

By: Peggy Horton
Introduced: June 3, 2024
Public Hearing: June 17, 2024
Action: APPROVED

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. 24-11**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT FOR THE OPERATION OF A MARIJUANA RETAIL FACILITY AT 6199 EAST MOUNTAIN HEATHER WAY, TAX ID 6932B01L001A.

WHEREAS, Teri Zell, of Higher by Bad Gramm3r, applied for a conditional use permit to relocate a marijuana retail facility from 1204 North Hyer Spur to 6199 East Mountain Heather Way; and

WHEREAS, MSB 17.60.030(A)(4) requires a conditional use permit for the operation of a marijuana retail facility; and

WHEREAS, unless this type of use is maintained under and in accordance with a lawfully issued permit, marijuana retail facilities are declared to be a public nuisance; and

WHEREAS, according to the application material, the proposed retail facility will be wholly contained within a 2,606-square-foot commercial structure; and

WHEREAS, there is no industrial equipment or processes that generate noise associated with the proposed use; and

WHEREAS, there are no outdoor speakers or public announcement systems associated with the proposed use; and

WHEREAS, Pannone Engineering prepared a Traffic Impact Analysis Worksheet as part of the application material; and

WHEREAS, according to the application material, the current business's self-reported peak hour traffic is currently 12 trips; and

WHEREAS, according to the application materials, the Institute of Transportation Engineers (ITE) Trip Generation Manual indicates an average of 28.85 trips per 1,000 square feet of Gross Floor Area (GFA) on Saturdays, which is the day with the highest traffic. This data is based on only five studies, which is a limited study database for trip rates for this type of land use; and

WHEREAS, the owner provided the engineer with the current customer volume. Since the anticipated use or similar is not listed in the ITE Trip Generation Manual, the engineer tripled the reported current customer volume and estimated 20 peak-hour trips; and

WHEREAS, according to the application material, the average rates for Higher by Bad Gramm^{3r} proposed location will never exceed 20 trips per hour at peak times on any day of the week; and

WHEREAS, according to the application material, the proposed facility does not require a traffic impact analysis; and

WHEREAS, the proposed use will not be processing, manufacturing, or storing hazardous substances identified in MSB 17.61.020(A)(3); and

WHEREAS, the proposed use is confined to a generally flat area on the parcel; and

WHEREAS, the proposed use is commercial retail in nature and will not generate contaminated water runoff; and

WHEREAS, the subject parcel is 1.34 acres in size; and

WHEREAS, according to the application material, the existing Higher by Bad Gramm3r Retail building at 1204 North Hyer Spur will be moved approximately 850 feet east to the subject parcel; and

WHEREAS, the subject parcel has frontage on East Mountain Heather Way, which is classified as a collector and can accommodate the traffic associated with commercial use; and

WHEREAS, East Mountain Heather Way has commercial and industrial uses along its frontage, including an office building, butcher shop, tank fabrication company, and gymnastics center; and

WHEREAS, East Mountain Heather Way is a frontage road located off East Palmer-Wasilla Highway; and

WHEREAS, East Palmer-Wasilla Highway is classified as a major arterial and has several different uses on its frontage, including

commercial, industrial, residential, and vacant or undeveloped;
and

WHEREAS, According to the application material, the proposed hours of operation are 9:00 a.m. to 10:00 p.m., seven days a week;
and

WHEREAS, according to the application material, the proposed use will be located approximately 85 feet from the East Mountain Heather Way right-of-way, approximately 30 feet to the southwesterly lot line, approximately 86 feet to the northwesterly corner lot line, and approximately 114 feet to the northeasterly lot line; and

WHEREAS, the proposed use will be located south of and approximately 240 feet from the closest residential structure; and

WHEREAS, within 1,000 feet, various land uses exist, including commercial, industrial, residential, and vacant or undeveloped; and

WHEREAS, consumption of marijuana is prohibited at the site;
and

WHEREAS, persons under 21 are prohibited from entering the facility; and

WHEREAS, according to the application material, loitering will not be allowed; and

WHEREAS, the closest school (Birchtree Charter School) is approximately 3,700 feet from the proposed use; and

WHEREAS, according to the application material, the facility has a 24-hour monitoring alarm system, exterior lighting, and a video surveillance system; and

WHEREAS, according to the application materials, AMCO's emergency order approved the use of the current building's drive-thru window during the COVID-19 pandemic, and the applicant proposes to use it when they move the building to the new location; and

