



Legislation Text

File #: 2021-0733, **Version:** 1

To: Sonoma County 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): First

Title:

2:00 P.M. -UPC17-0094, Appeal of a Use Permit approval to allow the Loe Firehouse commercial cannabis dispensary at 15499 Arnold Drive in Glen Ellen.

Recommended Action:

Hold a public hearing and adopt a Resolution denying the appeal, adopting a Negative Declaration, and upholding the Board of Zoning Adjustment's decision to approve the commercial dispensary operation. (First District)

Executive Summary:

This report presents an appeal of a Board of Zoning Adjustment's decision to approve a Use Permit to allow a cannabis dispensary at 15499 Arnold Drive in Glen Ellen, APN 054-130-024. The Use Permit was approved unanimously (5-0-0 vote) on April 8, 2021. An appeal of the approval was filed by Paul Morrison, representing Protect our Sonoma Valley Family Neighborhoods, on April 19, 2021.

The project proposes a cannabis dispensary, including 1,891 square feet of on-site retail floor area and delivery service, in an existing commercial building on a 0.33-acre parcel zoned Limited Commercial in central Sonoma Valley.

The appeal cites disagreement with staff's and the Board of Zoning Adjustment's interpretation of County Code related to setbacks and parking requirements, and insufficient review of traffic impacts under the California Environmental Quality Act (CEQA) as the primary concerns. During the April 8, 2021 hearing, the BZA heard concerns from the public, including most of the appeal-cited concerns, and discussed physical separation and setbacks, traffic impacts, neighborhood compatibility, and frontage improvement Conditions of Approval at length.

A Negative Declaration was prepared for the project and circulated through the State Clearinghouse February 26, 2021 through March 30, 2021. After the close of the public hearing on April 8, 2021, the Board of Zoning Adjustments determined that project would not result in any significant environmental impacts requiring mitigation and adopted the Negative Declaration.

Discussion:

PROJECT DESCRIPTION

Loe Firehouse, Inc. proposes a cannabis dispensary operation in an existing 3,847-square-foot commercial building. The operation will include 1,891 square feet of on-site retail floor area and delivery service. Storefront dispensary services will be available during regular hours of operation 7:00 am to 7:00 pm Monday through Saturday; closed Sunday. The operator anticipates an average of 150 patrons per day will visit the dispensary. Delivery service trips would occur twice each day during off-peak operating hours (one in am and one in pm). The operation will have a maximum of five employees on-site per shift, including delivery drivers. Parking for the operation will be provided on-site in two separate lots- a customer lot accessed from Arnold Drive with 12 parking spaces, including one van accessible space, and an employee lot accessed from Madrone Road with 5 spaces, including one van accessible space. See Attachment 17. Site Plan for details.

Construction activities for the project will be minimal, consisting of interior tenant improvements to reconfigure the first floor for retail and security operations, and convert an existing second-floor residence to employee support space (office(s), break room, bathroom) and product storage space, as needed (Attachment 18. Floor Plans). No substantial changes will be made to the exterior of the building, besides minor signage, lighting, and accessibility improvements that may be required by building code. Parking lots will be reconfigured and spaces re-marked to accommodate all customer and employee parking. Existing landscaping will be maintained. No new landscaping is proposed.

The dispensary will implement a site security plan (held confidentially at Permit Sonoma). Security measures include professionally monitored video surveillance from both indoor and outdoor cameras, controlled access to the retail floor, locking doors and windows, security lighting, alarms, and locked product storage areas. Commercial deliveries of cannabis products and dispensary customer delivery service will use a separate access at the rear of the building, away from the public entrance. Cash will be limited at the location to the minimum needed for the daily operations, and will be kept in a secure location (e.g., locked drawer, safe, or similar storage cabinet with a locking mechanism). Delivery orders will be completed prior to delivery, so that delivery drivers will not carry cash or process transactions at the point of delivery.

