

# NEW BUSINESS CALENDAR

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DOWNTOWN REVIEW BOARD AGENDA  
FEBRUARY 5, 2020

STAFF: MATTHEW FITZSIMMONS

FILE NO:  
CPC CU 19-00167 – QUASI-JUDICIAL

PROJECT: 910 S. NEVADA - KIND THERAPEUTICS INC.

APPLICANT: KIND THERAPEUTICS INC.

OWNER: BONICELLI BROTHERS, INC.



## **PROJECT SUMMARY:**

1. Project Description: This application proposes to utilize a 0.37 acre (15,888 square foot) commercial property and an existing 5,783 square foot building for a medical marijuana (MMJ) grow facility with a non-MMJ related use in the front 20% of the building. Any medical marijuana grow operation in the Form-Based Code is considered a conditional use and needs approval by the Downtown Review Board.
2. Applicant's Project Statement: **(FIGURE 1)**
3. Planning & Development Department's Recommendation: **Approval of the application with technical modifications.**

## **BACKGROUND:**

1. Site Addresses: 910 South Nevada Ave.
2. Existing Zoning/Land Use: FBZ-T1 (Form-Based Zone – Transition Sector 1) / The site was developed as a single-tenant commercial building which is currently vacant **(FIGURE 2)**
3. Surrounding Zoning/Land Use:  
North: FBZ-T1 (Form-Based Zone – Transition Sector 1) / Residential and Civic uses  
South: FBZ-T1 (Form-Based Zone – Transition Sector 1) / Commercial (used car dealership) and Freight Rail  
East: PUD (Planned Unit Development) / Lowell PUD, vacant parcel adjacent to Nevada and residential uses beyond to the east  
West: FBZ-T1 (Form-Based Zone – Transition Sector 1) / Retail – Auto detailing and used car dealership
4. Annexation: Town of Colorado Springs, 1872
5. Master Plan/Designated Master Plan Land Use: Mill Street Neighborhood Plan (2019) / Commercial / Office and the Experience Downtown Plan (2016) / General Mixed-Use
6. Subdivisions: Bonicelli Subdivision, 1983
7. Zoning Enforcement Action: None
8. Physical Characteristics: The 0.37 acre (15,888 square foot) site was naturally sloped from north to south, but when it was originally developed the property was excavated and leveled for the building and parking. The elevation of the northern portion of the property is about 12' lower than East Fountain Boulevard directly to the north. The southern end of the property, where the parking is located in front of the building, still has a slope toward the neighboring property to the south. **(FIGURE 5)** As a result of the site conditions, the back of 910 South Nevada Avenue faces the corner of East Fountain Boulevard and South Nevada Avenue.

## **STAKEHOLDER PROCESS AND INVOLVEMENT:**

Two hundred and fifty-nine (259) post cards were sent to the surrounding property owners within a thousand (1,000) foot buffer to notify them of the proposal shortly after the application was submitted. That notification provided information regarding the proposed project and instructions on how to submit comments.

Staff received three (3) formal comments of both opposition and support for the project **(FIGURE 3)**. The Mill Street Neighborhood Association wrote a letter stating that they did not have any concerns with an MMJ grow at this location as long as the project does not include a retail MMJ dispensary. The Downtown Partnership submitted a letter stating a few concerns regarding the proposed use. This letter spurred the Applicant to alter his plans to address their concerns. Once the plans were altered, the Applicant met with the Downtown Partnership on January 22<sup>nd</sup> to discuss their concerns and how the applicant proposed to mitigate them. During the meeting, The Downtown Partnership expressed that the second submittal addressed all of their concerns. As a result, they submitted a second letter supporting this project. Both letters are provided in Figure 3.

All applicable City agencies and departments were asked to review and comment. All concerns and comments have been incorporated into the plan or are listed in the technical modifications section at the

conclusion of this report. The site will be posted and notices will be sent announcing the public hearing prior to the Downtown Review Board meeting.

### **ANALYSIS OF REVIEW CRITERIA AND MAJOR ISSUES**

The Applicant is proposing to convert the existing single-tenant commercial building to a two tenant space with a medical marijuana grow in the rear of the building and a secondary commercial business in front (**FIGURE 4**). The MMJ grow will utilize approximately 80% of the building. The remaining space (1,200 square feet) will be located in the front of the building where the existing storefront windows are. In this portion of the building the Applicant is proposing to open a holistic/organic retail business to activate the front of the building and to produce the desired foot traffic and activity. To insure that this space is used for a business that is suitable for a gateway area in the future, the Applicant is willing to restrict the future uses to the following: office, commercial (café), or non-MMJ retail uses.

