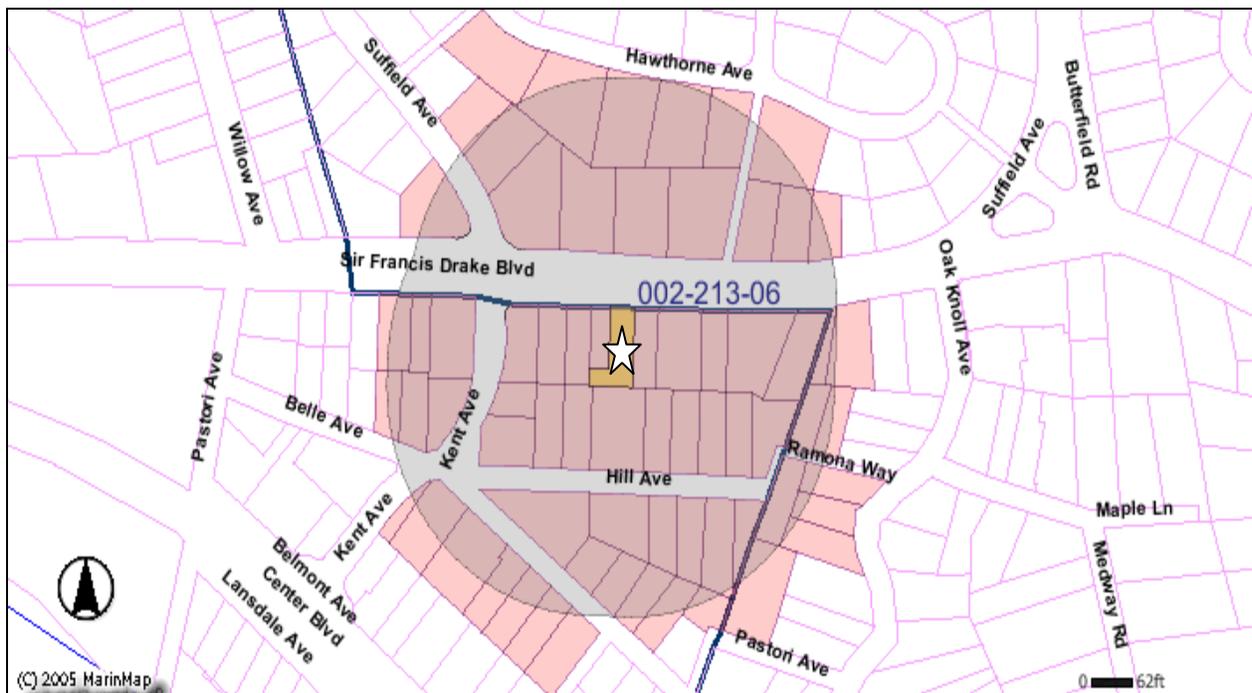


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
DATE: August 19, 2010
SUBJECT: Use permit for an acupuncture treatment/medical marijuana dispensary; Application # 10-20
ADDRESS: 1587 Sir Francis Drake Boulevard; Assessor's Parcel No. 002-213-06
ZONING: Highway Commercial CH Zone
OWNER: Sang and Pyong Kim
APPLICANT: Mina and Ziba Sohaei
CEQA: Categorically exempt, § 15301(a)



1589 Sir Francis Drake Boulevard

BACKGROUND

Currently existing on this 5,670 square foot lot are a duplex, a 980 square foot woodworking shop and a 691 square foot empty commercial space. The duplex at the rear of the site was constructed in 1934. The construction date of the commercial spaces at the front of site was not available in the Town or the County records. The property is currently zoned Highway Commercial (CH).

DISCUSSION

The applicant is proposing to open a combination acupuncture treatment/medical marijuana dispensary. The proposed hours of operation are as follows:

Summer Hours

Monday through Friday	9:00 AM through 9:00 PM
Saturday	10:00 AM through 8:00 PM
Sunday	10:00 AM through 7:00 PM

Winter Hours

Monday through Friday	10:00 AM through 7:00 PM
Saturday	10:00 AM through 6:00 PM
Sunday	10:00 AM through 7:00 PM

The applicant has indicated in her supplementary information that she foresees having five employees on site but only during the busiest shift from 4:00 PM through 6:00 PM. The employees will include one manager, one/two security guards (there is conflicting information provided in the application), a person to dispense the marijuana and 1 acupuncturist (Exhibit A – see page 2, paragraph 3 and page 3, section ix).

