



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

PLANNING COMMISSION-CITIZEN ADVISORY COMMITTEE
CITY OF LOWELL, MICHIGAN
AGENDA
MONDAY, OCTOBER 11, 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. September 13, 2021 – Regular Meeting
4. PUBLIC COMMENTS AND COMMUNICATIONS CONCERNING ITEMS NOT ON THE AGENDA
5. OLD BUSINESS
 - a. 805 E. Main St. – Statement of Findings and Conclusions
 - b. Public Hearing – 2335 W. Main - Special Land Use – Re-Application
6. NEW BUSINESS
 - a. Public Hearing – 2384 W. Main – Special Land Use
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, SEPTEMBER 13, 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, Dave Cadwallader, Marty Chambers, Collin Plank, Michael Gadula and Chair Bruce Barker

Absent: Commissioner Amanda Schrauben.

Also Present: City Attorney Thomas Forshee with Dickinson Wright, Andy Moore with William & Works, Lowell City Clerk Sue Ullery.

2. EXCUSE OF ABSENCES.

IT WAS MOVED BY CADWALLADER and seconded by CHAMBERS to excuse the absence of Commissioner Amanda Schrauben.

YES: 6. NO: None. ABSENT: Commissioner Schrauben. MOTION CARRIED.

3. APPROVAL OF AGENDA.

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

YES: 6. NO: None. ABSENT: Commissioner Schrauben. MOTION CARRIED.

4. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETINGS.

IT WAS MOVED BY CHAMBERS and seconded by CADWALLADER to approve minutes of the August 09, 2021 Regular Meeting as corrected.

YES: 6. NO: None. ABSENT: Commissioner Schrauben. MOTION CARRIED.

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

Mike DeVore who resides at 424 Elm Street wanted to thank the commissioners for the work that they are doing and let them know that they are appreciated.

6. OLD BUSINESS.

a.) Public Hearing – 805 East Main Street– Hive Wellness LLC-Site Plan Review/Special Land Use.

Chair Barker opened Public Hearing.

Conner Baker who is the owner of Hive Wellness LLC spoke explaining his plan to renovate and section off a portion of the first floor of the building at 805 E. Main Street, to accommodate an adult use marijuana establishment. Also to beautify the outside of the building.

Andy Moore with Williams & Works then provided background info stating the marijuana establishment is proposed on two lots, which have a combined area of approximately 0.84 acres. For the purpose of this

review, both lots, will be considered as a single property, as they are both proposed as an integral part of the marihuana use. The subject property is located in the C3 General Business zoning district and is surrounded by the R2 Single or Two Family Residential district and the R3 Multiple Family Residential district. The property contains an existing building that was previously used as the Rollaway Family Fun Center. The applicant is proposing to renovate the building and operate an adult use marihuana retail establishment in it. No on-site cultivation or consumption of the product is proposed. By definition, "marihuana retailer" is a type of adult use marihuana establishment. Adult use marihuana establishments are permitted in the C3 district only with a special land use approval by the Planning Commission. It is worth noting that until recently, marihuana establishments were not permitted at this location due to the presence of a preschool at the Lowell United Methodist Church. The zoning ordinance prohibits the operation of a marihuana establishment within 1,000 feet of a daycare center. However, with the preschool recently closed, this property is now outside the isolation radius required for marihuana establishments in the City. This was discussed with the Planning Commission at the June meeting. At that time, the Planning Commission held a public hearing and ultimately recommended approval of an amendment to the Zoning Ordinance that would prohibit all adult use marihuana establishments on any property east of the Flat River. However, this proposed amendment was not accepted by the City Council. Thus, this and other properties east of the Flat River remain available as potential locations for adult use marihuana establishments, subject to the terms of the Zoning Ordinance.

Moore then went through the site plan review standards A-F.

In reference to standard A, Commissioner Chambers said green space has to be there and concerned how to shield neighbors from lights, noise, etc. coming from building. There will need to be a 10' green setback along M-21, which will take up the parking spaces.

Commissioner Plank is concerned that this use affects public health, safety & welfare. He feels like we need additional information for this establishment and questioned whether welfare was being impacted. Important to think about this as we move forward because this property is mostly surrounded by residents.

Chair Barker opened it up for comments from the Public.

John Sterly who resides at 711 Avery spoke regarding the "survey". He knows he and Ann were not surveyed, nor was the owner of the residence across the street, 123 Division. Also, questioning a parking lot there on Horatio and whether they would still be able to keep Horatio as an actual street. Lastly, the Methodist Church does not currently have a preschool but they are gearing up right now to have a "before and after work" daycare. He does not believe this is a good fit.

Ann Charles who resides at 711 Avery spoke regarding her concern for children and this community and gave nine good reasons why this establishment should not be allowed. She does not feel that this is a good fit.

Craig Fonger who resides at 827 N Washington St stated he doesn't think the amount of traffic from this becoming a marihuana establishment would be any worse than when it was as a bowling alley/skating rink, and he feels they should be allowed to develop the property.

Cheryl Jahnke who resides at 905 E Main stated he has improved the area and she does not see what the problem would be. Bowling alley was busy. Property has been for sale for years. She is in favor of the establishment.

Clark Jahnke who resides at 905 E. Main feels it is the wrong application, he just feels something needs to happen to that property and maybe he is the guy to do it, but not a marihuana establishment. Pedestrian traffic has increased around there also.

Pam Rowley who lives at 804 E. Main stated she is not in favor of this marihuana establishment.

Jim Hodges who resides at 422 N. Jefferson stated this applicant, Connor Baker, came to the City Council to

propose medical marihuana approximately six years ago. Hodges suggested we observe the other marihuana establishments and how quiet and how well run they are and there are security guards. He feels these establishments are better for our community, better tax income and better site development. He is in favor of this establishment.

Patrick Bailey who resides at 823 Avery is not in favor of this establishment and feels that every family is a daycare. There is a bus stop right there as well. Does not feel this is the right place for this kind of an establishment.

Amy Kuble who resides at 919 E. Main is not in favor of a marihuana establishment at this location.

David Deaton who resides at 721 Avery stated he is also not in favor of a marihuana establishment on this end of town.

City Clerk Sue Ullery read an email from Maryalene LaPonsie who owns 717 E. Main Street and is not in favor of a marihuana dispensary in her neighborhood.

Chair Barker closed the Public Hearing.

City Attorney Tom Forshee with Dickinson Wright stated this is a special land use application, it is in the C3 district so it is not prohibited. He advised the Commission to go through the process to approve with conditions or deny. Support your decision with competent material and substantial evidence on the record. Review the special land use and site plan review standards to find that they either are met or they are not met and support that with evidence that may either dictate a denial or an approval with conditions where the conditions help ameliorate deleterious effects to the surrounding neighborhood.

IT WAS MOVED BY BARKER and seconded by ELLIS to deny the application of Hive Wellness LLC for the site plan review portion of the application as the site plan review fails to standards as outlined in Section 18.06 of the Zoning Ordinance, specifically standards A, B, C, D and F, noting and incorporating staff comments and findings.

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

NO: None.

ABSENT: Commissioners Schrauben..

MOTION CARRIED.

Moore then reviewed Special Land Use Standards A through F found in Section 17.03 of the Zoning Ordinance.

Commissioner Ellis spoke in regards to Standard E stating the loading dock area is not in a favorable location as it is open to the public.

Chair Barker then opened it up for public comments.

Clark Jahnke who resides at 905 E Main asked that the Commissioners carefully consider their decision as there would be a lot of things that would need to be modified.

Patrick Bailey who resides at 823 Avery Street spoke saying a sidewalk was promised but never followed through on, so he hopes that is a consideration with these changes.

Conner Baker, Hive Wellness LLC SLU applicant spoke stating this was a bar, that did operate late into the night, and when he did his survey, there was somebody that had discussed that with him and he

assured them that this would not be open later than 9:00 pm. Also, it was not purchased until after it was discussed with the city manager that the property itself is in fact eligible and that there would not be a problem with the property itself. Baker also discussed that 805 is technically the only property for the marihuana establishment. The property at 825 E. Main will be leased for the parking lot.

Kim Bailey at 824 E. Main inquired whether it is a cash only business and Baker responded credit cards are acceptable as well.

IT WAS MOVED BY BARKER and seconded by GADULA to deny the application for the Special Land Use for Hive Wellness LLC, specifically because of standards A, B, C and E not being met as well as the public discussion by Commissioners and Moore and incorporating the Williams & Works staff comments.

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

NO: None.

ABSENT: Commissioners Schrauben.

MOTION CARRIED.

