

CITY OF OLYMPIA HEARING EXAMINER

STAFF REPORT

Hearing Date: February 25, 2018

File Number: 18-4817

Applicant: Shelby Star, represented by Nick Taylor of the Iris Group

Type of Action Request: Conversion of 1,064sf of an existing building previously used for auto sales into a marijuana retail store.

Project Location: 3015 Pacific Ave SE

SEPA Determination: Categorically Exempt

Comprehensive Plan: Urban Corridor

Zoning: High Density Commercial - 4

Public Notification: Public notification for this hearing was mailed to property owners within 300 feet and recognized neighborhood association/s, posted on the site, and published in *The Olympian* on January 14, 2019 in conformance with Olympia Municipal Code (OMC) 18.78.020.

Staff Recommendation: Approval, subject to conditions identified at the end of this report

Staff Contact: Nicole Floyd, Senior Planner, 360.570.3768,
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BACKGROUND INFORMATION

The Washington State Liquor and Cannabis Board assigned the City of Olympia five licenses for retail sales of marijuana. All five licenses have been issued to individual businesses throughout the City. One of those business (A Bud and Leaf on Lilly Road) has closed to make way for a new development on the site, therefore a new location for the license is being sought. It is unclear what affiliation the applicant has with the current license holder, nor if this application is for a new location for "A Bud and Leaf", or if the license is being transferred to a new retailer. The end user of the site may be the current owner of the license, or a new business partnership. In terms of permitting, the City is focused on the site and its compliance with code requirements, rather than the business partnerships.

The project site includes the northern portion of a larger parcel, which was most recently

occupied by an automotive sales business. A storage facility continues to occupy the back half of the site. The auto sales business included an outdoor merchandise display area between the street and front of the building. Parking is located at the rear of the building. The applicant proposes to convert a portion of the existing auto sales building into a marijuana retailer with the interior area reserved for future undetermined use. Interior modifications to the building will require a building permit. Exterior modifications will be necessary to ensure the merchandise display area is not used for vehicular parking, as it poses safety concerns and is prohibited by the zoning district. An outdoor seating area is proposed to replace the merchandise (vehicular) display area.

Washington State Department of Liquor Control. WAC 314-55-147 establishes criteria for licensing retail sales of marijuana within Washington State. The Liquor and Cannabis Board (LCB) has primary regulatory authority over all aspects of siting, managing, securing, and the sale of products. In addition, the City has specific regulations related to the siting and mitigation of potential impacts from these businesses. These regulations are intended to supplement, but not supersede the State Law. Noteworthy provisions unique to the City of Olympia are as follows:

- 1) **Reduced Buffers:** As permitted by the State (RCW 36.70A.390), the City has opted to reduce the standard 1,000' buffers for surrounding uses to 500'. Specific code language is identified in OMC 18.51.040(c)(ii). A map identifying the buffers to indicate the location of all applicable buffered neighboring uses has been provided as **Attachment 2**.
- 2) **Hours of Operation:** The City of Olympia requires the store to be closed not later than 9:00 PM; however, WAC 314-55-150 allows businesses to remain open until 12:00 AM. The City's reduced hours are intentional and therefore the project should be conditioned to ensure compliance with the City's regulation.

Comprehensive Plan: The project proposal is within the Urban Corridor Land Use Designation. While there are no specific policies that directly relate to cannabis or marijuana sales, there are general policies that encourage a diverse mix of retail uses within this area such as:

- 1) PL11.4: Locate and size commercial areas to decrease reliance on cars, improve community life, and maintain the tax base.
- 2) PL11.6: Encourage new commercial uses adjacent to the arterial street edge and in mixed-use projects.
- 3) PL11.8 Prohibit new and expanded commercial strips; and allow conversion of such existing uses to a multi-use development with greater depth and integration of residential units.