Existing Facility

The project site is located at 15499 Arnold Drive, in an unincorporated, residential area of Sonoma County, approximately 1.75 miles south of the community of Glen Ellen and about 3 miles northwest of the City of Sonoma (Attachment 13. Vicinity Map). The 0.33-acre parcel is located in a small cluster of three commercially zoned parcels, and is developed with an existing 3,847-square-foot commercial building. The building was originally constructed as a fire station with a second-floor residence in 1985. The first floor was converted to office space in 2004. The residence has been maintained, although not always used as one. The most recent use of the building was commercial office space. The entire parcel is developed, including paved parking areas, a trash enclosure, and landscaping.

The project is located at the intersection of Arnold Drive and Madrone Road. Primary site access and all retail customer access is from Arnold Drive on the west side of the property. A secondary access for employees and deliveries is present on Madrone Road on the south side of the property (Attachment 17. Site Plan). No changes to current site access are proposed.

Potable water is provided to the existing commercial building by the Valley of the Moon Water District. The Water District has indicated they have capacity to continue to serve the parcel.

Sewer service is provided by the Sonoma County Water Agency - Sonoma Valley County Sanitation District.

The building is already serviced for electrical power and telecommunications through various providers.

General Plan Land Use and Zoning

The General Plan Land Use Designation on the parcel is Limited Commercial (LC).

Zoning on the parcel is Limited Commercial (LC), Scenic Resources - Arnold Drive Scenic Corridor (SR), Valley Oak Habitat (VOH).

Surrounding Land Use and Zoning

The surrounding area is largely residential, located in central Sonoma Valley between the community of Glen Ellen and the City of Sonoma. The two adjacent parcels are also Limited Commercial (LC): an art gallery and residence to the north and Rancho Market and Deli to the east. Surrounding parcels are zoned residential, consisting of High Density Residential (R3) apartments to the north and east, and Low Density Residential (R1) and Rural Residential (RR) single family dwellings to the south and west (Attachment 14. Aerial Map and Attachment 15. Land Use Map).

ISSUES RAISED IN THE APPEAL LETTER

The appeal letter is provided as Attachment 3. The issues are addressed in chronological order as much as practicable; some topics overlap.

1. Consistency with Sonoma County Code - Property Setbacks for Cannabis Dispensaries

The appellant contends that the Board of Zoning Adjustments (BZA) misinterpreted the code and relied on previous decisions, which were also made through misinterpretation of the code, in order to grant a setback reduction for the project. The appellant further states that public streets and intervening parcels should not be considered physical separation if those spaces are accessible to the public.

Staff Analysis

Code Section 26-88-256(f) sets the following property setbacks for cannabis dispensaries:

Property setbacks for cannabis dispensaries shall be measured in a straight line from the property line of the protected site to the closest property line of the parcel with the cannabis dispensary.

- 1) A cannabis dispensary shall not be established on any parcel containing a dwelling unit used as a residence, nor within one hundred feet (100') of a residential zoning district.*
- 2) A cannabis dispensary shall not be established within one thousand feet (1,000') of any other cannabis dispensary or a public park, nor within five hundred feet (500') from a smoke shop or similar facility.*
- 3) A cannabis dispensary shall not be established within one thousand feet (1,000') from a school providing education to K-12 grades, childcare center, or drug or alcohol treatment facility.*
- 4) Notwithstanding, the subsections (f)(1) and (2) may be waived by the review authority when the applicant can show that an actual physical separation exists between land uses or parcels such that no off-site impacts could occur.*

Code Section 26-88-256(f)(4) above allows the “review authority,” in this case, the BZA or the Board, to waive or reduce the 100-foot setback from a residential zoning district when that authority can determine that an actual physical separation exists between land uses or parcels such that no off-site impacts could occur. The code also states that physical separation is measured from the property boundary of the dispensary parcel to the property boundary of any nearby residential parcel. The fact that the space between parcel boundaries may be accessible to the public, such as a public roadway, does not negate the fact that the physical separation between parcel boundaries exists. However, the code does not provide specific guidance on what constitutes a physical separation such that no off-site impacts could occur for a dispensary. Therefore, a site-specific evaluation must be conducted, along with a review of previous decisions, for guidance on how the County has previously interpreted and implemented the provision.