As stated, the principal operation of this facility is proposed to be a non-hazardous medical marijuana (MMJ) grow facility. The proposed plan prohibits an MMJ retail dispensary. All of the products of the proposed business are sold at licensed dispensaries. This grow, just like all legal grow operations in the State, is required to follow all laws that regulate the industry. For planning purposes, the most notable of these laws address the control of odors created during the growing and harvesting of medical marijuana. A well-run and well-maintained grow operation will not emit detectable odors to surrounding properties. All licensed MMJ grow operations are required to filter all air leaving the facility to eliminate all odors. For this proposed operation, the scrubbers would be placed on the west side of the building out of sight from the street.

The Urban Planning Division and the Downtown Partnership share similar concerns regarding MMJ grows downtown. Some of the concerns, which are also outlined in the Partnership's letter to the Applicant, include having an inactive storefront, resulting in a blank façade without foot traffic in or around the business. In addition to concerns regarding the use itself, there has been considerable dialog regarding site and public space improvements. The Downtown Partnership has been planning and is in the process of installing downtown gateway elements at key access points to Colorado Springs' central business district (CBD). One of those locations is just south of 910 South Nevada Avenue.

To address site activation, the Applicant reduced the area of the used for the MMJ grow use by approximately 20% (1,200 sf) to create the proposed storefront business. To allow the future flexibility, Planning will allow the uses in the front of the building that are listed above. Any of these uses will activate the front of the building.

In addition to activating the front of the building and making it a viable business that people would frequent, Staff has required new landscaping along the east side of the property. Currently, between the east side of the building and the sidewalk, the ground is covered in black asphalt. The revised plan illustrates the creation of a landscaped strip along the east side of the building, which faces South Nevada Avenue. This strip of proposed landscaping will be approximately 120' long x 11'-16' wide and will improve the aesthetics of the property. Large shade trees and ornamental plants have been planned to fill the space currently occupied by asphalt. To support the health and growth of the plantings, the soil of the entire area will be amended and irrigated. The landscaping will have a recently painted mural of a mountain scene as a backdrop to add color in all seasons.

Staff believes that the Applicant's updated submittal sufficiently addresses the concerns of both Urban Planning and The Downtown Partnership regarding storefront activation and creating a landscape that will enhance this gateway to the City's central business district.

### **Conditional Use**

One of the overarching principles of the Downtown Form-Based Zone is that individual land uses are less important than the building forms that establish Downtown's character, architecture, and built environment. However, there are a select number of uses which, if not properly considered, have the potential to negatively impact surrounding properties and the Downtown as a whole. One such use is a

MMJ grow. While MMJ grows are legal in Colorado, their placement is closely regulated to reduce conflict with other uses. The Form-Based Code requires a conditional use application for this use type throughout the Form-Based Zone. The Downtown Review Board must determine if the current application meets the required criteria at a public hearing. This review is an important step toward ensuring that surrounding properties are not harmed and that the area is progressing in a direction that will benefit the city.

The three criteria that must be considered by the Downtown Review Board in order to grant the requested conditional use permit are:

- A. Surrounding Neighborhood: That the value and qualities of the neighborhood surrounding the conditional use are not substantially injured.
- B. Intent of Zoning Code: That the conditional use is consistent with the intent and purpose of this Zoning Code to promote public health, safety and general welfare.
- C. Comprehensive Plan: That the conditional use is consistent with the Comprehensive Plan of the City.

These three criteria are addressed by the Applicant in their project statement and by the following Staff observations and analysis:

There are a couple of components to the first criteria as it pertains to this application. Does this proposed use negatively affect the immediate area, the City's CBD or the City's gateway effort? Since 910 South Nevada Avenue does not have access to East Fountain Boulevard and only the roof of the building can be seen from the street, the neighborhood to the north of this establishment will not be impacted by this development. The neighborhood to the south and west is the used car lot, detail shop and a freight rail line that was discussed above. The proposed use should not be a detriment to these current uses. Approximately 150' to the east, across South Nevada Avenue, is the Lowell PUD development. The parcel in the Lowell PUD that is directly across from 910 S. Nevada Avenue has not been developed and is significantly higher in elevation than the subject property. Staff finds that this separation is sufficient between the proposed use and any use that ultimately is developed on this empty parcel.

910 South Nevada Avenue, though physically close to the downtown's central business district, it is rather disconnected because of topography, road configuration, rail lines and developments. The proposed use is not expected to have any impact on the City's CBD.

Staff has addressed above the issue of an MMJ grow being close to a gateway to downtown. Staff believes that, because the Applicant is proposing to have a storefront business along with substantial landscaping, this proposed use may be more beneficial as a gateway business than an approved use that would not require these improvements.

