

CITY OF COLORADO SPRINGS

INTEROFFICE MEMORANDUM

DATE: February 19, 2020

TO: Peter Wysocki, Director of Planning

FROM: Sarah Johnson, City Clerk

SUBJECT: Notice of Appeal

ITEM NO. 6.A. CPC CU 19-00167

An appeal has been filed by Randy Tuck on behalf of Kind Therapeutics Inc. regarding the Downtown Review Board action of February 5, 20.

I am scheduling the public hearing on this appeal for the City Council meeting of March 10, 2020. Please provide me a vicinity map.

CC: Matthew Fitzsimmons
Elena Lobato

Randy Tuck
Kind Therapeutics Inc.
621 Cheyenne Blvd.
Colorado Springs, CO 80905



THE PLANNING & DEVELOPMENT DEPARTMENT APPEAL TO CITY COUNCIL

Complete this form if you are appealing City Planning Commission's, Downtown Review Board's or the Historic Preservation Board's decision to City Council.

CITY CLERK'S OFFICE
2020 FEB 18 A 11:52

APPELLANT CONTACT INFORMATION:

Appellants Name: KIND THERAPEUTICS INC Telephone: (719) 499-1106
Address: 621 CHEYENNE BLVD City COLO SPRG
State: CO Zip Code: 80905 E-mail: TUCK834@gmail.com

PROJECT INFORMATION:

Project Name: KIND THERAPEUTICS INC D.P.C.
Site Address: 910 S. NEVADA AVE.
Type of Application being appealed: FBZ CONDITIONAL USE
Include all file numbers associated with application: CPC CU 19-00167 / FBZ T1
Project Planner's Name: MATTHEW FITZSIMMONS
Hearing Date: 02/05/20 Item Number on Agenda: 6A

YOUR APPEAL SUBMITTAL SHOULD INCLUDE:

1. Completed Application
2. \$176 check payable to the City of Colorado Springs
3. Appeal Statement
 - See page 2 for appeal statement requirements. Your appeal statement should include the criteria listed under "Option 1" or "Option 2".

Submit all 3 items above to the City Clerk's office (30 S Nevada, Suite 101, Colorado Springs, CO 80903). Appeals are accepted for 10 days after a decision has been made. Submittals must be received no later than 5pm on the due date of the appeal. Incomplete submittals, submittals received after 5pm or outside of the 10 day window will not be accepted. If the due date for the submittal falls on a weekend or federal holiday, the deadline is extended to the following business day.

If you need additional assistance with this application please call the Land Use Review front desk at (719) 385-5905

APPELLANT AUTHORIZATION:

The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

Matthew Fitzsimmons _____ Date 02/18/20
Signature of Appellant

Sunday, February 16, 2020

Appeal Statement

1. We had to meet 3 criteria for the DRB to approve our application

First, we needed to show that the value/qualities of the neighborhood would not be substantially affected. I did show via through a proposed complete renovation of the interior of the building to include, sectioning and sealing off the growing apparatus. A complete plan to mitigate all smell from the grow. Finally, a build out of the south elevation of the building to make way for a leasable 800-1200 sf space that would allow for one of several business models. This will help to facilitate activation of that space. The neighborhood is not going to be injured due to their not even knowing there is a grow in this location. Were not increasing crime in any capacity, were not getting much in the way of negative feedback from others in the area, except to say that a few want more information. The quality of the environment of the area will increase due to adding extensive surveillance and lighting up the area as well as increasing the looks of the area with all the exterior work being put in place, especially the landscaping.

2. The space would be built out to accommodate the intent of the zoning code: The conditional use for this space is consistent whereby it will promote a safe environment, the general welfare of the surrounding citizenship will not be put into a harmful situation and it will be safe.

