



Legislation Text

File #: 2019-1014, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number: Crystal Acker, 707-565-8357

Vote Requirement: Majority

Supervisory District(s): Second

Title:

9:00 A.M. Appeal of a Use Permit approval to allow the Petaluma Hills Farm commercial cannabis cultivation operation at 334 Purvine Road in Petaluma. UPC17-0020

Recommended Action:

Hold a public hearing and adopt a Resolution denying the appeal, adopting a Mitigated Negative Declaration, and upholding the Board of Zoning Adjustment's decision to approve the commercial cannabis operation, consisting of 8,096 square feet of mixed light/greenhouse cultivation, 2,880 square feet of indoor cultivation, and 28,560 square feet of outdoor cultivation, for a total cultivation area of 39,536 square feet (less than one acre/43,560 square feet), 4,080 square feet of indoor propagation, and associated processing of site-grown cannabis. (Second District)

Executive Summary:

This report presents an appeal of a Board of Zoning Adjustment's decision to approve a Use Permit to allow a commercial cannabis cultivation operation at 334 Purvine Road in Petaluma, APN 022-230-020. The Use Permit was approved unanimously (5-0-0 vote) on April 11, 2019. An appeal of the approval was filed by Kevin Block, attorney representing No Pot on Purvine and adjacent neighbors, on April 19, 2019.

The project proposes a commercial cannabis cultivation operation including outdoor cultivation, mixed light/greenhouse cultivation, and indoor cultivation totaling less than one acre in cultivation area, as well as associated propagation and on-site processing of site-grown plants, including trimming, drying, and packaging, on a 37-acre parcel zoned Land Extensive Agriculture in the Petaluma Dairy Belt.

The appeal cites concerns related to maintaining a primary agricultural use; neighborhood compatibility issues, including outdoor cultivation odor, special events/public access, and public safety; and personal character of the applicant. During the April 11, 2019 hearing, the BZA heard concerns from the public including all of the appeal-cited concerns, and discussed outdoor cultivation odor, special events/public access, and public safety/site security at length. Whereas, five new Conditions of Approval were added by the BZA at the hearing to address those concerns.

A Mitigated Negative Declaration was prepared for the project and circulated through the State Clearinghouse March 11, 2019 through April 11, 2019. After the close of the public hearing on April 11, 2019, the Board of Zoning Adjustments determined that all potential impacts can be mitigated to a less than significant level and adopted the Mitigated Negative Declaration. However, at the public hearing, the Board of Zoning Adjustments

directed staff to substitute certain mitigation measures and add clarifying language to the Mitigated Negative Declaration. No recirculation is required pursuant to the California Environmental Quality Act (CEQA) Guidelines.

Discussion:

Project Description Summary

Petaluma Hills Farm, LLC., proposes a commercial cannabis cultivation operation including a total cultivation area of 39,536 square feet (less than one acre/43,560 square feet) and cultivation support activities, including propagation and on-site processing of site-grown plants as described below:

- Total Permitted Cultivation Area = 39, 536 square feet
 - 8,096 square feet of mixed light canopy/greenhouse (Type 2B state license),
 - 2,880 square feet of indoor canopy (Type 1A state license),
 - 28,560 square feet of outdoor cultivation (Type 3 state license),
- 4,080 square feet of indoor non-flowering propagation
 - Not included in the permitted cultivation area,
 - Limited to 25% of the permitted cultivation area = 9,884 square feet,
- On-site processing of site-grown plants, including trimming, drying, curing, weighing, and packaging.

The applicant is not participating in the penalty relief program; no commercial cannabis is currently grown on the site.

Existing cattle grazing on 25 acres and a 1-acre chef's garden will continue operating on the site, independently from the cannabis operation.

Indoor cultivation, mixed light cultivation, and propagation operations will be conducted in a new 15,343-square-foot cultivation building. Drying will occur in a new 3,611-square-foot drying barn, which will also include a separate room to house hazardous materials, such as fertilizers, and additional storage on the second floor. All other processing activities and secure storage of cannabis products will occur in a repurposed 1,440-square-foot concrete block building.

Proposed hours of operation for cultivation, indoor processing, and outdoor harvesting are 24 hours per day, seven days per week, as needed. Outdoor cultivation will only take place for 5-6 months per year during the growing season, and all outdoor cultivation activities, with the exception of harvest, will be limited to daytime hours. Deliveries and shipping will be limited to 8:00 am to 5:00 pm Monday through Friday. The cannabis operation will have a maximum of 10 employees, including 2 full-time security guards, an on-site manager, and up to 7 cultivation, processing, and harvest employees. The operation will not be open to the public.