Five of the six previous dispensary approvals (three approved by public hearing at the Board of Zoning Adjustments, one at the Board of Supervisors, one by hearing waiver) were granted a waiver of the 100-foot property setback from residential zoning by demonstrating that no off-site impacts were likely to occur due to a combination of an actual physical separation between land uses or parcels, and proposed visual screening measures, such as fences and landscaping. Intervening parcels between the project parcel and the nearest residentially-zoned parcel, public and private roadways, and orientation of the dispensary frontage have been found to support a determination that adequate physical separation existed in the context of the dispensary applications at issue. Refer to Attachment 24. Summary of Approved Residential Setback Waivers for a summary table of previous setback waiver determinations.

The proposed dispensary has elements that are consistent with previous dispensaries that have been granted a setback waiver of the 100-foot residential zoning district setback. The following facts support a finding that an actual physical separation exists such that no offsite impacts to the nearby residences would occur:

- a) A physical separation exists on all four project parcel boundaries (the project parcel does not directly abut any residentially-zoned parcel; Attachment 19. Residential Setbacks map):
 - i. North - 116 feet. Approximately 116 feet of separation exists between the project parcel and the nearest residential district to the north (R3). Separation consists of an intervening Limited Commercial parcel containing Arlene’s Art Gallery & Studio.
 - ii. West - 65 feet. Approximately 65 feet of separation exists between the project parcel and the nearest residential district to the west (RR). Separation consists of Arnold Drive.
 - iii. South - 75 feet. Approximately 75 feet of separation exists between the project parcel and the nearest residential district to the south (R1). Separation consists of Madrone Road.
 - iv. East - 58 feet. Approximately 58 feet of separation exists between the project parcel and the nearest residential district to the east (R3). Separation consists of an intervening commercial property containing Rancho Market & Deli.
- b) Public roadways within County-owned right-of-way have been used as support for determining adequate physical separation between parcels in four of the previous dispensary approvals. In one case (Sonoma Medicinal Herbs), there was no separation between abutting parcels, but a privately-owned driveway serving a mobile home park supported a finding that a physical separation between land uses existed.
- c) Public roadways- Arnold Drive and Madrone Road- separate the proposed parcel from residentially

zoned parcels on two sides. Both Arnold Drive and Madrone Road are designated Major Collector roadways by the State of California (Caltrans) and the Sonoma County Department of Transportation and Public Works. Collectors generally serve intra-county travel (i.e., through-traffic) by gathering traffic from Local Roads (which primarily serve local areas and are often designed to discourage through-traffic) and funneling it to the Arterial network. Major Collectors typically carry a high level of traffic (compared to Minor Collectors) and generally have a physical roadway configuration to support that volume of traffic (e.g., wider travel lanes and shoulders, dedicated turn lanes, traffic control features, transit routes). Major Collectors are eligible to receive federal funding for maintenance, whereas Minor Collectors and Local Roads are not. Because Major Collectors are generally wider roadways primarily functioning to carry through-traffic between separate communities, they can provide a higher level of physical separation than local streets.

- d) Residential zoning occurs across Arnold Drive to the west. However, these parcels are large (5 to 45 acres) and single-family development is oriented away from and set back from Arnold Drive; most are accessed from Morningside Drive. The primary residential area occurs to the east and south along the Madrone Road corridor, consisting of multi-family apartments, and single-family dwellings on smaller (less than 0.25 acre) parcels. The dispensary business frontage, customer entrance, and customer parking lot face Arnold Drive (on the west) and the commercial property to the north. No public access would occur from the east or south sides of the building, which face the Madrone Road residential area. The second access to the rear (south) of the building would be used by employees and deliveries only; visible activity in the south lot would be minor, consisting of up to five employees arriving and departing each day, two cannabis delivery trips departing and returning each day, and periodic deliveries from commercial vendors.
- e) High density multi-family apartments occur nearby to the east. However, the development is accessed through driveways off Madrone Road that are on the opposite side of the west-facing customer entrance of the proposed dispensary and activity in the customer lot would be only minimally visible to residents due to existing fences, vegetation, and the orientation of roads and buildings. Similarly, a residential setback waiver was approved for Sonoma Medicinal Herbs, where a high-density mobile home park was located adjacent to the rear of the building, on the opposite side of the customer entrance.
- f) Single-family development occurs to the south. The nearest residence directly across Madrone Road from the proposed dispensary is oriented towards Glenwood Drive and is not facing the dispensary. Visual screening for this residence is provided by existing vegetation and a solid wood fence. Similarly, a residential setback waiver was approved for Sonoma Medicinal Herbs, where a commercial loading dock and employee parking area were located at the rear of the building adjacent to residential uses. Condition of Approval 19 requires continued prohibition of public access and customer parking at the rear of the building on Madrone Road.