City Attorney Tom Forshee with Dickinson Wright stated commissioners should have some discussion stating the exact reasons that justify your decisions for each of the standards you believe are not met. Forshee also stated there was a lot of good discussion here tonight about the reasons why; so he suggests language that would allow the secretary of planning commission to develop some findings and conclusions with the help of the City Attorney and City Planner to bring back to you at the next meeting to whether you either adopt or not adopt, showing it is accurate or not so that you have a summary and consensus for the reasoning for your decision. It needs to be recorded on the record that it existed. So that they are clear on your decision to deny. Forshee stated what he heard for reasons for denial was landscaping, parking, adjacent residential use, detrimental traffic circulation, noise, three or four sides being adjacent residential and the traffic impacts on that, and the impact of a marijuana use on residential zones. [Consensus indicated by Commisisoners]

Moore then went through the Adult Use Marihuana Site Design Standards b through m.

Commissioner Chambers asked Moore to clarify the C2 district 1000-foot rule of a preschool or child care center or a public or private K-12 school. Last, they can't be within 500 feet of any property in the central business district so there is a big 500-foot isolation radius around the main downtown core. They are also outside the four blocks to the east of downtown where we have that mixed use designation, and they are outside of that 500-foot isolation radius as well.

Commissioner Plank wanted to note what Patrick Bailey had stated earlier that a nuclear family has as much value as a daycare and there are already a lot of families living here and these parents and kids are not choosing to have their kids exposed to those facilities are forced to do so.

Chair Barker commented on Standard j, that the Planning Commission may require additional landscape or screening.

Commissioner Ellis also commented on Standard j and would like to see the applicant's creative thoughts on what he would do with the landscaping.

Chair Barker then opened it up for public comments.

Denise Barker who resides at 901 N Jefferson inquired whether the applicant was only planning to use a quarter of the building.

Connor Baker, Hive Wellness LLC applicant, commented saying 3,400 square foot will be used

for marihuana retail space and the entire upstairs would be used for commercial units available to be leased. Two other units would be used for leasing out as well. A lot of options to consider.

Chair Barker then closed the public comments and the public hearing.

IT WAS MOVED BY BARKER and seconded by CHAMBERS to accept that only that the adult use marihuana establishment site design standards found in Section 17.04.FF. for Hive Wellness LLC at 805 E. Main are met.

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

NO: None.

ABSENT: Commissioner Schrauben.

MOTION CARRIED.

Moore than reviewed conclusions stating as we went through this we identified several issues that kept coming up to us such as the completeness of the application, the landscaping issue which we talked about quite a bit tonight, the lighting, parking and finally safety and circulation. Those were kind of the site plan/SLU related issues that were areas of concern. What we struggled with, with this application in particular, was frankly the location of it in the City is not ideal and this site is so difficult and there are 3 of the 4 sides surrounding this site that are all residential properties. Moore continued, if the Planning Commission feels that there are things that you can do to make this acceptable, then you can accept them, without a bunch of conditions, but if not then you would be looking towards a denial of the site plan/special land use. It is up to the Planning Commission; I think that at this point our conclusion here speaks for itself in terms of what our concerns are and what's unique about this property. So at this point, we should also have one last motion that addresses the site plan and the special land use and make it clear what the final decision is and its findings.

City Attorney Tom Forshee agreed with Moore and suggested language regarding preparation of findings and conclusions to be done in writing; come back next meeting to either approve this or deny this.

IT WAS MOVED BY BARKER and seconded by ELLIS that the Planning Commission deny Hive Wellness LLC's Site Plan and Special Land Use Application for reasons that they failed to meet the Special Land standards as cited with the additions of Andy Moore with Williams & Works findings and evidence, the Planning Commissioners findings and discussion, the general public's input as evidence of impacts and the applicant's application information.

Further resolved in this motion of the planning commission that the Planning Commission secretary, with the assistance of the City Attorney and City Planners is hereby directed to prepare a written findings of fact and conclusions consistent with these proceedings and based on the discussion tonight, this motion and the record evidence - to be brought back at our next meeting for consideration and adoption.

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

NO: None.

ABSENT: Commissioner Schrauben.

MOTION CARRIED.

8. **STAFF REPORT.**

There was none.

9. **COMMISSIONERS REMARKS.**

Chair Barker thanked all the participants tonight, it was a lot of hard work and tough decisions.

City Clerk Sue Ullery stated we do have our combined Planning Commission meeting with Vergennes Township and Lowell Township set up for October 25, 2021 here at City Hall at 7:00 p.m.

10. **ADJOURNMENT.**

IT WAS MOVED BY CHAMBERS and seconded by CADWALLADER to adjourn at 8:58 p.m.

DATE:

APPROVED:

Bruce Barker, Chair

Susan Ullery, Lowell City Clerk

City of Lowell Planning Commission
Statement of Findings and Conclusions per MCL 125.3502
Site Plan and Special Land Use Request for
Hive Wellness LLC, 805 E. Main Street SE
Date: October 11, 2021

IT WAS MOVED BY BARKER and seconded by ELLIS that the Planning Commission deny Hive Wellness LLC's Site Plan and Special Land Use application based on the following facts in addition to the motion and applicable discussion on the record:

FINDINGS OF FACT

Section 1. Background

Hive Wellness LLC (the applicant), is located on two lots at 805 and 825 E. Main Street in the City of Lowell. Both lots will be considered as a single property and use the address listed at 805 E. Main Street, as they are both proposed as an integral part of the marihuana use. The subject properties have a combined area of about 0.84 acres. On September 13, 2021 the applicant submitted an application for site plan review to renovate the 3,477 square foot building and section off a portion of the first floor to accommodate an adult use marihuana establishment within the on the property.

The subject property is located in the C3 General Business zoning district and is surrounded by the R2 Single or Two Family Residential district and the R3 Multiple Family Residential district. The property contains an existing building that was previously used as the Rollaway Family Fun Center. The applicant is proposing to renovate the building and operate an adult use marihuana retail establishment. No on-site cultivation or consumption of the product is proposed. By definition, "marihuana retailer" is a type of adult use marihuana establishment. Adult use

marihuana establishments are permitted in the C3 district only with special land use approval by the Planning Commission.

The Planning Commission thoroughly considered the proposal in a public hearing on September 13, 2021 following proper public notice. On September 13, 2021 the Planning Commission took the following action: Denial of the proposed Site Plan and Special Land Use for Hive Wellness LLC, located at 805 E Main St, as set forth herein.

The following documents support these findings of fact and the decision of the Planning Commission:

1. Site Plan, dated July 18, 2021
2. Proximity Plan, dated July 18, 2021
3. Demolition Plan, dated July 18, 2021
4. Floor Plan, dated July 18, 2021
5. Composite Plan, dated July 18, 2021
6. Ceiling Plan, dated July 18, 2021
7. Mechanical Plan, dated July 18, 2021
8. Power Plan, dated July 18, 2021
9. Lighting Plan, dated July 18, 2021
10. Security Plan, dated July 18, 2021
11. Logo Concept, unknown date
12. Demolition Plan, dated July 26, 2021
13. Floor Plan, dated July 26, 2021
14. Composite Plan, dated July 26, 2021
15. Ceiling Plan, dated July 26, 2021
16. Mechanical Plan, dated July 26, 2021

17. Power Plan, dated July 26, 2021
18. Lighting Plan, dated July 26, 2021
19. Security Plan, dated July 26, 2021
20. Site Plan, dated Review July 26, 2021, Revisions September 12, 2021
21. Proximity Plan, dated Review July 26, 2021, Revisions September 12, 2021
22. Rollaway Dispensary Device Layout, dated July 26, 2021
23. Letter from the Department of Licensing and Regulatory Affairs, date May 14, 2021
24. City of Lowell Business License Application Adult Use Marihuana Establishments, dated July 17, 2021
25. City of Lowell Application for Site Plan Review/Special Land Use, dated July 17, 2021
26. "A Detailed Plan" document, unknown date
27. Affidavit commercial licenses, dated July 17, 2021
28. Certificate of Satisfied Judgement, dated June 14, 2021
29. Commercial Lease between Connor Baker and Hive Wellness LLC, dated July 17, 2021
30. Processing Regulated Material document, date unknown
31. 805 E main st containing a photograph of the site document, date unknown
32. Memorandum to the City of Lowell Planning Commission Re: CONFIDENTIAL – Hive Wellness LLC Security Plan Review, dated September 10, 2021
33. Memorandum to the City of Lowell Planning Commission Re: Hive Wellness LLC Special Land Use, dated September 10, 2021
34. Official Proceedings of the Planning Commission-Citizen Advisory Committee Advisory, dated September 13, 2021
35. Evidence provided by the City's professional planner Andy Moore of Williams and Works regarding intensity of use, traffic patterns and impacts, circulation, appropriate screening and affect on residential districts.

