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APPLICANT: Shelby Star

Nick Taylor
Iris Group
4160 6th Avenue S.E., Suite 105
Lacey, Washington 98503\

A Conditional Use Permit to convert an existing 1,064 square foot building into a marijuana retail store.

3015 Pacific Avenue S.E.

The permit application is **approved** subject to modified conditions.

The City of Olympia has been assigned five licenses for the retail sale of marijuana.

*Findings of Fact, Conclusions of Law
and Decision - 1*

CITY OF OLYMPIA HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

1 As with all marijuana retail facilities, the project must satisfy all requirements imposed
2 through the Liquor and Cannabis Board (LCB). City Staff finds that the State requirements have
3 been satisfied. The purpose of this proceeding is to determine whether the project satisfies the
4 additional City requirements, including the requirements for a Conditional Use Permit.

5 The Applicant proposes to convert an existing 1,064 square foot building into a marijuana
6 retail store. The existing building is a single story, nondescript small office building previously
7 used as the office for an auto sales business. The building, its driveway entrance and its
8 associated parking comprise the front portion of a long, skinny parcel. The remaining, rear
9 portion of the site contains a large storage facility and is not part of the application. The site is
10 located along Pacific Avenue in the High Density Commercial-4 (HDC-4) zoning district.
11 Surrounding properties include an eclectic mix of buildings used for commercial and retail
12 activities. Immediately west of the site is a newer, attractive professional building. Immediately
13 across Pacific is the State's LCB headquarters. A short distance east of the LCB headquarters, at
14 3044 Pacific Avenue East, is another marijuana retail facility, the Green Lady, approved in 2014.

15 The project site has a single driveway entrance off of Pacific Avenue. The front portion
16 of the site is paved. This pavement continues past the building and then turns to gravel in an area
17 proposed for parking. There is a paved area between the building and Pacific Avenue which was
18 used in the past for merchandise (automobile) display. City regulations prohibit the use of this
19 paved area for parking and so an alternate use must be established. The Applicant has proposed
20 installing bollards to prevent vehicle entry into this area, together with picnic tables to fill the
21 space. This will be discussed more fully below.

22 The building has two existing entrances, one on the front (north) side of the building
23 facing Pacific Avenue, and the second near the rear of the building on its east side. The
24 Applicant proposes to use the front entrance as the retail entrance and the second entrance as an
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1 employee-only entrance. As discussed more fully below, members of the public have suggested
2 that these entrances be switched to reduce the business' visibility from the street.

3 Like all marijuana facilities, the proposed facility will have limited signage and will not
4 display any products in its windows. There will be a single entry point for customers. Minors
5 will not be allowed unless accompanied by adults. Product will be maintained in a separate,
6 secured storage room and the entire facility will have extensive surveillance, with all inventory
7 closely monitored and tracked. Marijuana products will not be allowed to be consumed on the
8 premises.

9 The public hearing commenced at 6:30 p.m., on Monday, February 25, 2019, in the City
10 Council Chambers in the City Hall. Just prior to the public hearing I undertook and independent
11 site inspection. The City appeared at the public hearing through Nicole Floyd, Senior Planner
12 for the City. The Applicant, Shelby Star, was present and represented by his engineer, Nick
13 Taylor. Testimony was received from the City through Ms. Floyd and from the Applicant
14 through Mr. Taylor. A verbatim recording was made of the public hearing and all testimony was
15 taken under oath. The only documents considered at the time of the hearing were the City Staff
16 Report including all attachments, all of which had been received prior to the hearing. No
17 additional documents were admitted as exhibits during the hearing.

18 Ms. Floyd testified regarding the City's Staff Report and recommendations. She noted
19 that there had been two letters in opposition to the project prior to the public hearing addressing
20 concerns about several matters including the site's close proximity to the Green Lady; the lack of
21 a Traffic Impact Analysis; potential increased illegal activity; and the project's incompatibility
22 with nearby businesses. She responded to these concerns by explaining that a Traffic Impact
23 Analysis is not required as the project is not expected to have any greater traffic than the
24 previous business use; there is nothing in either State or City regulation prohibiting two
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1 marijuana retail facilities from being in close proximity; and there is no evidence of any
2 increased criminal activity associated with or resulting from existing marijuana retail operations.
3 Ms. Floyd acknowledged that neighboring business' concerns over aesthetics are legitimate, and
4 encouraged the Hearing Examiner to consider appropriate landscape screening between the
5 project and the professional building immediately to the west. Ms. Floyd concluded her
6 testimony by noting that the project satisfies all State and City requirements and recommends
7 conditional use approval subject to the conditions proposed by City Staff.

