

REPORT TO THE PLANNING COMMISSION



DATE: October 8, 2019

TITLE: Conditional Use Permit no. 05-19; A request to operate a cannabis storefront retail establishment with incidental cultivation (up to 99 mature plants) and light manufacturing within an existing two-story retail commercial building located at 11940 Palm Drive in the C-G (General Commercial) Zone (APN 639-293-029). Request submitted by Stephanie Bodde and Desert Hot Springs Dispensary.

Prepared by: Scott Taschner, Senior City Planner

Reviewed by: Rebecca Deming, Community Development Director

RECOMMENDATION

- 1) Receive Staff Report;
- 2) Allow Questions of Staff from Planning Commission;
- 3) Open the Public Hearing;
- 4) Take Testimony from Applicant;
- 5) Take Public Testimony;
- 6) Allow opportunity for Applicant Rebuttal;
- 7) Close the Public Hearing;
- 8) Conduct Planning Commission discussion and questions to Staff; and
- 9) Consider a motion to approve Conditional Use Permit No. 05-19, based on the findings stipulated and subject to the proposed Conditions of Approval.

BACKGROUND

On December 3, 2014, the City received an application for a Conditional Use permit to allow a medical marijuana dispensary to operate in an existing retail commercial building at 66406 Pierson Boulevard. The application was received within the time requirement established by the City Council when it determined that three dispensaries would be allowed (the Council also established criteria for scoring and ranking applications for the three dispensaries, including the potential for limited cultivation operations of up to 99 mature plants).

Upon receipt of the points application, it was reviewed by the City Manager, Police Chief, and Community Development Director, and was scored by the City Attorney. The City Attorney also conducted an analysis and reviewed the application for consistency with the medical marijuana dispensary guidelines established by the City Council. The top three applications were given clearance to move forward. On September 15, 2015, the City Council allowed additional applications, including the present request, to proceed through the entitlement process.

On March 20, 2017, the applicant resubmitted the application for a different site at 11940 Palm Drive. The site is located in the C-G (General Commercial) Zone and therefore eligible for use as



a medical marijuana dispensary, subject to approval of a Conditional Use Permit. The proposed site has a gross area of 0.34 acres (14,810 square feet) and is at the northeast corner of Palm Drive and Pierson Boulevard. The site contains an existing two-story retail commercial building with an area of 6,000 square feet; the building is currently vacant. The proposal is to fully occupy the building with a medical marijuana dispensary, including ancillary cultivation (up to 99 mature plants). No other tenants are proposed for the building. The site provides twenty-three (23) on-site parking spaces, including two handicap-accessible spaces, with driveway access on both Palm Drive and Pierson Boulevard.

On June 11, 2019, the applicant's request for a one-year extension of time was granted subject to a condition added by the Planning Commission that the applicant would have to correct all outstanding violations within 45 days of the hearing. The applicant failed to correct the violations in that time frame resulting in the expiration of Conditional Use Permit No 22-14.

The applicant has since come back to re-file a new application proposing the same facility that was approved in 2017. No changes are proposed.

GENERAL PLAN AND ZONING CONSISTENCY

The site is located within the C-G (General Commercial) land use designation of the City General Plan and Zoning map. Medical Marijuana Dispensaries with ancillary limited cultivation may be allowed within this land use designation, subject to approval of a Conditional Use Permit.

The Zoning and General Plan Land Use designations, and the current land uses for surrounding properties, are as follows:

	<u>Zoning & General Plan Designations</u>	<u>Current Land Use</u>
North	C-G (General Commercial)	Vacant Retail/Service/Office
East	C-G (General Commercial)	Hardware Store
South	C-G (General Commercial)	Retail Businesses
West	C-G (General Commercial)	Future City Hall

SITE DESCRIPTION

The existing site is a 14,810 square feet (0.34 acres) rectangular lot, developed with one free-standing two-story building (total floor area about 6,000 square feet). The applicant proposes to occupy the entire building. Other existing site improvements include:

- parking for twenty-three (23) vehicles, and
- pedestrian circulation and landscaping.

Vehicular access is provided from two driveways, one each accessing Palm Drive and Pierson Boulevard.