Section 2. Site Plan Review Standards.

Section 18.06 of the City of Lowell Zoning Ordinance sets forth six standards that the Planning Commission must find are met when reviewing a site plan. Those standards are as follows, along with the Commission's findings and conclusions:

18.06 A. The uses proposed will not adversely affect the public health, safety, or welfare. Uses and structures located on the site shall be planned to take into account topography, size of the property, the uses on adjoining property and the relationship and size of buildings to the site. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this ordinance.

Findings and Conclusions: The proposed use is a recreational marihuana retail establishment, which is permitted as a special land use in the C3 zoning district. Surrounding uses are entirely residential (R2 and R3 zoning districts) and the general land use pattern in this area is almost entirely residential. There are only three C3-zoned properties east of the Flat River. The predominance of residences in this area has established a relatively low-intensity land use pattern and a marihuana retailer is not appropriate in this context. Potential impacts of marihuana facilities have been accepted at many other commercial properties on West Main Street due to the predominance of auto-oriented commercial uses, and in cases where marihuana facilities have abutted residential districts, screening, fencing, and/or landscaping have been proposed to address these impacts. No such screening has been proposed here, and the ability to provide buffers on this site is also limited due to its size, location, and geometry.

The site was previously developed and there is substantial pavement around the building and extending to the road, leaving little to no greenspace for landscaping

around the building. The building is also legally nonconforming as it is closer to the road than would typically be permitted. While landscaping can often be used to mitigate the impacts of a more intense use, the existing building, site design, and infrastructure limit the extent to which a buffer could be an effective mitigation tool. This will exacerbate the impact of the establishment. The surrounding land use context and site condition was considered, along with public comment, when application was evaluated. The Planning Commission finds that this standard is not met.

- 18.06 B Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation shall be provided for ingress/egress points and within the site. Drives, streets, and other circulation routes shall be designed to promote safe and efficient traffic operations within the site and at ingress/egress points.

Findings and Conclusions: The applicant is proposing to retain three existing curb cuts and add a fourth curb cut on Avery Street for a secure delivery area. Several issues were not addressed by the application related to parking and curb cuts, including the dimensions of maneuvering aisles, parking lot setbacks, and barrier-free design. Currently, the proposed parking arrangement has spaces located at several different alignments in front of the building. While this reflects changes in the building exterior footprint, this creates confusion and circulation issues for vehicle parking. Of particular concern is the creation of blind spots due to changes in the building exterior and associated parking spaces.

Pedestrian circulation is provided by an existing sidewalk along E. Main Street. Other methods of pedestrian circulation are not provided. There are no sidewalks proposed to help facilitate people from parking spaces to the building entrance. This use requires

many people to walk behind parking spaces and across maneuvering aisles to access the building entrance. The Planning Commission finds that this standard is not met.

- 18.06 C The arrangement of public or private vehicular and pedestrian connections to existing or planned streets in the area shall be planned to provide a safe and efficient circulation system for traffic within the City of Lowell.

Findings and Conclusion: The applicant is proposing a new curb cut on Avery Street to accommodate deliveries. This new proposed curb cut does not comply with site development standards, as it is located too close to the intersection of Avery and Horatio Streets. Curb cuts on E. Main Street also do not comply with the Zoning Ordinance. MDOT requires a driveway permit for any change in use and it will likely require that these be closed negatively impacting the intended use.

Further, increased traffic on the site create conflicts between vehicles at these curb cuts and on the street system. Their proximity to each other and Horatio Street impacts turning movements and visibility for vehicles entering or leaving the site.. The Planning Commission finds that this standard is not met.

- 18.06 D Removal or alteration of significant natural features shall be restricted to those areas, which are reasonably necessary to develop the site in accordance with the requirements of this ordinance. The planning commission requires that approved landscaping, buffers and/or greenbelts be continuously maintained to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property.

Findings and Conclusions: The applicant is not proposing the removal or alteration of any natural features on the site. The site is mostly paved around the building. The previous mini-golf area contains some existing trees and shrubs, which are proposed to remain. The applicant has not proposed any landscaping, so proposed uses will not be adequately buffered from one another and from surrounding public and private property. The Planning Commission finds that this standard is not met.

- 18.06 E Satisfactory assurance shall be provided that the requirements of all other applicable ordinances, codes, and requirements of the City of Lowell will be met.

Findings and Conclusions: A condition of approval can stipulate continual compliance with applicable codes and ordinances. However, Special Land Use compliance is not met. The Planning Commission finds that this standard is met but for the SLU non-compliance.

- 18.06 F The general purposes and spirit of this ordinance and the Comprehensive Plan of the City of Lowell shall be maintained.

Findings and Conclusions: The purpose of the zoning ordinance is to “insure that uses of land shall be situated in appropriate locations and relationships; to limit the inappropriate overcrowding of land and transportation systems and other public facilities; to facilitate adequate and efficient provision of transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility needs; and to promote public health, safety, and welfare.”

Further, the purpose of the C3 General Business district is to permit a mixture of residential, office, and commercial uses that do not necessarily adhere to the style of

downtown buildings, including “automobile related uses which would ordinarily be incompatible with the character of residential districts.” The proposed development has been carefully evaluated with regard to its location and resulting relationships with the surrounding residential uses in close proximity. Due to the incompatibility of many C3 uses with residential districts noted in the Ordinance, care should be taken to ameliorate those impacts from residential uses, and building aesthetics or site improvements that would align with the residential character of the area. This has not been proposed by the applicant.

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 in the Mixed Use future land use category. This district is intended for a mix of residential, office, and commercial land uses that are not necessarily located in downtown-style buildings, so the site may under different plans and different commercial use be compatible with the Master Plan. Overall, the site plan is not consistent with the general purposes and spirit of this ordinance and the Comprehensive Plan of the City of Lowell because as previously discussed the landscaping, intensity of use, traffic patterns are not compatible with the surrounding residential use. The unique nature of commercial marihuana facilities including storage of product, odor, secondary effects of buyers traversing neighborhoods and compatibility with younger children being continuously exposed to the use as recognized by the state of Michigan Legislature in treating this use with marihuana-specific rules is precisely why it is a Special Land Use. While the Planning Commission has approved many marihuana retailers in other locations in the City which evidences fair treatment of marihuana applications, this particular location is not

similarly situated for the reasons stated herein. The Planning Commission finds that this standard is not met.

Section 3. Special Land Use Review Standards

The City of Lowell Zoning Ordinance requires that the Planning Commission find that all of the special land use standards of Section 17.03 are met when considering a special land use. Those standards are below, along with the Commission's findings and conclusions (where there is overlap between Site Plan Standards and Special Land Use standards the relevant Site Plan Standards are hereby incorporated herein):

17.03 A.1. 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;

Findings and Conclusions: The applicant is proposing to use an existing building, so its design and construction were previously accepted for this area. However, the building has been vacated and maintenance of the building and site appears to have declined. Landscaping is largely overgrown and the previous mini-golf area appears to still contain structures and gravel for that previous use. The applicant has noted that improvements are proposed but has not submitted building elevations or proposed landscaping, so the extent of exterior improvements is unclear at this time.

As discussed in Site Plan Review Standard A, above, there would be a considerable difference between the intensity of the proposed use and surrounding residences, which increase the impacts perceived by adjacent properties. The existing land use pattern is

residential, pedestrian-oriented, and of a relatively low intensity. The C3 district is only located on three properties east of the Flat River (the subject property being two of them) and while this district allows for more intense uses than surrounding residential districts, its impact was carefully considered within its surrounding residential context.

Adult use marihuana establishments have been typically associated with higher-intensity land use impacts (such as traffic, odor, loitering, etc.) which the Planning Commission finds are not harmonious or appropriate in a predominately residential area and the application and site plan did not provide substantial evidence that the use consequences could be ameliorated by conditions of an approval.

Landscape buffers are often used to help mitigate the impacts of a more intense commercial use on a less intense residential use. The applicant has not proposed any landscaping or buffers, and given the size and geometry of the site, landscaping/screening to a degree that sufficiently ameliorates its impacts on neighboring properties are difficult if not impossible to achieve given the characteristics of this marihuana use. It is also surrounded by streets and residential districts on all sides, making it impractical to require a buffer on every side even if it were feasible. Such a commercial marihuana facility which sells product that is prohibited to minors is not adequately shielded from plain view to neighboring properties. The Planning Commission finds that the proposed use would be incompatible with the existing and intended character of the general vicinity and the site's context given the lack of landscaping and its proximity and exposure to residential uses. The Planning Commission finds that this standard is not met.