3. Finally, the conditional use being requested or allowed for this location has met we believe the comprehensive plan of the city. It is increasing the visibility of the immediate area as well as adding aesthetically pleasing items, the tree's, shrubs ground covering and an irrigation system to enhance the east side of the building which is at the road access area.

a.) We have shown that there is a plan to build out and lease a portion of the building that will help to “activate” the location as requested by the downtown partnership. This was one item that we were confused on due to there never was any request from the downtown partnership stating they wanted to know who the tenant was going to be, the lease space cost and any interior elevations showing the actual space buildout, what it would look like when finished. However Ms. Colvert being a real estate person seemed to be stuck on the issue of not knowing who would be leasing that space, the rate of the lease and she could not see how anyone in a commercial situation could make an 800-1200 Sq ft area work for them. She wanted to know what the egress points were going to be, which side of building would the hallway go down, and because she was questioning that she wanted to know how the area would be built out to accommodate the tenant? That does not usually come in to play until the space has been leased and we know what the tenant’s requirements are going to be. Again, because we could not answer that questions at the time she could not vote in favor of application. Really, the city cannot dictate how the interior of a building is constructed, and the concern is not an issue as long as it is built out to regional building code. If it meets the requirements of the tenant and it is built to PPRBD code, there should not be a problem. Because we didn’t know who the tenant was the requirements for that tenant and how the existing building would be built out to accommodate the tenant, Ms Colvert stated she could not vote in favor.

b.) We have shown that the grow operation to be housed in the same location will meet all of the state and city requirements to include 100% concealment of the grow operation from the public, all of the handicap accessible requirements, and that there will be a special designed HVAC system to include a carbon scrubbing mechanism with 2 levels of cleaning those being a scrubbing system in each of the flowering areas as well as another that will scrub the environmental air/ or air being exchanged throughout the building will scrub and exchange the air 24 hours a day so that the smell will be mitigated, and there will be no way

for anyone to note a grow being inside of the building. The last issue being parking, and access will be addressed at the time of design.

c.) We have shown that the conditional use is consistent with the plan of the city. Taking the location as it is now and building it out into a building that can be leased and will be activated where it is not currently nor has it been for better than 18 months is also in line with the plan for the area. It is being converted on the exterior to fit into the downtown gateway scheme, whereby we are making the east elevation of the building to be a focal point of the area. We have shown that we are going to remove all of the black top area as well as the un useable base/soil under the black top and going to replace that with "A" grade top soil, plant several tree's, shrubs, and a some kind of a ground cover that will help to keep the area maintained and as well install an irrigation system to keep the tree's and shrubs watered and growing. The south elevation of the building is going to have the landscaped area to extend far enough south to cover the apron at the sidewalk so that it will help to cover/hide the parking lot spaces at the same location. The entire façade above the entryway area will have signage for whatever the business is contained therein, but we can not elaborate on that area until we know what is going inside of the space.

d.) The criteria that was required for the application has not only been met but has far exceeded what was being required per the partnerships comments and requirements to include that the downtown partnership as well as the planning dept have both come out in support of the buildout. If this space were leased to any other tenant none of the items being mentioned would be built out or even considered due to their not being a requirement. During the DRB hearing even though all of the concerns mentioned by the downtown partnership had been addressed and all concerns as we knew them been addressed in a way that far exceeded the requirements, there seemed to be an effort to just keep adding concerns/issue's on to the conversation and in the end because we could not come up with a quick response or didn't have the

materials to answer these new issue's it made it easier for those in general opposition to the cannabis industry to say no. They didn't consider that their concerns and issues were not only unfairly placed at the last minute they didn't even want to give any extra time for me, i.e {postpone} to address them. Even though they were brought up, spur of the moment. Matt Fitzsimmons couldn't understand what happened either. We answered and addressed all the issue's and concerns put in front of us and it seemed that didn't matter at all. I feel it was very unfair to not even allow for an postponement so that I could address all of the new issue's, especially when we had already address those brought up by the downtown partnership. The downtown partnership and the DRB have some communication between them why were these concerns not voiced by the DRB prior to the DRB meeting? It would have been much easier to address all the new issues then.