Zoning Compliance - Title 18:

- 1) Commercial Districts OMC 18.06 - Permitted Uses and Development Standards. Commercial retail sales are a permitted use in the High Density Corridor - 4 zoning district and the existing building complies with the development standards for setbacks, height and development coverage limitations.
- 2) Parking OMC 18.38: Pursuant to OMC 18.38.060(a) new parking is not required when the new use does not increase the parking demand by more than 25% or 6 stalls. Both the past use and the proposed use require four vehicular spaces, therefore new parking is not required.
 - Retail Sales: Requirement, 3.5 parking spaces for every 1,000sf. The building is 1,064 square feet therefore 4 vehicular parking spaces are required.
 - Auto sales, 1 stall for every 250 square feet, therefore 4 parking stalls were previously required.

Although there is not an increase in parking demand, the current site configuration does not clearly establish the location of the existing vehicular parking stalls. Additionally, building code requirements require a variety of upgrades related to accessibility and accessible routes, which will require upgrades to the parking layout. For these reasons, the applicant has provided a site plan that includes pavement markings and curb stops that clearly identify four parking stalls, an accessible stall, and the accessible route. The City suggests a condition of approval to ensure all four parking stalls are clearly marked with paint, include curb stops, and necessary signage and pavement markings to ensure the parking is easily identifiable by customers.

There is an area in front of the building that has historically been used for merchandise display. The merchandise, being vehicles being displayed for sale. This area is paved and looks very similar to a standard vehicular parking area. Several code sections prohibit this area from being converted from merchandise display to vehicular parking. Additionally, Engineering Design and Development Standards prohibit vehicular parking in this area due to safety issues. To ensure the area is not inadvertently used as parking, the applicant proposes to close off the area from vehicular use by installing bollards and pedestrian amenities such as benches and tables. The City finds this solution acceptable, but asks the Hearing Examiner to condition the approval to ensure that a physical restrict to vehicular access be installed such as bollards and/or landscaping.

- 3) Landscaping OMC 18.36: The project is exempt from compliance with the landscaping chapter requirements because the improvement value is not greater than 50% of the assessed property valuation. The site is predominately void of landscaping. Plans indicate that the southern property line includes existing landscaping, however upon inspection of the site, it appears this area is predominantly occupied by grass and weeds. The City encourages enhancement to the “existing landscaping” area.

4) State-Licensed Marijuana Producer, Processor and Retailer Requirements OMC 18.51.040.

- A. A marijuana retailer licensed by the State of Washington must comply with all State and City code requirements.

Staff Response: *The City has routed the application to all applicable City departments for review and has reviewed the project for compliance with all applicable codes. Additionally Staff recommends a condition of approval include demonstration of State Requirements by being provided a copy of the State issued license by the applicant at the point of the building permit application.*

- B. Premises Requirements. A recreational retailer must operate in compliance with the following conditions:

- I. From a public right-of-way, there shall be no exterior display of marijuana or marijuana cultivation visible outside of the premises.

Staff Response: *Plans do not include outdoor display and State licensing also prohibit outdoor display. A condition of approval to prohibit outdoor display or sales is proposed.*

- II. The marijuana of a retailer, producer, or processor shall be entirely within a permanent enclosed structure with a roof. The structure shall comply with all applicable code requirements.

Staff Response: *The proposal is inside an existing building.*

- III. Areas where marijuana is grown, stored, or dispensed must be provided with ventilation systems so that no odors are detectable off the premises.

Staff Response: *As a retailer, rather than grower or producer, all products are pre-packaged into sealed containers and, per the State Law, cannot be opened on-site; it is therefore unlikely that modifications to the existing, or standard, ventilation system will be necessary.*

- IV. All premises must comply with the noise control requirements of the Olympia Municipal Code.

Staff Response: *The noise control requirements are specified in OMC 18.40.080 Table N. The onsite sales are unlikely to caused noise levels different than any other retail sales establishment. Compliance with noise levels is required for all uses within the City.*

- V. No minors shall be permitted on marijuana producer, processor, or retailer premises unless accompanied by a parent or guardian.