17.03 A.2. The proposed special land use shall be generally consistent with the City of Lowell Master Plan;

Findings and Conclusions: 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 in the Mixed Use future land use category. This district is intended for a mix of residential, office, and commercial land uses that are not necessarily located in downtown-style buildings, so the site may be compatible with the Master Plan if proper steps were taken relative to appropriate commercial use, landscaping, buffering, and screening. Incorporating the findings found above found in the Site Plan Review findings, overall, the proposed special land use not consistent with the Comprehensive Plan of the City of Lowell. Not all commercial uses are equal and some other less intense use could be compatible, however, based on the application and proposed changes to the site, there was not substantial evidence that this use could be compatible. The Planning Commission finds that this standard is not met.

17.03 A.3. 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;

Findings and Conclusions: Because the applicant is proposing to use an existing building, utility connections are already present on the site. The applicant is not proposing any major changes to the parking lot, so drainage structures are also expected to be adequate; however, drainage was not indicated on the site plan. Emergency vehicle access is expected to be acceptable on the site, but the Fire Department would be contacted regarding any future development.

A new curb cut is proposed for marihuana delivery, which would require a driveway permit from the City. The presence of four curb cuts on the site causes concern for traffic circulation on public streets. Because the site is surrounded by streets on all sides, points of ingress and egress were carefully considered to ensure safe entrance and exit of vehicles on the site. Marihuana establishments have typically been associated with higher levels of traffic than many other commercial establishments, and traffic circulation is of particular concern on this site. While three curb cuts already exist, the current circulation must be carefully evaluated to ensure safety for traffic on the site and along public roads. MDOT approval would be required for the cuts on Main Street due to the change in use.

Security measures are expected to mitigate impacts on the local police department, and the fee charged by the City for an operating license would help offset any costs incurred. However, the applicant has not submitted sufficient evidence that the proposed special land use would be served adequately by essential public facilities and services. Therefore, the Planning Commission finds that this standard is not met.

17.03 A.4. The proposed special land use shall not create excessive additional requirements at public cost for public facilities and services.

Findings and Conclusions: Public facilities and services, including water and sewer connections, are already present on the site. The proposed use does not involve any grow rooms that would require facilities or services beyond a typical retail operation. The Planning Commission find this standard is met.

17.03 A.5. 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.

Findings and Conclusions: The narratives submitted with the site plan lack the detail needed to adequately describe the operation, including but not limited to secure storage areas, permitted access in the building, and procedures for accepting and storing marihuana.

No on-site marihuana consumption would be permitted and the applicant is not proposing to grow any marihuana on-site. Negative air pressure and a carbon filter are proposed in the HVAC system. This may mitigate odors associated with the operation; however, specific details were not described in the odor plan.

Noise and traffic will have a greater impact in this area due to the presence of residences entirely around the subject property. Without an appropriate buffer or landscaping, noise and traffic, and continuous exposure to minors negatively impact surrounding residential areas, and mitigation of these impacts is important. The Planning Commission finds that this standard is not met.

17.03 A.6. 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.

Findings and Conclusions: This standard would have been addressed as a condition of approval, if the application were approved.

Section 4. Additional Adult Use Marihuana Establishment-specific Special Land Use Standards.

In addition to the general standards for special land uses of Section 17.03, the proposed special land use must also comply with specific standards established for adult use marihuana establishments as listed in Section 17.04 FF of the City of Lowell Zoning Ordinance. Practically speaking, these standards are only relevant if the marihuana use is found to be appropriate for the location by the general standards, which in this case it was not. Considering all the standards together the use does not meet the applicable characteristics for approval. However, to be thorough the Planning Commission analyzed the following standards of 17.04 FF(5)(a-m) and find that the technical marihuana facility requirements were met :

17.04FF(5)(a) Security. The marihuana establishment shall comply with all applicable security requirements contained in applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

i. All marihuana and marihuana accessories shall be located within an enclosed, locked area, inaccessible on all sides, and equipped with locks that permit access only by the licensed operator or their employees, agents of LARA, law enforcement officers, emergency personnel, and other authorized individuals, as reviewed and approved by the city.

ii. Marihuana establishments shall use commercial-grade, nonresidential door locks on all points of entry and exit to the permitted premises.

iii. Security cameras are required to be installed and operated in marihuana establishments twenty-four (24) hours per day, three hundred sixty-five (365) days per year, and shall be directed to record only the subject property. Required security cameras may not be directed to public rights-of-way as applicable, except as

required to comply with applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA

Findings and Conclusions: The applicant has submitted a building floor plan with security features. This includes commercial grade doors and locks, security cameras, and alarm inputs. The alarm system control panel is proposed in the lobby. This standard is met subject to approval by City Staff.

17.04 FF(5)(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:

1,000 feet of a preschool or child care center, whether or not it is within the city of Lowell;

1,000 feet of a public or private K-12 school, whether or not it is within the city of Lowell;

500 feet of a property within the C-2, Central Business District as illustrated on the City of Lowell Zoning Map.

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.

Findings and Conclusions: The applicant submitted a sensitive use map depicting a 1,000-foot radius around the subject property. There are no schools or childcare

facilities within 1,000 feet of the proposed location and no new child care centers registered with the Michigan Department of Regulatory Affairs. The Planning Commission finds that this standard is met.

17.04 FF(5)(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' recommendations 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.

Findings and Conclusions: The Mechanical Plan (Sheet M1.1) notes that the HVAC equipment would be designed for negative air pressure inside the building to prevent odors outside, along with an added charcoal filter system. However, the ratio of negative air pressure was not included, but could have been addressed as a condition of approval. The Planning Commission find that this standard is met.

17.04FF(5)(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.

Findings and Conclusions: The applicant has proposed to dispose of marihuana waste with cat litter at a 50/50 ratio. This is proposed in a dumpster located in a locked and fenced area, which is shown on the site plan within the secure delivery area and includes an eight-foot-tall fence. Cat litter is not listed as an acceptable non-consumable solid waste in accordance with R 420.211 of the Marihuana Operations rules promulgated by LARA, unless approved in writing by the agency that will render the marihuana product waste unusable and unrecognizable. Another material would need to be used,

which could have been addressed as a condition of approval. The Planning Commission finds that this standard is met.

17.04FF(5)(e) The marihuana establishment shall not be operated out of a residence or any building used wholly or partially for residential purposes.

Findings and Conclusions: There would not be a residence associated with the marihuana establishment. The second story of the building is not proposed for the marihuana use and is currently vacant. The Planning Commission finds that this standard is met.

17.04FF(5)(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.

Findings and Conclusions: The proposed use will not involve the processing or growing of marihuana. Chemical storage is not proposed. The Planning Commission finds that this standard is met.

17.04FF(5)(g) A marihuana establishment shall not be operated from a business which also sells alcoholic beverages or tobacco products.

Findings and Conclusions: The site plan indicates that there will be no sale of alcoholic beverages or tobacco products. The Planning Commission finds that this standard is met.

17.04FF(5)(h) No drive-through facilities shall be permitted.

Findings and Conclusions: No drive-through facilities are proposed. The Planning Commission finds that this standard is met.

17.04FF(5)(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.

Findings and Conclusions: The Planning Commission finds that this standard is met.

17.04FF(5)(j) The Planning Commission may require additional landscape buffers or screening beyond what is required in Section 4.26 of the Zoning Ordinance.

Finding and Conclusions: This standard is not applicable.

17.04FF(5)(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.

Findings and Conclusions: The applicant is proposing to use a variety of methods to maintain records and has permitted random record evaluations and availability of all records to the state and City of Lowell. However, the Planning Commission finds that that standard is met.

17.04FF(5)(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.

Findings and Conclusions: The applicant will not be growing or harvesting marihuana on the site, so this standard is not applicable.

17.04FF(5)(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.

Findings and Conclusions: This standard is not applicable.

Section 5. Decision

Based on and for the reasons described in the foregoing review and findings of fact and conclusions the proposed special land use and site plan submitted by Hive Wellness LLC is hereby denied.

Certification of Decision

I hereby certify that the above findings of fact and determination were approved and adopted by the Planning Commission at its meeting on October 11, 2021.

Respectfully submitted,

By: _____
Sue Ullery
Lowell City Clerk

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: 2335 W. Main Street, Lowell MI 49331
2. Parcel Identification Number (Tax I.D. No.): #41-20- 03-301-033
3. Applicant's Name: FSM Property Ventures LLC Phone Number 616-460-0581
Address: 8256 Broadmoor Avenue SE Caledonia MI 49316

StreetCityStateZip

Fax NumberEmail Address mario@uccellos.com
4. Are You: ☒ Property Owner ☐ Owner's Agent ☐ Contract Purchaser ☒ Option Holder
5. Applicant is being represented by: Andrea Hendrick Phone Number 616-218-7669
Address: _____
6. Present Zoning of Parcel I - General Industry Present Use of Parcel Industrial Warehouse
7. Description of proposed development (attach additional materials if needed):
The proposed industrial space will be reused for an adult use marijuana grower & processor.

