



301 East Main Street
Lowell, Michigan 49331
Phone (616) 897-8457
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PLANNING COMMISSION-CITIZEN ADVISORY COMMITTEE
CITY OF LOWELL, MICHIGAN
AGENDA
MONDAY, AUGUST 9, 2021 AT 7:00 P.M.
UPSTAIRS – COUNCIL CHAMBERS

1. CALL TO ORDER: PLEDGE OF ALLEGIANCE, ROLL CALL
2. APPROVAL OF AGENDA
3. APPROVAL OF THE MINUTES OF PREVIOUS MEETINGS
 - a. July 12, 2021 – Regular Meeting
4. PUBLIC COMMENTS AND COMMUNICATIONS CONCERNING ITEMS NOT ON THE AGENDA
5. OLD BUSINESS
 - a. Public Hearing – 126 S. West – Site Plan Review/Special Land Use
6. NEW BUSINESS
7. STAFF REPORT
8. COMMISSIONERS REMARKS
9. ADJOURNMENT

**OFFICIAL PROCEEDINGS
OF THE
PLANNING COMMISSION-CITIZEN ADVISORY COMMITTEE
CITY OF LOWELL, MICHIGAN
FOR THE REGULAR MEETING OF
MONDAY, JULY 12, 2021 AT 7:00 P.M.**

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL.

The Meeting was called to order at 7:00 p.m. by Chair Bruce Barker.

Present: Commissioners Tony Ellis, Amanda Schrauben, Michael Gadula, Marty Chambers and Chair Bruce Barker.

Absent: Commissioner Collins Plank and Commissioner Dave Cadwallader.

Also Present: City Manager Michael Burns, Andy Moore with William & Works, Lowell City Clerk Sue Ullery.

2. EXCUSE OF ABSENCES.

IT WAS MOVED BY CHAMBERS and seconded by ELLIS to excuse the absence of Commissioners Cadwallader and Plank.

YES: 5. NO: None. ABSENT: Commissioners Plank and Cadwallader. MOTION CARRIED.

3. APPROVAL OF AGENDA.

IT WAS MOVED BY CADWALLADER and seconded by CHAMBERS to approve the agenda as written.

YES: 5. NO: None. ABSENT: Commissioner Cadwallader and Plank. MOTION CARRIED.

4. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETINGS.

IT WAS MOVED BY CHAMBERS and seconded by ELLIS to approve minutes of the June 14, 2021 Regular Meeting as written.

YES: 5. NO: None. ABSENT: Commissioner Cadwallader and Plank. MOTION CARRIED.

IT WAS MOVED BY GADULA and seconded by ELLIS to approve minutes of the June 28, 2021 Special Meeting as written.

YES: 5. NO: None. ABSENT: Commissioner Cadwallader and Plank. MOTION CARRIED.

5. PUBLIC COMMENTS AND COMMUNICATIONS CONCERNING ITEMS NOT ON THE AGENDA.

There were no comments.

6. OLD BUSINESS.

a.) Special Land Use Review – 1279 Gee Drive – John Baar.

Chair Barker reviewed the Special Land Use at 1279 Gee Drive, stating it seems to be going well and John Baar is doing exactly what he is supposed to do. Referring to his letter, Baar has again requested

to have eight cars, instead of six allowed on his property. Chair Barker recommended denial of this request as it seems to be going well with the conditions already have in place. By general consensus, the Commissioners agreed.

7. NEW BUSINESS

a.) Site Plan Review – 400 W. Main

Tyler Velting came up and discussed his plan to have a court yard and a patio, including green spaces for the expansion of the Brewery.

Andy Moore with Williams & Works then reviewed his memo stating Union Estates LLC, represented by Tyler Velting has submitted an application for a site plan amendment to the New Union Brewery at 400 E Main, at the southwest corner of Hudson and West Main. The purpose of this memorandum is to review the site plan amendment pursuant to applicable standards of the City of Lowell Zoning Ordinance. The original special land use approval considered the brewery use on the single parcel at 400 W Main Street. In November 2020, the applicant amended the site plan to expand the use with a concrete patio and roof, which was approved by the Planning Commission. However, upon receiving engineered drawings, the applicant noted the building looked too much like a pole barn and did not construct the new features proposed in the amendment. Therefore, the applicant has submitted a new application for amending the original site plan with a different design, which would create an outdoor courtyard with converted shipping containers and two covered low-profile silo roofs. Major site plan amendments shall be reviewed by the Planning Commission in the same manner as the original application, per Section 18.09 C of the Zoning Ordinance. Because the applicant is not proposing any changes to the use, our review focuses only on the proposed site improvements.

Moore then reviewed the Site Plan Review Standards 1 through 6.

Moore and the Commissioners found that all the standards have been met.

IT WAS MOVED BY BARKER and seconded by ELLIS to accept that all the Site Plan Review Standards 1 through 6 have been met.

YES: Commissioner Schrauben, Commissioner Gadula, Commissioner Ellis, Commissioner Chambers and Chair Barker.

NO: None. ABSENT: Commissioner Cadwallader and Commissioner Plank. MOTION CARRIED.

Based on the foregoing review and finding of facts, the proposed special land use and site plan is subject to the following conditions.

1. No demolition or earthwork shall be undertaken on the site until a building permit has been issued consistent with this site plan approval.
2. Prior to issuance of any City permits, the applicant shall have paid all application, permit, reimbursable escrow, and other fees related to the request.
3. The applicant and the site shall at all times comply with local standards and ordinances.
4. A brewery/winery shall obtain and maintain all applicable federal, state, and local permits upon request, furnish copies of applicable permits to the City.
5. The applicant shall comply with any stipulations of the Fire Department regarding emergency vehicle access and the City Engineer regarding drainage on the site.
6. Any proposed lighting must be reviewed and approved by the Zoning Enforcement Officer prior to

construction/placement of such lighting.

7. The applicant shall provide an updated site plan for staff review that shows a deferred parking area on the site.
8. The shipping containers shall be painted and designed to be compatible with the existing brewery building and the surrounding area.
9. Silo roofs shall not exceed 40 feet, in accordance with Section 12.04 of the Zoning Ordinance.
10. Applicant shall comply with floodplain conditions of Chapter 14.
11. Parking lot to be paved with asphalt by May 30, 2022.

IT WAS MOVED BY BARKER and seconded by ELLIS to approve the 400 West Main New Union Brewery Site Plan Amendment with the above 11 conditions met as listed.

b.) Public Hearing – 2384 W. Main – Special Land Use.

Chair Barker asked if someone was here to represent NU Group LLC and there was not.

IT WAS MOVED BY ELLIS and seconded by CHAMBERS to table the 2384 W Main Special Land Use.

YES: 5 NO: None. ABSENT: Commissioners Plank and Cadwallader. MOTION CARRIED.

c.) Public Hearing – 126 S. West – Site Plan Review/Special Land Use.

Chair Barker opened the Public Hearing.

Cody Newman with Driven Design who is the architect explained their plans.

Andy Moore with Williams and Works then review his memo stating BTD Holdings LLC, represented by James McGillie of the Covert Law Firm PLLC, has submitted an application for site plan review and special land use approval to open an adult use marihuana establishment (“Iconic Wellness & Provisioning Center”) at 126 S West Avenue. The purpose of this memorandum is to review the request pursuant to Chapter 17 Special Land Uses and Chapter 18 Site Plan Review of the City of Lowell Zoning Ordinance. The subject property has an area of approximately 0.3 acres and is within the C3 General Business district. A site plan for the building was previously approved at the October 12, 2020, Planning Commission meeting. This previous review considered the merits of the building in relation to the site and surrounding area, resulting in approval of the building, provided that it was occupied by a permitted by right in the C3 district. At the time of the original approval, the applicant was anticipating using the building for adult use marihuana purposes but did not apply for that specific special land use, indicating they may pursue it at a later time. Now the applicant has in fact proposed to use this building as a recreational marihuana retail facility with no on-site cultivation of this product. Therefore, this review is intended to evaluate the proposed marihuana special land use in the building at this location. By definition, ‘marihuana retailer’ is a type of adult use marihuana establishment. All adult use marihuana establishments are permitted only as a special land use in the C3 district.