All new structures will be located in approximately the same footprints as existing or previous structures within the developed central portion of the parcel. The majority of the land (over 25 acres) will remain as open pastureland to support cattle grazing. The outdoor cultivation area will be located on the footprints of the site's prior poultry barns. The indoor/ greenhouse cultivation building will be located on the site of the former dairy barn. The drying barn will be in place of the former hay barn, and all other operations will take place in repurposed existing buildings. Therefore, the structural development will be similar to the existing

condition. The nearest off-site residence is about 600 feet away from the proposed outdoor cannabis cultivation.

For a more detailed project description, see Attachment 5 Staff Report, Project Description, pages 4-10.

Site Characteristics

The parcel is 37.02 acres in size, and is located in an unincorporated, rural agricultural area in the Petaluma Dairy Belt of southwest Sonoma County, approximately 4.5 miles west of the City of Petaluma, about 3 miles southeast of Two Rock, and about 2 miles northeast of the Sonoma County-Marín County border (See Attachment 5 Staff Report: Exhibit B - Figure 3. Vicinity Map). The U.S. Coast Guard Training Center is about 1.5 miles to the west. Laguna Lake is approximately 1.5 miles to the south, and Stemple Creek is about 2 miles to the northwest. Surrounding parcels are generally large agricultural properties. The parcel is accessed from Purvine Road, a public County road via either Spring Hill Road or Middle Two Rock Road (See Attachment 5 Staff Report: Exhibit B - Figure 4. Aerial Map). The parcel is not under a Land Conservation Act Contract (Williamson Act).

Existing development is located in the center of the parcel, including one primary residence, one 901 square foot accessory dwelling unit (proposed to be converted to an employee break room and accessible restroom), a detached garage, three barns, a storage shed, and a well pump house. There is an existing domestic water well and two existing septic systems, serving the main house and accessory dwelling unit. The entrance to the property is a dirt/gravel driveway.

There are existing trees on the property, primarily a row of eucalyptus along the Purvine Road frontage and a few other species (e.g., coast live oak, Monterey pine, coast redwood, fan palm) planted around the residential structures. A few remnant orchard trees are present southwest of the farm buildings (cherry, apple, and grapefruit). However, most of the site consists of gently sloping, open pastureland vegetated by non-native annual grassland, which is common to heavily grazed areas.

Site drainage occurs by overland flow to the southwest. Site elevation ranges from 320 feet MSL at the eastern end to 240 feet MSL at the southwestern corner. There are no waterways or wetland features on the parcel. The site is located in a Groundwater Availability Class 2 - Major Natural Recharge Area.

General Plan Land Use and Zoning

The General Plan Land Use Designation on the parcel is Land Extensive Agriculture 100-acre density. The site is also designated Land Extensive Agriculture by the Petaluma Dairy Belt Area Plan.

Surrounding Land Use and Zoning

This area is largely rural, located in the hills west of Petaluma. Surrounding parcels to the subject site are zoned Land Extensive Agriculture, with a low residential density of 100 acres per dwelling unit (LEA-100) or 60 acres per dwelling unit (LEA-60). Surrounding land uses are predominantly pasture land, dairy and poultry farms, horse and canine facilities, and rural residential development. Uses on the adjacent agricultural properties include a dairy to the northwest (McClelland's Dairy), grazing land and a residence to the east (about 750 feet away from the proposed cultivation building), undeveloped grazing land to the south, and a residence to the southwest (about 600 feet away from the proposed outdoor cultivation area). Nearby commercial agricultural operations include McClelland's Dairy, Reichardt Duck Farm, Spring Hill Cheese, and

the Great Peter Pumpkin Patch. The Two Rock Dog Ranch, a commercial kennel operation is also nearby.

Issues Discussed at the Board of Zoning Adjustments Hearing and Raised in the Appeal Letter

1. Consistency with General Plan Policy AR-4a/Maintain a Primary Agricultural Use

The appellant contends that the project is inconsistent with General Plan Policy AR-4a, describing the primary uses in the Land Intensive Agriculture (LIA), Land Extensive Agriculture (LEA) and Diverse Agriculture (DA) land use designations:

“The primary use of any parcel within the three agricultural land use categories shall be agricultural production and related processing, support services, and visitor serving uses. Residential uses in these areas shall recognize that the primary use of the land may create traffic and agricultural nuisance situations, such as flies, noise, odors, and spraying of chemicals.”

