ADA regulations, reorientation of the rear deck steps to accommodate the creation of an accessible parking space, installation of an electric vehicle charging station in the parking lot to the rear of the building, exterior color and materials changes to the building, erection of two business identification signs and replacement of the front window, which had been modified from the original mullioned window style by the previous nail salon, with a window design matching the remaining existing windows and restoring the building to its original condition, relocation of the front door to meet ADA accessing requirements and removal of the second front door that faces east replacing the opening with stucco wall to match the existing building siding. The access driveway will also be widened from roughly 15 feet to 16 feet by removing the narrow landscaping strip on the eastern side of the site with the entrance reoriented to provide a small landscape bed at the southeastern corner of the site and a small landscaping bed will be created at the rear of the building between the structure and the new ADA parking space and delivery stairs and entrance deck.

BACKGROUND

This project was originally reviewed at the September 16, 2021, Commission regular meeting where the public hearing was conducted, and the public was permitted to speak to the project. The chair closed the public hearing, and the Commission discussed the project and scored for the business using Council-adopted criteria for rating the Cannabis Business Permit application as set forth in Resolution 19-34. At the conclusion of these deliberations, the Commission continued final action on the project until the October 21, 2021, meeting, directing the staff to prepare resolution(s) denying the requested Formula Business Conditional Use Permit application and making recommendations to the Town Council to deny the requested Design Review and Sign Permits, and referring the Commission's scoring on Cannabis Business Permit application.

To view the September 16, 2021, public hearing on this matter visit:

<https://www.townoffairfax.org/meetings/planning-commission-meeting-september-16-2021/#tab-video>

The review the staff report and attachments for this item from the September 16, 2021, meeting follow this link:

<https://www.townoffairfax.org/meetings/planning-commission-meeting-september-16-2021/#tab-agenda-packet>

The draft minutes from the September 16, 2021, meeting for this item are attached below as Attachment C.

DISCUSSION

At the September 16, 2021, meeting the Commission directed staff to prepare resolutions for denial of the project Formula Business Conditional Use Permit, recommending denial of the Design Review and Sign Permits, assigning a score for the Cannabis Business Permit application, and continued the matter to the October 21, 2021, Planning Commission meeting for final action. Accordingly, staff has prepared draft resolutions (see Attachments A and B) for the Commission's review and final action.

RECOMMENDATIONS

1. Continue deliberations.
2. Take action on Resolution No. 2021-22, A Resolution of the Fairfax Planning Commission Denying a Formula Business Conditional Use Permit for Medical Cannabis Storefront Retailer/Adult-Use Retail Delivery-only Business proposed to be located at 1930 Sir Francis Drake Boulevard.
3. Take action on Resolution No. 2021-23, A Resolution of the Fairfax Planning Commission Recommending that the Town Council Deny the Design Review Permit, Sign Permit and Cannabis Business permit for Medical Cannabis Storefront Retailer/Adult-Use Retail Delivery-Only Business proposed to be located at 1930 Sir Francis Drake Boulevard and Forwarding the Cannabis Business Permit Score of 80.1 to the Town Council.

ATTACHMENTS

A – Resolution No. 2021-22

B – Resolution No. 2021-23

C – 1930 Sir Francis Drake Blvd., draft 9/16/21 Commission meeting minutes

RESOLUTION NO. 2021-22

A Resolution of the Fairfax Planning Commission Denying a Formula Business Conditional Use Permit, for a Medical Cannabis Storefront Retailer/Adult-Use Retail Delivery-Only Business located at 1930 Sir Francis Drake Boulevard

WHEREAS, the Town of Fairfax received an application to convert the structure at 1930 Sir Francis Drake Boulevard into a combination medical retail storefront and adult use delivery cannabis business at 1930 Sir Francis Drake Boulevard from Fairfax Remedy on January 6, 2020 which was deemed complete on August 23, 2021; and

WHEREAS, the submitted application included a request for a Formula Business Conditional Use Permit; and

WHEREAS, pursuant to CEQA Guidelines Section **the project is exempt per California Code of Regulations, Chapter 3, Article 19, categorical exemption numbers 15301(a), 15303(c), 15304(b).**