PROJECT ANALYSIS

The applicant proposes to operate a cannabis storefront retail establishment with ancillary cultivation. Interior improvements to the building are proposed, and exterior changes are limited to new signage (new exterior doors and lighting may be required to comply with security needs). Interior walls will be erected to create spaces for the dispensary/limited cultivation operation, including:

- Reception/Waiting 439 sf
- Education Room 104 sf
- Retail Area 480 sf
- Delivery Area 147 sf
- Safe Room 70 sf
- Bathrooms, Hallways 290 sf
- Dry Storage 773 sf
- Clone Room 206 sf
- Order Processing 509 sf
- Offices 801 sf
- Staff Room 348 sf

Subsequent interior changes are anticipated in a second phase, including 574 square feet of first floor office, clone and storage spaces converted to processing (flower, veg and drying).

Zoning Conformance

No changes to the building’s overall size or form are proposed. The ten-foot required setback on both the front and street sides (Pierson Boulevard and Palm Drive, respectively) is not met – actual setbacks from both the front and street side property lines is zero. However, both conditions are considered pre-existing non-conforming (“grand-fathered”) and not subject to abatement at this time (DHS Municipal Code Section 17.124.020 – Nonconforming structures).

In addition, there are existing porticos projecting from the building on both street sides that extend over the public sidewalks in the street right-of-way. No other development standards are affected by the request.



Site Circulation/Off-Street Parking

Existing pedestrian and vehicular access to the site is provided from Palm Drive and Pierson Boulevard. Staff has evaluated the proposed parking plan against zoning and municipal code requirements. The site plan indicates twenty-three (23) parking spaces. The proposed use is considered a retail use; the applicable zoning standard of three (3) spaces per 1,000 square feet of floor area yield a requirement for eighteen (18) spaces for the building’s 6,000 square feet.

A review of the parking layout indicates that seventeen (17) spaces are perpendicular (“head-in”) and six (6) are parallel. The perpendicular spaces are all at least 9 by 20 feet and meet the minimum dimensional standard (9x19). Three (3) of the parallel spaces are 9 by 23 feet and meet the minimum standard for parallel spaces (9x23). The other three (3) parallel spaces are under-sized and non-conforming (one space is 9x21.7 and two (2) are 7.2 by 20.5). However, there is a sufficient number of conforming spaces to meet the zoning standards for the building. Staff recommends that the proposed handicap access parking spaces be revised, as needed, to meet ADA standards.

Parking Calculation			
Proposed Use	Zoning Requirement	Number of Spaces Required	Number of Spaces Provided
Retail Space: 6,000 sf	3 spaces/ 1,000 sf	18	20 (including 2 for Handicap Access) + 3 non-conforming

Elevations, Colors and Materials

The existing building is designed in a Mission Revival style and of conventional construction; however, the building exterior has several cosmetic defects which will be fixed prior to occupancy of the building. No exterior changes to the structure are proposed. The exterior doors may be replaced to address security issues. Closed circuit cameras will be mounted on the building elevations, and additional exterior lighting may be placed throughout the site. Staff is recommending conditions for review by staff of the design and placement of any exterior security devices, including cameras and lighting.



Signage

The applicant has proposed a monument signage in the planter at the southwest corner of the building; however, no approval of the sign is recommended at this time. Staff will evaluate signage for conformance with the City’s Zoning Code under a separate application, and a condition is recommended to assure that signage meets all zoning and building code requirements.

Landscaping

Existing landscaping is limited to small planters around the building. Planters in the sidewalk right-of-way are also shown. Two new trees – a desert willow and citrus tree – are proposed.

Lighting Plan

The lighting plan indicates proposed exterior security lighting throughout the site. No photometric lighting plan was submitted. Staff is recommending conditions for subsequent preparation of an exterior photometric lighting plan for review by staff. Further, all exterior lighting will conform to the approved exterior lighting plan. These fixtures will be reviewed by staff prior to installation to assure that no off-site glare is created and that they are designed and located to complement the building architecture.

Phasing Plan

The applicant proposes to open and operate in a single phase; however, interior space usage is expected to be modified in the future to include additional processing activities, as discussed above.

