"Village with a Past, City with a Future"

210 Fidalgo Avenue, Kenai, Alaska 99611-7794
Telephone: 907-283-7535 / Fax: 907-283-3014
www.kenai.city

the city of
KENAI, ALASKA

CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. PZ17-21
CONDITIONAL USE PERMIT

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **GRANTING** A REQUEST FOR A CONDITIONAL USE PERMIT TO CONSTRUCT AND OPERATE AN APPROXIMATELY 288-SQUARE-FOOT RETAIL MARIJUANA STORE AND A 500-SQUARE-FOOT MARIJUANA CULTIVATION FACILITY, LIMITED AND ALSO CONSTRUCT AND OPERATE AN APPROXIMATELY A 3,800-SQUARE-FOOT MARIJUANA CULTIVATION FACILITY, STANDARD AND AN APPROXIMATELY 1,200-SQUARE-FOOT MARIJUANA PRODUCT MANUFACTURING FACILITY.

APPLICANT: Majestic Gardens

PROPERTY ADDRESS: 12656 Kenai Spur Highway, Kenai, AK 99611

LEGAL DESCRIPTION: Government Lot 142 & the West 20 Feet of Government Lot 141, Section 31, T5N, R11W

KENAI PENINSULA BOROUGH PARCEL NO: 04314001

WHEREAS, an application meeting the requirements of Section 14.20.150 has been submitted and received on May 30, 2017; and,

WHEREAS, the application affects land which is zoned as General Commercial (CG); and,

WHEREAS, a duly advertised public hearing as required by Kenai Municipal Code 14.20.153 was conducted by the Planning and Zoning Commission on June 28, 2017; and,

WHEREAS, the applicant has demonstrated with plans and other documents that the prerequisites of a Conditional Use Permit have been met; and,

WHEREAS, Kenai Municipal Code 14.20.150 details the intent and application process for conditional uses and specifies the review criteria that must be satisfied prior to issuing the permit, which are the following:

(1) <u>The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district</u>.

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The subject parcel is zoned General Commercial (CG), and is therefore subject to the Principal Permitted and Conditional land-uses as shown on KMC 14.22.010 - Land Use Table.

Pursuant to Ordinance 2870-2016, as approved by the Council of the City of Kenai on January 20, 2016, which became effective on February 19, 2016, a Retail Marijuana Store, Marijuana Cultivation Facility, Limited, Marijuana Cultivation Facility, Standard, and a Marijuana Product Manufacturing Facility may be established and operated under a Conditional Use Permit within the General Commercial Zone. The General Commercial Zone, as outlined in KMC 14.20.120 is intended to provide for areas where a broad range of retail, wholesale, and service establishments is desirable. Uses are regulated to concentrate commercial development to the greatest extent possible and to prevent any uses, which would have an adverse effect upon nearby properties. New single-family and two-family residential uses and other noncommercial uses, except as otherwise provided in this chapter, are not permitted in this zone as principal uses because it is intended that land classified in this zone be reserved for commercial purposes, and because a commercial zone is not suited to the uses excluded above.

The subject parcel previously contained Larry's Club restaurant and bar, which burned down in early 1990's. Pursuant to KMC 14.22.010 – Land Use Table, a Retail Marijuana Store, Marijuana Cultivation Facility, Limited and Standard, as well as a Marijuana Product Manufacturing Facility are a Conditional Use within the General Commercial Zoning District.

Pursuant to the submitted site plan, the applicant proposes to construct the smaller building containing the Retail Marijuana Store and Limited Marijuana Cultivation Facility at a distance of 80 feet from the front property line. The larger building would be constructed behind the proposed smaller building at a distance of 145 feet from the front property line. The front setback for the General Commercial Zoning District is 20 feet. Therefore, the proposed project meeting the setback requires as required in the General Commercial Zoning District.

Given the intent of the General Commercial Zone which encourages a compact group of businesses of the type which are located close enough together to encourage walk-in trade a retail business with a marijuana cultivation facility would be appropriate within the zone.

The Kenai Spur Highway is classified by the State of Alaska Department of Transportation and Public Facilities as a Major Collector. A collector is defined as "A road classification applicable to roads serving a mixture of local access and through traffic, for which the volume, average speed, and trip length of vehicles using the road are usually lower than for principal or minor arterials, but higher than for local roads." Furthermore, KMC 14.20.320 defines a Collector as "...a street located and designed for the primary purpose of carrying through traffic and of connecting major areas of the City". Pursuant to the submitted site plan, primary access to the subject Commercial Marijuana Establishment (CME) would be from the Kenai Spur Highway or Evergreen Street, and not through the surrounding neighborhood. Therefore, impacts to the surrounding neighborhood should be minimal, concerning vehicular access.