Staff Response: *State licensing also prohibit minors from the premise. Violation of this would likely result in loss of State licensing.*

- VI. Consumption of marijuana, products containing marijuana or alcohol on the premises is prohibited, as are any other associated uses such as a smoking room, dance or performance space, private club, open-to-the-public nightclub, cabaret, tavern, or similar establishment.

Staff Response: *State licensing also prohibits these activities. Violation of this would likely result in loss of State licensing.*

- VII. All premises must have an operating security and alarm system that is monitored twenty-four (24) hours a day and that includes a video recording system. All videos are subject to inspection by the Olympia Police Department upon request.

Staff Response: *State licensing establishes specific requirements for the security and alarm system. A Condition of approval should require the details of the equipment intended to be used to be submitted with the building permit application.*

- VIII. A recreational retailer may be open only between the hours of 8 a.m. and 9 p.m.

Staff Response: *If approved, a recommended condition of approval will be to re-state the City's adopted hours of operation parameters. This will allow the applicant to operate provided they are with the city's designated parameters.*

C. City Zoning for State-Licensed Marijuana Retailers

- I. Pursuant to OMC 18.51.040(c)(1)(i) state-licensed marijuana retailers are limited to the HDC-3, HDC-4, MS or GC Zones. As this project is within the HDC-4 zone, the code is satisfied.
- II. Pursuant to OMC 18.51.040(c)(1)(ii) Waste products must be disposed of in a secure manner that would prevent exposure to the public or create a nuisance.

Staff Response: *The City assumes the applicant intends to use the municipal solid waste system. If no change is proposed to the existing refuse bin and recycle location, they may remain in their current condition. Changes to their location will trigger full code compliance, which would include significant alteration such as a dumpster enclosure and landscaping. Plans appear to indicate the dumpster area is being reduced in size to accommodate parking. Building permit plans will need to clearly demonstrate the full width of the dumpster area will remain consistent. This may require the proposed parking area to shift to the south. A condition of approval has been recommended to ensure compliance.*

- III. Pursuant to OMC 18.51.040(c)(1)(iii) A retailer is required to obtain a conditional use permit approved by the Hearing Examiner.

Staff Response: *The scheduled hearing will be followed by an Examiner's Decision. If approved, the Decision will contain appropriate conditions of approval.*

- 5) **Conditional Uses OMC 18.48.** This project has been identified as a use that requires a Hearings Examiner approval, therefore the process for a Hearing has been followed and this report has been prepared for the Examiners review. Given the uncertainty regarding the business name / owner intended to operate at this location it is noteworthy that according to OMC 18.48.100 Transferability: A Conditional Use Permit shall be transferable provided that the transferee complies with the conditions. If at any time the conditional use no longer complies with the conditions of the permit, the owner shall be declared in violation of this title and shall be subject to its penalties, and the Hearing Examiner may suspend or revoke the permit.

Staff Response: *This Conditional Use Permit, if granted, will run with the land provided the users do not violate conditions of approval.*

- 6) **Public Notice OMC 18.78.040:** Public notice is required a minimum of 10 days prior to the hearing and must be published in the Olympian, mailed to all property owners within 300' of the project site within 13 days of the hearing, posted onsite, and published on the city's website.

Staff Response: *Public notice for the application containing notification for the public hearing was mailed to property owners within 300 feet of the subject property, recognized neighborhood association(s), posted on-site on January 11, 2019; and published in The Olympian on January 14, 2019, in conformance with Olympia Municipal Code (OMC) 18.78.*

- 7) Public Comments (summary of comment content below) Attachment 4:

Dean Stohl, submitted on January 24, 2019:

- Liquor and cannabis board noticing requirements are inadequate and the City should inform the board of these inadequacies.
- Concerns about the project contributing to illegal activity, proximity to the existing marijuana retailer across the street, and adjacent pediatric clinic.
- Request for the project to provide a traffic study and install mitigation as appropriate and to address existing stormwater issues.
- Requests the entrance of the building be re-located to the eastern side of the building. Suggests the front yard area be converted from pavement to landscaping without seating nor other pedestrian amenities.