OPERATIONAL ISSUES

Staff has reviewed and summarized a number of operational issues below. All aspects of the operation will be subject to the conditions of this Conditional Use Permit as well as the associated Regulatory Permit.

Security

The applicant will employ a security guard licensed and bonded on site during all hours of operation (8 a.m. to 10 p.m., seven days per week). The security guard will be subject to all clearance procedures applicable to the operation's employees.

A continuous monitored alarm system will be installed for all windows, doors, product storage areas and cultivation areas. Digital surveillance and infra-red security cameras with archived storage for up to 240 hours of operations will be provided. The security plan will be subject to review and approval by the City.

Odor Control

The applicant has indicated that a charcoal filter odor control system will be installed in the cultivation area. Staff recommends that the specifications for the system be provided for review and approval by the Director of Community Development and the Riverside County Fire Department, and that the operation be subject to additional odor control measures if the City determines that such additional measures are necessary.

Outdoor Sales

No outdoor sales are proposed or permitted by the ordinance.

Age Restrictions

Only patients conforming to California law will be served, including only those possessing a medical recommendation and valid California ID indicating an age of no less than 18 years. Verification of the medical recommendation and identity will be undertaken prior to any other service or sale. All records of both approved and rejected customers will be stored and available for review by the City.

Hours of Operations

The proposed hours of operation are 8 a.m. to 10 p.m., seven days per week, subject to City review and approval. The City's ordinance presently allows operations from 8:00 a.m. to 10:00 p.m.

Delivery Hours

The applicant proposes to offer delivery services to patients. Patients must first register at the facility for delivery service. Deliveries will be made between 8 a.m. and 10 p.m., seven days per week and delivery vehicles will be equipped with GPS tracking systems. Specifications for the delivery systems may be subject to review and approval by the City.

CONDITIONAL USE PERMIT FINDINGS

Conditional Use Permits are regulated under Section 17.76 of the Desert Hot Springs Municipal Code and require that certain findings be made by the Planning Commission before granting a CUP request. Staff has developed recommendations for each finding, as follows:

1. *That the proposed use is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this Zoning Ordinance.*

The application is for a cannabis storefront retail establishment, including limited incidental cultivation (no more than 99 mature plants), which is identified in Section 17.180.060 of the City of Desert Hot Springs Zoning Ordinance as permitted within any commercial zone which includes the C-G/General Commercial zone), subject to approval of a Conditional Use Permit. The project is proposed to be located within an existing commercial building that complies with applicable provisions of the Zoning Ordinance. Conditions of approval have been prepared and are recommended to assure the proposed use will comply with applicable Zoning Ordinance provisions. Staff recommends this finding.

2. *That the proposed use would not impair the integrity and character of the land use district in which it is to be located.*

Section 17.12.010.B.2 of the Desert Hot Springs Zoning Ordinance identifies the underlying C-G (General Commercial) zoning district to *"include a wide variety of smaller commercial centers at nodes with development such as small scale convenience commercial centers that provide a limited range of convenience commercial services, smaller grocery and convenience stores, service stations, and other limited retail operations; and also along major commercial corridors, with shops including specialty retail shops, a broad range of clothing and apparel, jewelry stores and a variety of personal service businesses."* The proposed cannabis storefront retail establishment, including limited incidental cultivation, qualifies as both a "limited retail operation" and a "personal service business", and will occupy an existing commercial building similar to other retail buildings in the area. The proposed uses will serve customers in a manner similar to other retail and recreational uses and will not introduce any activities that would impair the integrity or character of the land use district in which it is to be located. Staff recommends this finding.

3. *That the subject site is physically suitable for the type and intensity of land use being proposed.*

The site is developed as a commercial building with parking, landscape, and other features and amenities appropriate to the development. The proposed cannabis storefront retail establishment is physically organized similar to other retail establishments. While the site development does not currently comply with required front and street side setbacks, no expansion of the building is proposed. Further, the existing site is similar to older commercial buildings in the downtown area and considered pre-existing non-conforming with regard to front and street side setbacks. On this basis, the site is physically suitable for the type and intensity of the proposed dispensary. Staff recommends this finding.