2. Consistency with Sonoma County Code - Property Setbacks for Cannabis Cultivation

The appellant states that Code Section 26-88-254(f)(6)&(8), which provides a standard for reducing the 1,000-foot setback between a cannabis cultivation site and a public park, should also be applied to dispensaries.

The code sections state (in relevant part):

This park setback may be reduced with a use permit when it is determined that an actual physical equivalent separation exists due to topography, vegetation or slope, that no offsite impacts will occur, and that the cannabis operation is not accessible or visible from the park.

Staff Analysis

Dispensaries are governed by Code Sec. 26-88-256. The provision authorizing residential setback reductions for dispensaries was added to the code with the adoption of the original dispensary ordinance in 2007 (Ord. No. 5175). Cannabis cultivation, on the other hand, is governed by Code Sec. 26-88-254. The provision allowing park setback reductions for outdoor and mixed light cultivation (Ord. No. 6245) was added in 2018. Ord. No. 6245 made minor modifications to the cannabis dispensary ordinance, and even to the provision on setback reductions, but did not add the language related to topography, vegetation, and slope. This evidences an intent for that requirement to apply to cultivation park setback reductions, but not to dispensary setback reductions. This makes sense in application as cultivation setbacks are applied to rural parcels in Agricultural and Resource zoning where parcels are larger and development is less dense, whereas dispensaries are allowed only in commercial zoning, with typically much smaller parcel sizes but more intense urban or semi-urban development. The above code section is not applicable to the proposed dispensary.

3. Consistency with Sonoma County Code - Number of Parking Spaces

The appellant contends that the number of proposed parking spaces is not consistent with the code requirement for dispensaries. Staff has calculated the number of parking spaces used for customers based on the total retail floor area, whereas the appellant argues that it must be based on the total floor area of the building, including areas used exclusively for storage and employees.

Staff Analysis

Code Section 26-88-010(c) sets parking requirements for dispensaries based on customer floor area and employee number:

2 spaces, including at least 1 van-accessible space; plus 1 additional space for every 200 square feet of gross floor area, plus 1 additional space for each employee on maximum shift; but in no case less than 5 off-street parking spaces

Determination of parking needs for a dispensary requires two separate calculations- one for customers and one for employees. Customer spaces are calculated as a percentage of the dispensary gross floor area, which includes the retail floor area, security check-in, consultation rooms, public-use restrooms, and any other space open to customers or operated as part of the customer interaction. Employee support spaces, like offices, breakrooms, and bathrooms closed to the public, are not included in the dispensary floor area for the parking determination because the regulations contain a specific, separate employee requirement based on the actual number of employees present on-site per shift. One space is required per employee; employee support spaces do not generate additional employee parking need over the one space per employee already required. All square footage of the building has been accounted for as either open to the public and part of the gross retail floor area or as employee support space accessible to employees only. This methodology is consistent with how the parking provision has been implemented at other approved dispensaries. The proposed dispensary will occupy the entire building; no additional land uses would be present on the parcel without designated parking.