Staff Analysis

In adopting Ordinance No. 6189, the Board of Supervisors concluded that cannabis cultivation and processing may be permitted within the Land Extensive Agriculture land use designation with Use Permit approval, provided the project is consistent with the overall goals, objectives, policies, and programs of the Sonoma County General Plan. The General Plan Purpose and Definition for Land Extensive Agricultural Areas is:

“This category shall enhance and protect lands capable of and generally used for animal husbandry and the production of food, fiber, and plant materials. Soil and climate conditions typically result in relatively low production per acre of land. The objective in land extensive agricultural areas shall be to establish and maintain densities and parcel sizes that are conducive to continued agricultural production.”

The development density (100-acre density) and the parcel size (37 acres) will remain unchanged under the project proposal, which complies with the overall purpose of the Land Extensive Agriculture Zoning District to maintain large parcel sizes conducive to agricultural production, provided that a primary agricultural use is also established or maintained on the parcel. Neither the General Plan nor the Zoning Code includes a discrete definition for “primary agricultural use.” Therefore, determining what constitutes a primary agricultural use involves evaluation and balancing of multiple factors, including acreage of land dedicated to agricultural vs. non-agricultural uses, income derived from all land uses on the parcel, and compatibility of non-agricultural land uses with agricultural uses, both on the project parcel and surrounding agricultural parcels. Each of these factors is discussed below.

Agricultural Acreage. The cannabis operation will encumber a relatively small portion of the 37-acre property totaling approximately 2.7 acres, as follows:

- Approximately 18,954 square feet (0.44 acre) of replacement buildings involving new construction in the locations of former structures (the cultivation building in the location of the former dairy barn and the drying barn in the location of the former hay barn),
- Approximately 3,133 square feet (0.07 acre) of existing buildings repurposed for the operation (the garage/security office, employee break room/rest room, and processing/secure storage building),
- Approximately 28,560 square feet (0.66 acre) of outdoor cultivation,
- Approximately 5,336 square feet (0.12 acre) of new hardscape (driveway, parking, and fire turnaround improvements), and

- Approximately 62,722 square feet (1.44 acres) of additional land inside security fences (separate from everything listed above). Various activities and improvements occur within the fences, including the rainwater collection system and storage tanks, graywater collection and storage tank, composting and soil reclamation areas, secure outdoor storage of equipment and supplies, and other cultivation support functions.

Refer to Tables 1 and 2 in the Mitigated Negative Declaration for a detailed breakdown of existing and proposed structures and improvements (Attachment 8, pages 2-3). The Site Plan (Attachment 2) shows locations and square footage of all structures.

A majority of the 2.7-acre cannabis operation will occur within the footprint of previous farm development (e.g., the new cultivation building is larger than but located in the footprint of the former dairy barn; the outdoor cultivation area is located in the footprint of former poultry barns) where the land had already been removed from agricultural production by structures.

Currently, 25 acres are leased for grazing (see Attachment 3. Grazing Lease), and 1 acre is leased as a commercial organic chefs garden. Leasing of the property for livestock grazing has been occurring historically for many years, at least the past 10 years according to neighbors. The current 25-acre grazing lease was first initiated with a nearby cattle rancher on July 1, 2017, shortly after the applicant purchased the property, and has been renewed twice (see Attachment 3. Grazing Lease for current agreement). The chefs garden is a comparatively new operation begun in spring of 2018. The garden space is leased to and managed by Sonoma Hills Farm Jugo, Inc., to supply organic produce for restaurant use.

Under the project proposal, existing agricultural uses totaling approximately 26 acres (70%) of the 37-acre property will continue to be dedicated to agricultural use.

Income Derived from Property Uses. While specific figures are not available, it is probable that the income from cannabis will exceed income from agricultural uses on the property. However, it is not uncommon for a property owner of an agricultural property to derive income from multiple activities in addition to agriculture, when the non-agricultural uses are compatible with the agricultural use or otherwise allowed under the law. For example, telecommunication towers, non-agricultural home occupations, and establishment of visitor-serving uses such as agricultural farmstays are all ways that can help sustain agricultural uses by supplementing and stabilizing farming incomes. Neither the General Plan nor the Zoning Code requires that the agricultural use generate more income than other allowed uses. Recently, the Board of Supervisors revised the Agricultural Farmstay Zoning Code regulations under Section 26-88-085 (Ordinance 6255, adopted January 8, 2019), deleting the requirement for on-site agricultural products to be the primary source of income, largely to encourage preservation and promotion of agricultural operations which may otherwise be financially insolvent without the added farmstay income. Thus, cannabis cultivation as the primary revenue source on the property does not conflict with the agricultural use of the property in this regard, and furthermore, can help support ongoing agricultural uses on the parcel by providing supplemental income.