Moore suggested the applicant ask for a shared parking arrangement of some kind at least temporarily with one of the neighboring businesses to use half a dozen or something of their parking spaces just in case.

IT WAS MOVED BY BARKER and seconded by CHAMBERS to table this Public Hearing and Special Land Use review until the parking situation can be addressed.

YES: Commissioner Chambers, Commissioner Schrauben, Commissioner Plank, Commissioner Ellis, Commissioner Gadula and Chair Barker.

NO: None. ABSENT: Commissioners Plank and Cadwallader. MOTION CARRIED.

8. **STAFF REPORT.**

There was none.

9. **COMMISSIONERS REMARKS.**

Commissioner Chambers stated Riverwalk Festival was amazing and thank you to the people that cleaned up the graffiti at Creekside.

10. **ADJOURNMENT.**

IT WAS MOVED BY GADULA and seconded by CHAMBERS to adjourn at 7:49 p.m.

DATE:

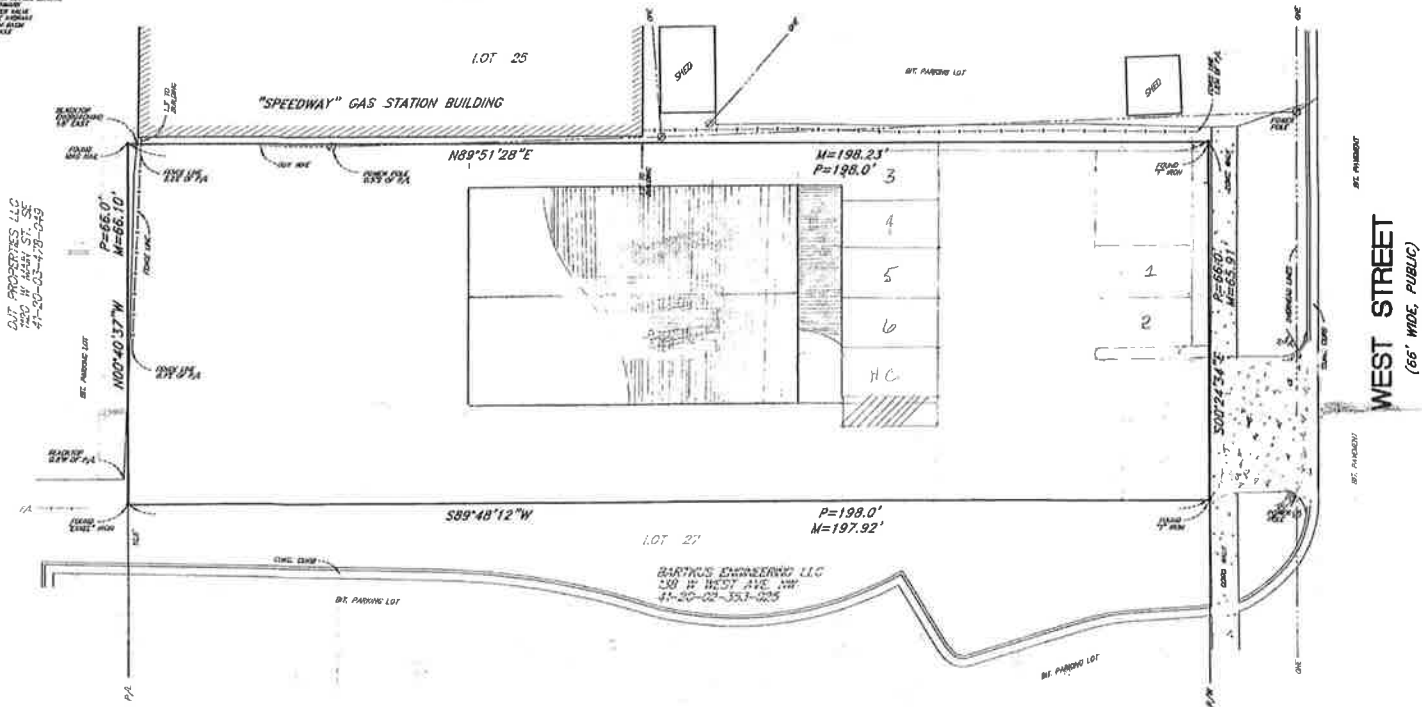
APPROVED:

Bruce Barker, Chair

Susan Ullery, Lowell City Clerk

- [illegible]

SPEEDWAY SUPER AMERICA LLC
1004 W MAIN ST
41-20-02-353-012



201. *First American Title Insurance Company and Biome Construction Corporation v. Nevada Corporation*
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2010 Minimum Standard Order Requirements for ALTA/NSIP Land Title Surveys, jointly established and adopted by ALTA and NSIP, and includes Items 1, 2, 3, 4, 7a, 8, 9, 13, 16, and 18 of Table A thereof. The field work was completed on August 22, 2016.

Kath Russell, PS431604

Date: August 25, 2018

LEGAL DESCRIPTION FROM FIRST AMERICAN TITLE POLICY NO. 821045:
Lot(s) 20 of SHEET A SWITTS' ADDITION, City of Lowell, West County,
Michigan, according to the plat thereof recorded in Liber 7 of Plats, Page 13
of West County Records.

NOTE:

1. According to FEMA 1004 map dated May 16, 1983, community panel no. 280108 0001 B, subject parcel lies in Zone B, which is described as areas lying between the 100 year flood plain and 500 year flood plain zones.

GRAPHIC SCALE
10' 0 5' 10'
(IN FEET)
1 inch = 10 ft.



ALTANOPS LAND TITLE SURVEY
126 S WEST STREET SE
SWEET AND SMITH'S ADD.
CITY OF LOWELL, KENT CO., MR.

SHAWN BOWNE
BOWNE CONSTRUCTION
806 N WASHINGTON ST.
LOWELL, MI 49351

'SHEET
1 of 1

MICHIGAN COMMERCIAL LEASE AGREEMENT

I. THE PARTIES. This Michigan Commercial Lease Agreement ("Agreement") made on July 23, 2021, by and between:

Lessor: Bartkus Engineering LLC [name of lessor], with a mailing address of 215 West Main Street Lowell Michigan 49331 ("Lessor"), and

Lessee: BTD Holdings LLC [name of lessee], with a mailing address of 15154 Pine Street, Grand Haven, MI 49417 ("Lessee"), and collectively shall be known as the "Parties", agree as follows:

II. DESCRIPTION OF LEASED PREMISES. The Lessor agrees to lease to the Lessee the following described space:

Street Address: 138 South West Ave. Lowell Michigan 49331

Square Feet: 16000 SF

Type of Space: Parking

Other Description: North section only of parcel with the North South divider being the concrete curbed island running east west across property. Westward limit of space is marked with concrete curbs. South section of parcel will be inaccessible to general public by means of a gate.

Hereinafter known as the "Premises."

III. USE OF LEASED PREMISES. The Lessee agrees to use the Premises for: (check one)

☐ - All purposes legal under law.

☒ - Only the following purposes: Vehicle parking for retail business at 126 S. West Avenue Lowell Michigan 49331

Any change in the above-mentioned purposes of the Premises shall only be permitted upon the Lessor's prior written consent.

IV. TERM OF LEASE. The term of this Agreement shall be for a period of 3 year(s) commencing on September 1, 2021, and expiring at midnight on September 1, 2024 ("Initial Term").