4. *That the proposed use is compatible with the land uses presently on the subject property.*

The site is developed with a two-story commercial building and paved areas. The proposed cannabis storefront retail establishment, including limited incidental cultivation, is a retail use and can be considered similar to other retail establishments allowed in the C-G (General Commercial) zone, such as personal services (e.g., dry cleaners), grocery stores, or food products. The existing commercial building was developed to accommodate a wide variety of retail/office commercial uses. The proposed dispensary does not appear to be outside the range of activities typical for a commercial building and is proposed to entirely occupy the commercial building. Staff recommends this finding.

5. *That the proposed use would be compatible with existing and future land uses within the general area in which the proposed use is to be located.*

Existing and future land uses within the general area of the proposed cannabis storefront retail establishment are retail/commercial and residential. Lands immediately surrounding the site are zoned for commercial uses, with nearby properties either vacant or developed with retail commercial/office businesses. The applicant proposes to entirely occupy the existing building, and the proposed use is not directly accessed from surrounding land uses. No exterior modifications to the building are proposed, except for security measures; signage will comply with the zoning code. All activities will be contained within the existing building, and the operation will appear as a retail use consistent with the intent of the C-G General Commercial Zone. Consequently, the proposed cannabis storefront retail establishment, including limited incidental cultivation, is expected to be compatible with existing and future development in the surrounding general area. Staff recommends this finding.

6. *That the proposed use is compatible in scale, mass, coverage, density, and intensity with all adjacent land uses.*

The proposed cannabis storefront retail establishment will be located within an existing commercial building. The two-story building is of conventional construction and no new construction or building expansion is proposed. Adjacent land uses are either existing or planned commercial uses. Future commercial uses are currently prohibited by the Municipal Code from exceeding 35 feet in height. The subject 0.34-acre site is developed with one, two-story commercial office building that does not exceed about 27 feet in height and contains a total of about 6,000 square feet. The scale, mass, coverage, density and intensity of the proposed use will be consistent with general commercial activities, and the site's location and orientation toward a primary street will cause the use to be compatible with surrounding commercial uses. Staff recommends this finding.

7. *That there are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.*

The subject site is fully developed with a retail commercial building that includes all public services and utilities installed and available. The proposed cannabis storefront retail establishment will not create an extraordinary demand for water, sanitation or other public utilities and services that would result in any detriment to public health and safety. Staff recommends this finding.

8. *That there will be adequate provisions for public access to serve the site.*

The subject site has sufficient on-site parking and access, with vehicle access available from both Pierson Boulevard and Palm Drive. The design and location of on-site handicap-access parking spaces will be required to meet ADA standards. The proposed cannabis storefront retail establishment will not create any demand for parking beyond what would be expected for a commercial use in the building. Staff recommends this finding.

9. *That there will not be an adverse effect upon desirable neighborhood characteristics.*

Desirable neighborhood characteristics include existing low-density commercial development, long-range views from business of surrounding mountains, and the

future availability of local goods and services in the downtown commercial core. While the proposed cannabis storefront retail establishment will fully occupy the commercial building on-site, there appear to be substantial additional available square footage for other businesses along Pierson Boulevard and Palm Drive. The proposal's location and orientation toward Pierson Boulevard and Palm Drive as well as the limitations on the operation (hours, age restrictions, etc.) is expected to result in no adverse effect on the surrounding area neighborhoods; the building's maximum height of about 27 feet is anticipated to have no effect on long-range views from surrounding areas. Staff recommends this finding.

10. That the proposed use is necessary and essential to the community.

The proposed cannabis storefront retail establishment, including limited incidental cultivation, can be considered necessary and essential to the community to the extent that it is supported by customers that cause it to succeed as a local retail business. Further, the proposed use must also operate under City regulations and conditions of approval so that only the necessary and essential elements of the business – as determined by the City – are expressed over the life of the business. Staff recommends this finding.

11. That the proposed use is consistent with applicable goals and policies of the General Plan.

Staff has identified the following General Plan goals and policies applicable to the application and provides responses to each.

Administration:

Goal: Comprehensive and integrated administration and implementation of all elements of the Desert Hot Springs General Plan through consistent and effective policies and programs.