They plan to serve only patients with a physician's recommendation which is verified in writing and verbally. They are not proposing to incorporate a delivery system into the business to deliver medicinal marijuana to patients who are unable to get to the dispensary.

In order to maintain security for the establishment the applicant proposes the following:

1. Newly developed security film will be installed over all the windows that make the windows impenetrable to bullets or other objects.
2. Ten security surveillance cameras will be installed outside the building and 12 inside the building covering all possible entrance points and interior areas. The camera videos will be retained for a period of 72 hours.
3. Motion activated security lights will be installed outside the building.
4. A professionally monitored alarm system will be installed.
5. Medicine and money will be installed in separate safes.

6. Buzz in locking doors will be installed at the front and between the waiting room and the patient supply counter area. At this point the patient will communicate with the staff through a security window.

For additional information regarding the proposed dispensary operating procedures see the attached Exhibit A.

Please be advised that staff receives approximately one inquire every one to two weeks from persons interested in locating a dispensary in the Town of Fairfax. Likewise, this large volume of inquires may be the result of restrictions on operating dispensaries within other municipalities within the County. Therefore, the Town may be approaching a point when it wants to address the issues to this type of land use (i.e., dispensaries) by amending the Town's Zoning Ordinance to address such – rather than dealing with these types of applications on a case by case basis. (Please see Exhibit B attached).

Use Permit

Town Code § 17.032.010 sets forth the purpose of the Conditional Use Permit as follows:

A) The purpose of the conditional use permit is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations in the town or in a zone or only if the uses are designed or laid out on the site in a particular manner.

(B) In consideration of an application for a conditional use, the Planning Commission shall give due regard to the nature and condition of all adjacent uses and structures, to the physical environs of the proposed use and to all pertinent aspects of the public health, safety and general welfare.

The site is located immediately adjacent to the residentially zoned Fairfax Tract neighborhood which includes Belle Avenue, Hill Avenue, Kent Avenue and Belmont Avenue. The neighborhood is zoned for single-family residences and duplexes only. Two legal non-conforming residential units are located on the same site as the proposed dispensary. The rear of the homes on Hill Avenue, immediately behind the proposed dispensary site, is roughly 80 to 100 feet away.

Therefore, staff is concerned about the safety of a dispensary so close to residential uses and residentially zoned areas. The fact that the applicant is proposing hiring 1 to 2 security guard for the hours the business is open, plans to have sophisticated security systems in place for the hours the business is closed, and is proposing to install bullet proof window covering indicates the challenges of placing this use next to existing neighborhoods and residences. Likewise, the approval of a discretionary permit to allow the location of a use that requires a security guard on duty so close to a residential area will set a precedent in Fairfax which may not be in the best interest of the citizens since approval could open the door for locating of other dispensaries in similar areas of town. Importantly, there is no other retail business in Town, that staff is aware of, that requires the types of security being proposed by the applicant.

Parking

Where a parcel includes two or more uses, the parking requirements shall be the aggregate of the requirement for the various uses (Town Code § 17.052-030). Parking spaces for

commercial sites in the Highway Commercial Zone are required at a rate of one space for each 200 square feet or fraction thereof. Residential units require two parking spaces for each living unit and commercial spaces require one space for each 200 square feet or fraction thereof.

The site is currently developed with 1,671 square feet of commercial space and two residential units. Therefore, the current multiple uses requires a total of 13 parking spaces and only 4 spaces area provided on site with only two reserved for use by the dispensary [Town Code § 17.052.030(b) and (c) and Town Code 17.096.120(B)(2)(a)]. The viability of these four spaces is questionable since they are accessed by driving through the parking lot for the feed store owned by a different property owner, around the back of the adjacent liquor store and onto the site.

The Commission has granted parking variances for other businesses with inadequate on-site parking in the past but they were either located downtown where public parking lots are available and/or other adjacent businesses had required parking. In this block there are 5 businesses and three living units on sites with substandard or no onsite parking and there are no public lots in the area.

Fairfax Building Department

The building must meet the California Building Code and Americans with Disabilities Act Accessibility requirement for the entrance, doorways, counters, bathrooms, etc. before the business begins opens for business.

The applicant shall obtain a building permit prior to starting any work to comply with the above condition if a permit is required (Exhibit C).