V. SECURITY DEPOSIT. As part of this Agreement: (check one)

☐ - There shall be no deposit required for the successful performance of this Agreement ("Security Deposit").

☒ - There shall be a deposit in the amount of \$700 shall be due and payable in advance of the Term or at the signing of this Agreement ("Security Deposit"). The



Security Deposit shall be held in escrow by the Lessor as security for the successful performance of the terms and conditions of this Agreement. The Security Deposit may not be used to pay the last month's Rent unless written permission is granted by the Lessor.

VI. RENT. The net monthly payment shall be seven hundred dollars (\$700) payable monthly with the first payment due upon the commencement of this Agreement and each monthly installment payable thereafter on the first day of each month after the Initial Term ("Base Rent"). The Base Rent shall also be applied to any pro-rata period when the Lessee occupies the Premises for less than a one (1) month period.

The Base rent shall increase by four percent (4%) each year of this lease, with the increased rents due starting on months 13 (year 2) and months 25 (year 3).

VII. LATE FEE. If Rent has been not paid within 5 days after the due date, the Lessee shall accrue a payment penalty of one of the following: (check one)

☐ - Interest at a rate of _____ percent (____%) per annum on a daily basis until the amount is paid in full ("Late Fee").

☒ - Late fee of thirty dollars (\$30) per day until the amount is paid in full ("Late Fee").

In this regard, all delinquent rental payments made shall be first applied to the Late Fee and all remaining amounts toward the outstanding rental payments.

VIII. EXPENSES.

☒ - TRIPLE NET (NNN). Tenant's Initials AC Landlord's Initials EB

It is the intention of the Parties that this Agreement shall be considered a "Triple Net Lease."

- a.) **Operating Expenses.** The Lessor shall have no obligation to provide any services, perform any acts, or pay expenses, charges, obligations, or costs of any kind whatsoever with respect to the Premises, except the property taxes and assessments. The Lessee hereby agrees to pay one hundred percent (100%) of all Operating Expenses as hereafter defined for the Term of this Agreement and any extensions thereof in accordance with specific provisions hereinafter set forth. The term "Operating Expenses" shall include all costs to the Lessor of operating and maintaining the Premises and shall include, without limitation, electricity, water, waste disposal, sewage, operating materials and supplies, service agreements and charges, lawn care, snow removal, routine repairs, cleaning, security, insurance, the cost of contesting the validity or applicability of any governmental acts which may affect operating expenses, and all other direct operating costs of operating and maintaining the Premises and related parking areas, unless expressly

excluded from operating expenses. Major repairs that are not covered by insurance shall be paid by the Lessor.

b.) Insurance. Lessee shall maintain, at all times during the Initial Term of this Agreement, comprehensive general liability insurance in an insurance company licensed to do business in the State in which the Premises are located and that is satisfactory to Lessor, properly protecting and indemnifying Lessor with single limit coverage of not less than: (check all that apply)

- ☒ - \$5,000,000 for injury or death.
- ☒ - \$1,000,000 for property damage.
- ☒ - \$1,000,000 for casualty insurance.

During the Term of this Agreement, Lessee shall furnish the Lessor with certificate(s) of insurance, in a form acceptable to Lessor, covering such insurance so maintained by Lessee and naming Lessor and Lessor's mortgagees, if any, as additional insured.

IX. LEASEHOLD IMPROVEMENTS. The Lessee agrees that no leasehold improvements, alterations, or changes of any nature (except for those listed on any attached addenda) shall be made to the Premises without first obtaining the consent of the Lessor in writing, which consent shall not be unreasonably withheld, and thereafter, any and all leasehold improvements made to the Premises which become affixed or attached to the leasehold Premises shall remain the property of the Lessor at the expiration or termination of this Agreement. Furthermore, any leasehold improvements shall be made only in accordance with applicable federal, state, or local codes, ordinances, or regulations. If the Lessee makes any improvements to the Premises the Lessee shall be responsible payment, except the following: None

Nothing in this Agreement shall be construed to authorize the Lessee or any other person acting for the Lessee to encumber the rents of the Premises or the interest of the Lessee in the Premises or any person under and through whom the Lessee has acquired its interest in the Premises with a mechanic's lien or any other type of encumbrance. Under no circumstance shall the Lessee be construed to be the agent, employee, or representative of Lessor. In the event a lien is placed against the Premises, through actions of the Lessee, Lessee will promptly pay the same or bond against the same and take steps immediately to have such lien removed. If the Lessee fails to have the lien removed, the Lessor shall take steps to remove the lien, and the Lessee shall pay Lessor for all expenses related to the lien and removal thereof and shall be in default of this Agreement.

X. DEFAULT AND POSSESSION. In the event that the Lessee shall fail to pay said Rent, and expenses as set forth herein, or any part thereof, when the same is due and payable, or shall otherwise be in default of any other terms of said Agreement for a period of more than 15 days, after receiving notice of said default, then the parties hereto expressly agree and covenant that the Lessor may declare this Agreement terminated and may immediately re-enter said Premises and take possession of the same together with any of Lessee's personal property, equipment or fixtures left on the

Premises which items may be held by the Lessor as security for the Lessee's eventual payment and/or satisfaction of rental defaults or other defaults of Lessee under this Agreement. It is further agreed that if the Lessee is in default, that the Lessor shall be entitled to take any and all action to protect its interest in the personal property and equipment, to prevent the unauthorized removal of said property or equipment which threatened action would be deemed to constitute irreparable harm and injury to the Lessor in violation of its security interest in said items of personal property. Furthermore, in the event of default, the Lessor may expressly undertake all reasonable preparations and efforts to release the Premises including, but not limited to, the removal of all inventory, equipment or leasehold improvements of the Lessee's, at the Lessee's expense, without the need to first procure an order of any court to do so, although obligated in the interim to undertake reasonable steps and procedures to safeguard the value of Lessee's property, including the storage of the same, under reasonable terms and conditions at Lessee's expense, and, in addition, it is understood that the Lessor may sue the Lessee for any damages or past Rents due and owing and may undertake all and additional legal remedies then available.

In the event any legal action must be instituted to enforce any terms or provisions under this Agreement, then the prevailing party in said action shall be entitled to recover a reasonable attorney's fee in addition to all costs of said action.

XI. LICENSES AND PERMITS. A copy of all local, state, or federal permits acquired by the Lessee which are required for the use of the Premises shall always be kept on-site and shall be readily accessible and produced to the Lessor and/or their agents or any local, state, or federal officials upon demand.

XII. OBLIGATIONS OF LESSEE. The Lessee shall be primarily responsible whenever needed for the maintenance and general pickup of the entranceway leading into the Premises so that this is kept in a neat, safe, and presentable condition. The Lessee shall also be responsible for all minor repairs and maintenance of the leasehold Premises, particularly those items which need immediate attention and which the Lessees, or their employees, can do and perform on their own. The Lessee shall properly maintain the Premises in a good, safe, and clean condition. The Lessee shall properly and promptly remove all rubbish and hazardous wastes and see that the same are properly disposed of according to all local, state, or federal laws, rules, regulations, or ordinances.

In the event the Premises are damaged as a result of any neglect or negligence of Lessee, their employees, agents, business invitees, or any independent contractors serving the Lessee or in any way as a result of Lessee's use and occupancy of the Premises, then the Lessee shall be primarily responsible for seeing that the proper claims are placed with the Lessee's insurance company, or the damaging party's insurance company, and shall furthermore be responsible for seeing that the Premises are safeguarded with respect to said damage and that all proper notices with respect to said damage, are made in a timely fashion, including notice to the Lessor, and the party or parties causing said damage. Any damage that is not covered by an insurance company will be the liability of the Lessee.