WHEREAS, the Planning Commission held a duly noticed Public Hearing on September 16, 2021, at which time all interested parties were given a full opportunity to be heard and to present evidence, and then closed the public hearing and provided direction to staff to return at the October meeting with a resolution denying the applications; and

WHEREAS, based on the plans and supplemental information provided by the applicant as well as testimony at the public hearing, the Planning Commission has determined that the applicant has not met the burden of proof required to support all of the findings necessary for approval of the Project's Formula Business Conditional Use Permit, as described below; and

WHEREAS, in accordance with Sections 17.032.060 and 17.040.220 of the Fairfax Municipal Code, the Commission hereby makes the following findings to support denial of the application for a Formula Business Conditional Use Permit:

The proposal does not comply with Fairfax General Plan Policies as follows:

Land Use Element

Goal LU-7: Preserve Community and Neighborhood Character

Town Center Element:

Policy TC-1.1.1: New and/or renewed development in the Town Center Planning Area shall preserve and enhance the village (small town) character and pedestrian scale of the downtown area.

The proposed business does not achieve or further either of the above General Plan Goal contained in the Land Use Element or the above policy contained in the Town Center Element.

The proposed formula business will be attracting medicinal cannabis users from adjacent and outlying areas due to the lack of other licensed legal medical retail/adult recreation retail cannabis delivery businesses in the other Marin areas and many or most of those customers will be driving and leaving, which will not preserve the village character and pedestrian scale of the downtown area and the immediately adjacent Taylor and Claus Drive neighborhoods.

General Use Permit Findings, Finding (B) (required by Town Code, Chapter 17.032 and Section 17.040.220):

(B) The development and use of property, as approved under the use permit, shall not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, and create undue or excessive burdens in the use and enjoyment thereof, which effects will be substantially beyond that which might occur without approval or issuance of the use permit.

The potential of a substantial increase in the number of persons visiting the dispensary site by vehicle and other means. Specifically the business will cause excessive detriment and adverse burdens to adjoining properties due to the regional draw of one of only two medical dispensaries/adult recreational delivery cannabis businesses in Marin.

(D) Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that the approval is in the public interest and for the protection or enhancement of the community.

Approval of the use permit will not result in equal or better development of the premises than would be the case, for example, if a locally-owned restaurant were located on the premises. There is more community interaction and activity consistent with the downtown character with such a restaurant business.

Formula Business Use Permit Required Findings (Town Code § 17.040.020, required findings (B), (D), and (F))

(B) The proposed formula business or restaurant, together with its design and improvements, will be consistent with the unique and historic village-like character of the town, and preserve the unique visual appearance and shopping and dining experience of the Town for its residents and visitors.

The design of the exterior improvements to the building with horizontal railings and blue tinted decking surfaces typically found in a more modern building will not preserve the

historic village-like character of the Town, or preserve the unique visual appearance and shopping and dining experience of the Town for its residents and visitors. An influx of cannabis purchasers and associated two-way traffic will also be inconsistent with the Town's unique and historic village-like character.

(D) If located within the Town Center Planning Area, the proposed business or restaurants will be consistent with the pedestrian orientation of the Town Center Planning Area.

The exterior design is modern with horizontal deck and access ramp railings, blue tinted decking and stair material and does not comply with General Plan Town Center policy TC-2.1.1: New or renewed development in the Town Center Planning Area should be compatible with the architectural character of the downtown in terms of height, design treatment, colors, textures and materials (other buildings in the Town Center range in construction date from the 1920's through 1970's). Further, the Town Center's pedestrian orientation will be adversely affected by the influx of one-purpose visitors, mostly by automobile, and their resultant traffic and activity patterns.

(F) The proposed formula business or restaurant will be consistent with all applicable general plan goals, policies, and programs.

The proposed business will not be consistent with General Plan Goal LU-7: Preserve Community and Neighborhood Character, and Town Center Element Policy TC-1.1.1: New and/or renewed development in the Town Center Planning Area shall preserve and enhance the village (small town) character and pedestrian scale of the downtown area (see discussion above).