The intent of the zoning code is to promote public health, safety and general welfare. Staff finds that this proposal does not harm the public health in any way and it can be argued that a viable business with an activated front and landscaping in this location will promote the general welfare and support the new gateway element for the South Nevada corridor.

#### Mill Street Neighborhood Plan (2019)

The subject property is designated as 'general mixed use' within the newly adopted Mill Street Neighborhood Plan. One of the four main goals of the Mill Street plan is to "create a resilient future for Mill Street." This project will occupy a hard to lease space in a somewhat blighted corridor of South Nevada. Because of the store front, landscaping and mural, this new use will be an asset to the neighborhood and a contributing component of the Downtown Partnership's downtown gateway initiative. In addition, the plan calls for attracting new businesses that can improve facades along Tejon and Nevada and create jobs, generate revenue, and improve neighborhood outcomes. That is exactly what this project is proposing for the neighborhood.

#### Experience Downtown Master Plan (2016)

910 South Nevada Street is on the southeastern corner of the Experience Downtown Master Plan. The plan calls out the 2016 land use of this area as “retail” and future uses as “general mixed use.” It also calls out this area as the “New South End” and a gateway area to the downtown. This idea is currently being implemented by the Downtown Partnership and this project was designed to contribute to that goal of beautifying the southern gateway. The master plan supports the diversification of uses in hard to lease commercial spaces like this location.

#### Plan COS (2019)

Plan COS, the City’s comprehensive plan, strongly supports infill projects that activate blighted areas like the South Nevada Avenue corridor.

1. Comprehensive Plan Conformance:

The proposed applications appear to be complementary to the envisioned comprehensive land use pattern for the South Nevada Avenue corridor as it relates to several themes in PlanCOS. The Plan identifies the goals to enhance the existing character of these neighborhoods, while supporting their ongoing investment and improved adaptation. Additionally, PlanCOS notes that most Established Neighborhoods should expect some degree of infill. We are defining infill as not only filling a vacant space with a building and business, but also the reuse of hard to lease areas, reactivating the property and hopefully the surroundings.

The following are some strategies and passages within PlanCOS that support infill projects like the subject property:

Goal VN-3: Through neighborhood plans, associations, and partnerships, empower neighborhoods to reinvest in order to create community, vibrancy, and to address their specific vision and needs.

Goal UP-2: Embrace thoughtful, targeted, and forward-thinking changes in land use, infill, reinvestment, and redevelopment to respond to shifts in demographics, technology, and the market.

Policy UP-2.A: Support infill and land use investment throughout the mature and developed areas of the city.

Strategy UP-2.A-1: Encourage the development or redevelopment of vacant properties in the core area of the city by using a combination of incentives, rezoning, and creative design solutions.

Strategy UP-2.A-2: Provide opportunities for redevelopment by identifying and supporting catalyst projects in underutilized locations such as disinvested shopping centers and business parks, former “big box” retail spaces, and no longer needed school buildings.

Strategy UP-2.A-4: Actively support ongoing and potential infill projects, employ problem-solving approaches and continue to implement process improvements in support of infill and redevelopment.

Policy UP-3.A: Proactively participate and invest in the development of Downtown as the city’s premier urban activity center.

Staff finds the proposed development at 910 South Nevada Avenue in substantial compliance with PlanCOS.

After careful consideration, Staff has determined that the required criteria have been met and once the technical modifications described below are addressed, the plan can be approved.

**STAFF RECOMMENDATION:**

**ITEM NO: CPC CU 19-00167 – 910 S. NEVADA - KIND THERAPEUTICS**

**Approve** the proposed conditional use development plan based on the findings that the conditional use criteria empowered in Section 2.5.4 of the Downtown Colorado Springs Form-Based Code will be substantially met once the following technical modifications are made:

**Technical Modifications to the Conditional Use Development Plan:**

1. Finalize landscaping plants and perimeter – landscaping should extend to the curb cut on the SE side.
2. Revise the plan to show proposed façade improvements on the parapet.
3. Edit or remove the Book and Page reference on the east side of the property per the Surveyor's comments.
4. Show ADA route from the parking space to the door and indicate that it does not exceed a 2% slope.
5. Renumber the pages to include the 4<sup>th</sup> page.
6. Include a note on the plan where the odor filters will be located.
7. Update the plan's parking calculations for FBZ:
  - a. Grow = 1 Stall per 1000 Square feet,
  - b. Store = 1 Stall per 500 Square feet,
8. Update the plan to show all existing utilities per CSU review comments.