The Lessee shall, during the Term of this Agreement, and in the renewal thereof, at its sole expense, keep the Premises in as good a condition and repair as it is at the date of this Agreement, reasonable wear and use excepted. Furthermore, the Lessee shall not knowingly commit nor permit to be committed any act or thing contrary to the rules and regulations prescribed from time to time by any federal, state, or local authorities and shall expressly not be allowed to keep or maintain any hazardous waste materials or contaminants on the Premises. Lessee shall also be responsible for the cost, if any, which would be incurred to bring his/her contemplated operation and business activity into compliance with any law or regulation of a federal, state, or local authority.

XIII. INSURANCE. In the event the Lessee shall fail to obtain the insurance required hereunder and fails to maintain the same in force continuously during the Term, Lessor may, but shall not be required to, obtain the same and charge the Lessee for same as additional Rent. Furthermore, Lessee agrees not to keep upon the Premises any articles or goods which may be prohibited by the standard form of fire insurance policy, and in the event, the insurance rates applicable to fire and extended coverage covering the Premises shall be increased by reason of any use of the Premises made by Lessee, then Lessee shall pay to Lessor, upon demand, such increase in insurance premium as shall be caused by said use or Lessee's proportionate share of any such increase.

XIV. SUBLET/ASSIGNMENT. The Lessee may not transfer or assign this Agreement or any right or interest hereunder or sublet said leased Premises or any part thereof without first obtaining the prior written consent and approval of the Lessor.

XV. DAMAGE TO LEASED PREMISES. In the event the Premises shall be destroyed or damaged as a result of any fire or other casualty which is not the result of the intentional acts or neglect of Lessee and which precludes or adversely affects the Lessee's occupancy of the Premises, then in every such cause, the Rent herein set forth shall be abated or adjusted according to the extent to which the leased Premises have been rendered unfit for use and occupation by the Lessee and until the demised Premises have been put in a condition at the expense of the Lessor, at least to the extent of the value and as nearly as possible to the condition of the Premises existing immediately prior to such damage. It is understood, however, in the event of total or substantial destruction to the Premises that in no event shall the Lessor's obligation to restore, replace or rebuild exceed an amount equal to the sum of the insurance proceeds available for reconstruction with respect to said damage.

XVI. INDEMNIFICATION. The Lessee hereby covenants and agrees to indemnify, defend, and hold the Lessor harmless from any and all claims or liabilities which may arise from any cause whatsoever as a result of Lessee's use and occupancy of the Premises, and further shall indemnify the Lessor for any losses which the Lessor may suffer in connection with the Lessee's use and occupancy or care, custody, and control of the Premises. The Lessee also hereby covenants and agrees to indemnify and hold harmless the Lessor from any and all claims or liabilities which may arise from any latent defects in the subject Premises that the Lessor is not aware of at the signing of the lease or at any time during the Term.

XVII. BANKRUPTCY - INSOLVENCY. The Lessee agrees that in the event all or a substantial portion of the Lessee's assets are placed in the hands of a receiver or a Trustee, and such status continues for a period of 30 days, or should the Lessee make an assignment for the benefit of creditors or be adjudicated bankrupt; or should the Lessee institute any proceedings under the bankruptcy act or any amendment thereto, then such Agreement or interest in and to the leased Premises shall not become an asset in any such proceedings and, in such event, and in addition to any and all other remedies of the Lessor hereunder or by law provided, it shall be lawful for the Lessor to declare the Term hereof ended and to re-enter the leased land and take possession thereof and all improvements thereon and to remove all persons therefrom, and the Lessee shall have no further claim thereon.

XIII. SUBORDINATION AND ATTORNMENT. Upon request of the Lessor, Lessee will subordinate its rights hereunder to the lien of any mortgage now or hereafter in force against the property or any portion thereof, and to all advances made or hereafter to be made upon the security thereof, and to any ground or underlying lease of the property provided, however, that in such case the holder of such mortgage or the Lessor under such Agreement shall agree that this Agreement shall not be divested or in any way affected by foreclosure, or other default proceedings under the said mortgage, obligation secured thereby, or agreement, so long as the Lessee shall not be in default under the terms of this Agreement. Lessee agrees that this Agreement shall remain in full force and effect notwithstanding any such default proceedings under said mortgage or obligation secured thereby.

Lessee shall, in the event of the sale or assignment of Lessor's interest in the building of which the Premises form a part, or in the event of any proceedings brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Lessor covering the Premises, attorn to the purchaser and recognize such purchaser as Lessor under this Agreement.

XIX. MISCELLANEOUS TERMS.

- a.) Usage by Lessee. Lessee shall comply with all rules, regulations, and laws of any governmental authority with respect to use and occupancy. Lessee shall not conduct or permit to be conducted upon the Premises any business or permit any act which is contrary to or in violation of any law, rules or regulations and requirements that may be imposed by any authority or any insurance company with which the Premises is insured, nor will the Lessee allow the Premises to be used in any way which will invalidate or be in conflict with any insurance policies applicable to the building. In no event shall explosives or extra hazardous materials be taken onto or retained on the Premises. Furthermore, Lessee shall not install or use any equipment that will cause undue interference with the peaceable and quiet enjoyment of the Premises.
- b.) Signs. Lessee shall not place on the Premises any signage or advertising matter without Lessor's prior written consent and the approval of the local municipality. Thereafter, Lessee agrees to maintain such sign or advertising matter as first approved by Lessor in good condition and repair. Upon vacating the Premises,

Lessee agrees to remove all signs and to repair all damages caused or resulting from such removal. The cost of signage is the responsibility of the Lessee.

- c.) Condition of Premises/Inspection by Lessee. The Lessee has had the opportunity to inspect the Premises and acknowledges with its signature on this Agreement that the Premises are in good condition and comply in all respects with the requirements of this Agreement. Furthermore, the Lessor makes no representation or warranty with respect to the condition of the Premises or its fitness or availability for any particular use, and the Lessor shall not be liable for any latent or patent defect therein. Furthermore, the Lessee represents that Lessee has inspected the Premises and is leasing and will take possession of the Premises with all current fixtures present in their "as is" condition as of the date hereof.
- d.) Right of Entry. It is agreed and understood that the Lessor and its agents shall have the complete and unencumbered right of entry to the Premises at any time or times for purposes of inspecting or showing the Premises and for the purpose of making any necessary repairs to the Premises as may be required of the Lessor under the terms of this Agreement or as may be deemed necessary with respect to the inspection, maintenance or repair of the Premises.
- e.) Overhead lighting. The two pole lights are currently not working due to a previous lot split from the neighboring building. If the Lessee desires working pole lights, the costs to operate the lights is the responsibility of the Lessee.

XX. ESTOPPEL CERTIFICATE. Lessee at any time and from time to time, upon at least ten (10) days prior notice by Lessor, shall execute, acknowledge and deliver to Lessor, and/or to any other person, firm, or corporation specified by Lessor, a statement certifying that this Agreement is unmodified and in full force and effect, or if this Agreement has been modified, then that the same is in full force and effect except as modified and stating the modifications, stating the dates to which the Rent have been paid, and stating whether or not there exists any default by Lessor under this Agreement and, if so, specifying each such default.

XXI. HOLDOVER. Should Lessee remain in possession of the Premises after the cancellation, expiration, or sooner termination of this Agreement, or any renewal thereof, without the execution of a new agreement or addendum, such holding over in the absence of a written agreement to the contrary shall be deemed, if Lessor so elects, to have created and be construed to be a tenancy from month to month, terminable upon thirty (30) days' notice by either party.

XXII. WAIVER. Waiver by Lessor of a default under this Agreement shall not constitute a waiver of a subsequent default of any nature.

XXIII. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Michigan.