Therefore, given the above discussion within the context of the proposed land-use project, it seems reasonable the proposed Commercial Marijuana Establishment would be consistent with the intent of KMC 14.20.150 and the intent of the General Commercial Zoning District with respect to the proposed use as a CME, given compliance with staff recommended specific conditions.

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(2) The value of the adjoining property and neighborhood will not be significantly impaired.

The proposed development must be in compliance with the requirements of KMC 14.20.330 – Standards for Commercial Marijuana Establishments. In addition, the proposed development must also be in compliance with Alaska Statue 17.38, an Act to Tax and Regulate the Production, Sale, and Use of marijuana as well as Alaska Administrative Code – Title 3 – Marijuana Control Board – Omnibus licensure requirements and procedures for marijuana establishments.

Pursuant to KMC 14.20.010 – Land Use Table, a Retail Marijuana Store, Marijuana Cultivation Facility, Limited and Standard, and a Marijuana Product Manufacturing Facility may be established in the General Commercial Zone with a Conditional Use Permit. In addition, pursuant to KMC 14.20.330 – Standards for Commercial Marijuana Establishments, provisions have been put in place to help mitigate impacts to the value of adjoining property and the surrounding neighborhood.

As reviewed by staff, the proposed CME would be contained within a fully enclosed secure indoor facility as required by KMC 14.20.330(d), thereby, helping to mitigate the potential impact to surrounding property owners. In addition, pursuant to KMC 14.20.330 (e) no CME's shall emit an odor that is detectable by the public from outside the CME. Pursuant to the submitted supplemental application materials, under Odor the applicant has indicated that they will implement an Odor Control Plan. The Odor Control Plan will consist of carbon filters and Ona Gel. Pursuant to the submitted application materials, the use of Ona Gel in combination with charcoal filters results in a clean, fresh smell, which neutralizes odors that would be detectable by the public from outside the CME.

Concerning visual and auditory impacts of the proposed CME, pursuant to the KMC 14.20.330 the proposed CME would be located within a fully enclosed secure commercial building. Chapter 14.25 details the requirements of the submission and approval of a Landscape Site Plan. KMC 14.25.020 gives the requirements and in part states that a Landscape Site Plan is required for all commercial development for new construction. The proposed project requires a building permit and is new construction and therefore requires the submission of a Landscape Site Plan. A Landscape Site Plan will be required to be approved by the Planning Department prior to issuance of the Building Permit.

The Landscape Site Plan will need to demonstrate compliance with the off-street parking requirements in KMC 14.20.250(8) for "Store: Retail and wholesale sales of non-bulky items", which requires One (1) space per 300 square feet of gross floor area, "Manufacturing/Industrial, research and laboratories", which requires One (1) space for every 500 square feet of gross floor area plus three (3) for patron parking and "Nurseries and greenhouses" which requires One (1) space per 500 square feet of gross floor area. Therefore, 1-space will be required for the Retail Marijuana Store, 2-spaces for the Garden Supply Store, 6-spaces for the Marijuana Product Manufacturing Facility and 10-spaces will be required for the Marijuana Cultivation Facility, Standard and Limited for a total of 19 off-street parking spaces.

Pursuant to Alaska Statue 17.38, an Act to Tax and Regulate the Production, Sale, and Use of marijuana as well as Alaska Administrative Code – Title 3 – Marijuana Control Board – Omnibus licensure requirements and procedures for marijuana establishments an appropriate license for a Marijuana Establishment will have to be issued by the State of Alaska Marijuana Control Board.

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Staff therefore recommends that a condition be added to require that prior to operation of the CME a copy of the approved appropriate license be furnished to the City of Kenai.

Therefore, provided that all conditions recommended by staff and the Planning and Zoning Commission are followed, staff believes that the value of the adjoining property and neighborhood will not be significantly impaired.

(3) The proposed use is in harmony with the Comprehensive Plan.

The subject parcel is defined in the 2030 Imagine Kenai Comprehensive Plan as Mixed Use (MU). The plan defines MU as *"Mixed Use is intended for a compatible mix of residential, retail, service, office, public, institutional and recreational uses. Use are co-located in an integrated way that supports sustainable forms of transport such as public transport, walking and biking, and increases neighborhood amenities. Compatibility issues are addressed through careful site layout and building design."*

Goal 3 – Land Use of the 2030 Imagine Kenai Comprehensive Plan seeks to discuss land use strategies to implement a forward-looking approach to community growth and development. Objective LU-1 states "Establish siting and design standards so that development is in harmony and scale with surrounding uses."