Character of the Land Remains Agricultural. A majority of the 2.7-acre cannabis operation will occur within the footprint of previous farm development within the interior portion of the parcel. The majority of the land (over 25 acres) will remain as open pastureland. The outdoor cultivation area will be located where the previous poultry barns were. The indoor/greenhouse cultivation building will be located where the former

dairy barn was located. The drying barn will be located in place of the former hay barn, and all other operations will take place in repurposed existing buildings. Therefore, the overall level of structural development will be similar to the existing condition. The land does and will continue to look 'agricultural' in nature, containing a primary residence, barns, outbuildings, a greenhouse, water tanks, planted crops and landscaping, farm animals, and open and rural spaces.

In addition, new and repurposed buildings have been designed to stay in character with the agricultural setting. The new drying barn will have walls clad with salvaged barn wood from the original hay barn to maintain the agrarian character, and the barn roof will be gabled to match the look of the original barn. The new indoor cultivation/greenhouse structure will be approximately 23 feet tall, slightly taller than the former dairy barn (about 20 feet tall), but of similar scale. It also will have a gabled roof and be constructed of corrugated metal siding common to newer agricultural buildings in the county.

Cannabis is not defined as an agricultural crop under County Code due to its classification and regulation as a Schedule 1 controlled substance. However, the cultivation and processing of cannabis products is similar to other farming activities, and therefore, it is classified as an "agricultural product". Farming equipment and infrastructure (e.g., tractors, irrigation systems, barns, greenhouse) proposed for the cannabis operation are compatible with surrounding agricultural development, and could also support future non-cannabis agricultural uses. In contrast, other land uses allowed in agricultural zoning- such as schools, cemeteries, or commercial kennels- are much less likely to support a future agricultural use.

The project does not propose to provide additional services, such as public sewer or water which could facilitate more intensive future development, or to provide additional residential development which might create a conflict with existing agricultural uses in the surrounding area due to agricultural nuisance situations, such as flies, noise, odors, or spraying of chemicals.

In view of all the facts and circumstances for this property and this project described above, the proposed cannabis cultivation operation is determined to be in compliance with General Plan Land Use and Agricultural Resource Element policies for agricultural land.

2. Alleged Violations

The appellant contends that the applicant has engaged in unpermitted cultivation and/or tourism.

Staff Analysis

The applicant is not participating in the Penalty Relief program and no commercial cannabis is currently being grown on the parcel. There are no open violations on the parcel. Several site inspections have been performed by County Code Enforcement staff in response to complaints; no violations have been documented for unpermitted cannabis cultivation or unpermitted events. One building code violation was documented for unpermitted framing and electrical work inside a barn; this case has since been closed.

3. Neighborhood Compatibility - Odor

The appellant contends that the Board of Zoning Adjustments failed to impose mitigation measures sufficient to control cannabis odor.

Staff Analysis

Cannabis cultivation operations for commercial use must comply with the following Operating Standard, set forth in Section 26-88-254(g)(2):

“All indoor and mixed light cultivation operations and any drying, aging, trimming and packing facilities shall be equipped with odor control filtration and ventilation system(s) to control odors, humidity, and mold.”

All cultivation and processing structures include self-contained, closed-loop climate control systems, including carbon filtration to clean the air and control odor, which complies with the Operating Standard. Daily inspections and reporting are required by Condition of Approval No. 24 to ensure that the system is working adequately to control off-site odors from the cultivation building.

Outdoor cannabis cultivation will be conducted in a 28,560-square-foot area during the May to October outdoor growing season with one harvest conducted, typically in late October. Cannabis plants start to emit odors about 3-5 weeks into the flowering period, generally starting in August or September and continuing until harvest in October.

The Cannabis Ordinance does not require an odor control system for outdoor cultivation. To address odor impacts, the County adopted setback and separation criteria between cannabis operations and adjacent uses. A minimum parcel size of 10 acres is required for all outdoor cultivation. Minimum setback distances of 300 feet from residences and businesses and 1,000 feet from schools, parks and other sensitive uses are also enforced by the County to facilitate odor dissipation by distance. In addition, cannabis cultivation operations must comply with the following Health and Safety requirement, set forth in Section 26-88-250(f):

“Commercial cannabis activity shall not create a public nuisance or adversely affect the health or safety of the nearby residents or businesses by creating dust, light, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, unsafe conditions or other impacts, or be hazardous due to the use or storage of materials, processes, products, runoff or wastes.”