The DRB kept saying that the city has a vision for this area but even they didn't know what the vision is because Ms Nicklasson asked if she could get a definite answer from the downtown partnership on what the future vision was for the area because she didn't want any of the items that may be incorporated like, the landscape and mural already in place to be such that they would have to be removed down the road or have a different one put in place. Finally, there was a huge amount of talk about activation of the building in this area, but they seemed to put that burden just on this buildout not any of the other properties located in this area, which is completely unfair.

Finally, as it is now, we have about 4 years left on our lease. I was told that the "gateway" and money to perform any of the work in this area was still at least 5 years out. The city must come up with the money and then put it into the schedule. I cannot understand what it is going to hurt to allow for this buildout to go forward. It would keep us from losing this license. We could show that what I am proposing can be done. It would bring forth the start of the buildout in this area by my performing the remodel on the outside of the building as well as the landscaped area on the east side elevation. If at the end of our lease

things have not worked out, then all that must be done is we just don't renew the lease. However, if all is well and we have met all the requirements and performed as we have promised then this will be a model by which others can follow.

Final Issues:

After the DRB meeting and having our application denied we feel that the decision was incorrect and unfair for these reasons.

- a.) **It was against the express language of the zoning ordinance.** We met all the language in the ordinance. We also had been in contact with the downtown partnership and had been given a list of concerns as well as questions to answer and returned to the downtown partnership what was asked of us, to include committing to going above and beyond what was being asked of us. It was our understanding the questions and concerns that were voiced by the partnership were those that had direct relevance to what the DRB would be asking or looking at as well as considering. Once we got in front of the DRB, not only did they not consider in detail most of what we submitted but came up with well more considerations and concerns that they wanted addressed and have answers to. The further the conversation went on they just kept piling on more questions and concerns. Due to those on the DRB wanting more information at that point, it would have not only been fair to give us more time to answer those concerns but as well as the ability to go back and review each member comments and concerns.

- b.) **The decision was unreasonable,** due to the specific items they were requesting information on, we could not answer things like, what kind of business was going to be housed in the lease space, or what the lease price would be, or what the engineering would be for the scrubbers or HVAC system, or what seemed important to them where the existing mural came from. Due to not having a certainty on being able to have a grow at this location, there cannot be any design of these items until we

get approval for the area. It is not reasonable to think I would have all the design done an approval to grow at this location, it would be foolish to spend the kind of money necessary to obtain, building drawings and only to find that I may not be able to use the building at all. The DRB members kept saying that they could not base their decision on words like "hope" or "guess" or "possibly" when it comes to their decision on voting for an approval for the use. Last time I had been involved in a buildout it is most likely that there will be items to address, and there are not any certainties without first knowing the requirements, especially in a retro fit situation. There also must be some sense of saying, "ok" we don't know all of the issues or answers, but we will work through them. Mr. Gullixson seemed to know that there was no way we could mitigate all of the smells, but he had nothing to base his opinion on and was willing to vote against the buildout without having any further information to go by. Again, if he was really that concerned and wanted answers to his questions he should have voted to postpone, rather than say he didn't think more time would make any difference. This is a person who is supposed to vote and base his vote on an informed decision. Yet they expected me to be able to answer their questions and give an answer without any research. They all at some point decided that rather than give us some extra time to address their concerns it was easier to just say no.

Also, some of the DRB members stated that they were concerned about the "gateway". The facts are that the work for that area, and the money to make it happen will most likely not happen for at least 5 years. Mr Raughton and another had stated that had this application have not had to come before DRB it probably would have been approved. When you have people that just dislike cannabis and the decision has to do with accommodation of any type of cannabis business, the decision is most likely going to have a person's personal thoughts tied to the decision as well, and in most instances if there is a deep enough dislike it will most likely be the prevailing item that leads them to a "NO". The area we are talking about no matter how much they wish it to be a glimmering gateway into Colorado Springs it will be no more than what it is now

with the existing buildings being in the shape that they are at present. This building will be a huge help in that regard. However, it still will be quite some time before this area, "the gateway", is built out to the capacity everyone seems to be up in arms about. Letting this lease happen for the duration of 4 years is not going to be detrimental or harmful to the area for at least the 5 years, this is what I was told it would be before this area and any gateway items are even built out.