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

Signature: _____ Date: 09-29-2021

Type or Print Your Name Here: _____

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.

Owner

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.

- | | <u>INITIAL</u> |
|---|----------------|
| 1. Date, north arrow and scale (not more than 1" = 100', supplementary site plans at a 1" = 50' or larger scale are encouraged) | <u>AH</u> |
| 2. A city locational sketch | <u>AH</u> |
| 3. Legal description and City address of the subject property | <u>AH</u> |
| 4. The size in acres or square feet of the subject property | <u>AH</u> |
| 5. All lot and/or property lines with dimensions, including building setback lines | <u>AH</u> |
| 6. The location of all existing structures within one hundred (100) feet of the subject property's boundary | <u>AH</u> |
| 7. The location and dimensions of all existing and proposed structures on the subject property | <u>AH</u> |
| 8. The location and dimensions of all existing and proposed: | |
| ▪ Drives | <u>AH</u> |
| ▪ curb openings (NOTE: all new openings onto M-21 (Main Street) must receive State Transportation Department approval) | <u>AH</u> |
| ▪ sidewalks | <u>AH</u> |
| ▪ exterior lighting | <u>AH</u> |
| ▪ curbing | <u>AH</u> |
| ▪ parking areas (include and delineate the total number of parking spaces showing dimensions of a typical space) | <u>AH</u> |
| ▪ unloading areas | <u>AH</u> |
| ▪ recreation areas | <u>AH</u> |
| ▪ common use areas | <u>AH</u> |
| ▪ areas to be conveyed for public use and purpose | <u>AH</u> |
| 9. The location, pavement width and right-of-way width of abutting roads, alleys or easements | <u>AH</u> |
| 10. The existing zoning of all properties abutting the subject project | <u>AH</u> |
| 11. The location of all existing and proposed: | |
| ▪ landscaping and vegetation | <u>AH</u> |
| ▪ location, height and type of existing and proposed fences and walls | <u>AH</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>AH</u> |
| 14. The location and size of septic and drain fields | <u>AH</u> |
| 15. Contour intervals shown at five (5) foot intervals | <u>AH</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;

See Attached

- 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;

See Attached

- 3. Not create excessive additional requirements at public cost for public facilities and services; and

See Attached

- 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.

See Attached

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:

See Attached

City of Lowell Special Use Standard Response

7. Description of proposed project:

- The Special Use request is for the reuse of an existing industrial building to a marijuana grow facility and processor. When complete, the site will contain four (4) Class C adult-use grow facilities and a processor.
- The build-out will take place in two (2) phases.
 - Phase 1: Office renovation, northern growing area, and processing area.
 - Phase 2: Southeast arm of the building to increase grow space
- The building is comprised of approximately 25,000 square feet of industrial, warehouse space, a 1,664 square foot office area.
- The majority of the building is currently vacant. The 9,556 s.f. southeast arm of the building is currently being used as a warehouse for computer hardware
- The building has previously been used for a sports complex
- The majority of the exterior site will not be modified
- Exterior modifications include
 - The potential removal of the east curb cut (In accordance with the requirements of MDOT/highway permit)
 - demolition of a non-conforming storage building located to the west of the current parking lot
 - the potential addition of a privacy fence on the east property line to provide screening for the adjacent religious institution (In accordance with the preference of the congregation with regards to snow storage and facility maintenance)
 - Minor landscaping modification
- No signage is proposed
- There will be no on-site consumption of product.

Section 17.03 Response

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 marijuana grower and processor is a reuse of an existing building and is consistent with the current and future use of the area. The proposed development is located in the I, Industrial District, which is designed to permit industrial and related uses which are desirable to serve the employment needs of the residents of the city. The City of Lowell Master Plan designates this site as Highway business which is intended to services oriented towards automobile traffic, however, the current site has maintained an industrial use and zoning for the past 13 years and the current facility is in good condition and can reasonable maintain an industrial use for the remainder of the life of the building. The interior modification and general operations of a marijuana grower and processor would be harmonious with the general vicinity. The subject parcel and the adjacent parcels to the south, and west are zoned for marijuana uses. The proposed use is harmonious and appropriate with the character of the general vicinity because the current building and site layout conform to the standards of the zoning ordinance with regards to parking, clear vision area, access management, lot coverage, and building element standards. While one portion of the building currently encroaches into the required setback for the north section of the building, the building is existing and no exterior modification is proposed. The non-conforming portion of the building has no windows and faces a vacant parcel. The proposed interior operation will not change the existing character of the general facility whatsoever.

Additionally, the operation of the proposed facility will be discrete and will be consistent with the character of the general vicinity. The reuse of a partially vacant building will bring jobs and vitality to the area. The proposed site modifications will improve harmony with surrounding land uses by removing a building that is currently encroaching on the property to the west and providing an aesthetically pleasing buffer between the industrial use and the land use to the east.

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 marijuana grow operation will have adequate access to the existing public facilities. The City of Lowell staff has been engaged with regard to the public facilities needed to service the proposed operation. The current site has two

(2) curb cuts providing access to W. Main. The proposed use will not increase traffic to the point that two curb cuts are necessary, therefore the proposed site design will eliminate the easternmost curb cut. This will simplify traffic circulation for this site and mitigate potential negative impacts on W. Main St. and surrounding properties. The current site design retains stormwater on-site and no additional parking spaces are required. Impervious service will be decreased by the removal of the easternmost curb cut, as well as improve traffic circulation, provide a buffer between the religious institution to the east, and increase safety. This will also create a more harmonious pedestrian pathway. The site is currently served by public water and sewer connections. An increase in public services is not anticipated. The site is 1.6 miles from the Lowell Police Department and 10 miles from the nearest fire department, ensuring the site will be adequately served by essential public services.

3. Not create excessive additional requirements at public cost for public facilities and services; and

The proposed marijuana grower and processor will not create excessive additional requirements at public cost for public facilities and services because the proposed use is similar in nature to previous uses, which were appropriate for the zoning district and location. Further, the proposed operation will provide on-site security. All hazardous materials will be used, stored, and disposed of in a manner that is appropriate for the use. Staff will abide by all State and local requirements and will coordinate with all appropriate agencies, as laid out in the provided documents. The addition of cameras, digital security, and on-site security guards reduces the number of calls for services for adjacent properties.

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 marijuana establishment will not be detrimental to any person, property or the general welfare of the surrounding area because the facility will comply with all the requirements of the Michigan Taxation and Regulation of Marijuana Act and the City of Lowell Zoning Ordinance with regards to a marijuana facility within the I, Industrial Zone District. On-site consumption is not permitted and will not be tolerated by facility staff and security. Therefore no smoke or fumes is anticipated. Additionally, the facility will be built utilizing the best practices in marijuana growing and processing. There is will be no smoke, fumes, glare, or odors. Product will be transferred to the facility in secured containers and the site will meet the development standards of the City of Lowell Zoning Ordinance. Lastly, the proposed use will not significantly increase the amount of traffic to the site. The aforementioned site design, with the removal of the curb cut, will improve site circulation.

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 development will not have an adverse effect on the public health, safety and welfare of the adjacent property because it will adhere to all regulations of the MRTMA standards for a marijuana provisioning center. The applicant is pre-qualified through the State of Michigan Marijuana Regulatory Agency. The applicant will obtain the required business license to operate a marijuana facility within the City of Lowell, as well as all other building and zoning requirements.

The applicant has reached out to the adjacent property owners and has discussed potential adverse effects of the facility, as well as mitigation measures.

The owner of the property consents to the use of a marijuana facility at this location. Additionally, there are no sensitive uses within the 1,000-foot proximity of the proposed location. Lastly, all required documentation has been provided to the City of Lowell for review.

williams&works

engineers | surveyors | planners

MEMORANDUM

To: City of Lowell Planning Commission
Date: October 8, 2021
From: Andy Moore, AICP
RE: **2335 W. Main Special Land Use (re-application)**

Five Lakes Farm, LLC, represented by Andrea Hendrick, has submitted an application for site plan review and special land use approval to construct an adult use marihuana establishment at 2335 W. Main Street (PPN 41-20-03-301-033). The subject property is located in the I Industrial District, where adult use marihuana establishments are only permitted by special land use. 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 3.1 acres in the I Industrial District. The I Industrial district is also adjacent to the west, the R3 Multiple Family Residential District is adjacent to the north, the PF Public Facilities district is adjacent to the east, and the C3 General Business district is across Main Street to the south.

