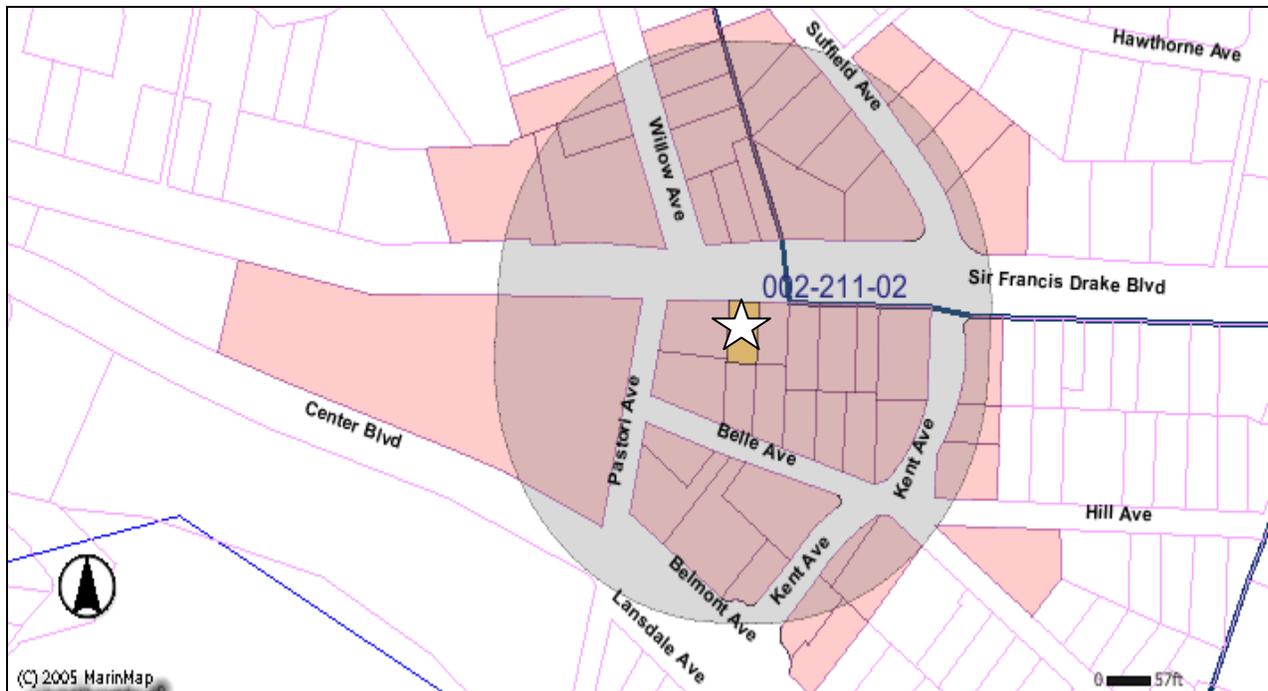


**TOWN OF FAIRFAX  
STAFF REPORT**  
Department of Planning and Building Services

**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 a holistic healing center/medical marijuana dispensary; Application # 10-21  
**ADDRESS:** 1621 Sir Francis Drake Boulevard; Assessor's Parcel No. 002-211-02  
**ZONING:** Highway Commercial (CH)  
**OWNER:** William Lehrke  
**APPLICANT:** Karen Kissler  
**CEQA:** Categorically exempt, § 15301(a)



**1621 Sir Francis Drake Boulevard**

**BACKGROUND**

Currently existing on this 2,720 square foot lot is a structure that was originally constructed as a 1,206 square foot single-family residence. The structure was most recently utilized as a contractor's office. The property is currently zoned Highway Commercial (CH).

## **DISCUSSION**

The applicant is proposing to open a combination holistic healing center/medical marijuana dispensary; including the sale of certain food products. The proposed hours of operation are Monday through Sunday from 10:00 AM to 7:00 PM.

The applicant has indicated in her supplementary information that she foresees having three full time and 4 part-time employees.

They plan to serve only patients with a physicians recommendation, which they plan to retain in their records. They are proposing to deliver medicinal marijuana to patients who are unable to get to the dispensary. They are proposing to contract with "Greenlife Medical Systems" to create and manage their document control system to protect the identity of their patients.

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

1. The front door will be monitored during business hours by a trained security guard. This entrance will be the only entrance to the building and the side entrance will be locked. The staff has checked with the Building Official and due to the occupancy load being less than 50 persons this door can remain locked without violating emergency exiting requirements.
2. Security surveillance cameras will be installed at the front entrance and outside the front of the building. The dispensing room and counter will also be provided with surveillance cameras. Security videos will be retained for at least 72 hours.
3. The collective will contract with a security company to install and monitor an interior movement sensitive alarm system for securing the site after hours. The applicant has indicated that ADT will contact her first and contact the Fairfax Police Department if she is unavailable (Exhibit A, letter dated June 9, 2010 from Karen Kissler – page 3, number iii). Staff recommends that if the Commission votes to approve the Use Permit, the applicant and the Police Department be contacted simultaneously for the safety of the surrounding residents.
4. A 1,000 pound fireproof safe will be installed for the storage of inventory and money.
5. Delivery persons will be bonded and insured members of the health collective.
6. There will be no janitorial service and access to the building will be restricted to qualified patients and caregivers only.
7. Patients will be limited to visiting the dispensary 2 times per day.
8. The collective will prohibit loitering in the area of the dispensary.

