



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

Coast Guard City, USA

Planning and Community Development Department

Date: May 5, 2016

To: Planning Commission

From: Michael Scarcelli, Senior Planner

Re: CU 16-16 Marijuana Retail at 1321 Sawmill Creek Road, Unit J

GENERAL INFORMATION

Applicant: Anna Michelle Cleaver

Property Address: 1321 Sawmill Creek Road, Unit J

Property Owner: Eagle Bay Inn, LLC

Legal Description: U.S. Survey 2729

Parcel ID Number: 30450000

Size of Existing Lot: 69,300 sq. ft.

Zoning: General Commercial Mobile Home (C-2)

Existing Land Use: Commercial

Utilities: Full city services

Access: Off of SMC

Surrounding Land Use: Residential, Commercial, & Industrial

ATTACHMENTS

Attachment A: Application

Attachment B: Vicinity Map

Attachment C: Aerial Vicinity Map

Attachment D: Pictures

Attachment E: Zoning Map

Attachment F: Subdivision Plat

Attachment G: Site Plan

Attachment H: Floor Plan

Attachment I: Narrative

Attachment J: AMCO Application

Attachment K: Emails and other Supporting Documents

MEETING FLOW

- Report from Staff
- Applicant comes forward
- Applicant identifies him/herself – provides comments
- Commissioners ask applicant questions
- Staff asks applicant any questions
- Floor opened up for Public Comment
- Applicant has opportunity to clarify or provide additional information
- Comment period closed - brought back to the board
- Findings
- Motion of Recommendation

Attachment L: Buffer Map – 500 feet
Attachment M: Mailing List – 300 feet

BACKGROUND/PROJECT DESCRIPTION

The proposal is for a marijuana retail facility¹ in a General Commercial Mobile Home zoning district (C-2) located at 1321 Sawmill Creek Road, Unit J. Therefore, the proposed use is subject to receiving a conditional use permit to be able to operate subject to section 22.24.026.

The proposed retail operation is located on ground level and occupies unit J, which takes about 1,250 gross square feet. It provides a restricted public entrance, a retail floor, and restricted access for support area.

ANALYSIS

1. CRITERIA TO BE USED IN DETERMINING THE IMPACT OF CONDITIONAL USES.²

a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses:

First, our Department does not have traffic engineering software to calculate traffic impacts, nor does it have the equipment to conduct or own objective traffic studies. However, I was able to glean information from other objective traffic studies. Using a study from Boulder, Colorado, marijuana retail was studied with actual traffic and parking observations and also compared and contrasted to similar businesses to calculate a range of traffic and parking impacts. Using observation and modeling, the average trips to a specific retail location per day ranged from 100 to 321; during the highest am hour, the range was .4 to 14.33, and in the highest pm hour the range was 14 to 48. Note: there was less of a correlation between retail size and traffic impacts, instead that seemed to be determined more by market variables (such as supply, demand, density of similar uses in area).

So what does this mean? It means that these uses will produce similar parking and traffic demand as any other retail use would see in a given market. Weed Dudes would need to provide 4.16 parking spaces for its gross floor area per code. At a moderately high level of sales and trips per hour, the spaces should cover most hours of operation. Some hours of highest demand may need additional spaces to provide for employees and clientele. CUPs can address parking impacts by creating specific additional conditions to address parking, such as the condition recommending a parking plan with striped parking stalls to be completed and submitted (this is currently a code requirement anyway). 7 spaces should be sufficient.

b. Amount of noise to be generated and its impacts on surrounding land use:

There is no objective analysis regarding noise. Subjectively, retail use would not appear to create any noise impacts to a General Commercial Area any more so than other commercial uses. In reviewing other planning analysis of such marijuana retail uses, I found no concerns about noise impacts in commercial zones.

c. Odors to be generated by the use and their impacts: Odors are a concern.

¹ § 22.08.587 G

² § 22.24.010.E

There is difficulty ascertaining the quantitative, objective impact of marijuana odor. Subjectively, some may like the odor – whether as an odor alone or compared to other noxious odors that may be found in commercial and industrial areas. State regulations identify under section 3 AAC 306.420 (F) Odor Control under the operating plan that each applicant must submit to the state Alcohol and Marijuana Control Office (AMCO). In addition, Section 3 AAC 306.430 (C)(2) states, “Does not emit an odor that is detectable by the public from outside the marijuana **cultivation** facility **except as allowed by a local government conditional use permit process.**”[Staff has highlighted for emphasis].

First, staff recognizes this code section applies to cultivation and that this is retail. However, whether grown or smoked or opened or packaged, Marijuana can produce an aroma. Therefore, odor is a concern, and it appears prudent to condition a moderate level of odor control, but recognize absolute elimination may not be feasible, practical, or necessary depending upon surrounding land use.

