



Legislation Text

File #: CPC CU 19-00167, **Version:** 3

An appeal of the Downtown Review Board's denial of a Form-Based Zone Conditional Use Development Plan for a medical marijuana cultivation operation located at 910 South Nevada Avenue.

(QUASI-JUDICIAL)

Presenter:

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Summary:

Owner: Bonicelli Brothers, Inc.

Consultant: Kind Therapeutics Inc.

Location: 910 South Nevada Avenue, located at the southwest corner of South Nevada Avenue and East Fountain Boulevard.

The application under consideration is a Form-Based Zone Conditional Use Development Plan for a medical marijuana cultivation operation. Similarly, to the Planning Commission, the Downtown Review Board is the final decision maker on conditional use development plans within the Form-Based Zone. The Downtown Review Board denied the conditional use development plan so the applicant appealed their denial to the City Council.

Background:

A relatively brief summary of the project's history, details, and criteria is provided within this memo. A more detailed description can be found within the Downtown Review Board Staff Report.

The Applicant is proposing to convert the existing single-tenant commercial building to a two tenant space with a non-hazardous medical marijuana (MMJ) cultivation facility in the rear of the building and a secondary non-MMJ related commercial business in front. The MMJ grow will utilize approximately 80% of the building. The remaining 800-1200 square feet of commercial space will be located in the front of the building. 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 ensure that this space is used for a business that is suitable for the future downtown gateway area, the Applicant is willing to restrict the future uses to the following: office, commercial (café), or other non-MMJ retail uses.

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 addresses 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. Per City Code, all MMJ grow operations are required to filter all air leaving the facility so that odors are not detectable. For this proposed operation, the odor filtration system would be placed on the west side of the building out of sight from the street.

The plan illustrates a 115' long landscaped area along the entire east side of the property. This landscaping will screen the parking and frame the mountain mural that was recently painted on the east-facing wall along South Nevada Avenue.

The three criteria that must be considered by the City Council in order to grant the requested Form-Based Zone 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.

After careful consideration and reviewing of The Mill Street Neighborhood Plan, Experience Downtown Master Plan and Plan COS, Staff has determined that the required Conditional Use have been met and once a number of technical modifications described below are addressed, the plan can be approved.

Applicant's appeal statement has been included in the Council packet. The Appellant would like City Council to reconsider the Downtown Review Boards decision for the following reasons:

- Per City Code requirements, there will be no detectable smell from the grow on any neighboring property.
- The front 800-1200 square feet of the building will be occupied by a viable commercial business that will activate the building and be an amenity to the community.
- The business in the front of the building and the landscaping on the east side will hide the grow from the public.
- Additional reasons for appealing the Downtown Review Board's decision can be found in the Appellant's appeal statement.

Previous Council Action:

On March 18, 2020, City Council postponed all quasi-judicial items due to the state of emergency for the City of Colorado Springs.

Financial Implications:

N/A

City Council Appointed Board/Commission/Committee Recommendation:

This item was heard by the Downtown Review Board on February 5, 2020 at which time the Board voted to deny the conditional use application with a 5 to 2 vote. On February 18, 2020, the Applicant submitted the required appeal application sending the project to City Council for consideration.

Please reference the February 5, 2020 Downtown Review Board minutes from the hearing for a detailed record. The Downtown Review Board hearing spent approximately two hours hearing and deliberating on this item. Staff presented the project and expressed support for it because of the reasons stated above. The Applicant also presented, adding details regarding the grow operation and what business would be allowed in the storefront area.

The property owner of the auto dealership to the south attended the hearing to gather information and express concern regarding the use.

During the question and answer portion of the hearing, the Board members expressed concerns about the following aspects of the project:

1. The location of the external air filtration system and if it will be visible from the street?
2. Whether odors will be detectable in the neighborhood and how the air filtration system works?
3. What kind of business would activate the store front space with only 800-1200 square feet?
4. How does the City regulate the use or enforce the active storefront concept once approved?
5. Is it appropriate to have an MMJ grow in downtown Colorado Springs?

Stakeholder Process:

Postcards were sent to the surrounding property owners within a thousand (1,000) foot buffer to notify them of the proposal three times before the City Council hearing.

Staff received four (4) formal comments of both opposition and support for the project before the Downtown Review Board Hearing. 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 22nd 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.

Alternatives:

1. Uphold the action of the Downtown Review Board denying the application;
2. Modify the decision of the Downtown Review Board;
3. Reverse the action of the Downtown Review Board approving the application; or
4. Refer the matter back to the Downtown Review Board for further consideration

Proposed Motion:

Two motions are included for City Council's consideration, one upholding the Downtown Review Board's decision to deny the application and one overturning the Downtown Review Board's decision, thereby approving the application.

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Deny the appeal and uphold the Downtown Review Board's decision to deny the conditional use development plan for a medical marijuana cultivation operation within the Form-Based Zone - Transition Sector 1 (FBZ-T1) located at 910 South Nevada Avenue based upon the findings that the

appellant did not meet the appeal criteria in City Code Section 7.5.906.A.4 and that the conditional use development plan does not comply with the conditional use review criteria in City Code Section 7.5.704.

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Uphold the appeal and overturn the Downtown Review Board's decision thereby approving the conditional use development plan for a medical marijuana cultivation operation within the Form-Based Zone - Transition Sector 1 (FBZ-T1) located at 910 South Nevada Avenue based upon the findings the appellant met the appeal criteria in City Code Section 7.5.906.A.4 and that the conditional use development plan complies with the conditional use review criteria in City Code Section 7.5.704 once the technical modifications are complete.

Technical modifications to the Conditional Use 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 4th page.
6. Include a note on the plan where the odor filters will be located and illustrate.
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.

N/A