XXIV. NOTICES. Payments and notices shall be addressed to the following:



XXVII. WAIVER OF SUBROGATION. Tenant and Landlord release each other and waive any right of recovery against each other for loss or damage to their respective property, which occurs on or about the Premises (whether due to the negligence of either party, their agents, employees, licensees, invitees or otherwise), to the extent that such loss or damage is reimbursed by insurance proceeds. Tenant and Landlord agree that all policies of insurance obtained by either of them in connection with the Premises shall contain appropriate waiver of subrogation clauses.

XXVIII. ADDITIONAL TERMS & CONDITIONS.

- a.) Bartkus Engineering LLC is to be listed as Certificate Holders on Lessee's insurance policy.
- b.) This agreement shall be contingent on the City granting Tenant a license to operate a cannabis establishment. Should tenant be denied such license by the City this agreement shall automatically terminate.

IN WITNESS WHEREOF, the Parties have indicated their acceptance of the terms and conditions of this Agreement by their signatures below on the dates indicated.

LESSEE'S SIGNATURE: _____ **DATE:** _____

PRINT NAME: _____

LESSOR'S SIGNATURE: Eric K Bartkus **DATE:** 7/24/21

PRINT NAME: Eric Bartkus

LESSOR'S ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF _____ County, ss.
On this ____ day of _____, 20____, before me appeared _____, as **LESSOR** of this Commercial Lease Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public
My commission expires: _____

LESSEE'S ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF _____ County, ss.
On this ____ day of _____, 20____, before me appeared _____, as **LESSEE** of this Commercial Lease Agreement who



Lessor: Bartkus Engineering LLC 215 West Main Street Lowell Michigan 49331
Lessee: _____

XXV. AMENDMENT. No amendment of this Agreement shall be effective unless reduced to writing and subscribed by the parties with all the formality of the original.

XXVI. BINDING EFFECT. This Agreement and any amendments thereto shall be binding upon the Lessor and the Lessees and/or their respective successors, heirs, assigns, executors, and administrators.

XXVII. WAIVER OF SUBROGATION. Tenant and Landlord release each other and waive any right of recovery against each other for loss or damage to their respective property, which occurs on or about the Premises (whether due to the negligence of either party, their agents, employees, licensees, invitees or otherwise), to the extent that such loss or damage is reimbursed by insurance proceeds. Tenant and Landlord agree that all policies of insurance obtained by either of them in connection with the Premises shall contain appropriate waiver of subrogation clauses.

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- a.) Bartkus Engineering LLC is to be listed as Certificate Holders on Lessee's insurance policy.
- b.) This agreement shall be contingent on the City granting Tenant a license to operate a cannabis establishment. Should tenant be denied such license by the City this agreement shall automatically terminate.

IN WITNESS WHEREOF, the Parties have indicated their acceptance of the terms and conditions of this Agreement by their signatures below on the dates indicated.

LESSEE'S SIGNATURE: _____

DATE: 7/29/21

PRINT NAME: Daniel S. Chilawich, Member

LESSOR'S

SIGNATURE: _____

DATE: 7/28/21

PRINT NAME: Eric Bartkus, member

LESSOR'S ACKNOWLEDGMENT OF NOTARY PUBLIC



Request Number: _____

Filing Fee: _____



301 East Main Street
Lowell, Michigan 49331
Phone (616) 897-8457
Fax (616) 897-4085

APPLICATION FOR SITE PLAN REVIEW / SPECIAL LAND USE

- All drawings must be sealed by an architect, engineer or surveyor unless waived by the Zoning Administrator.
- 15 copies of the site plan must be submitted to the City Manager's office no later than four weeks the Planning Commission meeting to allow adequate staff review.
- The Planning Commission meets the second Monday of the month at 7:00 p.m. where plans are approved, rejected or modified.
- Preliminary plans may be presented for Planning Commission comment, but no final approval is given until all required conditions are met.
- After approval, public works and building permits must be secured before construction may commence.

1. Street Address and/or Location of Request: 126 West Ave SE, Lowell MI 49331
2. Parcel Identification Number (Tax I.D. No.): #41-20- 02-353-002
3. Applicant's Name: BTD Holdings, LLC Phone Number 9175090252
Address: 1129 N Washington Avenue Lansing MI 48906
Street City State Zip
Fax Number 3139890228 Email Address kevin@iconic-wellness.com
4. Are You: ☐ Property Owner ☐ Owner's Agent ☐ Contract Purchaser ☒ Option Holder
5. Applicant is being represented by: The Covert Law Firm, PLLC Phone Number (517) 512-8364
Address: James R. McGillie - 1129 N Washington Avenue, Lansing MI
48906
6. Present Zoning of Parcel C3 Present Use of Parcel Phase build commercial
7. Description of proposed development (attach additional materials if needed):
Adult Use cannabis retailer Establishment under MRTMA and local permit/license.

The facts presented above are true and correct to the best of my knowledge.

Signature: K Beebe Date: 06/07/2021

Type or Print Your Name Here: Kevin Beebe

Property Owner Approval: As owner I hereby authorize the submittal of this application and agree to abide by any decision made in response to it. [Signature] 6-7-21
Date

The following 16 points make up the **CHECKLIST** of required information needed on the drawing for final plan approval (unless specifically waived by the Planning Commission). Please go over this **CHECKLIST** with the City Manager and Zoning Administrator before presenting to the Planning Commission.

- | | INITIAL |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| 1. Date, north arrow and scale (not more than 1" = 100', supplementary site plans at a 1" = 50' or larger scale are encouraged) | <u>X</u> |
| 2. A city locational sketch | <u>X</u> |
| 3. Legal description and City address of the subject property | <u>X</u> |
| 4. The size in acres or square feet of the subject property | <u>X</u> |
| 5. All lot and/or property lines with dimensions, including building setback lines | <u>X</u> |
| 6. The location of all existing structures within one hundred (100) feet of the subject property's boundary | <u>X</u> |
| 7. The location and dimensions of all existing and proposed structures on the subject property | <u>X</u> |
| 8. The location and dimensions of all existing and proposed: | |
| ▪ Drives | <u>X</u> |
| ▪ curb openings (NOTE: all new openings onto M-21 (Main Street) must receive State Transportation Department approval) | <u>X</u> |
| ▪ sidewalks | <u>X</u> |
| ▪ exterior lighting | <u>X</u> |
| ▪ curbing | <u>X</u> |
| ▪ parking areas (include and delineate the total number of parking spaces showing dimensions of a typical space) | <u>X</u> |
| ▪ unloading areas | <u>X</u> |
| ▪ recreation areas | <u>X</u> |
| ▪ common use areas | <u>X</u> |
| ▪ areas to be conveyed for public use and purpose | <u>X</u> |
| 9. The location, pavement width and right-of-way width of abutting roads, alleys or easements | <u>X</u> |
| 10. The existing zoning of all properties abutting the subject project | <u>X</u> |
| 11. The location of all existing and proposed: | |
| ▪ landscaping and vegetation | <u>X</u> |
| ▪ location, height and type of existing and proposed fences and walls | <u>X</u> |
| 12. Proposed cost estimates of all site improvements | |
| 13. Size and location of existing and proposed hydrants and utilities including proposed connections to public sewer or water supply systems | <u>X</u> |
| 14. The location and size of septic and drain fields | <u>X</u> |
| 15. Contour intervals shown at five (5) foot intervals | <u>X</u> |
| 16. FOR RESIDENTIAL DEVELOPMENT, the following information is required (affixed to the drawing): | |
| ▪ Net developable area, in acres or in square feet, defined as all areas that could be developed subtracted by lands used or dedicated for existing easements and rights of way | _____ |
| ▪ the number of dwelling units proposed (by type); including typical floor plans for each type of dwelling | _____ |
| ▪ the number and location of efficiency and one or more bedroom units | _____ |
| ▪ typical elevation views of the front, side and rear of each type of building | _____ |
| ▪ Dwelling unit density of the site (total number of dwellings / net developable area) | _____ |

Section 17.03 of the City of Lowell Zoning Ordinance specifies that to approve a special land use, the Planning Commission must find that the request meets the following standards. Please describe how the proposed project would meet each standard.