c.) **Finally, the decision is "unfair"**. I can point out in couple of instances' whereby the DRB member is just flat out opposed to the cannabis industry but would not consider a favorable ruling due to their personal feelings about the industry itself. Mr Hahn right at the end of the discussion prior to a vote on approval was at least honest but still biased, said, "I am conflicted about the industry", so... I don't know that I could vote in favor or something to that effect I couldn't hear him exactly on the video and the minutes were not printed out yet, but his comments were something close to that. That makes me think that there was no way for him to put aside his dislike about cannabis and just give us a fair shake. Mr Gullixson said a few things that were not factual like, he claimed even after I told him we were not interested in opening a dispensary he still thought that was the reason to try to house a grow there for future possible chance at another dispensary, even after Matt Fitzsimmons told him that would not happen and I told him twice that would not happen. If he was that concerned all he had to do was ask Mr Teffertiller about the fact that could not happen even if we wanted because of there being several other MMC's already within 1000 ft which he did tell him twice, but again if he were really concerned he could have given us more time to bring forth information to show that, but he couldn't even vote to postpone a vote on approval because in his comment to the others and me, "he didn't think anything would change" his mind so why postpone. He claimed he had concerns about it not being the type of business that would fit into the new "gateway" scheme and that the smell he was certain would be an issue and he didn't want anyone to see a grow. However, when I told him the smell would be mitigated and that the grow would be hidden from sight, that

still didn't make any difference he still after that could not vote in favor on it. A few others that have viewed this DVD and myself included, as well as a few city employees could tell that there was too much in the way of prejudice against the cannabis industry and therefore a vote in favor of this building being used for a grow would just never happen. So having those on the DRB that just hate the industry and those in it or those that may use it, just can not see their way clear to give a fair shake and a favorable vote on anything to do with cannabis, let alone a building to grow out of or at the very least time to produce answers to their concerns. I had originally thought that this was too much for me to do on my own so I hired a civil engineer, an architectural engineer, then had someone on my side with the city, Matt Fitzsimmons whom knows the process and what the important items are and how any information or answers will be looked at or perceived. I wanted to make sure I was being as informative as I needed to be. Even after submitting the letter of justification and having all of the feedback I received from Matt and then having answered all of the concerns they had, even going above and beyond, I would have thought they would have at the very least given me the chance to postpone to get all of the other concerns addressed and then they could make a decision. Nope, I think because it is cannabis and this area no matter how I address their questions even going above and beyond it is just not enough.

I was told not to mention this issue but it has direct bearing on why we are now having to not only move our grow license but why we cannot transfer it to another location at the last minute, and will lose it if it is not placed at this location, as well as why we are really here. One of the DRB members said, "the time frame of this license needing to be placed at this location is not their concern". I had not explained any of this to them at the time, but "yes, it is and should be" their concern.

Because of an error brought on by the city of Colorado Springs in 2018, having to do with a relocation of our medical marijuana center we ended up losing our growing location that was already functioning and had to start all over with

finding a new location, and then get it approved and built out. That is why I am in front of your committee now. I would be happy to elaborate if necessary.

- Our building lease only has about 4 years left on it. This location could be used, and the downtown partnership could approve this at least for the remaining time left on our lease. This would allow for us to at least get the growing apparatus up and functioning so that we could show the downtown partnership were able to do as we have suggested. Secondly, we would not lose our license and could at least move it to a new location prior to the expiration of the lease.
- We have done all asked of us, and we have tried to be reasonable in all aspects of this application.

Finally, I want to apologize for the extremely wordy explanation for our appeal. If it were not so critical and necessary to have the council understand the gravity of the matter and the importance to our company, I would have not been so detailed. But it is through this appeal process that we have hope those who are on the committee will consider all aspects of this situation and will be able to make a fair decision with regards this matter.