8 Following Ms. Floyd's testimony, Nick Taylor spoke on behalf of the Applicant. Mr.
9 Taylor's comments mirrored most of Ms. Floyd's. He reiterated that there has been no evidence
10 of any illegal activity connected to marijuana retail facilities, and that nothing prevents two such
11 facilities from being located close to one another. He acknowledged that some landscaping
12 would be beneficial to the site but that the primary goal is to make the facility fairly innocuous
13 and not stand out.

14 Following Mr. Taylor's testimony the hearing was opened to public testimony. Dean
15 Stohl was the only member of the public asking to testify. Mr. Stohl had earlier provided written
16 comments on behalf of TTL Partners, owners of the professional building immediately west of
17 the project site. Mr. Stohl amplified several points made in his earlier written comments while
18 also raising three new issues:

- 19 1. The Applicant proposes to place picnic tables in the paved area between
20 the front entrance and the street. Mr. Stohl believes this idea to be a bad one as there is
21 little or no foot traffic except homeless individuals, and the proposed tables would only
22 serve this population. The impact of this would be largely felt by the occupants of Mr.
23 Stohl's building whose offices look out upon this portion of the project site.

1 2. The project as currently proposed does not require any extension of
2 existing paving even though the required four parking stalls extend into an area currently
3 in gravel. Mr. Stohl adds that the lease with the Applicant appears to require this area to
4 be paved. He encourages the Conditional Use Permit to similarly require paving of all
5 area necessary for parking.

6 3. Mr. Stohl encourages the building's redesign to transform the existing side
7 door on the east side of the building into the customer entrance, eliminating any customer
8 entrance along Pacific Avenue. Mr. Stohl believes that this would reduce the facility's
9 visual impact as well as its impact upon his adjoining professional building.

10 Mr. Taylor responded to each of Mr. Stohl's concerns:

11 1. As to the proposed picnic benches, the Applicant merely wants to make
12 the front appearance more attractive and inviting, either through landscaping or other
13 means.

14 2. The Applicant's lease does not require that paving be extended further
15 south. The Applicant would prefer not to be required to extend paving through the
16 parking area.

17 3. The Applicant is strongly opposed to re-orientating the customer entrance
18 to the side of the building. The HDC-4 zoning district encourages customer entrances
19 along the street, and the current design is consistent with this goal. The Applicant adds
20 that changing entrances would involve significant redesign and could possibly endanger
21 pedestrian traffic, although this last concern is not well explained.

22 Ms. Floyd responded to Mr. Stohl's concerns by noting that the Hearing Examiner has
23 authority pursuant to the Conditional Use Regulations to reduce conflicts with surrounding
24 property uses and improve site aesthetics. The City would not object to enhanced landscaping
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1 imposed by the Hearing Examiner, or with extension of paving to all proposed parking area. As
2 to the location of the customer entrance, the City agrees with Mr. Taylor that the HDC-4 zoning
3 district encourages customer entrances to be along Pacific Avenue, but this requirement is not
4 mandatory for existing buildings. City Staff would therefore not object to either entrance serving
5 as the customer entrance.

6 Although Mr. Stohl has expressed a number of concerns about the project, he
7 acknowledges that the application generally meets all legal requirements with the only issue
8 being what conditions may be attached to its approval. His concerns are legitimate ones worthy
9 of closer examination:

10 • Increased Landscaping/Elimination of the Proposed Picnic Tables. The project
11 site currently offers no landscaping between it and the professional building to the west, and
12 proposes to convert the paved area between the front entrance and the street into a seating area.
13 Mr. Stohl encourages greater landscaping and the elimination of the seating area. City Staff is
14 generally in agreement with improving the landscaping buffer between the buildings, and the
15 Applicant does not express any strong objection. The Applicant's proposal to install seating
16 areas is somewhat unusual as the store's customers are prohibited from using the product on the
17 premises, and so the proposed benches have no business-related purpose. Indeed, the presence
18 of tables could lead customers to believe that consumption onsite is permitted.

19 It is reasonable to require an improved landscape buffer between the building and the
20 adjoining professional building, and to replace the proposal for picnic tables with additional
21 landscaping in the area between the front entrance and the street. This could be accomplished
22 through elimination of the current paving in front of the front entrance and the planting of
23 landscaping, or through the use of containerized landscaping.

- Added Paving. Conditions of approval require the creation of four parking stalls behind the building. This parking area is partially paved with the remainder in gravel. Requiring that this parking area be paved will help identify the parking stalls and provide for improved aesthetics.