A. Each application shall be reviewed for the purpose of determining that the proposed special land use meets the following standards and, in addition, that each use of the proposed site will:

1. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance, with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed;
THE PROPOSED MARIHUANA ESTABLISHMENT IS GOING TO REMAIN AS IS MEETING THE INTENDED CHARACTER OF THE GENERAL VICINITY.
2. Be served adequately by essential public facilities and services such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities;
THE PROPOSED MARIHUANA ESTABLISHMENT DOES NOT HAVE A NEGATIVE EFFECT ON ANY UTILITIES. ALL EXISTING UTILITIES TO THE BUILDING ARE TO REMAIN.
3. Not create excessive additional requirements at public cost for public facilities and services; and
THE PROPOSED MARIHUANA ESTABLISHMENT IS UNDER 24/7/365 SURVEILLANCE AND THEREFORE WILL NOT HAVE ANY NEGATIVE IMPACTS TO THE PUBLIC FOR SERVICES OR PUBLIC FACILITIES.
4. Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.
THE PROPOSED MARIHUANA ESTABLISHMENT WILL NOT HAVE A NEGATIVE IMPACT ON THE OVERALL WELFARE OF THE NEIGHBORHOOD BY ANY OF THE MENTIONED ITEMS ABOVE.

Section 17.04 of the City of Lowell Zoning Ordinance lists specific standards pertaining to special land uses that must be met. Please respond to those standards below as it pertains to the proposed project, describing how the standards would be met by this proposal:

THE PROPOSED MARIHUANA ESTABLISHMENT IS THE SECOND BY ICONIC WELLNESS. THEIR GOAL IS TO BE A COMMUNITY PLAYER AND WORK TOGETHER TO ENSURE THEY HAVE A CLEAN, SMELL FREE, SAFE, ESTABLISHMENT THAT WORKS TO BE A POSITIVE NEIGHBOR TO THE NEIGHBORHOOD.

williams&works

engineers | surveyors | planners

MEMORANDUM

To: City of Lowell Planning Commission
Date: July 8, 2021
From: Andy Moore, AICP
Whitney Newberry
RE: **Iconic Wellness & Provisioning Center Special Land Use**

BTD Holdings LLC, represented by James McGillie of The Covert Law Firm PLLC, has submitted an application for site plan review and special land use approval to open an adult use marihuana establishment ("Iconic Wellness & Provisioning Center") at 126 S West Avenue (PPN 41-20-02-353-002). The purpose of this memorandum is to review the request pursuant to Chapter 17 Special Land Uses and Chapter 18 Site Plan Review of the City of Lowell Zoning Ordinance.



Background

The subject property has an area of approximately 0.3 acres and is within the C3 General Business district. A site plan for the building was previously approved at the October 12, 2020, Planning Commission meeting. This previous review considered the merits of the building in relation to the site and surrounding area, resulting in approval of the building, provided that it was occupied by a permitted by right in the C3 district. At the time of the original approval, the applicant was anticipating using the building for adult use marihuana purposes but did not apply for that specific special land use, indicating they may pursue it at a later time. Now the applicant has in fact proposed to use this building as a recreational marihuana retail facility with no on-site cultivation of the product. Therefore, this review is intended to evaluate the proposed marihuana special land use in the building at this location. By definition, "marihuana retailer" is a type of adult use marihuana establishment. All adult use marihuana establishments are permitted only as a special land use in the C3 District.

Completeness of Submission

The applicant has submitted site plan documents for review. Section 18.04 B provides a list of information required for a detailed site plan review, unless deemed unnecessary by the zoning enforcement officer. We find that the site plan is generally complete for review; however, the following items were not included:

- Location of existing and proposed exterior lighting
- Pavement width and right-of-way width of all streets within 100 feet of the subject property
- The location of all existing vegetation and the location, type, and size of all proposed landscaping, and the location, height and type of existing and proposed fences and walls
- Size and location of existing utilities
- The location and size of all surface water drainage facilities
- Existing and proposed topographic contours at a minimum of two (2) foot intervals

The building was previously approved in October 2020, so some of the items identified above will likely remain unchanged. However, the Planning Commission may still request their inclusion on the site plan to ensure compliance with applicable standards. In general, we find the application is sufficiently complete for review.

Section 17.04 FF (3) and (4) requires additional application and site plan materials to be submitted for adult use marijuana establishments. The applicant included some of the additional site plan materials; however, the following items were not received:

- Verification
- Isolation radius
- A lighting plan showing the lighting outside of the marijuana establishment for security purposes and compliance with section 4.24 and any other applicable city requirements
- Building materials, descriptions of glass to be used, and other pertinent information that describes construction or structural alterations to accommodate marijuana facilities.

SITE PLAN REVIEW

Setbacks and Dimensional Requirements. The building meets all setback requirements for the C3 district (Section 12.04). The lot is legally nonconforming in terms of lot area and width; however, the City permits nonconforming lots to be developed in accordance with the underlying zoning district, provided the applicable setbacks are met.

Landscaping. Landscaping is not indicated on the site plan. The lot width is 66 feet, so two canopy trees and six deciduous shrubs are required (Section 4.26 E, 2). Additionally, because parking spaces face a public street, a strip of land at least five feet wide with a solid screen of hedge, fence, or decorative wall at least three feet tall, or a strip of land at least 10 feet wide

containing two canopy trees is required (Section 4.26 E, 3, b). The Planning Commission included as a condition of approval on October 12, 2020, that "Landscaping shall include including 6 box elders and a fence meeting the standards of Section 4.26(3)(b)." Assuming that this has been installed and properly maintained, further landscaping may not be necessary.

Lighting. Exterior lighting is not indicated on the site plan. A typical parking lot light detail is provided on C010 of the site plan; however, the location of parking lot lighting is not shown. Exterior lighting should comply with Sections 4.24 of the Zoning Ordinance. The Planning Commission may include this as a condition of approval.

Parking/Circulation. The site contains 12 parking spaces, one of which is ADA accessible. Based on the total building size of 2,400 square feet, 12 retail spaces are required (Section 19.07). Therefore, the applicant has met the parking requirement. Yet, considering the parking needs of other retail establishments in the area, this number of spaces may remain insufficient. The Planning Commission may discuss parking needs with the applicant and plan for deferred or shared parking if the existing number of spaces becomes. The Planning Commission may adjust the parking requirement standards when parking demand is expected to be higher or smaller than the requirements, in accordance with Section 19.03 M.

One ADA van accessible parking space is required. While one ADA space is depicted, it does not appear to meet the dimensional requirements for a van accessible space. The Planning Commission may include compliance with ADA standards as a condition of approval.

One loading/unloading space is depicted on the site plan; however, it does not meet the length requirement of 40 feet as required in Section 19.08. The Planning Commission may discuss loading/unloading with the applicant.

Signage. A wall sign is proposed on the building frontage and the site plan indicates that this will be in compliance with local ordinances. As a condition of approval, the Planning Commission should require any signage to comply with Chapter 20 of the Zoning Ordinance.

Provisional License. The Planning Commission shall require an operating license from the City of Lowell as a condition of special land use approval in accordance with Section 17.04 FF.

Site Plan Review Standards. In order to approve a special land use, the Planning Commission must find that each of the standards listed in Section 18.06 would be met. Because the Planning Commission reviewed and approved these standards in October 2020 and no changes are proposed, we will not evaluate them again here. This evaluation only relates to the special land use request.