Generally, odors dissipate with distance from the source and opposite the primary direction of prevailing winds

There was substantial discussion at the hearing related to the possible use of vegetated windbreaks to deflect the outdoor cannabis odor plume above the windbreak vegetation where it can mix with the prevailing winds and be diluted (for more details see Attachment 5 Staff Report, pages 18-19; and Staff Report Exhibit D - Odor Sources).

The proposed outdoor cultivation operation is sited near the center of the parcel and exceeds ordinance requirements for setbacks (300-foot minimum required from residences, while the project achieves 600+feet from residences). Planted screening and windbreak deflection of the cultivation site will also occur. The landscape plan is subject to design review; the planting proposal will need to address both visual screening and odor management to be approved. Cannabis odors will be present during the hottest months of the year, when natural air convection is highest, further enhancing the odor management potential of planted windbreaks to deflect air and odors upwards to be mixed with prevailing winds and diluted.

The prevailing wind direction during August-October is from the coast- west to east. Most of the parcels to the

east are large agricultural parcels without residences; however, there are four parcels with residences within one half mile of the cultivation site in a general easterly direction. The approximate distance between the outdoor grow site and the nearest residence to the east or northeast is about 850 feet away. The next three residences are approximately 1,250, 1,500, and 2,300 feet from the outdoor cultivation site. Six additional residences occur within one half mile in other directions (a total of 10 residences identified within 0.5 mile from aerial imagery). The nearest residence overall is about 620 feet to the southwest of the outdoor cultivation site. This residence is opposite the prevailing wind direction and will be separated from the cultivation area by the cultivation site fencing and landscaping, which are expected to facilitate deflection and diffusion of cannabis cultivation odors.

As stated in Sec. 26-88-250(f) above, an outdoor cannabis operation is not required to be odor free at all times to be operating lawfully, but rather, the odor must be contained in such a manner that it does not result in a public nuisance. Public nuisance considerations include the strength, frequency, and duration of the odor to nearby residences and businesses. Some degree and duration of odor is to be expected from this agricultural product, particularly during the flowering period when terpenes are present; this impact was taken into consideration when cannabis zoning, minimum parcel sizes, and setbacks were established.

The applicant has submitted an Odor Control Plan (See Attachment 5 Staff Report: Exhibit E - Odor Control Plan). Condition of Approval No. 24 requires review of additional odor-reduction measures in the event that verified odor complaints are received. During the BZA hearing, commissioners deliberated on whether additional odor mitigations could be imposed. Discussion primarily focused on the lack of proven odor-control technology for outdoor cannabis cultivation. Also discussed was eliminating the outdoor cultivation component of the project and relocating it further away from the closest residence. However, relocating the outdoor grow further away from one residence would move it closer to another. Ultimately, the BZA concluded that the operation meets and exceeds minimum parcel size and setback standards, as required by code to address potential off-site odor impacts (10-acre parcel size required to separate operations from adjacent parcels; the parcel is 37 acres. 300-foot setback required from off-site residences; the nearest is about 620 feet away from the outdoor cultivation site).

As described above, the proposed cannabis cultivation operation meets and exceeds all odor-control requirements, and was determined to be compatible with surrounding agricultural and residential land uses. Nevertheless, the BZA added the following condition at the hearing in response to concerns expressed by the public related to outdoor cultivation odor impacts:

Condition No. 17. Two-Year Review. A review of outdoor cultivation activities under this Use Permit shall be undertaken by the director two (2) years after commencement of the first outdoor harvest to determine compliance with the Conditions of Approval applicable to the outdoor cultivation operation, including but not limited to landscape screening, odor control, security, and water use. All annual monitoring reports and incident logs required by the County shall be submitted in support of this review, including groundwater monitoring reports, odor inspection and complaint logs, and security inspection and incident logs.

The director shall give notice of this Use Permit review and opportunity to submit comments or request a public hearing to all owners of real property within one thousand feet (1,000') of the subject site plus any additional property owners who have previously requested notice. The director shall allow at least ten (10) days for comment.

If the director determines that there is credible evidence of non-compliance with the Conditions of Approval applicable to outdoor cultivation or that outdoor cultivation activities constitute a public nuisance, the director shall refer the matter to the Board of Zoning Adjustments for possible modification of the Use Permit with regard to the outdoor cultivation activities, which may include elimination of the outdoor cultivation portion of the operation. Any such modification shall be preceded by a public hearing noticed and heard in compliance with Sonoma County Code. The planning director may waive the requirement for a public hearing as provided in Section 26-92-040(d), provided, that subsequent to public noticing procedures pursuant to section 26-92-050, no timely, written, and signed requests for public hearing are received.

If the director determines that no credible evidence of non-compliance with the Conditions of Approval applicable to outdoor cultivation and that outdoor cultivation activities do not constitute a public nuisance, the outdoor cultivation operation shall be extended to the full five-year permit term without a public hearing.