The applicant has provided that they do plan on providing some form of odor control. However, details of that odor control plan are not provided. Staff has provided a suggested condition to mitigate this potential impact.

d. Hours of operation: Unknown. Applicant shall include these. Note: General Commercial zones anticipate a range of commercial uses that tend to operate into evening hours (e.g. restaurant, hotel, theatre, etc). Reasonable hours that are in line with the theatre would not result in adverse impacts to the surrounding land uses.

e. Location along a major or collector street: Located along a state highway, Sawmill Creek Road, which is adequate for the proposed use.

f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario: Proposed use is in an existing building. The use itself will not create or alter any access.

g. Effects on vehicular and pedestrian safety: None anticipated or identified.

h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site: Part of the operating plan will include emergency access. Due to operating plan and regulations, emergency access may be better than average use. Positive impact only.

i. Logic of the internal traffic layout: Property has proper layout; however, there is concern about parking. Staff has done a parking analysis based on all uses. No current striping exists and that is in violation of code. In addition, to best utilize existing parking space, parking should be striped to encourage efficient spacing of vehicles. If 107 spaces are provided in the front, rear, and side for the entire plaza, and 7 are reserved for Weed Dudes, staff feels that will be adequate.³

j. Effects of signage on nearby uses: None anticipated.

k. Presence of existing or proposed buffers on the site or immediately adjacent the site: Existing lot orientation is proper. In terms of state buffer, there is residential use on site and adjacent vicinity that could be impacted by odor or other impacts of marijuana retail use.

³ Staff applied retail, office, storage, hotel, theatre, and mfg. use rates to existing units A through P, applying staff generated gross square footage of an average of 25 feet by 50 feet for each unit. All units were accounted for. Storage was applied for upstairs as a default due to unknown use. Regardless, this is a fair parking analysis and meets in the middle (compromise) and property can support 107 spaces (and some).

1. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan: There are many goals, policies, and objectives that this proposal could fall under, these include but are not limited to: 2.1.2 economic growth, 2.1.3 foster quality family life (condition to protect these), 2.1.10 diverse and vital local job base, 2.1.13 diversified industry and utilizing Sitka's resources for best return on investment (renewable electricity), 2.2.1 economic base, 2.2.3 produce high quality goods, 2.2.5 protect health and welfare of community (through conditions), 2.2.10 respect social and community values (70% support recreational marijuana), 2.3.6 focus on waste water and watershed protection (through conditions and operating plan), 2.4.1 orderly use, 2.4.4 resolve conflicts of use through public process, and 2.6.2 commercial development without substantial negative impacts (through conditions and regulations). Overall, the conditional approval with appropriate conditions and default state regulations appears to offer the best economic development by providing jobs, tax revenue, utilizations of electricity that has extra supply, comports with existing community values, and creates harmony of use for the area.

Some of the positive impacts include increasing jobs directly and indirectly through on-site employees, contractors for building and business design, sale tax revenue, tourism incentives, and sale of electricity. Potential negative impacts are adequately mitigated through stringent state regulations incorporated into the municipal conditional use permit via security protocols, tracking system, diversion protocols, camera and security features, odor control, other means.

m. Other criteria that surface through public comments or planning commission review

1. Any impact or criteria that surfaces through public comment, planning staff review, or planning commission review.⁴

Safety: Building and occupational safety will be reviewed by the Building Department and Fire Marshal. In addition, default conditions address safety concerns.

1. All licensed facilities shall comply with all life and safety regulations as promulgated by the municipal Building Official.

2. All licensed manufacturing and cultivation uses shall provide a fire safety plan, material handling plan, and comply with all fire safety regulations that satisfies the Fire Marshal or their designee and the Building Official.

In addition, all public, health and safety has been adequately addressed with the operating plan and proposed conditions regarding parking compliance and odor control. Emergency access, security, and diversion programs⁵ have all addressed any other potential safety concerns.

Parking: Per section 22.20.100, the applicant shall provide parking in compliance with code. The code requires 1 space per 300 gross square feet of floor space. Staff assumes the retail and storage components of the proposal would require 5 spaces. Due to certain unknowns and potential for higher demand that may result in negative impacts. Staff believes requiring 7 parking spaces and an overall parking plan, and the striping⁶ of

⁴ §22.24.026(D)(2)

⁵ Applicant has provided and will be required by state and municipal condition of approve to provide a tracking system, handler's education, and other mitigation measures to avoid illegal diversion of product, safe handling, and security.

⁶ Striping where feasible, i.e. on concrete pads and not for gravel area.