WHEREAS, according to the application material, marijuana or marijuana products will not be visible to the public from the drive-thru window; and

WHEREAS, according to the application materials, the drive-thru window is equipped with safety features, including safety plate glass, iron bars, a security shutter, a transaction drawer similar to that of a drive-thru bank, and surveillance cameras; and

WHEREAS, according to the application material, the use has a security plan in place, which includes education of employees on all security measures; and

WHEREAS, the Central Mat-Su Fire Department Deputy Fire Marshal issued Plan Review #2024-101 for the commercial structure; and

WHEREAS, the commercial structure fully complies with the State of Alaska fire code; and

WHEREAS, the applicant provided a copy of the approved Plan Review #2024-101; and

WHEREAS, according to the application material, all unusable marijuana products are mixed into organic soil and then disposed of at the Borough Central Landfill; and

WHEREAS, the applicant submitted all required site plans and operational information, except for evidence that the commercial structure will be relocated to comply with the setback requirements of MSB 17.55; and

WHEREAS, according to the application material, all retail operations will occur indoors; and

WHEREAS, according to the application material, the structure will meet all applicable setback requirements of MSB 17.55; and

WHEREAS, according to the application material, the site drainage plan includes a swale along the southwest property line to retain the increased stormwater runoff due to the larger impervious surfaces being installed on this lot; and

WHEREAS, according to the application material, the facility will have a sign with the company name on the top of the building and an independent signpost. Signs are also planned on the sides of the building; and

WHEREAS, according to the application material, the commercial structure will have lighting on all four sides and five light poles installed separately from the building. The lighting will be downward-directional and shielded to mitigate unwanted light pollution; and

WHEREAS, according to the application material, the facility will have a sign with the company name on the top of the building and an independent signpost. Signs are also planned on the sides of the building; and

WHEREAS, according to the application material, the applicant will install a 40' pole with the mounted sign approximately 15 feet from the southwest property boundary; and

WHEREAS, according to the application materials, Alaska Statute 19.25.105 delineates the restrictions for outdoor

advertising signs. It allows outdoor advertising signs within 660 feet of a right-of-way, visible from the main traveled way, and advertising activities conducted on the property; and

WHEREAS, the State of Alaska Marijuana Control Board (AMCO) voted to approve a transfer of location application for Higher by Bad Gramm3r Retail Marijuana Store License # 19178 with delegation at the November 15-16, 2023 meeting; and

WHEREAS, Planning staff received a copy of AMCO's delegated approval for the applicant's transfer of location application; and

WHEREAS, a marijuana retail facility has operated in the structure for over four years in its current location; and

WHEREAS, the bus access road that previously bisected the subject property was vacated, as shown on Plat # 2002-87. The remaining pavement is proposed to be removed; and

WHEREAS, the proposed use will be located approximately 125 feet northwest of the closest commercial structure; and

WHEREAS, according to the application material, the net floor area is approximately 2,606 square feet in size; and

WHEREAS, a marijuana retail facility, 2,606 square feet in size, is required to provide eight parking spaces, one of which

must be an Americans with Disabilities Act (ADA) compliant space;
and

WHEREAS, according to the application material, nine customer parking spaces are proposed; and

WHEREAS, according to the application material, each parking space is 20 feet long and 10 feet wide; and

WHEREAS, ADA guidelines require one van-accessible parking space, 11 feet wide with a five-foot-wide parking aisle, for every 1 to 25 spaces; and

WHEREAS, there are no vertical clearance limitations on site;
and

WHEREAS, the Planning Commission has reviewed this application with respect to standards set forth in MSB 17.60.100, 17.60.150, and 17.60.170; and

WHEREAS, the Planning Commission conducted a public hearing on October 2, 2023, on this matter; and

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby adopts the aforementioned findings of fact and makes the following conclusions of law supporting approval of Planning Commission Resolution 24-11;

1. The use will not exceed sound levels set forth in MSB 17.61.080, and noise levels exceeding the levels in MSB 17.61.080 are prohibited. As such, a Core Area Conditional Use Permit is not required under this standard (MSB 17.61.020(A)(1)).
2. A Core Area Conditional Use Permit is not required under this standard, as the number of vehicles will not exceed 100 vehicles during the morning or afternoon peak hours or more than 750 vehicles a day (MSB 17.61.020(A)(2)).
3. A Core Area Conditional Use Permit is not required under this standard because the proposed use will not process, manufacture, or store hazardous substances beyond the thresholds identified (MSB 17.61.020(A)(3)).
4. The proposed use will not generate contaminated water runoff or other discharges that are likely to violate state water quality standards or negatively impact groundwater or surface water quality beyond adjacent property lines. As such, a Core Area Conditional Use Permit is not required under this standard (MSB 17.61.020(A)(4)).
5. The proposed use will not detract from the value, character, and integrity of the surrounding area (MSB 17.60.100(B)(1)).