This Use Permit review shall not include any aspects of the original Use Permit approval that do not relate to outdoor cultivation, unless other Conditions of Approval have not been met, violations have occurred, or the use constitutes a public nuisance.

4. Neighborhood Compatibility - Public Safety/Site Security

The appellant contends that the Board of Zoning Adjustments failed to impose conditions of approval to address neighborhood security as opposed to the security of the applicant's cannabis operation; that too much reliance was placed on the Sonoma County Sheriff's positive review of the applicant's Site Security Plan; and that the Site Security Plan should be made public.

Staff Analysis

In adopting Ordinance No. 6189, the Board of Supervisors found that security issues could be addressed through compliance with the Zoning Code Security and Fencing requirements, set forth in Section 26-88-254(f) (21):

"A Site Security Plan shall be required. All Site Security Plans shall be held in a confidential file, exempt from disclosure as a public record pursuant to Government Code Section 6255(a). Security cameras shall be motion-sensor and be installed with capability to record activity beneath the canopy but shall not be visible from surrounding parcels and shall not be pointed at or recording activity on surrounding parcels. Surveillance video shall be kept for a minimum of 30 days. Video must use standard industry format to support criminal investigations. Lighting and alarms shall be installed to insure the safety of persons and to protect the premises from theft. All outdoor and mixed light cultivation sites shall be screened by non-invasive, fire resistant vegetation and fenced with locking gates with a Knox lock. No outdoor or mixed light cultivation sites located on parcels adjacent to public parks shall be visible from trails or public access points. Razor wire and similar fencing shall not be permitted. Weapons and firearms at the cultivation site are prohibited. Security measures shall be designed to ensure emergency access in compliance with fire safe standards. All structures used for cultivation shall have locking doors to prevent free access."

The submitted Site Security Plan had been reviewed by staff as part of a project. To maintain effectiveness of the security measures, part of the security protocol requires security plans to be held in a confidential file, although a generalized description of the plan can be provided to the public and decision-makers.

A Site Security Plan must meet all the minimum requirements of the ordinance, tailored to address site-specific project activities and site constraints. A Site Security Plan was reviewed by County staff and found to meet ordinance requirements, including security fencing and screening, cameras, lighting, and alarms. Additional non-required security measures have also been proposed by the applicant, including: a security gate/camera/intercom system at the site driveway entrance where all staff, all vendors, and all visitors will be required to check in with security staff prior to entering the gate; dedicated security personnel will be on-site at all times, 24 hours per day; all persons allowed on-site will be required to have a key card with a specific security clearance limiting access to specific areas; each building used in the operation and the outdoor cultivation perimeter fence will include key card security at one or more locations to limit access; and implementation of a training program for staff and vendors to familiarize them with security equipment and protocols appropriate to the individual's level of clearance. Proposed on-site security measures are robust and go above and beyond the security and fencing requirements detailed in the Zoning Code above.

Condition of Approval No. 23 limits the cash retained on-site to the minimum needed for daily operations and requires that all cash be placed in a secure location (e.g., locked drawer, safe, or similar storage cabinet with a locking mechanism). Condition of Approval No. 23 also requires that a log of security incidents be kept and an annual report be submitted to Permit Sonoma staff.

The Site Security Plan was discussed with and reviewed by the Sonoma County Sheriff's Office by the applicant. The Sheriff's Office has since submitted a letter to County staff (see Attachment 5 Staff Report, Exhibit C - Public Comments, Agency Letters), signed by the Sheriff, stating:

"The Petaluma Hills Farm security plan clearly incorporated the most current and best practices for security as it relates to cannabis operators. I understand that for some, cannabis operations in Sonoma County continues to raise local opposition, however after reviewing Petaluma Hills Farm security plan, I do not have any objections to their proposal from a security/public safety point of view."

The Site Security Plan exceeds Zoning Code security and fencing requirements, and has received a positive evaluation from the Sonoma County Sheriff's Office. Conditions of approval can only be imposed on the project operation as part of the land use approval, and cannot be extended to neighboring properties over which the applicant has no control. However, the intent of the security plan requirement is to facilitate public safety of the surrounding neighborhood by limiting potential for opportunistic crime at the site (e.g., controlling site access, implementing alarms and cameras to discourage break-ins, limiting cash on hand to discourage theft).

With implementation of the Site Security Plan, the project is not anticipated to attract opportunistic crime or result in any undue impacts to public safety, and therefore, was determined to be compatible with the surrounding neighborhood.