The City has adopted a zoning ordinance to implement the General Plan and provide for review and approval of individual development projects. The proposed cannabis storefront retail establishment will be subject to all requirements of this Conditional Use Permit, as prescribed by the Zoning ordinance and the adopted conditions of approval.

Policy 7: The City shall encourage in-fill development within already urbanized areas of the corporate boundaries of the City, and expansion of new development shall be logically phased and, as appropriate, guided by the development of existing and new Specific Plans.

The proposed cannabis storefront retail establishment will be located within an existing commercial building in the C-G (General Commercial) zone of the City and all public improvements are in place.

Policy 8: City shall provide opportunities for review and comment on development proposals through public hearing notices sent to owners of property located at least within 300 feet of development proposal sites.

Prior to Planning Commission review of the project application, notice of the proposed cannabis storefront retail establishment conditional use permit hearing was provided to property owners within 300 feet of the proposed site. In addition, a public

hearing before the Planning Commission has in fact been held where persons were provided a meaningful opportunity to be heard.

Commercial Land Use:

Goal: A responsive range of commercial land uses conveniently and appropriately distributed throughout the City, meeting the community's needs and taking full advantage of emerging development and economic opportunities.

The proposed cannabis storefront retail establishment will be located in an existing commercial building located on two major collectors (Pierson Boulevard and Palm Drive). This site is a convenient location for retail commercial uses generally. The proposed use will provide medical marijuana to qualified customers, which is an emerging economic opportunity.

Community Design:

Goal 2: Variety of community design, architecture and landscaping compatible with the City's desert setting and surrounding development.

The project will be located within an existing commercial building and no structural changes to the exterior are proposed. Exterior changes will be limited to the possible replacement of doors for additional security, outdoor security lighting and signage, subject to the zoning code. All exterior changes will be reviewed by staff to assure compatibility with the City's desert setting and surrounding development.

Policy 1: Private and public sector development projects shall equally apply City community design standards, thereby protecting the community's scenic viewsheds, providing community cohesion and enhancing the image of Desert Hot Springs as a resort residential community.

The site contains one existing retail commercial building and no expansion is proposed. Therefore, the proposed cannabis storefront retail establishment will not affect the community's scenic viewsheds.

Policy 9: Signs shall be limited to the minimum size, scale and number needed to provide functional identification and exposure necessary to convey messages, while minimizing impacts on traffic safety, streetscape and scenic viewsheds.

All exterior signs shall be subject to approval under the Desert Hot Springs Zoning Code, including limitations on size, scale and number. The code does not permit signs to exceed the height of existing construction which will result in no impacts on scenic viewsheds.

Policy 10: Lighting shall be limited to the minimum height, number and intensity of fixtures needed to provide security and identification in residential, commercial and industrial development, taking every reasonable measure to preserve the community's night skies.

All exterior lighting shall comply with Section 17.40.170 (Outdoor Lighting) to assure that only the minimum level of lighting necessary to provide the needed security is installed. All proposed exterior lighting shall be reviewed by staff for conformance to the applicable standards. Therefore, the proposed cannabis storefront retail establishment is taking reasonable steps to preserve the night skies.

Economic Development:

Goal 1: A broadly based, healthy and balanced economy that provides a full range of economic and employment opportunities.

The proposed cannabis storefront retail establishment will expand the type of commercial services available to residents and visitors, provide opportunities for new employment and business support services.

Goal 2: Continued growth, which assures the maintenance of a revenue base adequate to support present and future public services and facilities' needs.

The establishment of a cannabis storefront retail establishment will provide additional revenues to the City to support present and future public needs.

Policy 11: Make every effort to expedite the processing of development proposals, which address the economic development goals of the community and take the initiative to incubate new programs and projects.

The application for a Conditional Use Permit is required by the Desert Hot Springs zoning code to assure compatibility with surrounding land uses and to develop project-specific conditions to assure successful operation in concert with the City's development goals. The application was received on December 3, 2014, and on September 15, 2015, the City Council allowed this application, among others, to proceed through Conditional Use Permit/regulatory permit review. The revised application was most recently submitted on September 23, 2019 and deemed complete on September 25, 2019; since then the application has been processed expeditiously.

