



PC 12-9-21

Planning Department <planning@edcgov.us>

5

9 pages

Comments on Item #5 and Open Forum

1 message

Sue Taylor <sue-taylor@comcast.net>

Mon, Nov 29, 2021 at 9:56 AM

To: "Clerici, John" <john.clerici@edcgov.us>, "Nevis, Andy" <andy.nevis@edcgov.us>, "Ross, Amanda" <aross@edcgov.us>, "Vegna, John" <jvegna@edcgov.us>, "planning@edcgov.us" <planning@edcgov.us>, Kris Payne <krispayne999@gmail.com>

Planning Commission,

I've attached comments for open forum and a comment for #5. Please attach to the agenda of 12-9-21.

Thank you,
Sue Taylor

2 attachments

Re_ 12-9-21 Item #5.pdf
304K

Re_ 12-9-21 Open Forum & Item #4.pdf
458K

11/29/2021

Re: Planning Commission Meeting for December 9th, 2021:

Item #5, 21-1902 "for a retail storefront for the sale of cannabis goods for medicinal and adult-use recreational in an existing building on property".

Parts of the Staff report is confusing and conflicting:

The project description in the Conditions of Approval states that:

" The project includes a Commercial Cannabis Use Permit (CCUP) for the operation of a commercial cannabis retail storefront for the sales and delivery of adult-use recreational and medical cannabis goods located at 537 Pleasant Valley Rd., Suites #1 and #2, Diamond Springs, CA. Operation of a commercial cannabis retail storefront is an allowed use in the Commercial-Main Street zone district with the issuance of a CCUP. No expansions of the buildings are part of this project. Existing signage was approved by Design Review application DR07-0004 and no new signage is proposed. No new signs are proposed. The Owners of the project approved in this CCUP are Kelly Chiusano and Summer Bradley. The development, use, and maintenance of the property, the size, shape and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans must be submitted for review and approval and shall be implemented as approved by the County."

This description is different than what is recorded in the Staff Report:

"PROJECT DESCRIPTION The proposed project includes a request for a Commercial Cannabis Use Permit for a retail sale storefront facility open to the public for the sale of commercial cannabis. The retail facility located on a parcel that contains two exiting retail/office buildings. The existing cannabis retail sales business is in the rear building which is 1,966 square feet in size. The project proposes to expand into the front building, 906 square feet, but would be occupied by offices and record keeping only. Hours of operation for retail sale and delivery are limited to commencing at 8:00 a.m. and ending at 8:00 p.m. The project includes the continued operation of a commercial cannabis delivery service consisting of one vehicle. Delivery vehicles are regulated by the State Department of Cannabis Control and include the requirement that the vehicle contains no company marking or branding. During operation there are approximately 8 employees that consist of security guards, a manager, and sales floor employees. The retail facility will provide security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. The site currently operates as a retail storefront facility for sale of cannabis for medicinal use only. Operation of an existing legal commercial cannabis retail storefront is an allowed use in the CM zone

district with the issuance of a CCUP. Furthermore, no signs are being proposed as part of this project."

The Staff Report includes, "**but would be occupied by offices and record keeping only**", which is not included in the Conditions of Approval. It is not clear from the conditions of approval if the sale of cannabis can move into the buildings that front Highway 49/Main Street. The staff report project description also claims that the operation of an existing legal commercial cannabis retail storefront is an allowed use in the CM zone district with the issuance of a CCUP, but *Section 130.41.300.7.A does not allow commercial cannabis in a CM zone district as explained in the body of the staff report.*

*Per the Staff Report: "As part of the ballot measures, Ordinance 4999 was repealed and the ban on medical dispensaries was removed. The ballot measures did not provide for the legalization or automatic permitting of the dispensaries that had existed under Ordinance 4999. Instead, it addressed the existing dispensaries in Section 130.41.300(7)(D), which provides: "Provided that the application for a Commercial Cannabis Use Permit is received within 45 days of the availability of applications for retail sale, the County shall first review and take action on the application of any retail facility that was issued a valid temporary license from the Bureau of Cannabis Control by July 17, 2018 and continuation within a zone inconsistent with those authorized under this Section **may be permitted** for those retail facilities as part of the Commercial Cannabis Use Permit as a legal non-conforming use under Article 6, Chapter 130.61 (Nonconforming Uses, Structures, and Lots)."*

Then the staff report states under "OTHER PROJECT CONSIDERATIONS:

Zoning consistency: The project parcel is within the Commercial, Main Street zone district (CM).