5. Neighborhood Compatibility - Special Events/Public Access

The appellant contends that the Board of Zoning Adjustments failed to impose conditions of approval to prohibit all events on the property, not just those related to cannabis activity, and to restrict public access to the entire property, not just the cannabis operation.

Staff Analysis

Tastings, promotional activities, and events related to commercial cannabis activities are prohibited by Zoning Code Section 26-88-250(c), and therefore, could not be approved as a part of the Use Permit, as stated in Condition of Approval No. 11. However, there was extensive discussion at the hearing related to potential non-cannabis special events and concern expressed about public access to the site. There is an existing residence on the parcel, which will be retained. Residents and their guests will be required to check in with security, but will otherwise be able to enjoy the use of their residence consistent with County regulations. Non-cannabis special events are allowed by Zoning Permit in agricultural zoning. Due to the prohibition of special events related to cannabis, events could not be approved on the parcel, unless it could be clearly demonstrated that the event would have no relation to cannabis, and that attendees of the event would have no access to any portion of the cannabis operation, which could require providing separate site access and/or confining the event to a fully enclosed area.

The following new Conditions of Approval were added by the BZA at the hearing in response to concerns expressed by the public related to special events and public access:

Condition No. 12. Transient Occupancy. Farm stays, vacation rentals, hosted rentals, and other transient occupancies are prohibited.

Condition No. 13. Temporary Occupancy Structures. Tents, yurts, and other temporary structures designed for human habitation are prohibited.

Condition No. 15. On-Street Parking. Parking on Purvine Road is prohibited.

As described above, public access to the site is not allowed, except residential guests who will be required to check in with security. Special events would require a separate permit approval, with a public notice posted in the area, and only approved if it is demonstrated the event would have no relation to cannabis, and attendees of the event do not have access to any portion of the cannabis operation. The additional Conditions of Approval cited above prohibit public access for all types of transient overnight occupancy, and prohibit parking on Purvine Road, which was expressed as a primary public concern related to special events. Therefore, the project is not anticipated to result in any off-site impacts related to special events or public access, and was determined to be compatible with the surrounding neighborhood.

6. Neighborhood Compatibility - Use Permit Findings

The appellant contends that the Board of Zoning Adjustments erred in finding that the project would be compatible with the neighborhood under Sec. 26-92-080(a):

In order to grant any use permit, the findings of the board of zoning adjustments shall be that the establishment, maintenance or operation of the use or building applied for will not under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the neighborhood or to the general welfare of the area.

Staff Analysis

Findings on the design, location, size, and development and operating standards are used to evaluate the project's neighborhood compatibility. These findings are used to determine if the proposed project/use would be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the

area. This determination does not require that there be an environmental impact to prove the project/use may be detrimental.

The following facts support the Board of Zoning Adjustment's finding of neighborhood compatibility:

- The nearest residence is about 620 feet away from the proposed outdoor cannabis cultivation location and is not located in the direction of the prevailing winds; the next closest residence is about 850 feet away from the proposed greenhouse. Both of these distances exceed the 300-foot residential setback requirement.
- The proposed cultivation operation is appropriately scaled for the site; cultivation area is less than the maximum allowed by Zoning Code (43,560 square feet allowed; 39,536 square feet proposed). All proposed structures and the proposed outdoor cultivation area are located in the approximate center of the parcel within the footprint of existing or previous farm development.
- The mixed light/indoor cultivation area will be contained within a non-distinct, corrugated metal building, similar to other agriculture structures in the area. The building will be located in the space of a former dairy barn and will be partially screened by proposed vegetation. The drying barn will be located in the footprint of a former hay barn and will be clad with reclaimed wood salvaged from that barn. The outdoor cultivation area will be located in the footprint of two former poultry barns and will be screened by both existing trees and proposed vegetation. Therefore, project development will be similar to the existing condition and compatible with surrounding agricultural development.
- Access to and from the site will be controlled through a private security gate. As noted above, security measures are robust and will deter potential theft and other crime.
- Odor control and management meets all requirements of the Zoning Code. Odor in the cultivation building will be controlled by using a closed-loop recirculating air system, carbon filter, and odor neutralizers. The outdoor cultivation area is sited near the center of the parcel and exceeds all setback requirements (300-foot minimum from residences; project 600+feet from residences). A windbreak/hedgerow will also be planted and maintained to help deflect any odor plume above the vegetation layer into the atmosphere where winds will dissipate any odors.
- Proposed lighting meets all requirements of the Zoning Code. The greenhouse will have a paned glass roof with retractable curtains designed to fully contain the light between sunset and sunrise, and ensure no light from within the greenhouse is visible from neighboring properties. All exterior security lighting will be fully shielded and downward casting to prevent spillover into the night sky or onto adjacent properties.
- Traffic to and from the site is expected to be minimal: the traffic study expects an average of 31 trips per day, including 5 each during the morning and evening peak hours.