Hazardous and Toxic Materials:

Goal: The assured safety of City of Desert Hot Springs residents and visitors through the regulation of the manufacture, transport, use and disposal of toxic and hazardous materials.

Any hazardous or toxic materials associated with the proposed operation shall be regulated by the provisions of all applicable law, including the Desert Hot Springs Municipal Code, including Section 5.50 (Medical Marijuana Facilities Regulatory Permit), Section 17.40 (Property Development Standards) and Section 17.180 (Medical Marijuana Facilities Location).

Fire and Police Protection:

Goal: A high level of police and fire protection and service.

The proposed cannabis storefront retail establishment will include security measures, including door locking systems, exterior lighting, camera monitoring and other systems to minimize the impact on police protection services, and subject to City approval. Fire suppression systems will be incorporated into the operation to minimize the impact on fire protection service, and subject to City approval. Consequently, the proposed medical marijuana dispensary is not expected to demand a high level of police and fire protection services.

Policy 1: All new and improved developments shall be reviewed for their impact on safety and the provision of police and fire protection services.

The proposed application and associated regulatory permits will include requirements for review of the proposed operation by City police and fire services. Any identified impacts on safety will be addressed by conditions of approval or regulatory requirements.

Policy 2

Enforce fire standards and regulations in the course of reviewing building plans and conducting building inspections.

All plans and improvements for interior or exterior building improvements will be subject to review and enforcement under fire codes and regulations.

The project appears to be consistent with the applicable goals and policies of the General Plan. Staff recommends this finding.

- 12. That there will not be significant harmful effects upon environmental quality and natural resources.*

The proposed cannabis storefront retail establishment, including limited incidental cultivation, will occupy an existing commercial building, located within an established retail commercial area, and operated in accordance with the City's regulations and conditions of approval. Consequently, no significant adverse or harmful effects on the environment or on any natural resources are anticipated. Staff recommends this finding.

- 13. That the negative impacts of the proposed use are mitigated and/or a mitigated negative declaration may be filed.*

The proposed cannabis storefront retail establishment, including limited incidental cultivation, will be operated as a retail commercial use within an existing commercial building. It will be operated in accordance with all applicable regulations and conditions of approval. A review of the proposed project has identified no negative impacts; consequently, no mitigation measures are required.

- 14. That the proposed location, size, design, and operating characteristics of the proposed use would not be detrimental to the public interests, health, safety, convenience, or welfare of the City.*

The proposed cannabis storefront retail establishment, including limited incidental cultivation, has been reviewed by City departments and other public agencies for any potential detrimental effects on public interests, health, safety, convenience or welfare of the City. Any potential concerns have been addressed by recommended conditions of approval, and no unresolved concerns remain. Staff recommends this finding.

In reviewing this application, plans, documents and other supporting information, staff has determined that the Planning Commission can make these findings.

ENVIRONMENTAL ANALYSIS

The applicant proposes to occupy and improve an existing commercial building; only interior and cosmetic exterior improvements are proposed, and these will result in no significant environmental impacts.

In accordance with the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq*, and the CEQA Guidelines, Title 14, Chapter 3 of California Code of Regulations, the project may be found to be Categorically Exempt from further environmental review as a Class 1 (Existing Facility) Categorical Exemption of Section 15301 of CEQA.

FISCAL IMPACT

Improvements to the existing building will generate one-time revenues to the City in the form of building permit fees to defray plan check and inspection costs. In addition, the City will receive on-going revenue from cannabis taxes.

RECOMMENDATION

Staff finds that the proposed project is substantially consistent with the General Plan and meets the development standards of the C-G (General Commercial) zoning district. Staff recommends that the Planning Commission approve Conditional Use Permit No. 05-19 based on the findings stipulated and subject to the proposed Conditions of Approval.

EXHIBIT(S)

1. Recommended Conditions of Approval
2. Site Plan
3. First Floor Plan
4. Second Floor Plan
5. Building Elevations
6. Building Elevations (2)
7. Landscape Plan
8. Exterior Lighting Plan