The area is comprised of existing commercial development located along the Kenai Spur Highway, which fosters a mix of compatible commercial and retail uses. The proposed Retail Marijuana Store and Garden Supply Retail Store would be open to the public whereas the remaining portions of the project would not.

Therefore, as proposed, the developed would be in harmony with the 2030 Imagine Kenai Comprehensive Plan.

(4) Public services and facilities are adequate to serve the proposed use.

City water and sewer serve the subject property. City of Kenai police and fire department resources are sufficient to serve the proposed use.

(5) The proposed use will not be harmful to the public safety, health or welfare.

The proposed project is construct an approximately 2,016-square-foot detached one-story commercial building that would consist of a Commercial Marijuana Establishment (CME) and contain an approximately 288-square-foot Retail Marijuana Store, 500-square-foot Marijuana Cultivation Facility, and an approximately 360-square-foot garden supply retail store. The project is also to construct a proposed approximately 5,000-square-foot detached one-story metal commercial building which would consist of a Commercial Marijuana Establishment containing an approximately 3,800-square-foot Marijuana Cultivation Facility, Standard, and an approximately 1,200-square-foot Marijuana Product Manufacturing Facility.

KMC 14.20.330(f) provides that no portion of a CME can be located within the following buffer distances:

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(1) 1,000 feet of any primary and secondary schools (K-12) and 500 feet of any vocational programs, post-secondary schools including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and,

(2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, a substance abuse treatment facility providing substance abuse treatment.

With regards to buffer distances as discussed in KMC 14.20.330(f)(1), the proposed CME would not be located within 1,000 feet of any primary and secondary school (K-12) or within 500 feet of any vocational program, post-secondary school including but not limited to trade, technical, or vocational schools, college and universities. In addition, it would not be within 500 feet of any, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment. Therefore, the proposed CME meets the buffer requirements of KMC 14.20.330(f)(1).

Therefore, giving the above discussion and proposed conditions of approval, staff believes that they proposed Commercial Marijuana Establishment, would not have a harmful impact to the public safety, health or welfare, provided that all conditions recommended by staff and the Planning and Zoning Commission are followed.

WHEREAS, any and all specific conditions deemed necessary by the Planning and Zoning Commission to fulfill the conditions as set forth below shall be met by the applicant. These may include, but are not limited to measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use, as follows:

1. Further development of the property shall conform to all Federal, State, and local regulations.

2. A building permit will be required for the construction of the Commercial Marijuana Establishment as shown on the submitted floor plan.

3. Prior to issuance of the Building Permit, the property owner shall submit a Landscape Site Plan for review and approval by Planning Administration. The Landscape Site Plan shall demonstrate compliance with Kenai Municipal Code Chapter 14.25 – Landscaping/Site Plan Regulations.

4. All Marijuana Product Manufacturing methods shall conform to the requirements within the International Fire Code.

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5. Prior to operation of the Retail Marijuana Store and/or Marijuana Cultivation Facility, Limited and/or Marijuana Cultivation Facility, Standard, and/or the Marijuana Product Manufacturing Facility, the property owner shall submit a copy of the approved and fully executed license from the Alaska Alcohol & Marijuana Control Board. The applicant shall comply with all regulations as stipulated by the State of Alaska Marijuana Control Board.

6. A Sign Permit will be required for the construction of the proposed marquee sign, which is shown on the submitted floor plan and building elevations. Prior to installation of any new signs, a Sign Permit shall be submitted to the City of Kenai Planning Department for review and approval.

7. Pursuant to Kenai Municipal Code Section 14.20.150(f), the applicant shall submit an Annual Report to the City of Kenai.

NOW, THEREFORE, BE IT RESOLVED, BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA THAT THE APPLICANT **HAS** DEMONSTRATED THAT THE CONSTRUCTION AND OPERATION OF AN APPROXIMATELY 288-SQUARE-FOOT RETAIL MARIJUANA STORE AND A 500-SQUARE-FOOT MARIJUANA CULTIVATION FACILITY, LIMITED AND ALSO THE CONSTRUCTION AND OPERATION OF AN APPROXIMATELY A 3,800-SQUARE-FOOT MARIJUANA CULTIVATION FACILITY, STANDARD AND AN APPROXIMATELY 1,200-SQUARE-FOOT MARIJUANA PRODUCT MANUFACTURING FACILITY MEETS THE CONDITIONS REQUIRED FOR SAID OPERATION AND THEREFORE THE COMMISSION **DOES** AUTHORIZE THE ADMINISTRATIVE OFFICIAL TO ISSUE THE APPROPRIATE PERMIT.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, this 28th day of June, 2017.

JEFF TWAIT, CHAIRPERSON

ATTEST:

Jamie Heinz, Acting City Clerk

CITY OF KENAI ALASKA FOUNDED 1791

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