WHEREAS, the Commission has reviewed the project based on the information provided in the applicant's supplemental information containing table of contents sections 1 through 15, including 1) Remedy Fairfax Introduction, 2) Cannabis Business Application, 3) Planning Application, 4) Live Scans (reviewed and approved by the Fairfax Police Chief and Town Manager in February of 2020), 5) Business Formation Documents, 6) State License Application, 7) Business Plan, 8) Operating Plan, 9) Public Benefits Plan, 10) Sensitive Use Plans, 11) Site and Floor Plans, 12) Signage and Lighting Plan 13) Traffic Study, 14) Security Plan, and 15) Letters of support, the Architectural Plans by SKS architects dated 5/22/20, pages ESP, EC1, A0, A1 and A2 and the landscaping and irrigation plans by Roth/Lamotte Landscape Architecture, pages L0.0, L1.0 and L1.1 dated 5/18/20 and presented to the Commission at the public hearing on 9/16/21.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

1. Based on the findings set forth above, the Planning Commission hereby denies the requested Formula Business Conditional Use Permit.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 21st day of October 2021, by the following vote:

AYES:

NOES:

ABSENT:

Chair Mimi Newton

Attest:

Ben Berto, Director of Planning and Building Services

Resolution No. 2021-23

A Resolution of the Fairfax Planning Commission Recommending that the Town Council Deny the Design Review Permit, Sign Permit, and Cannabis Business Permit for a Medical Cannabis Storefront Retailer/Adult-Use Retail Delivery-Only Business Proposed to be Located at 1930 Sir Francis Drake Boulevard

WHEREAS, the Town of Fairfax received an application to convert the structure at 1930 Sir Francis Drake Boulevard into a combination medical retail storefront and adult use retail delivery cannabis business at 1930 Sir Francis Drake Boulevard from Fairfax Remedy on January 6, 2020 and was deemed complete on August 23, 2021; and

WHEREAS, the submitted application included requests for a Design Review Permit, a Sign Permit, and scoring for a Cannabis Business Permit; and

WHEREAS, pursuant to CEQA Guidelines Section the project is exempt per California Code of Regulations, Chapter 3, Article 19, categorical exemption numbers 15301(a), 15303(c), 15304(b).

WHEREAS, the Planning Commission held a duly noticed Public Hearing on September 16, 2021, at which time all interested parties were given a full opportunity to be heard and to present evidence, and then closed the public hearing and provided direction to staff to return at the October meeting with a resolution recommending denial of the applications; and

WHEREAS, based on the plans and supplemental information provided by the applicant as well as testimony at the public hearing, the Planning Commission has determined that the applicant has not met the burden of proof required to support the findings necessary for the Project's Design Review Permit and Sign Permit as described below; and

WHEREAS, the Planning Commission has determined that the applicant has satisfied the criteria to achieve the required numerical total to support the Project's Cannabis Business Permit as described below; and

WHEREAS, in accordance with Section 17.020.040 of the Design Review Criteria which the Commission is required to use to evaluate a design review application, the Planning Commission hereby makes the following criteria determinations in recommending to the Town Council that it deny the project Design Review Permit:

(A) The proposed development shall create a well composed design, harmoniously related to other facilities in the immediate area and to the total setting as seen from hills and other key vantage points in the community.

The modern design of the access ramp, stairway with the horizontal railings and blue color when viewed together with the simple box-like architecture of the existing building, does not conform to the general character of the majority of the other commercial

buildings in the Town Center commercially zoned areas. The general aspect of the building is not open and inviting to the public. The use of high pressure sodium lighting is also inconsistent with the downtown character.

(K) The accessibility of off-street parking areas and the relation of parking areas with respect to traffic on adjacent streets.

Although the project meets applicable off-street parking requirements, the applicant has provided information that the anticipated employee staffing levels will result in the majority of onsite parking being taken by employees and unavailable for use by customers.