The applicant has stated a maximum of 5 employees per shift will be needed to run the operation. Therefore, the proposed dispensary requires 17 spaces to meet code: 2 spaces (including 1 van-accessible space) + 10 spaces for 1,891 square feet of retail floor area for customers + 5 spaces for a maximum of 5 employees per shift. The project has 17 on-site parking spaces: 12 in the lot off Arnold Drive for customers, including 1 van-accessible space, and 5 designated for employees and commercial deliveries at the rear of the building accessed off Madrone Road. To ensure adequate parking is maintained for the operation, Condition of Approval 12 limits the dispensary floor to 1,891 square feet, while Condition of Approval 19 requires that 17 parking spaces be maintained, and limits parking of employee vehicles, including delivery vehicles, to a maximum of 5 to preserve all 12 customer parking spaces for customers.

4. Consistency with Sonoma County Code - Configuration and Size of Parking Spaces

The appellant contends that the configuration of the proposed parking spaces is not consistent with code in that one of the spaces is tandem and does not provide independent access. The appellant also contends that the size of the proposed parking spaces is not consistent with code in that the spaces shown on the applicant's Site Plan show typical sizing of 9 feet by 18 feet.

Staff Analysis

Code Section 26-04-020(P)(1) defines parking spaces as:

Usable off-street area with independent access, not included within established front-yard setback, at least nine feet (9') by twenty feet (20') for diagonal or perpendicular vehicle parking, or at least eight feet (8') by twenty-two feet (22') for parallel vehicle parking.

Space 17 in the employee/vendor lot is tandem, intended to be shared by the delivery driver and commercial vendors. The delivery employee would only be parking at the dispensary for short periods to load orders before heading out to make deliveries to customers. Delivery service trips would occur twice each day during off-peak operating hours (one in am and one in pm), so that the delivery vehicle would be parked on-site for only a few short periods per day to pick up delivery orders. The delivery space would be shared with third party licensed cannabis transporters and commercial deliveries of non-cannabis products, which also would only be parking for short periods to unload products through the secured back door of the building. The use of tandem parking is common in permitted special events run by a parking service; the key consideration to allowing such use is that the tandem parking is under control of the business operator and not available for uncontrolled use by the general public. Because the use of employee and vendor spaces is under control of the operator and the space used for deliveries would only be occupied for short periods, staff determined that these tandem spaces met the requirement for independent access because the operator can always ensure that both spaces can be entered and exited.

While staff and the Board of Zoning Adjustments determined that the project meets parking code requirements, and therefore, does not require a parking reduction, it can also be found that a reduction is appropriate here. Parking requirements set under Code Section 26-88-010(c) above can be reduced under Code Section 26-88-010(i), which states:

The above parking standards may be reduced when it has been satisfactorily demonstrated to the

planning director or applicable decision-making body that fewer spaces will adequately serve the specific use or that the applicant has encouraged transit opportunities . . .

For the reasons laid out above, the proposed tandem space in the employee lot was determined to be adequate to serve the short-term delivery parking needs of the operation.

Code Section 26-82-030(q) provides off-street parking design standards as 9 feet by 20 feet for a standard parking space and 8 feet by 16 feet for a compact space. The project Site Plan (Attachment 17. Site Plan) shows typical parking space dimensions, but is not the final parking lot layout. The final parking lot configuration will be determined during the design review process, as required by Condition of Approval 24. Note that Condition of Approval 19 requires that 17 parking spaces be provided, so final configuration will be required to provide that number.

5. Hearing Notice

The appellant contends that the public notice did not provide enough information and/or provided misleading information to the public in that the size of the proposed retail floor area was provided but not the size of the entire building.

Staff Analysis

California Government Code Section 65094 states:

As used in this title, “notice of a public hearing” means a notice that includes the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.

A public notice is required to provide “a general explanation of the matter to be considered.” When drafting a public notice project description, staff provide a brief summary of the main project components, information on the location of the project, and a contact to request additional information about the proposal. The following project description was provided in the Public Notice:

Cannabis dispensary with 1,891 square feet of retail floor area and delivery service operating 7:00 am to 7:00 pm Monday through Saturday (closed Sunday) in an existing commercial building on a 0.33-acre parcel located at 15499 Arnold Drive, Glen Ellen, APN 054-130-024. Supervisorial District 1.