The property was approved for a marihuana grow facility in July 2020. However, no construction activities have taken place on the site. Section 18.07A of the Zoning Ordinance provides as follows:

- A. Timeframe. Each development shall be under construction within one (1) year after the date of approval of the final site plan, except as noted below.
1. The planning commission may grant one (1) six (6) month extension of such time period, provided the applicant requests, in writing, an extension prior to the date of the expiration of the final site plan.
 2. The extension shall be approved if the applicant presents reasonable evidence to the effect that said development has encountered unforeseen difficulties beyond the control of the applicant, and the project will proceed within the extension period.

3. If neither of the above provisions are fulfilled or the six (6) month extension has expired prior to construction, the final site plan approval shall be null and void.

If a site plan expires pursuant to subsection 18.07 A(3), above, no work may be undertaken until a new site plan has been approved by the planning commission or zoning enforcement officer pursuant to the standards of this chapter.

The applicant did not seek an extension; thus, the July 2020 application is considered expired and thus invalid. The applicant has re-applied for site plan and special land use approval for the same use. The special land use submittal reviewed to date indicates that the application is the same as was originally proposed; however, it is our understanding that the building will be utilizing a private septic system instead of connecting to City sewer services.

A site plan was submitted to City offices recently, but we have not yet reviewed it. A public hearing has been scheduled for the October meeting. At the public hearing, the Commission should carefully consider comments from the applicant and the public. Because the site plan has not been reviewed in detail, the Commission may postpone a decision on the application until the November meeting. However, if the Commission is satisfied that the site plan is the same as what was previously approved, it may re-approve the application based on the factors originally considered in July 2020, with the same conditions.

A copy of the July 2020 staff report has been included for your review.

As always, feel free to contact us with any questions.

williams&works

engineers | surveyors | planners

MEMORANDUM

To: City of Lowell Planning Commission
Date: July 8, 2020
From: Andy Moore, AICP
Whitney Newberry
RE: **2335 W. Main Special Land Use**

Five Lakes Farm, LLC, represented by Andrea Hendrick, has submitted an application for site plan review and special land use approval to construct an adult use marijuana establishment at 2335 W. Main Street (PPN 41-20-03-301-033). The subject property is located in the I Industrial district, where adult use marijuana establishments are only permitted by special land use. 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 3.1 acres in the I Industrial district. The I Industrial district is also adjacent to the west, the R3 Multiple Family Residential district is adjacent to the north, the PF Public Facilities district is adjacent to the east, and the C3 General Business district is across Main Street to the south.

Currently, the subject property contains four existing buildings, one of which is proposed for the grow and processor facility. This main building is approximately 25,923 square feet. The other buildings have a combined area of approximately 3,300 square feet. The applicant is proposing to keep the site largely unaltered, but has proposed the following exterior modifications:

- Removal of a nonconforming storage building (approx. 1,400 sq. ft.) along the western property boundary;
- Removal of the east curb cut, in accordance with MDOT requirements;
- A privacy fence along the east property line; and
- Minor landscaping.



Two phases are proposed for the project. The first phase would involve the office renovation, northern growing area, and processing area. The second phase would increase grow space into the southeast arm of the building.

The applicant is proposing to establish an adult use recreational marihuana establishment that contains four Class C adult-use grow facilities and a processor operation. By definition, "marihuana grower" and "marihuana processor" are types of adult use marihuana establishments.

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:

- **Existing and proposed transportation features, 18.04 B(j).** The site plan does not indicate the dimensions and radii of existing and proposed drives, curbing, and dimensions of a typical parking space. All other features required in this section are included.
- **Existing and proposed utilities, 18.04 B(n).** The size and location of all existing and proposed utilities, including connections to public sewer and water supply systems, are not shown on the site plan.
- **Drainage facilities, 18.04 B(o).** The site plan and land title survey do not include the location and size of all surface water drainage facilities. Catch basins are indicated in the W. Main Street right-of-way, but not in the subject property.
- **Existing and proposed topographic contours, 18.04 B(p).** Topographic contours are not included on the site plan or land title survey.
- **Cost Estimates, 18.04 B(r).** Estimates for all public improvements included as part of any performance guarantee if required.

The applicant is proposing to utilize an existing building and several items identified above may 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 marihuana establishments. The applicant included all of the additional site plan materials, except a verification statement (Section 17.04 FF(3)(a)) and window calculations and descriptions of glass to be used (Section 17.04 FF(4)(e)).

SITE PLAN REVIEW

Setbacks and Dimensional Requirements. The main building proposed as a marihuana grow facility does not meet rear and side yard setbacks required in Section 13.04. The western lot line abuts another industrial property, requiring a 20-foot side yard setback. The land title survey indicates the building is 18.3 feet from the western lot line at the nearest point. The rear property line abuts the R-3 Multiple Family Residential district, requiring a 50-foot rear yard setback. The land title survey indicates the building is 14.1 feet from the rear lot line at the nearest point. Because this is an existing building, it is legally nonconforming in regards to its location on the property.

Section 4.13 A(5) allows nonconforming buildings to receive ordinary repairs or “repair or replacement of walls, fixtures, wiring or plumbing” as long as the building is not altered or increased except in compliance with Section 4.13. Further, Section 4.13 A(7) allows a change in tenancy, ownership, or management of nonconforming buildings. The applicant is proposing no exterior alterations to building; however, as a grow facility, there may be enhancements to existing fixtures, such as electrical wiring, and the applicant has indicated interior renovation of the front office. The Planning Commission may discuss the extent to which the proposed use and associated modifications to the building would constitute ordinary repairs. Structures that are nonconforming by reason of area may be extended, enlarged, altered, remodeled, or modernized only when the conditions of Section 4.13 A(8) are met. The following are applicable to the subject property:

- a. The building or structure shall comply with all height, area, and/or parking and loading provisions with respect to such extension, enlargement, alteration, remodeling or modernization.
- b. The zoning enforcement officer shall determine that such alteration, remodeling, or modernization will not substantially extend the life of any nonconforming building or structure.

The site also contains an additional nonconforming building near the western lot line. The applicant has proposed to remove this building, thus eliminating its nonconformity.

Site Development Requirements. Section 13.04 A through E provides site development requirements. The applicant is not proposing any outdoor storage and parking is located more than 25 feet from the rear lot line. Landscaping is addressed below and odor is addressed under Adult Use Marihuana Establishment Special Land Use Standard (c). The Planning Commission may require continued compliance with site development standards as a condition of approval.

Landscaping. The applicant has proposed a 6-foot privacy fence along the east property line to screen the proposed use from the adjacent church. Additionally, the applicant is proposing to close the eastern curb cut and replace this area with grass and appropriate landscaping. Specific landscape materials were not submitted. The applicant is not proposing any changes to the parking lot, so parking lot landscaping is not required in Section 4.26 E(3).

Front yard landscaping is required in Section 4.26 E(2), with a minimum of one canopy tree and three deciduous shrubs for each 30 feet of lot width. The applicant's property frontage is 255.4 feet, equating to 8 canopy trees and 25 shrubs. The site has several existing trees, 11 of which are located in front of the main building. The existing landscaping meets the minimum front yard tree requirement; however, the number of shrubs are not indicated on the site plan.

Section 4.26 E(1) also requires a wall or wooden privacy fence between six and eight feet tall, or a landscaped buffer or berm at least partially comprised of evergreen trees, to provide screening between an industrial use and any residential zoning district. The applicant has provided a privacy fence along the eastern property boundary; however, because the R3 Residential district is adjacent to the subject property along the rear lot line, a buffer is required along this lot line as well. Currently, there are four pine trees of various sizes located along the rear lot line.

The Planning Commission may discuss the number of shrubs proposed for landscaping and screening along the rear property boundary with the applicant.

Lighting. The applicant is proposing 14 wall lights and three pole lights, all of which are fully cut-off and shielded. The applicant has submitted a photometric plan, which indicates that lighting will not exceed ½ foot candle along property boundaries, as required in Section 4.24 E(1). Additionally, all pole lights are proposed to be 20 feet above grade, in accordance with Section 19.03 C(1) for parking lot lighting adjacent to a residential district. The Planning Commission may find lighting requirements met.

Parking. The Ordinance requires one space for each 2,000 square feet of gross floor area for an industrial or manufacturing establishment, with additional spaces for any accessory uses and a minimum of five spaces. The applicant is proposing approximately 24,259 square feet of the building for industrial use and 1,664 for office use. This equates to 19 total spaces for industrial and office uses. The applicant is not proposing any changes to existing parking, which includes 32 existing spaces. Parking space dimensions were not provided; however, the land title survey states that these are regular parking spaces. The Planning Commission may find the parking requirement met.

Based on 32 parking spaces, two ADA barrier-free parking spaces are required, one of which is van accessible. These are not depicted on the site plan and the Planning Commission may address this requirement with the applicant.