Ross Valley Fire Department

The building shall be improved with an automatic fire suppression system. A permit to install the system shall be obtained from the Ross Valley Fire Department (Exhibit C).

Letter(s) from Citizen(s)

See Exhibit D for letter(s) from citizen(s)

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to deny application # 10-20 based on the following findings:
 - The provision of an additional medical marijuana dispensary even though it will provide acupuncture as well, is not deemed to be necessary for the general good of this 7,319 person Town which already has an approved dispensary located in the Limited Commercial Zone district, distanced from residential neighborhoods and in a commercial center that has plenty of parking.
 - The use of the property for a medicinal marijuana dispensary, immediately adjacent to a

residentially zoned neighborhood and 2 legally non-conforming residential units, will create an unreasonable security concern for the residents on the site, next door and adjacent to the site. Likewise, this land use involving the sale of a controlled substance generates a situation not presented by other typical retail uses in the area. This will

create an undue burden for the residents in the use and enjoyment of their property beyond that which might occur without approval or issuance of the use permit.

- Denial of the use permit is contrary to the Parking Ordinance contained in the Fairfax Town Code (Chapter 17.02) since only two spaces can be provided on site while the Code requires that 13 spaces be provided for all the uses on the site.
- Denial of the use permit will not result in unequal or lesser development of the premises since the Highway Commercial Zone district has a lengthy list of 82 permitted uses that could operate from the location without requiring a conditional use permit and without the need for a heightened of security. Said approval of this Use Permit would not be in the public interest and would not protect or enhance the general health, safety or welfare of the community of Fairfax.
- Anticipated future employees and customers visiting the site will exceed the number of parking spaces the site can provide. Therefore, the proposed use will impact on-street public parking and adjacent existing businesses.
- There is already a parking shortage in this block with a thrift store, liquor store, woodworking shop, floor covering shop and three living units with only 8 on-street parking spaces. The neighboring woodworking shop previously utilized the proposed space with one employee. Therefore, the proposed use will general a greater parking need than the previous use in this area and will slope traffic with more customers and employees vying for the available 8 on street spaces.

ATTACHMENTS

Exhibit A – Applicant’s supplemental information

Exhibit B – Staff Inquiries

Exhibit C – Other Agency or Department requirements

Exhibit D – Letter(s) from citizen(s)

Exhibit B

Staff Inquiries

Staff checked with the other Towns in Marin and the County to find out their positions on medical marijuana dispensaries. Our reason for contacting other jurisdictions was to determine whether Fairfax is the only Marin County Town to have a permitted dispensary. Staff receives approximately 1 call every 1 ½ to two weeks from persons wanting to locate a dispensary in Town which seems like excessive number of calls of this type for a town the size of Fairfax. We determined the following:

- Sausalito City Council passed a resolution prohibiting medical marijuana dispensaries but plans to revisit the issue after the November election.
- Mill Valley has a Zoning Ordinance section prohibiting dispensaries (Town Code § 20.40.040).
- Marin County prohibits them. County Counsel has advised the Community Development Department that because dispensaries are not listed as permitted in any areas of the County and there is no framework or process to allow them, they are prohibited. The County has directed their counsel to prepare and file injunctions to close the illegal county dispensaries.
- Larkspur prohibits dispensaries.
- Corte Madera prohibits dispensaries. They originally decided to try to pass an ordinance allowing some dispensaries but limiting the number. Public outcry at the hearings was so great that the Town Council directed the Town Attorney to issue injunctions to close the operating dispensaries and cited as section of the Corte Madera Town Code that prohibit the operation of uses in violation of Federal law as prohibiting dispensaries.
- Ross does not have an ordinance banning dispensaries but it is laid out much like Fairfax's Town Code with a list of permitted uses, conditionally permitted uses and a catch all that allows the Town to approve use permits for uses not listed. While Ross has received calls asking about locating dispensaries in Town, they have received no applications and the staff discourages persons from trying to locate there.

It is staff's opinion that we receive so many calls because all of the other Town's in Marin prohibit dispensaries - except Ross. Ross indicates that they have received calls but the staff has discouraged callers from trying to locate there. The Town of Fairfax may want to address the bigger policy decision of whether or not the citizens want to become the main location for dispensaries in Marin or whether they want to limit the number and adopt an Ordinance addressing the zoning/criteria/conditions for locating in Town (i.e. distance from residentially zoned areas, schools and daycare operations, required minimum parking, requirements for

security, etc.).