For additional information regarding how the dispensary operating procedures see the enclosed letter from Karen Kissler, dated June 9, 2010 (Exhibit A).

The applicant has submitted a petition with 134 Fairfax residents indicating they support the proposed Use Permit, with 20 of them indicating they are medical marijuana patients. She also submitted a petition signed by 88 non-Fairfax residents supporting the Use Permit with 8 of the signers identifying themselves as medical marijuana patients.

The applicant has also submitted letters from the following establishments located near a dispensary she operates in Santa Rosa addressing what a good neighbor the collective there has been:

- Los Amigos Billiards
- Lepe's Tienda Market
- Vista Broadband Networks
- Avenue Tadoo Parlor

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).

### **Delivery**

The Commission recently approved a delivery system for the existing Marin Alliance Dispensary in Fairfax. The Police Department was opposed to that delivery system and is also opposed to this dispensary delivering marijuana to patients (Exhibit C – 8/11/10 and 9/12/09 memorandums from the Fairfax Police Department).

### **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. Pancho Villa's Restaurant, described as a family restaurant by the owner, is located immediately to the west.

Three legal non-conforming residential units are located immediately to the east of the site with

a tutoring center/residential unit within the same block.

There are also apartments in Fairfax and San Anselmo across the street from the proposed site (1616 and 1606 Sir Francis Drake Boulevard). The closest residences are located 3 feet from the proposed dispensary (1615 Sir Francis Drake Boulevard, units A, B and C) while the rear of homes on Belle Avenue, immediately behind the proposed dispensary site are roughly 40 to 50 feet away.

Therefore, staff is concerned about the safety of a dispensary so close to residential uses and/or residentially zoned areas. The fact that the applicant is proposing hiring a security guard for the hours the business is open and plans to have sophisticated security systems in place for the hours the business is closed 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 the location of other dispensaries in town. Importantly, there are no other retail businesses in Town, that staff is aware of, that require the types of security being proposed by the applicant.

### **Parking**

Parking spaces are required in the Highway Commercial Zone at a rate of one space for each 200 square feet or fraction thereof. Therefore, the proposed use should provide seven, 9 foot by 19 foot parking spaces to comply.

The applicant is proposing to have three full time employees and four part time employees with only two on-site parking spaces. She does not indicate in her written submittal how many customers she expects at any one time but the on-site parking is already substantially non-conforming.

The site currently accommodates tandem parking for two vehicles alongside the building. The applicant has proposed removing the white fence along the property frontage to accommodate parking for another vehicle parallel to the front door.

The existing parking is located in a driveway perpendicular to Sir Francis Drake Boulevard. The parking has worked for past businesses located here because the spaces were used by staff that stayed on-site all day and they had very few clients visiting on a daily basis (i.e., Rose Construction, a specialty antique store that sold on an appointment basis only).

For the record, the applicant had originally tried to obtain a lease for off-site parking in the old Albertsons's parking lot but it was to be for a limited time (six months) and fell through. References to this leased parking in her attached letters dated July 3<sup>rd</sup> and August 2<sup>nd</sup> should be disregarded.

### **Marin County Environmental Health Services**

The County Health Services Department has asked that the Commission, should it approve the Use Permit to; a) prohibit the sale or provision of potentially hazardous foods containing marijuana; b) allow only the sale/provision of non-potentially hazardous foods containing marijuana only if it can be demonstrated that it is from a permitted facility and evidence that it is from a permitted facility is provided to the Health Services Department; and c) prohibit the

production of foods containing marijuana (including cannabis butter) until statewide standards or guidelines providing sanitation requirements for the dispensing of medical marijuana in food products are adopted. Once adopted, the facility must meet the guidelines (Exhibit D).

### **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 operations.

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

### **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 D).

### **Letter(s) from Citizen(s)**

See exhibit E 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 # 10-21 based on the following findings:

The provision of an additional medical marijuana dispensary 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 within 3 feet of 3 legally non-conforming residential units, will create an unreasonable security concern for the residents next door to 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. Therefore, 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 will not result in un-equal or lessor 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 protection or enhance the general health, safety or welfare of the community of Fairfax.

Approval of the use permit is contrary to the Parking Ordinance contained in the Fairfax Town Code (Chapter 17.02) since only three spaces can be provided on site while the Code requires

that 7 spaces be provided.

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.

Granting of the variance will result in the parking or loading of vehicles on public streets in a manner as to interfere with the free flow of traffic on the streets because two of the on-site spaces are in tandem with each other and will require persons to either back out into traffic on Sir Francis Drake Boulevard from a driveway where visibility is limited by the adjacent restaurant building, or they will have to back into the site at an angle that will result in traffic being blocked temporarily on Sir Francis Drake Boulevard.

## **ATTACHMENTS**

Exhibit A – Applicant's supplemental information

Exhibit B – Other Agency or Department requirements

Exhibit C - 8/11/10 and 9/12/09 memorandums from the Fairfax Police Department

Exhibit D - Staff Inquiries

Exhibit E – Letter(s) from citizens(s)

## Exhibit D

### 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.).