Section 19.08 provides loading space requirements. Based on the building's gross floor area of approximately 25,923 square feet, one loading space is required. A review of aerial imagery and the applicant's site plan indicate two loading spaces on the site. However, the applicant's delivery protocol also indicates three overhead doors, which allow indoor access for loading/unloading of secure transport vehicles. Therefore, the applicant exceeds the number of loading/unloading spaces. Dimensions for loading/unloading spaces are not required when vehicles are brought indoors.

Signage. The site plan does not address signage. Compliance with Ordinance requirements may be addressed as a condition of approval.

State License. The applicant has submitted an official letter stating that they have obtained prequalification status pursuant to the licensing provisions of the Michigan Regulation and Taxation of Marihuana Act. As a condition of approval, the City may require a copy of the state license to be submitted once it is obtained.

Provisional License. The applicant has not yet received a provisional license issued by the City of Lowell, but a completed application was included with the submittal. Therefore, the Planning Commission shall require a license from the City of Lowell as a condition of special land use approval.

Consent. The applicant submitted a proposed statement of consent to confirm that the property owner, 1313Keith LLC, consents to the items included in Section 17.04 FF(3)(b) of the Ordinance. This statement also includes consent to be governed by all applicable regulations, including Chapter 28. The statement of consent does not include the property owner's signature; rather, it appears to be a draft statement. As a condition of approval, the Planning Commission may require a signed and notarized copy to be submitted to the City.

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. Following are the standards and our remarks on each:

- A. The uses proposed will not adversely affect the public health, safety or welfare. Uses and structures located on the site shall be planned to take into account topography, size of the property, the uses on adjoining property and the relationship and size of buildings to the site. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this ordinance.

Remarks: The proposed use is permitted as a special land use in the I district and would function as a marihuana grow and processor establishment. The previous use was a sports complex and warehouse. Other previous uses on the site included a tobacco retailer and an equipment rental business. The applicant is proposing to use the largest existing building for the marihuana establishment, demolish a non-conforming building, and retain the remaining two smaller buildings on the site. The proposed uses for the two smaller buildings are unknown, so the impact of their use is uncertain. However, the exterior of all remaining buildings would remain unaltered and the total impervious surface of the site would be reduced. The relationship of existing buildings to surrounding uses is expected to improve through the removal of the nonconforming building. Because the applicant is not proposing any other modifications to building exteriors, the site will retain a similar relationship to surrounding properties in terms of its development and the location of structures.

The nonconforming setback of the main building near the R3 Residential district may increase the intensity of the proposed use on this adjacent property due to the significant reduction in setback distance. Although the property is currently vacant, its potential for normal and orderly development or improvement should not be impeded by the

proposed use. However, because the main building is legally nonconforming, it is permitted to remain in the current location and receive ordinary repairs as long as it is not altered or increased except in compliance with Section 4.13 of the Ordinance. The Planning Commission may consider whether the proposed improvements would constitute ordinary repairs or whether they would alter, remodel, or modernize the building. If considered more than ordinary repairs, the applicant would have to comply with Section 4.13 A(8).

- B. Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation shall be provided for ingress/egress points and within the site. Drives, streets, and other circulation routes shall be designed to promote safe and efficient traffic operations within the site and at ingress/egress points.

Remarks: The applicant is not proposing any changes to the existing vehicular and pedestrian circulation systems within the site, except for closing the east curb cut on W. Main Street. This curb cut would increase distance between the marihuana establishment and the adjacent church curb cuts. Using only the west curb cut would allow traffic to access the marihuana establishment by traveling essentially straight through the site. Access to the eastern side of the building would require traffic to circumvent an existing smaller building (1-story frame house).

Although the current layout appears capable of accommodating traffic to and from the establishment, directional signage or pavement markings may be beneficial to ensure orderly flow of traffic throughout the site. The width of maneuvering aisles is not indicated on the site plan; however, pavement west of the existing frame house is narrower than the pavement east of the house. It is likely that the west access aisle would only accommodate one-way traffic, while the east access aisle could accommodate two-way traffic. Maneuvering aisle widths must be 15 feet for one-way traffic and 24 feet for two-way traffic, in accordance with Section 19.06. The Planning Commission may address traffic circulation with the applicant to ensure clear and safe access is provided for traffic throughout the site. The Planning Commission may defer to the City Fire Department for comments regarding emergency vehicle access on the site. Modification of the curb cut will also require approval from MDOT.

Sidewalks exist along the W. Main Street right-of-way, along all sides of the southeastern portion of the main building, and from the blacktop to two office entrances. All access points to the building have a sidewalk connection. The Planning Commission may find sidewalk access adequate for the proposed use.

- C. The arrangement of public or private vehicular and pedestrian connections to existing or planned streets in the area shall be planned to provide a safe and efficient circulation system for traffic within the City of Lowell.

Remarks: The applicant is proposing to utilize the existing curb cut on West Main Street and remove the second existing curb cut to the east. MDOT has jurisdiction over driveway location and turning movements onto West Main Street. If a driveway permit is

issued by MDOT and removal of the curb cut is approved, the Planning Commission may find this standard met.

- D. Removal or alteration of significant natural features shall be restricted to those areas, which are reasonably necessary to develop the site in accordance with the requirements of this ordinance. The planning commission requires that approved landscaping, buffers and/or greenbelts be continuously maintained to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property.

Remarks: Few modifications are proposed to the site's exterior. The applicant has not proposed the removal of any trees from the site. The applicant has also proposed additional landscaping to replace the second curb cut. Specific landscape details were not provided. See our general site plan review comments regarding landscape requirements. Maintenance of landscaping, buffers, and/or greenbelts may be addressed as a condition of approval.

- E. Satisfactory assurance shall be provided that the requirements of all other applicable ordinances, codes, and requirements of the City of Lowell will be met.

Remarks: A condition of approval can stipulate compliance with applicable codes and ordinances.

- F. The general purposes and spirit of this ordinance and the Comprehensive Plan of the City of Lowell shall be maintained.

Remarks: The purpose of the I Industrial district is to provide industrial and related uses that serve the employment needs of City residents and protect residential areas from negative impacts often associated with more intense uses (Section 13.01). The establishment will employ 18 staff members after phase 1 and an additional 8 staff members after phase 2, totaling 26 employees. The I district would likely be the most suitable district for a growing and processing operation, due to intensity of the proposed use. However, the purpose of this district in Section 13.01 includes careful protection of residential areas in the City. Considering the R3 Residential district behind the subject property and the reduced setbacks of the legally nonconforming use, the Planning Commission may consider the impact of the industrial use to ensure the welfare of all surrounding areas is maintained in accordance with the purpose of the Industrial district.

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 Highway Business future land use category. This designation is intended for uses that accommodate automobile traffic, including retail, office, and service uses. It is also intended to correspond with regulations and land uses permitted in the C-3 General Business district; therefore, the plan envisions the business district expanding slightly west along W. Main Street to include the subject property.

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 applicant is proposing few exterior modifications to the site. Those proposed would likely enhance the appearance of the site through the removal of a nonconforming building and closure of a curb cut along W. Main Street. These would reduce impervious surface on the site and increase landscaping. Additionally, the site plan states that all production and processing would occur within the fully enclosed facility. While one portion of the main building has a nonconforming setback along an R3 district property, this property is currently vacant and the building has no windows facing the parcel. Therefore, by occupying an existing building, the proposed use would not change the design of the buildings and their relationship to other structures on adjacent sites. It is expected that the appearance of the site would remain harmonious in relation to the intended character of the general vicinity.

The existing character of the area is a combination of industrial, commercial, residential, and institutional uses. The Planning Commission may discuss the extent to which the proposed use would impact the *essential* character of the area, as this property is located at somewhat of an intersection of several different zoning districts. Because the proposed use would be conducted entirely within an enclosed building, it is expected that it would not alter the essential character in terms of its visual impact.

However, the essential character of the area may also be considered in terms of the intensity of the proposed use in the general vicinity, as the property is adjacent to the R3 and PF districts to the north and east, which typically permit uses that would be more sensitive to an industrial facility. Adult use marihuana establishments, as allowed in the Ordinance, include several types of marihuana establishments which have different levels of intensity. Properties to the west and south of the subject property are already planned for marihuana retailers. Therefore, the presence of another marihuana establishment may be compatible with these neighboring marihuana uses, while also increasing the combined intensity of such uses within the surrounding area. The proposed hours of operation from 9:00 AM to 9:00 PM may also be considered in relation to uses in the general area. In accordance with this standard, the Planning Commission may consider what would constitute a change in the "essential" character of the area in order to ensure this is maintained through the establishment of the proposed industrial operation.