*Section 130.41.300.7.A of the Zoning Ordinance states the following, "Retail sale storefront facilities open to the public for the sale of commercial cannabis **may only be permitted** in the Community Commercial (CC), Regional Commercial (CR), General Commercial (CG), Industrial Low (IL), and Meyers Community Center (MAP-1), zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100". Further Section 130.41.300.7.D states, "Provided that the application for a Commercial Cannabis Use Permit is received within 45 days of the availability of applications for retail sale, the County shall first review and take action on the application of any retail facility that was issued a valid temporary license from the Bureau of Cannabis Control (BCC) by July 17, 2018 and continuation within a zone inconsistent with those authorized under this Section may be permitted for those retail facilities as part of the Commercial Cannabis Use Permit as a legal non-conforming use under Article 6, Chapter 130.61 (Nonconforming Uses, Structures, and Lots)."*

The intention of Zoning Ordinance section 130.41.300.7.D was to allow the continued operation and application submittal of a CCUP for those existing retail operations that were inconsistent with the zone districts within Section 130.41.300.7.A. **The project parcel being within the CM zone district would be inconsistent if newly proposed**, however the site was issued a license from the BCC before July 17, 2018 and this application was received within 45 days of the availability of applications for retail sale. Therefore, the request for a CCUP at the project site is consistent with the County's Zoning Ordinance and specifically Chapter 130.41. Section 130.41.300.7.D does not allow processing of a newly proposed commercial cannabis retail application that would be inconsistent with Section 130.41.300.7.A."

Basically, the report is stating that the proposal is a non-conforming use, since the use is not allowed in the CM zone district, but the existing non-conforming cannabis operation **could** submit an application in which the County **could** allow or disallow the operation. That was not clearly explained in the Staff Report Description as shown further in this comment.

Also conflicting is the information on the signage. The Staff Report is stating that there are no new signs proposed but the County is allowing wall-mounted free-standing signage to be approved in the future, administratively by the Director of Planning and Building. The Signage and the location of that signage to be proposed should be included with the application.

Per the Staff Report:

"No expansions of the buildings are part of this project. Existing signage was approved by Design Review application DR07-0004 and no new signage is proposed. **No new signs are proposed.**"

"3.4 The project is consistent with Chapter 130.36 **Signs**. Chapter 13.36 states the purpose of this Chapter is to establish sign regulations that are consistent with the goals, objectives and policies of the El Dorado County General Plan and the County's visual and aesthetic goals, and provide adequate identification for establishments. Specifically, this Chapter regulates the size, quantity, and location of signs to maintain and enhance the visual appearance of the County (Goal 2.7), regulates the location, number and size of highway signs and, to the extent allowable by law, eliminates billboards along identified scenic and historic routes (Objective 2.7.1). Rationale: The project site was developed consistent with approval of Design Review application DR07-0004. No external changes have been made or are proposed for the existing buildings and site. **Existing signage is limited to wall-mounted free standing signage. No additional signage would be proposed as part of this application. Wall-mounted and free standing signage for future tenants may be administratively approved by the Director of Planning and Building.**

In the Conditions of Approval:

16. Signs: *Within 30 days of the approval of this CCUP, building permits to immortalize the change in message on the existing permitted free standing and wall signs shall be submitted to Building Services. Building permits shall be finalized within 60 days of approval of this CCUP. All temporary signs shall be consistent with Zoning Ordinance Section 130.36.050."*

In the Conditions of Approval Project Description: *"Existing signage was approved by Design Review application DR07-0004 and no new signage is proposed. No new signs are proposed."*

Looking up DR07-0004 (from 2008, which was not attached to the legistar) it only states, *"Signage: One sign has been proposed which would contain 19.2 square feet of sign area and eight feet six inches in height. The design of the sign is consistent with the proposed structures and signs in the area."* **We would assume that policy related to the Stelzmilller Brokerage Signage. How does this apply to the current project?**



Signs currently on the property seem to be non-complaint per the Section 130.36 but aside from that, it is not clear as to what signage will be allowed for this building. Since the report states that the existing signage was approved by Design Review 07-0004, does this mean that the only allowed signage is the 19.2 square feet of sign area and eight feet six inches in height that was approved in 2008? **This needs to be clarified and included in the project.**



Sec. 130.36.090 - Prohibited Signs

5. Pennants, banners, balloons, or other paraphernalia composed of paper, cloth, or other flexible material, except as otherwise allowed.11.