107 on-site parking spaces that comply with code for the entire plaza would be sufficient and fair and mitigate any potential adverse impacts.

Marijuana 500 Foot Buffers

The state requires a 500 foot buffer from sensitive uses that include educational facilities, recreational centers, youth centers, churches, or correctional facilities. This is measured in different ways. Educational, recreation center, and youth center type uses are measured from the public entrance of the marijuana establishment to the outer boundary of the sensitive use by the shortest pedestrian route (determined by State AMCO Board); or 2) from the public entrance of the marijuana establishment to the main public entrance of the religious or correctional facility measured by the shortest pedestrian route (determined by State AMCO Board). There are no state regulated sensitive uses that staff is aware of per site visit. However, this is conditioned to comply with state buffers and burden is upon applicant.

C. Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions: ⁷

1. The city may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:
 - a. Be detrimental to the public health, safety, and general welfare;
 - b. Adversely affect the established character of the surrounding vicinity; nor
 - c. Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.
2. The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives, and policies of the comprehensive plan and any implementing regulation.
3. All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.
4. The proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety, and welfare of the community from such hazard.
5. The conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.
6. Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in subsection B of this section.

The city may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The city may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The general approval criteria are as follows:

⁷ § 22.30.160.C – Required Findings for Conditional Use Permits

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

Specific Guidance from 22.24 on Findings for Marijuana Uses⁸

Findings of Fact: Upon review and considerations of the required criteria, the Planning Commission shall determine whether the proposed use(s) at the proposed project location are found to not present a negative impact to the public's health, safety, and welfare.

- 1.If such a finding can be made, then the proposed use shall be approved with standard regulations, dimensions, and setbacks.
- 2.In the alternative, where the Planning Commission finds negative impacts are present, the Planning Commission shall only approve conditional use permits where the negative impacts can be adequately mitigated by conditions of approval that preserve the public's health, safety, and welfare. ***These conditions of approval shall be case by case specific and in addition to the standard regulations.***
- 3.If negative impacts to the public's health, safety, and welfare cannot be mitigated through conditions of approval than the Planning Commission shall so find and deny the proposed conditional use permit.

RECOMMENDATION

It is recommended that the Planning Commission adopt the Senior Planner's analysis and required findings as found in the staff report.

⁸ §22.24.026(E)

Recommended Motions: (two motions - read and voted upon separately)

1) I move to find (two options):

- a. That there are no negative impacts present that have not been adequately mitigated by the attached conditions of approval (supports approval)
- b. That there are negative impacts, such as _____, that cannot be adequately mitigated and therefore poses a substantial negative impacts to the public's health, safety, and welfare. (supports denial)

2) I move to approve the conditional use permit request filed by Anna Michelle Cleaver for marijuana retail at 1321 Sawmill Creek Road, Unit J, in the C-2 General Commercial and mobile home zone subject to the attached 10 conditions of approval. The property is also known as U.S. Survey 2729. The owner of record is Eagle Bay, LLC.

Required Standard Conditions of Approval:⁹

1. Owners, operators, and staff of conditional uses shall comply with all state and municipal licensing regulations.
2. All licensed facilities shall comply with all life and safety regulations as promulgated by the municipal Building Official.
3. All licensed manufacturing and cultivation uses shall provide a fire safety plan, material handling plan, and comply with all fire safety regulations that satisfies the Fire Marshal or their designee and the Building Official.
4. All licensed facilities and/or uses shall provide screening from public view of any marijuana related commercial, retail, cultivation, or manufacturing use.
5. All licensed facilities and/or uses shall establish an active sales account and business registration with the Municipality and shall comply with all standard & required accounting practices.
6. It shall be a standard regulation that all conditional uses comply with all applicable state regulations and licensing laws or it shall be deemed to abandon and extinguish and associated municipal license or conditional use permit.
7. All approved conditional use permits shall comply with all Sitka General Code or shall be deemed to abandon and extinguish any associated municipal license or conditional use permit

Additional Recommended Conditions

8. Applicant shall provide a Parking Plan that complies with Section 22.20.100 for all uses present and proposed at the current property including striped parking spaces where feasible (i.e. concrete or asphalt areas).
9. Odor Control shall include reasonable best means (such as high quality Commercial HEPA filter) to limit and mitigate odor impacts to surrounding uses. Should a meritorious odor complaint be received, the Planning Commission may require additional odor control measures to mitigate any actual negative impacts.
10. The proposed cultivation site shall not be located within 500 feet of any school grounds, recreation or youth center, religious service building, or correctional facility that was legally established prior to approval of this conditional use permit as intended by licensing restriction and regulations of the state in 3 AAC Chapter 306.

⁹ §22.24.026(C)