WHEREAS, in accordance with Town Code § 17.064.100(B), which sets forth the required findings to allow an exception to sign regulations, the Planning Commission hereby makes the following finding in recommending to the Town Council that it deny the Sign Permit Exception to Town Code 17.110.040(D)(5):

(B) The Planning Commission may grant an exception if it finds that the exception is not inconsistent with the purpose and intent of this chapter and that the strict adherence to the regulation may cause unnecessary hardship if one of the following exists:

- (1) Exceptional or extraordinary circumstances or conditions, not resulting from any act of the owner or applicant, apply to the location under consideration and not generally to other business or properties in the vicinity;**
- (2) The exception is the minimum necessary to serve its intended use;**
- (3) The application submitted is extraordinary and outstanding in design; or**
- (4) The sign is of historical significance.**

The exception is inconsistent with the purpose and intent of this chapter and strict adherence to the regulation will not cause unnecessary hardship. One 6 square-foot sign is adequate to convey to the public the business location and identity, and two signs totally 7.5 square feet are not subject to exceptional/extraordinary circumstances or conditions, are not necessary to serve the sign's information purpose, is not outstanding in design, and is not of historical significance; and

WHEREAS, the Commission finds that they are able to recommend to the Town Council that the applicant has satisfied the criteria to achieve the required numerical total that would enable the Council to approve the requested Cannabis Business Permit; and

WHEREAS, pursuant to Fairfax Municipal Code Section 5.56.070(B) Phase 2 - Application Scoring, and consistent with Council Resolution 19-34, the Commission finds and approves scoring for a Fairfax Commercial Cannabis Business Permit in connection with the Remedy Fairfax Medical Cannabis Storefront Retail and Adult Use

Delivery-Only business application as follows:

Business Qualifications and Business Plan	28.6
Quality of Operating Plan	27.2 points
Public Benefits	24.3 points

Said application achieved a recommended cumulative score of 80.1 points. Accordingly, consistent with subsection 5.56.070 B. 1. and the Scoring Criteria adopted by the Town, the Planning Commission is forwarding Remedy Fairfax to the Town Council for consideration as having achieved the minimum 80-point qualifying score.

WHEREAS, the Commission has reviewed the project based on the information provided in the applicant's supplemental information containing table of contents sections 1 through 15, including 1) Remedy Fairfax Introduction, 2) Cannabis Business Application, 3) Planning Application, 4) Live Scans (accepted and approved by the Fairfax Police Chief and Town Manager in February of 2020), 5) Business Formation Documents, 6) State License Application, 7) Business Plan, 8) Operating Plan, 9) Public Benefits Plan, 10) Sensitive Use Plans, 11) Site and Floor Plans, 12) Signage and Lighting Plan 13) Traffic Study, 14) Security Plan, and 15) Letters of support, the Architectural Plans by SKS architects dated 5/22/20, pages ESP, EC1, A0, A1 and A2 and the landscaping and irrigation plans by Roth/Lamotte Landscape Architecture, pages L0.0, L1.0 and L1.1 dated 5/18/20 and presented to the Commission at the public hearing on 9/16/21.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

1. Based on the findings set forth above, the Planning Commission recommends that the Town Council deny the requested Design Review Permit and Sign Permit, and refers its qualifying score for the Cannabis Business Permit for Remedy Fairfax at 1930 Sir Francis Drake Boulevard.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 21st day of October 2021, by the following vote:

AYES:

NOES:

ABSENT:

Chair Mimi Newton

Attest:

Ben Berto, Director of Planning and Building Services

DRAFT 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

ATTACHMENT C

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 Pammier 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 Ramaides, 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 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.
- They have two stores and she does not consider this a corporation.

Ms. Brenna Gubbins, Fairfax, 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 that will be served.
- 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, Findings for the Conditional Use Permit, and asked if the Commission could make the first finding. Commissioners Fragoso, Jansen, Swift, Kelly, and Chair Newton stated “yes”

Chair Newton referred to Code Section 17.032, Findings for the Conditional Use Permit, and asked if the Commission could make the second finding. Commissioner Fragoso and Swift stated “no” Commissioner Jansen and Chair Newton stated “yes” Commissioner Kelly stated “maybe”.

Chair Newton referred to Code Section 17.032, Findings for the Conditional Use Permit, and asked if the Commission could make the third finding. Commissioners Fragoso, Jansen, Swift, and Chair Newton stated “yes”. Commissioner Kelly stated “maybe”.

Chair Newton referred to Code Section 17.032, Findings for the Conditional Use Permit, and asked if the Commission could make the fourth finding. Commissioners Fragoso, 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. 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 of 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 (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