- Relocation of the Customer Entrance. Mr. Stohl's suggestion that the customer entrance be moved to the east side of the building is an understandable one but it would require the entire layout of the building to be redesigned. It is unclear if it could be redesigned and still meet all State requirements for the proper storage of inventory. The Applicant correctly notes that the HDC-4 zone encourages storefronts to face the street. I conclude that there is not a sufficient enough reason to deviate from this standard approach, and the customer entrance should therefore remain in the front of the building, but with improved landscaping as discussed earlier.

I therefore make the following:

FINDINGS OF FACT

1. The Applicant, Shelby Star, requests a Conditional Use Permit in order to convert an existing 1,064 square feet building into a marijuana retail store, located at 3015 Pacific Avenue S.E.

2. The Findings of Fact contained in the foregoing Background section are incorporated herein by reference and adopted by the Hearing Examiner as his own Findings of Fact.

3. The proposed site is zoned High Density Corridor-4 (HDC-4).

4. The proposed use is exempt from SEPA regulation.

5. Notification of the public hearing was mailed to the parties of record, property owners within 300 feet and recognized neighborhood associations, posted on the site and published in The Olympian in conformance with Olympia Municipal Code 18.78.020.

1 6. Commercial retail sales are a permitted use in the project's zoning district, and the
2 existing building complies with the development standards for setbacks, height, development
3 coverage, and parking.

4 7. The City's Comprehensive Plan does not contain any specific policies concerning
5 cannabis although it does contain general policies concerning retail sales within the HDC-4
6 zoning district. The application, as conditioned, meets these general policies.

7 8. The Staff Report, at page 2, contains Findings relating to compliance with
8 regulations imposed by the State of Washington Liquor and Cannabis Board (LCB) with
9 additional discussion/Findings at pages 4 and 5. The Hearing Examiner has reviewed those
10 Findings and adopts them as his own Findings of Fact.

11 9. The Staff Report, at page 3, addresses parking requirements pursuant to Chapter
12 18.38 OMC. As explained in the Staff Report, the project will require four vehicle parking
13 spaces.

14 10. The Applicant's site plan identifies the four required parking spaces to the rear
15 (south) of the existing building. City Staff recommends that as a condition of approval all four
16 parking stalls be clearly marked with paint, include curb stops, and that there be necessary
17 signage and pavement markings to ensure that parking is easily identifiable by customers.

18 11. The area proposed for the four parking stalls is partially paved with the remainder
19 in gravel. Requiring all identified parking stalls to be paved will better assure that the City's
20 conditions are satisfied, that is, that the stalls will be clearly marked with paint and otherwise be
21 easily identifiable by customers.

22 12. There is currently an area between the front of the building and Pacific Avenue
23 that is paved. It has historically been used for merchandise (automobile) display. This area has
24 the appearance of a parking area. The City's EDDS prohibit vehicular parking in this area due to
25 safety concerns.

1 13. The Applicant has proposed to prevent vehicular access into this area by
2 installation of bollards as shown on the Site Plan. The Applicant further proposes to install
3 pedestrian-related amenities such as benches and tables in this area.

4 14. City Staff agrees with the Applicant's proposal to install bollards to prevent
5 vehicular access, but asks the Hearing Examiner to condition project approval on installing
6 appropriate landscaping in this area. The adjoining landowner also requests that tables or
7 benches not be installed in this area as their presence would be counterproductive.

8 15. State regulation precludes the consumption of marijuana products on the
9 premises. The Applicant's proposal to install tables or benches would therefore not serve a
10 business-related purpose and may instead send the incorrect message that consumption of
11 produce is allowed onsite.

12 16. The Staff Report addresses site landscaping at page 3. City Staff note that the
13 project is exempt from compliance with the requirements of Chapter 18.36 OMC because the
14 improvement value is not greater than 50% of the assessed property valuation. Nonetheless, City
15 Staff recommends that the Hearing Examiner exercise his allowed discretion and require
16 landscaping as a condition of approval.

17 17. The site is currently void of any landscaping. City Staff recommends landscaping
18 between the project site and the professional building to the west. The adjoining property owner
19 also recommends this condition. The Applicant is not opposed to landscaping this area. The
20 City also recommends appropriate landscaping of the area between the front entrance and the
21 street and the adjoining property owner again concurs.

22 18. Conditioning project approval on improved landscaping between these buildings,
23 and in front of the front entrance, would allow for the better integration of the project into
24 surrounding uses.

1 19. The Staff Report, at pages 5 and 6, contain Findings relating to the project's
2 compliance with the City's other requirements for marijuana retailers and the issuance of a
3 Conditional Use Permit. The Hearing Examiner has reviewed those Findings and adopts them as
4 his own Findings of Fact.