Special Land Use Review Standards. In order to approve a special land use, the Planning Commission must find that the proposed special land use meets each of the following standards in accordance with Section 17.03. Following are these standards and our remarks on each:

- A. The proposed special land use shall be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance, with the existing or

intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed;

Remarks: The marihuana retail use is proposed in a previously-approved building, which has been considered appropriate in design and appearance with the surrounding area.

While the site appearance is considered appropriate, traffic impacts may be further evaluated. On-site parking may not be sufficient for anticipated customer traffic. Traffic circulation should be considered for safety, efficiency, and ability to avoid conflicts with neighboring uses, and the Planning Commission may require additional parking, deferred parking, or a shared parking arrangement in the case that on-site facilities prove inadequate.

It should also be noted that this is the only adult use marihuana facility proposed in Lowell thusfar that does not have any frontage on Main Street, so there may be some concern that this site is too close to the neighborhood to the south. Of course, other facilities, particularly Lume and Premier Botancs, were also approved despite their relative close proximity to the multi-family dwellings on Deborah Drive and the Valley Vista Village Mobile Home Park, respectively. Nevertheless, this location off Main Street may generate objections from neighbors that should be carefully considered by the Planning Commission during its evaluation of the special land use.

- B. The proposed special land use shall be generally consistent with the City of Lowell Master Plan;

Remarks: The City of Lowell's Master Plan was adopted in 2007 and outlines a desired vision for land uses in the City. The subject property is located in the Mixed Use future land use category. The Mixed Use designation is "intended to permit a mixture of residential, office, and commercial land uses but not necessarily in a downtown style building." Although not in a downtown style building, the Plan notes that these areas should still be pedestrian-oriented. The proposed building and subject property appear to maintain the general purposes and spirit of the Ordinance and Master Plan. The Planning Commission may find that this standard is met.

- C. The proposed special land use shall be served adequately by essential public facilities and services such as highways, streets, police, fire protection, drainage structures, refuse disposal, water, and sewage facilities;

Remarks: The building was previously approved with utility connections, which are expected to remain adequate for the proposed use. Stormwater drainage is not included in the site plan and was not addressed during the building approval. The Planning Commission should discuss this with the applicant and may also defer to the City Engineer or DPW Director for comments regarding drainage on the site.

As noted above, the dumpster is located behind the building and may be difficult for a waste hauler to access due to the parking lot and driveway design. Other public facilities

and services are expected to remain adequate from the previous building approval, subject to any additional concerns from the City Engineer, Department of Public Works, City Police Department, or Lowell Area Fire Department.

- D. The proposed special land use shall not create excessive additional requirements at public cost for public facilities and services;

Remarks: The proposed use is not expected to use facilities and services beyond a normal retail operation, as the applicant is not proposing to grow or process marihuana on the site. Public water and sanitary sewer connections are already established, so additional hook-ups are not required. The Planning Commission may find this standard met.

- E. The proposed special land use shall not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.

Remarks: The proposed use would not involve any growing, processing, or consumption of marihuana on the site. The applicant has submitted an odor control and response plan to ensure odors are not perceptible outside the building, including an improved HVAC system, carbon filters, negative building air pressure, a maintenance schedule, and weekly staff monitoring of odors.

Traffic circulation should be considered for the site due to the limited number of parking spaces available. Provided parking is found to be sufficient, other conditions of operation are expected to be appropriate on the site and the Planning Commission may find this standard met.

- F. The proposed special land use shall comply with all applicable federal, state, and local requirements, and copies of all applicable permits shall be submitted to the City.

Remarks: This standard will be addressed as a condition of approval.

Adult Use Marihuana Establishment Special Land Use Standards. In addition to the general standards for special land uses of section 17.03, the Planning Commission must also find that the proposed special land use would comply with specific standards established for adult use marihuana establishments as listed in Section 17.04 FF. Our remarks related to the security concerns plan pursuant to Section 17.04 FF(5)(a) are in a separate confidential memorandum. Following are the standards of 17.04 FF(5)(b-m), and our remarks on each:

- b. Separation distances. The distances described in this subsection shall be computed by measuring a straight line from the nearest property line of the land used for the purposes stated in this subsection to the nearest property line of the parcel used as a marihuana establishment. The following minimum-distancing regulations shall apply to all marihuana establishments. A marihuana establishment shall not be located within:

- i. 1,000 feet of a preschool or child care center, whether or not it is within the city of Lowell;
- ii. 1,000 feet of a public or private K-12 school, whether or not it is within the city of Lowell;
- iii. 500 feet of a property within the C-2, Central Business District as illustrated on the City of Lowell Zoning Map.
- iv. Exception. The requirements above do not apply if the marihuana establishment was lawfully established prior to the location of an establishment or zoning district specified in items i - iii above.

Remarks: The applicant did not submit a map depicting a 1,000-foot isolation radius from the property. This is a required application material; however, the subject property is more than 1,000 feet from preschools, child care centers, schools, and the C-2 Central Business District. The Planning Commission may find this standard met.

- c. Odors. The marihuana establishment shall be designed to provide sufficient odor-absorbing ventilation and exhaust systems so that any odor generated inside the establishment is not detected outside the building in which it operates, on adjacent public rights-of-way, private road easements, or within other units located within the same building as the establishment if it occupies only a portion of the building. Odors must be controlled and eliminated by the following methods:
 - i. The building must be equipped with an activated air scrubbing and carbon filtration system that eliminates all odors prior to leaving the building. Fan(s) must be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 - ii. Air scrubbing and filtration systems must be maintained in working order and must be in use at all times. Filters must be changed per manufacturers' recommendation to ensure optimal performance.
 - iii. Negative air pressure must be maintained inside the building.
 - 1. At a ratio of 1:4 between the air intake (CFM) and exhaust fan (CFM), or a similar ratio as approved by the planning commission.
 - 2. A minimum negative pressure of 0.01" water column relative to the building exterior and to adjacent spaces without product.
 - 3. A minimum exhaust rate of 0.2 CFM per square foot of floor area or greater.
 - iv. Doors and windows must remain closed, except for the minimum time length needed to allow people to ingress or egress the building.

- v. The planning commission may approve an alternative odor control system if a mechanical engineer licensed in the State of Michigan submits a report that sufficiently demonstrates the alternative system will be equal or superior to the air scrubbing and carbon filtration system otherwise required above.

Remarks: The applicant submitted an odor control and response plan, which includes measures for sealing rooms with marihuana, an appropriately sized and maintained HVAC system, maintenance of negative air pressure, installation of activated carbon filters, and staff training to evaluate odor outside the building. These measures appear sufficient to control odors at the establishment. The Planning Commission may find this standard met.

- d. The marihuana establishment shall be operated and maintained at all times so that any by-products or waste of any kind shall be properly and lawfully kept and disposed of so as to preclude any risk of harm to the public health, safety, or welfare.

Remarks: The applicant provided a Facility Sanitation and Waste Disposal Plan, detailing the measures for disposal of marihuana waste. This includes procedures in accordance with LARA regulations, including rendering waste unusable and unrecognizable prior to being transported from the facility. Additionally, the applicant has proposed for all waste disposal activities to be performed in full view of a surveillance camera and tracked. The narrative states that both indoor and outdoor dumpsters would be locked. The Planning Commission may find this standard met.

- e. The marihuana establishment shall not be operated out of a residence or any building used wholly or partially for residential purposes.

Remarks: There would not be a residence associated with the marihuana establishment. The Planning Commission may find this standard met.

- f. Any portion of the structure where energy usage and heat exceed typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Fire Department to ensure compliance with applicable fire codes. Any fuel, fertilizer, pesticide, fungicide, rodenticide, herbicide, or other substance toxic to wildlife, children, or pets shall be stored in a secured and locked area and be in compliance with State pesticide laws and regulations.