The description includes the primary project elements- a cannabis dispensary with both a retail storefront and delivery service, and a few details- hours of operation, reuse of an existing building, and the size of the retail floor area. These details were identified as important to help convey information to members of the public who may be concerned about noise or traffic associated with the proposed operation. Hours of operation were included to establish the dispensary would not be open late night or on Sundays. Operation in an existing building was included to indicate the project would not involve new construction. The retail floor area was provided as an indication of the likely scale of customer patronage. The total size of the building was not provided in the notice as the building is existing, and the employee support spaces associated with the operation were not anticipated to be of significant public interest. Further, information regarding the full size

of the building was included in the Board of Zoning Adjustments staff report, which is made publicly available 7 days before the hearing.

The BZA Hearing Notice is provided as Attachment 4.

6. Traffic Study - Original Analysis More Than Two Years Old

The appellant contends that the project traffic study is invalid because the original analysis was conducted in 2018.

Staff Analysis

The County's *Guidelines for Traffic Impact Studies* (May 2016) state:

For projects that have languished and/or are being resubmitted, all previous traffic studies relating to the development that are more than two (2) years old will have to be updated

The original Traffic Impact Study for the project was submitted July 24, 2018, and was based on data collected in 2017 and 2018. Because the study was more than two years old, staff requested it be updated in 2020 to reflect any new development, changes in roadways or traffic patterns, or changes in the regulatory environment. An Addendum was submitted January 4, 2021, which included an analysis of Vehicle Miles Traveled (VMT), as is now required under the California Environmental Quality Act.

The traffic consultant also conducted a reevaluation of all previous assumptions, and determined that, with the exception of VMT, all previous findings remained valid and did not require updating. Staff discussions with the traffic consultant indicated that taking additional traffic counts in 2020 would have underrepresented typical traffic due to Shelter-In-Place/ COVID-related changes in travel; therefore, no additional data was collected to re-certify the results.

Because the January Addendum did not include a clear re-certification statement or mention of the pandemic-related traffic pattern changes, a revised Addendum was submitted May 19, 2021, which includes these items (Attachment 5). Both Addendums were submitted to Sonoma County Department of Transportation and Public Works for review and approval, and both were accepted as meeting the County's Guidelines for an updated traffic study.

7. Traffic Study - Future Projects

The appellant contends that the project traffic study is invalid because it does not include analysis of the Sonoma Developmental Center as a future project.

Staff Analysis

The County's *Guidelines for Traffic Impact Studies* (May 2016) includes direction for future land uses in the Traffic Impact Analysis Methods section, as follows:

4. Future Land Use: *Projection of future land uses and development should be made in consultation with planning staff at PRMD. A minimum 10-year growth projection is required for an*

interim evaluation (if necessary) and a long-term growth projection is required for cumulative impact analysis consistent with the General Plan. Long-term projected traffic volumes shall be developed using either the most recent version of the County wide transportation forecasting model from SCTA, or a list of projects approved but not yet constructed, projects that are pending approvals, as well as general projections of growth within or affecting the study area.

To determine projected future traffic volumes, the Guidelines recommend using a combination of forecasting methods: computer modeling based on the Sonoma County Transportation Authority (SCTA) traffic model, trip generation calculations for approved or pending projects in the area, and general growth projections for the area.

Regarding the second method - approved or pending projects - a project must be almost fully developed (e.g., number of residences, square footage of various commercial uses) in order to be included in a future traffic projection, because trip generation cannot be estimated without knowing what the land use will be. That is why only projects which are already approved or very near approval are included in the methodology.

The Sonoma Developmental Center Specific Plan is in a very early stage of development. At this time, there are no draft proposals or plans for what the future project would be, and therefore, traffic analysis that incorporated measurements or projections of future development on the Sonoma Developmental Center site would not be feasible. The traffic study and addendum were approved by Sonoma County Transportation and Public Works as meeting the Guidelines.

8. Traffic Study - Parking

The appellant contends that the project traffic study is invalid because the project does not propose adequate parking.