Harish, submitted January 31, 2019:

- Believes the project is not a suitable addition to this area. Concerns about existing crime and the projects potential to exacerbate criminal activity.

Staff Response to Comments:

- Notification: The City does not have control over State requirements. The City's noticing requirements include posting of property, mailing to property owners within 300', and publishing in the newspaper.
- Site Location: The City reduced buffer requirements from 1,000' to 500' which increased the number of locations available for retailers. Further modification to the code requirements related to retail locations would require a zoning code text amendment. An application to revise code language can be submitted anytime throughout the year.
- Traffic / Stormwater: The City did not require a traffic study for this project because the change from auto sales to retail sales does not represent a significant increase in traffic demand. The project is exempt from providing enhancements related to stormwater because it is not increasing the amount of impervious surfaces.
- Crime: The five existing marijuana retail businesses in the City have not caused significant increases in crime.
- Site Modifications: While an alternative entry might benefit the adjacent neighbors and enhance vehicular parking access, the City cannot require the applicant to make such a modification. Similarly, landscaping rather than the seating area would be permitted within the front of the building, but is not required by code.

RECOMMENDATION

Pursuant to OMC 18.72.100, the Site Plan Review Committee met on January 30, 2019 and recommends approval of the Star Commercial Conditional Use Permit proposal, with the following conditions of approval:

1. Prior to opening and any sales, the applicant shall submit a copy of the state-issued license to the Department of Community Planning & Development pursuant to OMC 18.51.040(A).
2. The four parking stalls shall be clearly marked with paint, include curb stops, necessary signage and pavement markings to ensure the parking is easily identifiable by customers.
3. The outdoor merchandise display area permitted to display vehicles for sale, located between the building and the street frontage, shall be modified to provide a physical barrier to restrict vehicular access such as bollards and/or landscaping. These improvements shall be shown on the site plan with the building permit application.
4. Plans shall be revised to ensure the width of the solid waste/recycle area is not reduced as is indicated on the plans. The size, access and location for solid waste is to remain unchanged. If altered, the solid waste area shall be brought to current standards including, but not limited to, construction of an enclosure and access as dictated by the Engineering Design and Development Standards. Applicable permits and plan review shall apply to any proposed changes.

5. Prior to the business opening and/or any sales, the applicant shall apply for and be granted a building permit for the requisite site alterations within the building that meets the City adopted Construction Codes. The building permit submittal must include:
 - a. All sales counter locations, one of which will be required to comply with accessibility requirements as outlined in the 2009 ICCA 117.1.
 - b. A copy of the state-issued license pursuant to OMC 18.51.040(A).
 - c. The proposed or existing ventilation system must be identified on permit plans and meet the International Mechanical Code.
 - d. The proposed or existing security alarm system must be identified. A separate electrical permit may be required for the security system installation.
 - e. Plans shall address accessibility and must provide an accessible parking stall, accessible route from the accessible parking stall to the accessible building entrance, an accessible route from public right of way to accessible building entrance and an accessible restroom for public and employee use.
 - f. Exit signs may be required.
 - g. Additional requirements for parking & restrooms may be required where the building is being occupied by a second tenant.
6. New signage will require a building permit application submittal and approval and must meet the code requirements of OMC 18.42.
7. There shall be no exterior display of marijuana or marijuana cultivation visible outside of the premises. The retail shall be entirely within a permanent enclosed structure pursuant to OMC 18.51.040(B)(1&2).
8. A retailer may be open only between the hours of 8 a.m. and 9 p.m. pursuant to OMC 18.51.040(B)(8).

Submitted on Behalf of the Site Plan Review Committee by:

Staff Contact: Nicole Floyd, Senior Planner

Site Plan Review Committee:

Rich Balderston, Building Plans Examiner, Kevin Bossard, Fire Marshal, Nicole Floyd, Senior Planner, Steve Speer, Assistant City Engineer, and Cari Hornbein, SEPA Official.

Report Issued Date: February 11, 2019

Attachments:

1. Staff Report
2. Allowed Locations Map
3. Applications and Plans
4. Public Comment Letters