6. The proposed use will not adversely affect public health, safety, convenience, and welfare (MSB 17.60.100(B)(2)).
7. Sufficient setbacks, lot area, buffers, and other safeguards are being provided (MSB 17.60.100(B)(3)).
8. The application material has met all of this chapter's requirements (MSB 17.60.100(B)(4)).
9. The proposed use will not negatively affect other properties due to factors such as noise and odor (MSB 17.60.150(A)(1)).
10. Measures are in place to reduce negative effects upon adjacent properties (MSB 17.60.150(A)(2)(a-c)).
11. The proposed use is compatible with the character of the surrounding area (MSB 17.60.150(A)(3)).
12. The proposed use is more than 1,000 feet away from any school grounds (MSB 17.60.150(B)(1)).
13. Documentation demonstrating the applicant obtained all applicable licenses pertaining to 3 AAC 306.005 was provided to planning staff (MSB 17.60.150(D)(1)).
14. The proposed use will be in full compliance with all applicable fire codes (MSB 17.60.150(D)(2)).
15. The proposed use is located on a parcel that is appropriate for commercial use (MSB 17.60.170(A)(1-3)).

16. The proposed use meets the minimum number of parking spaces for retail facilities (MSB 17.60.170(B)).

17. The proposed use will comply with current ADA parking space guidelines (MSB 17.60.170(C)).

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Planning Commission finds this application does meet the standards of MSB 17.60 and does hereby approve the conditional use permit for the operation of a marijuana retail facility, with the following conditions:

1. Prior to operating, the applicant shall obtain approved driveway permits for both proposed driveways onto East Mountain Heather Way.
2. Prior to operating, the applicant must submit a surveyor's as-built drawing to the Planning staff, conducted after the building has been moved. The drawing shall show the location and dimensions of the commercial structure in relation to property lines, demonstrating compliance with MSB 17.55 - Setback and Screening Easements.
3. Prior to operating, the applicant must install the drainage facilities as shown on the site drainage plan, approved by MSB PD&E. Provide evidence of compliance to Planning staff. These drainage

facilities shall be maintained for the duration of the conditional use permit.

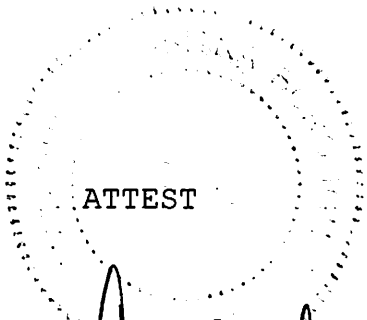
4. Prior to operating, the applicant shall have the ADA parking stall and access aisle painted and compliant with the current ADA guidelines. Provide evidence of compliance to Planning staff.
5. Exterior lighting will be designed to direct light downwards and be shielded, if necessary, to mitigate spill light and glare from impacting neighboring properties or traffic on nearby roads.
6. The operation shall comply with all applicable state and local regulations.
7. All aspects of the operation shall comply with the description detailed in the application material and with the conditions of this permit. An amendment to the Conditional Use Permit shall be required prior to any expansion of the conditional use.
8. Borough staff shall be permitted to enter the premises subject to this permit to monitor compliance with permit requirements. Such access will, at minimum, be allowed on demand when activity is occurring, and/or with prior verbal or written notice, and/or at other times as necessary to monitor

compliance. Denial of access to Borough staff shall be a violation of this Conditional Use Permit.

9. The hours of operation shall not exceed 9:00 a.m. to 10:00 p.m., seven days a week.

10. On-site consumption of marijuana and marijuana products is prohibited.

ADOPTED by the Matanuska-Susitna Borough Planning Commission this 17 day of June, 2024.



ATTEST

Corinne Lindfors
CORINNE LINDFORS,

Acting Planning Clerk

(SEAL)

CJ Koan
CJ KOAN, Chair

YES: Glenn, McCabe, Allen, Shawne

NO: Koan