11. Movable signs with a commercial message.

Sec. 130.36.050 - Temporary Signs.

Temporary signs may include, but are not limited to, commercial signs (including sign twirlers) for grand openings, products/services, sales, special events, and new apartments/multi-family units. All temporary signs must comply with the standards listed in Table 130.36.050.1 (Allowed Temporary On-Site Sign Standards) below in this Section and are subject to the conditions herein.

A. Time Duration. Display periods for temporary on-site signs shall be limited to a cumulative maximum of 90 days per establishment per calendar year, unless otherwise specified below.

2. **Banner Signs.** All banner signs (including feather banners) utilized for grand opening events shall be limited to a maximum of 30 consecutive days per establishment per calendar year.

3. **A-Frame Signs, Feather Banners and Sign Twirlers.** When allowed, A-frame signs, feather banners and sign twirlers shall be allowed only on-site during daylight hours and shall be removed from dusk to dawn and during all times when the establishment is closed or event is over.

Sign Type	Number Allowed	Max. Area	Max. Height	Minimum Setback from Right-of-Way ¹
On-Site Subdivision and Apartment Signs¹				
Banner	3	30 sf each	Roofline	5 feet
Feather Banner	1 per subdivision	30 sf	12 feet	5 feet
Entrance	1 per subdivision entrance	80 sf each	15 feet	5 feet
Model Home	1 per model home	8 sf	2 feet	5 feet
Flags	5 poles per street frontage, max 15 poles per subdivision	20 sf per pole	25 feet	5 feet
Sign Twirler	1 per subdivision entrance; on legal parcel of subdivision	12 sf	8 feet	5 feet
All Other Uses¹				
Banner	1 sign (any type) per establishment per street frontage	50 sf	Roofline	5 feet behind face of curb, outside of right-of-way
Feather Banner		30 sf	12 feet	
A-Frame		8 sf	4 feet	

Another conflict is that the County is stating that the expansion is consistent with Section 130.41.300.4.C, yet if one reads the section, it is not consistent given the proximity of a place of worship and the residential properties.

"3.2 The project is consistent with Section 130.41.300.4.C.

Section 130.41.300.4.C requires commercial cannabis activity authorized under this Section shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, public library, licensed drug or alcohol recovery facility, or licensed sober living facility. The section further requires that with the exception of the Meyers Community Center (MAP1) zoning district, a commercial cannabis activity authorized under this Section shall not be established on any parcel containing a dwelling unit used as a residence or within 500 feet of a residential zoning district.

Rationale: The project is within 600 feet of a place of worship and approximately 85 feet from a residential zone district. A residential use is directly adjacent to the project parcel. Zoning Ordinance Section 130.41.100.4.C states, "Any setback for a commercial cannabis activity may be reduced in a Commercial Cannabis Use Permit so long as the applicant demonstrates that the actual setback will substantially achieve the purpose of the required setback and that the parcel was owned or leased by the applicant before voter approval of the ordinance from which this Section is derived on November 6, 2018".

I'm not sure how a reduction 415 feet of the allowed distance from a residential district and a residence that is adjacent to the operation has been demonstrated to show that the reduction "will substantially achieves the purpose of the required setback". Actually, due to this restriction the business should not be allowed to expand a non-conforming use.

I would add that since this is a non-conforming use at this site, the use should not be allowed to continue if there is a change of business ownership. That should be modified in the Change of Business Ownership Conditions of Approval.

The conditions of approval also provides that: *"The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto."* This should be more specific to the Cannabis ordinance since it is not a given that this business/project can be transferred to different owners. Therefore, this statement should also be modified within the conditions of approval to state something like, *that if the property is sold, leased or a new funding source results, an application for a new Commercial Cannabis Annual Operating Permit must be submitted.*

The biggest concern regarding this proposal is allowing a recreational cannabis operation that fronts a main Highway artery road of the County. Especially one that is a route for multiple schools. There should be more restrictions on the displaying of cannabis signage and advertising on this very public route. As the Cannabis Ordinance exists today, this business

would have never have been allowed at this location. If the Planning Commission moves to approve expansion of this non-conforming use, there needs to be more in the conditions of approval that restricts what is allowed from this business into the front buildings. In relationship to the Cannabis business, the two frontage buildings should be conditioned to only be allowed for use as unadvertised offices and not for retail sales of cannabis.

Thank you for your consideration,

Sue Taylor