Staff Analysis

As described above under Issues 3 and 4 above, the project does propose adequate parking, and will be required to provide it by Conditions of Approval.

9. Traffic Study - Other Dispensaries in Sonoma Valley

The appellant contends that the project traffic study is invalid because it does not include traffic data from future dispensaries that may be approved in Sonoma Valley.

Staff Analysis

There are currently no operating dispensaries in Sonoma Valley or the City of Sonoma.

A Use Permit application for a new dispensary at 19315 Sonoma Highway was submitted to the City of Sonoma by Sparc on March 4, 2021. The project was approved at the Sonoma Planning Commission on May 13, 2021.

Two additional dispensary applications within Sonoma Valley are in process at Permit Sonoma: one in Kenwood at 8910 Highway 12 (UPC19-0006) and one at 15 Fremont Drive in lower Sonoma Valley (UPC18-0023). Neither of these applications have been scheduled for a decision.

As described above under Issue 7, it is not feasible to do traffic analyses on a project that has not been approved or developed to a point that it is at least scheduled for approval. If one or more of these proposed dispensaries were to be approved and begin operation, it would not be likely to negatively impact the project traffic study VMT analysis. The proposed Loe Firehouse dispensary would remain a local-serving retail use that would likely reduce VMT by diverting customers that currently drive further to access a dispensary.

10. Sonoma Valley Citizens Advisory Commission

The appellant urges that the Board of Supervisors deny the project because it was not recommended for approval by the Sonoma Valley Citizens Advisory Commission.

Staff Analysis

The project was presented by the applicant to the Advisory Commission at their May 23, 2018 meeting. This meeting date was the first to include cannabis projects, and many questions from Commissioners and the public were related to understanding the cannabis ordinance and permit processing requirements. The traffic analysis had not yet been completed, so discussion related to traffic impacts was not fully informed. In addition to potential traffic impacts, the foremost topics of discussion included: residential separation, security, neighborhood compatibility, and medical vs. adult use (at that time the County ordinance only allowed medical use). Ultimately, the project was not recommended for approval when a motion to recommend approval failed to pass by a 5 (No) : 4 (Yes) vote. Meeting minutes are provided in Attachment 25. Sonoma Valley Citizens Advisory Commission Meeting Minutes, 5/23/2018.

11. Public Outreach by the Applicant

The appellant contends that the applicant has not conducted adequate public outreach, and that stating they have done so is false testimony.

Staff Analysis

In response to the appellant's assertion, the applicant has provided a summary of their public outreach efforts in Attachment 31. Applicant Summary of Public Outreach.

APPLICANT'S REQUEST TO ELIMINATE CONDITIONS OF APPROVAL REQUIRING PEDESTRIAN FRONTAGE IMPROVEMENTS

At the BZA hearing, the applicant requested to eliminate most of the Conditions of Approval imposed by Sonoma County Transportation and Public Works (Conditions of Approval 41-54), stating the County had no nexus to require them, that construction costs would be disproportionately high relative to the project impact, and that time to design and construct various improvements would delay project operation.

The BZA discussed the issue at length, but ultimately did not remove any conditions. BZA meeting minutes are provided in Attachment 7.

The applicant submitted a formal request to eliminate three Conditions of Approval on June 17, 2021 (Attachment 6). The subject conditions are all related to pedestrian frontage improvements and are copied

below (note the conditions are mis-numbered in the applicant's request and are 44, 45, and 46 in the final BZA Conditions of Approval, Attachment 9):