Remarks: The proposed use will not involve the processing or growing of marihuana. The Facility Sanitation and Waste Disposal Plan addresses chemical and hazardous waste, listing any substances that are anticipated for use on the site. These are limited to household type cleaners and products. The Planning Commission may find this standard met.

- g. A marihuana establishment shall not be operated from a business that also sells alcoholic beverages or tobacco products.

Remarks: The applicant has not proposed the sale of alcoholic beverages or tobacco products. This may be addressed as a condition of approval.

- h. No drive-through facilities shall be permitted.

Remarks: No drive-through facilities are proposed. The Planning Commission may find this standard met.

- i. The marihuana establishment shall comply at all times and in all circumstances with the MRTMA and the Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

Remarks: This may be addressed as a condition of approval.

- j. The Planning Commission may require additional landscape buffers or screening beyond what is required in Section 4.26 of the Zoning Ordinance.

Remarks: Landscaping is currently not indicated on the site plan. Due to the site's nonconforming lot size and width, additional landscaping would be difficult to accommodate. Because the C3 zoning district is adjacent to all property boundaries, additional landscaping does not appear necessary. However, original landscape standards should be addressed, as noted above under Landscaping.

- k. The owner and/or licensee shall maintain clear and adequate records and documentation demonstrating that all cannabis or cannabis products have been obtained from and are provided to other permitted and licensed cannabis operations. The city shall have the right to examine, monitor, and audit such records and documentation, which shall be made available to the city upon request.

Remarks: The applicant has provided an Inventory and Recordkeeping Plan with narrative regarding product inventory control. The applicant is proposing to use the statewide monitoring system METRC to maintain inventory. The inventory plan implements several steps to ensuring accurate inventory tracking, including training, product tagging, random audits, and compliance with LARA regulations. The Planning Commission may include the right for the City to examine, monitor, and audit such records and documentation as a condition of approval.

- l. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any portion of the structure which contains electrical wiring, lighting, and/or watering devices that support the cultivation growing or harvesting of marihuana.

Remarks: The applicant is not proposing to grow or harvest marihuana on the site, so this standard is not applicable.

- m. In the event of any conflict, the terms of this ordinance are preempted and the controlling authority shall be the statutory regulations set forth by the MRTMA or the adopted Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

Remarks: This standard may be addressed as a condition of approval.

Recommendation

At the July 12 public hearing, the Planning Commission should discuss the site plan, application, and carefully consider any comments from the public and the applicant. Subject to those comments, we recommend the Planning Commission resolve the following issues before making a decision on the application:

1. **Lighting.** Exterior lighting is not indicated on the site plan. All exterior lighting should be identified for security purposes and to ensure light intensity does not exceed 0.5 foot candles at private property boundaries. The Planning Commission may request a photometric plan if determined necessary.
2. **Parking.** Parking spaces meet the minimum requirement of the Ordinance, but half of the spaces are allocated to employees, barrier free, and electric vehicle parking. While these spaces are appropriate in themselves, we are concerned that the remaining six regular parking spaces will not be sufficient to accommodate customer traffic based on the trends of other marijuana retail establishments in the area. The Planning Commission should discuss alternative parking arrangements with the applicant. Additionally, the ADA space should meet the dimensions for a van accessible space, which may impact the number of parking spaces.
3. **Traffic Circulation.** The lot width limits the ability for vehicles to travel around the building, so two-way traffic is proposed in a 12-foot aisle. While only allowing employees behind the building may limit conflicts in this area, it should be clearly designated for employees only so customers do not try to park behind the building. Additionally, there may be conflicts with the waste hauler maneuvering behind the building when parking spaces are full, as this leaves little area for turning.

If the Planning Commission finds these concerns adequately addressed, the Planning Commission may approve the application. If the Planning Commission approves the special land use and site plan, we suggest the following conditions be included, along with any others deemed necessary:

1. Prior to issuance of any City permits, the applicant shall have paid all application, permit, reimbursable escrow, and other fees related to the request.
2. The applicant shall comply with any requirements from the City's Department of Public Works, City Engineer, Lowell Area Fire Department, City Police Department, or other approving agencies.
3. The proposed special land use shall comply with all applicable federal, state, and local requirements, and copies of all applicable permits shall be submitted to the City.
4. The applicant shall continually comply with applicable ordinances, codes, and requirements of the City of Lowell.

5. The applicant shall all submit missing site plan items of Section 18.04 B and 17.04 FF, and identified above under Completeness of Submission, unless specifically waived by the Planning Commission.
6. The applicant shall comply with the landscape requirements of Section 4.26 of the Zoning Ordinance, unless specifically modified by the Planning Commission.
7. Any outdoor lighting shall be added to the site plan and comply with Section 4.24 of the Zoning Ordinance.
8. The applicant shall provide one ADA van accessible space on the site.
9. The loading/unloading space shall meet the requirements of Section 19.08 of the Zoning Ordinance, including a 40-foot length, unless specifically modified by the Planning Commission.
10. The applicant shall receive a sign permit for any signage on the site in accordance with Chapter 20 of the Zoning Ordinance.
11. The applicant shall submit a copy of a provisional license issued by the City of Lowell pursuant to Chapter 28 of the city of Lowell code of ordinances. The facility shall not open until appropriate operating licenses have been obtained from the City of Lowell and the State of Michigan.
12. All landscaping, buffers and/or greenbelts shall be continuously maintained to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property.
13. Doors and windows shall remain closed, except for the minimum time length needed to allow people to ingress or egress the building.
14. The marihuana establishment shall not be operated from a business that also sells alcoholic beverages or tobacco products.
15. The marihuana establishment shall comply at all times and in all circumstances with the MRTMA and applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
16. The security plan shall address the items outlined in our confidential memo dated July 8, 2021, and any other items identified by the City's law enforcement personnel.
17. In the event of any conflict, the terms of this approval are preempted and the controlling authority shall be the statutory regulations set forth by the MRTMA or the adopted Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

2021				
Open Date	Close Date	Address	Name/Business	Subject
02/04/2021	02/04/2021	514 N. Monroe	Home Specialists	Remodel
03/30/2021	03/30/2021	1490 Sibley	Christian Hattis	Re-Roof
03/16/2021	07/01/2021	510 Kent	Matt Garrison	New Home
04/08/2021	04/13/2021	318 E. Main	BGR Investments	Fence
04/21/2021	04/27/2021	226 S. Jefferson	Donald Lasby	Addition
04/22/2021	04/28/2021	418 N. Jefferson	Patty Story	Fence
05/04/2021	05/04/2021	1401 W. Main	Rite Aid	Updated Signs
06/03/2021	06/03/2021	781 Foreman	Mark Batchelor	Fence
06/04/2021	06/09/2021	151 N. Center	Paula Rittersdorf	Deck
06/08/2021	06/08/2021	2420 Gee Drive	Lori Gerard	Deck
06/09/2021	06/10/2021	804 Riverside	Taylor Bonga	Fence
06/01/2021	06/11/2021	206 S. Division	Noah Trulock	Fence
06/29/2021	06/29/2021	257 Donna	Elizabeth Sparks	Re-Roof
07/08/2021	07/08/2021	2601 W. Main	Mercantile Bank	Interior Remodel
07/20/2021	07/20/2021	820 N. Jefferson	Craig Kalman	Garage
07/22/2021	07/22/2021	716 N. Monroe	Matt Collins	Fence
07/20/2021	07/28/2021	820 N. Jefferson	Victor/Karrie Scudder	Accessory Building
07/29/2021	07/29/2021	96 W. Main	Scott Brown	Inside Remodel
07/29/2021	07/29/2021	2601 W. Main	Mercantile Bank	Inside Remodel