The following new Condition of Approval was added by the BZA at the hearing in response to concerns expressed about neighborhood compatibility:

Condition No. 14. On-Site Manager. An on-site manager for the cannabis operation shall be required to reside at all times on the premises, and shall provide contact information to all adjacent neighbors.

The intent of the above condition is to provide a designated contact to receive all neighbor concerns, and to ensure this contact has authority and responsibility to act on all concerns to resolve them.

For all of the reasons described above, and compliance with all development criteria and operating standards of the Cannabis Ordinance, the project was determined to be compatible with the surrounding neighborhood.

The ordinance requires a minimum of two inspections per year: 1) an annual inspection to document cultivation area and verify compliance with operating standards is performed by staff from the Agricultural Commissioner's office, and 2) an annual inspection to verify compliance with Use Permit Conditions of Approval is conducted by Permit Sonoma planning staff.

Applicant's Request to Eliminate Condition Requiring Two-Year Review

In response to public odor concerns, the BZA incorporated a new Condition of Approval No. 17 to require a two-year review of the outdoor cultivation operation, as described above. The applicant has requested the Board eliminate the two-year review because: 1) the permit is already term-limited to five years; 2) the time and expense required to conduct review and renewal hearings at two years and again at five years is substantial; and 3) more information will be available for decision-makers to evaluate at the end of five years, including site-specific operational data, information on the cannabis industry in general, and better understanding of odor-control technology.

Environmental Determination

The proposed project has been analyzed under the California Environmental Quality Act (CEQA) and the CEQA Guidelines, California Code of Regulations. Staff has determined that all potential project impacts can be mitigated to a less than significant level. Mitigation measures were included to address: Air Quality (construction emissions, odor control and monitoring); Biological Resources (pre-construction surveys); Cultural Resources (salvage and reuse of barn wood, interpretive display, archaeological monitor); and Noise (sound wall around HVAC unit, construction operation limitations). The draft Mitigated Negative Declaration was circulated through the State Clearinghouse for public and agency review and comments March 11, 2019 through April 11, 2019.

An amended Mitigated Negative Declaration was prepared to address comments from two responsible state agencies: the California Department of Food and Agriculture and the California Department of Fish and Wildlife. The California Department of Food and Agriculture runs the state CalCannabis licensing program and requested a number of mostly format changes to help them satisfy their CEQA obligations related to potential future issuance of a state license. The California Department of Fish and Wildlife comments were primarily concerned with expanding protections to species already addressed in the CEQA document. All requested mitigation measures are substitutions that are equivalent or more effective than previously proposed. Thus, these measures can be substituted pursuant to CEQA Guidelines Section 15074.1 and no recirculation is required. For details on changes, see Attachment 7. Staff Memo recommending changes to the Mitigated Negative Declaration and Conditions of Approval, April 11, 2019.

The Mitigated Negative Declaration was adopted by the Board of Zoning Adjustments on April 11, 2019, at which time the Board of Zoning Adjustments directed staff to substitute certain mitigation measures and make clarifying changes to the Mitigated Negative Declaration, as outlined in the Staff Memo.

Staff Recommendation

Staff recommends the Board deny the appeal and uphold the Board of Zoning Adjustment's decision to approve the request, subject to the attached Conditions of Approval.

Prior Board Actions:

None

FISCAL SUMMARY

N/A

Narrative Explanation of Fiscal Impacts:

N/A

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Draft Board of Supervisors Resolution

Exhibit A Draft Conditions of Approval of the Resolution and Mitigation Monitoring Program

- 1: Appeal submitted by Kevin Block for No Pot on Purvine, April 19, 2019
- 2: Site Plan
- 3: Grazing Lease
- 4: Board of Zoning Adjustments Minutes, April 11, 2019
- 5: Board of Zoning Adjustments Staff Report and Exhibits, April 11, 2019
- 6: Final BZA Conditions of Approval, April 11, 2019
- 7: Staff Memo recommending changes to the MND and Conditions of Approval, April 11, 2019
- 8: Mitigated Negative Declaration, March 11, 2019, Amended April 11, 2019
- 9A: MND Biotic Assessment.pdf
- 9B: MND Historic Resource Evaluation
- 9C: MND Hydrogeologic Assessment
- 9D: MND Trip Generation Analysis Assessment

Related Items "On File" with the Clerk of the Board:

N/A