44. Prior to occupancy or issuance of a Use Permit Certificate to operate, the applicant/operator shall construct sidewalk warps at all driveways accessing the property to meet ADA requirements as necessary, along the property's entire frontage on both Arnold Drive and Madrone Road.
45. Prior to occupancy or issuance of a Use Permit Certificate to operate, existing curb ramps along the project frontage shall be upgraded to be ADA compliant pedestrian ramps. Refer to Caltrans Standard Plan RSP A88A and A88B, and Sonoma County Department of Transportation and Public Works Construction Standards 224A and 224B for details.
46. Prior to occupancy or issuance of a Use Permit Certificate to operate, the applicant/operator shall provide a report prepared by a civil engineer containing sufficient information to demonstrate that the existing public facilities along the property's public street frontage meet the current ADA requirements. The report shall be submitted to the Land Development section at Permit Sonoma (PRMD; located at the Survey Counter). The report shall clearly identify the project by planning file number and assessor's parcel number. The Applicant shall obtain an encroachment permit and correct all identified deficiencies (such as the sidewalk warps and pedestrian ramp replacement noted in the previous conditions) prior to clearance of these conditions.

When the County imposes conditions on a project they must meet the requirements of nexus and proportionality. Nexus means that the condition is sufficiently related to a legitimate regulatory interest. To satisfy proportionality, the improvements gained by the condition must be roughly proportionate to the projected impacts of the development.

Staff recommend that the above conditions be maintained.

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 the project is subject to CEQA. Based on application materials provided by the applicant and technical specialists, an Initial Study was completed. As a result of the Initial Study, it was determined that the project would not result in any significant environmental impacts requiring mitigation; therefore, a Negative Declaration was prepared for the project and circulated through the State Clearinghouse February 26, 2021 through March 30, 2021. After the close of the public hearing on April 8, 2021, the Board of Zoning Adjustments determined that project would not result in any significant environmental impacts requiring mitigation and adopted the Negative Declaration.

The appeal challenged the validity of the traffic analysis under CEQA in that the original study is more than two years old, and that analysis did not include future land uses at the Sonoma Developmental Center, in conflict with the County's Guidelines for Traffic Impact Studies. As discussed above, the traffic study and addendum were approved by Sonoma County Transportation and Public Works as meeting the Guidelines.

STAFF RECOMMENDATION

Staff recommends the Board deny the appeal, adopt the Negative Declaration, 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

Narrative Explanation of Fiscal Impacts:

N/A

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

- Attachment 1: Draft Board of Supervisors Resolution
- Attachment 2: Exhibit A Draft Conditions of Approval of the Resolution
- Attachment 3: Appeal submitted by Paul Morrison for Protect our Sonoma Valley Family Neighborhoods, 8/19/2021
- Attachment 4: BZA Hearing Notice, 3/26/2021
- Attachment 5: Traffic Impact Study Addendum, 5/19/2021
- Attachment 6: Applicant request to modify Conditions of Approval, 6/17/2021
- Attachment 7: Board of Zoning Adjustments Minutes, 4/8/2021
- Attachment 8: Final BZA Resolution, 4/8/2021
- Attachment 9: Final BZA Conditions of Approval, 4/8/2021
- Attachment 10: Board of Zoning Adjustments Staff Report, 4/8/2021
- Attachment 11: Draft BZA Resolution
- Attachment 12: Draft BZA Conditions of Approval
- Attachment 13: Vicinity Map
- Attachment 14: Aerial Map
- Attachment 15: Land Use Map
- Attachment 16: Zoning Map
- Attachment 17: Site Plan
- Attachment 18: Floor Plans
- Attachment 19: Residential Setbacks
- Attachment 20: Park Setback
- Attachment 21: Loe Firehouse Proposal Statement, 1/18/2021
- Attachment 22: Traffic Impact Study, 7/24/2018
- Attachment 23: Traffic Impact Study Addendum, 1/4/2021
- Attachment 24: Summary of Approved Residential Setback Waivers
- Attachment 25: Sonoma Valley Citizens Advisory Commission Meeting Minutes, 5/23/2018
- Attachment 26: Final Negative Declaration, 2/26/2021
- Attachment 27: Public Comments received prior to 2/26/2021
- Attachment 28: Public Comments received 2/27/2021 through 3/23/2021
- Attachment 29: Public Comments received 3/24/2021 through 4/6/2021

Attachment 30: Public Comments received 4/7/2021 through 8/2/2021

Attachment 31: Applicant Summary of Public Outreach, 7/2/2021

Related Items “On File” with the Clerk of the Board:

N/A