5 20. City Staff recommends approval of the requested Conditional Use Permit subject
6 to the various conditions set forth on pages 7 and 8 of the Staff Report, together with additional
7 conditions discussed above.

8 21. The adjoining property owner has recommended that the customer entrance to the
9 facility be relocated to the existing east entrance to the building. This issue is more fully
10 discussed in the Background section. The Hearing Examiner finds that the proposed relocation
11 of the front entrance is not sufficiently justified to require the redesign of the building, and that
12 its current location facing the street is consistent with the HDC-4 standards.

13 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

14 **CONCLUSIONS OF LAW**

15 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.
16 2. The proposed use is exempt from SEPA regulation.
17 3. Any Conclusions of Law contained in the foregoing Background section or
18 foregoing Findings of Fact are incorporated herein by reference and adopted by the Hearing
19 Examiner as his own Conclusions of Law.

20 4. A Conditional Use Permit is required for the proposed use at this site. The
21 locational standards for such a use in the HDC-4 zone have been satisfied. OMC 18.04.040.

22 5. All other conditions imposed upon conditional uses pursuant to OMC 18.48 have
23 been satisfied.

6. The project, as conditioned, complies with the development standards imposed under OMC 18.06.

7. The project, as conditioned, complies with all specific requirements of State licensed marijuana production processing retail sales, OMC 18.51.040.

8. The project, as conditioned, complies with all requirements imposed by the City on State licensed marijuana retailers.

9. The project, as conditioned, is consistent with the City's Comprehensive Plan.

10. Imposing landscaping requirements and additional paving, as noted in the Findings of Fact, are both appropriate for the protection of the surrounding properties, the neighborhood and the general welfare of the public. These additional conditions, and those recommended by City Staff, are appropriate for the protection of the surrounding properties, the neighborhood and the general welfare of the public.

11. The project should be **approved** subject to the following:

CONDITIONS

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. All areas identified as parking stalls on the Site Plan shall be paved. 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. In addition, the Applicant shall prepare and

1 implement a landscaping plan, suitable to City Staff, for this former display area. These
2 improvements shall be shown on the Site Plan Map with the building permit application.

3 4. The Applicant shall prepare and implement a landscaping plan, subject to City
4 Staff approval, for the project area between the existing building and the adjoining building to
5 the west. These improvements shall be shown on the Site Plan Map with the building permit
6 application.

7 5. Plans shall be revised to ensure the width of the solid waste/recycle area is not
8 reduced as is indicated on the plans. The size, access and location for solid waste is to remain
9 unchanged. If altered, the solid waste area shall be brought to current standards including, but
10 not limited to, construction of an enclosure and access as dictated by the Engineering Design and
11 Development Standards. Applicable permits and plan review shall apply to any proposed
12 changes.

13 6. Prior to the business opening and/or sales, the Applicant shall apply for and be
14 granted a building permit for the requisite site alterations within the building that meets the City
15 adopted Construction Codes. The /building permit submittal must include:

16 a. All sales counter locations, one of which will be required to comply with
17 accessibility requirements as outlined in the 2009 ICCA 117.1.

18 b. A copy of the State-issued license pursuant to OMC 18.51.040(A).

19 c. The proposed or existing ventilation system must be identified on permit
20 plans and meet the Internal Mechanical Code.

21 d. The proposed or existing security alarm system must be identified. A
22 separate electrical permit may be required for the security system installation.

1 e. Plans shall address accessibility and must provide an accessible parking
2 stall, accessible route from the accessible parking stall to the accessible building entrance,
3 an accessible route from public right of way to accessible building entrance and an
4 accessible restroom for public and employee use.

5 f. Exit signs may be required.

6 g. Additional requirements for parking and restrooms may be required where
7 the building is being occupied by a second tenant.

8
9 7. New signage will require a building permit application submittal and approval
10 and must meet the code requirements of OMC 18.42.

11 8. There shall be no exterior display of marijuana or marijuana cultivation visible
12 outside of the premises. The retail shall be entirely within a permanent enclosed structure
13 pursuant to OMC 18.51.040(B)(1&2).

14 9. A retailer may be open only between the hours of 8:00 a.m. and 9:00 p.m.
15 pursuant to OMC 18.51.040(B)(8).

16 **DECISION**

17 Subject to the Conditions the requested Conditional Use Permit is **approved** subject to
18 the foregoing Conditions.

19 DATED this 27 day of February, 2019.

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22 _____
23 Mark C. Scheibmeir
24 City of Olympia Hearing Examiner
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*Findings of Fact, Conclusions of Law
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