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

Remarks: See comments under Site Plan Review, F above.

- 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: Because the proposed use would occupy an existing building, essential public facilities are already present on the site. The applicant has stated in a narrative that public water and sewer connections are already present on the site. The applicant is not proposing any changes to the existing parking and has also stated that all stormwater is retained on-site through the current design. The removal of a curb cut is expected to improve traffic circulation and increase the buffer distance between the establishment's traffic and adjacent uses. This will also increase pedestrian safety along the property frontage.

As an operation with four Class C adult-use grow facilities and a processor, the facility is could have a much higher power and water consumption than the previous use, as the operation will likely involve ventilation, extensive lighting, exhaust fans, cooling/heating, and watering systems. The entire facility would have approximately 12,500 square feet of flowering rooms and 2,100 square feet of vegetation rooms. The site plan indicates that the electric service for the project is expected to be 480 volt, 3 phase, and approximately 2,000 amps (960 kilowatts). Therefore, the operation is expected to be energy-intensive. However, the site plan indicates that energy services are being coordinated with Lowell Light and Power and that they do not expect any "overbuilding." As a condition of approval, the Planning Commission may require that the applicant receive approval from and comply with any requirements of Lowell Light and Power. The Planning Commission may also defer to the City Fire Department, City Police Department, and City Engineer for additional comments regarding other site utility and service requirements.

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

Remarks: The site plan indicates that energy consumption of the proposed use is not expected to result in "overbuilding" of Lowell Light and Power. As a condition of approval, the Planning Commission may require that the applicant receive approval from and comply with any requirements of Lowell Light and Power.

- 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 be located entirely inside the existing building, which is expected to help mitigate impacts from noise and odors. The applicant has stated in a narrative that on-site consumption is not permitted and smoke or fumes are not anticipated. The product would be transferred in secured containers when leaving

the facility, mitigating the potential for odor while products are loaded. The site plan also indicates that odors will be controlled through activated charcoal filter systems and by negative air pressure in the building. Excessive customer traffic is not expected on the site, as the applicant is not proposing a retail operation. 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 on security (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 submitted a sensitive use map with buffers depicting a 1,000-foot radius around the subject property. There are no schools or childcare facilities within either buffer around the proposed location and no new child care centers registered with the Michigan Department of Regulatory Affairs. 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 site plan states that any odors in air exhausted outside will pass through an activated charcoal filter system and that negative air pressure will be maintained inside the building, in accordance with the above requirements. Standard HVAC systems are proposed in office areas, typical corridors, and other "standard" spaces. However, air exhausted from these spaces will still pass through the activated charcoal filters. Individual HVAC systems are proposed for each grow and vegetation room, totaling six units for phase 1. Grow areas will have grade-mounted packaged heating and cooling units, which will each have a charcoal filtration section as necessary. These measures of odor mitigation are expected to sufficiently eliminate any odor generated from the site. 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 has submitted an operation plan that details the storage, destruction, and disposal of marihuana waste. Any recalled product would be immediately removed from salable inventory and kept separate from salable products.

Destruction and disposal of products would occur in accordance with the MRTMA Emergency Rules. The applicant proposes to use a translucent container to allow visualization of the shredder's effectiveness during destruction and keep records in a statewide monitoring system (METRC).

The locations for waste destruction and dumpster enclosure are not indicated on the site plan. Therefore, it is unknown if a waste receptacle will be located outside and whether there will be methods for screening and security. The Planning Commission may address secure disposal with the applicant.

- 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 applicant is proposing six grow rooms in phase 1, which will require energy usage and heat in excess of a typical residential use. As a condition of approval, the Planning Commission may require the facility to be subject to inspection and approval by the Fire Department to ensure compliance with applicable fire codes.

The applicant is proposing the use of chemicals in the hydrocarbon extraction facility. The site plan states that all flammable products would be stored according to the Michigan Administrative Code. Bleach and pesticides are proposed for storage in the supplies closet, which would have a commercial grade, nonresidential lock. Storage of chemicals will be regulated by the MRTMA Emergency Rules. The Operation Plan also indicates that all hazardous waste would be managed pursuant to the Natural Resources and Environmental Protection Act (Part 111 of 1994 PA 451).

- 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 MTRMA 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: The applicant has proposed a privacy fence along the eastern property boundary to help screen the use from the adjacent church property. Other uses along W. Main Street are generally commercial in nature and there are several trees already on the property. Provided other landscape standards are met, the Planning Commission may find the site landscaping adequate.

- 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 proposed to use the statewide monitoring system METRC to record marihuana waste and identify product recalls. As a condition of approval, the Planning Commission may require the City to have the right to examine, monitor, and audit such records and documentation, which shall be made available to the City upon request.

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

- 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 13 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, the Planning Commission may approve the site plan and special land use. If approved, 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, City Fire Department, City Police Department, or other City officials.
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, including approval from MDOT and Lowell Light and Power
4. The applicant shall continually comply with applicable ordinances, codes, and requirements of the City of Lowell.
5. The applicant shall include all missing items as required in Section 18.04 B, 17.04 FF(3) and 17.04 FF(4) and noted above in "Completeness of Submission" on the site plan, unless deemed unnecessary by the Zoning Enforcement Officer.
6. 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.
7. The applicant shall submit a copy of the state license to operate the marihuana facility to the City.
8. The applicant shall continually comply with all site development requirements in Section 13.04 A-E of the Zoning Ordinance.
9. The applicant shall comply with all landscape and screening requirements of Section 4.26, unless specifically waived by the Planning Commission.
10. Plant materials and lawn areas shall be maintained in a healthy condition and be neat and orderly in appearance. If any plant material required by this Ordinance dies or becomes diseased, it shall be replaced.
11. The applicant shall provide two ADA barrier free parking spaces, one of which is van accessible, on the site.
12. Signage shall comply with Chapter 20 of the Zoning Ordinance and a sign permit shall be obtained prior to the erection of any signage on the site.
13. The security plan shall address the items outlined in our confidential memo dated June 24, 2020.
14. The applicant shall submit a signed and notarized copy of the statement of consent to the City.
15. The applicant shall receive approval from and comply with any requirements of MDOT and Lowell Light and Power.
16. Doors and windows shall remain closed, except for the minimum time length needed to allow people to ingress or egress the building.

17. An MDOT driveway permit shall be obtained prior to occupancy.
18. The planning commission may require a cross access easement between the subject property and neighboring properties to the east and west.
19. A trash enclosure, if provided, shall be secure and locked at all times.
20. 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 and be subject to inspection and approval by the Fire Department to ensure compliance with applicable fire codes.
21. The marihuana establishment shall not also sell alcoholic beverages or tobacco products.
22. The marihuana establishment shall comply at all times and in all circumstances with the MTRMA and applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
23. 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.
24. 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.
25. 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.

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: 2384 West Main Street, Lowell, MI
2. Parcel Identification Number (Tax I.D. No.): #41-20-03-370-031
3. Applicant's Name: Exclusive Brands LLC Phone Number 6199615784
Address: 2384 W Main Street SE, Lowell, MI 49331
Street City State Zip
Fax Number _____ Email Address kimberly@exclusivebrands.com
4. Are You: ☐ Property Owner ☐ Owner's Agent ☒ Contract Purchaser ☐ Option Holder
5. Applicant is being represented by: _____ Phone Number _____
Address: _____
6. Present Zoning of Parcel C3 General Business Present Use of Parcel Auto Repair Shop
7. Description of proposed development (attach additional materials if needed):
An existing auto repair shop is being converted into a marihuana provisioning center. The parking lot is being redeveloped as part of this project.

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

Signature: [Signature] Date: 08/13/21

Type or Print Your Name Here: Guste Shukeireh

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.

Owner

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.

1. Date, north arrow and scale (not more than 1" = 100', supplementary site plans at a 1" = 50' or larger scale are encouraged)	INITIAL <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	<u> </u>
▪ the number of dwelling units proposed (by type), including typical floor plans for each type of dwelling	<u> </u>
▪ the number and location of efficiency and one or more bedroom units	<u> </u>
▪ typical elevation views of the front, side and rear of each type of building	<u> </u>
▪ Dwelling unit density of the site (total number of dwellings / net developable area)	<u> </u>

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 building will be renovated with an exterior to match the surrounding context. Our intent is to beautify the neighborhood while remaining harmonious to the surroundings.
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 building will be no different than any other retail establishment and will not be a burden on the local public facilities or services.
3. Not create excessive additional requirements at public cost for public facilities and services; and
The project will not create excessive additional requirements at the public cost for utilities or services.
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 building will maintain a slight negative pressure and have carbon filters to ensure there are no odors outside of the building. There will be no excess noise or lighting that would have a negative impact on the public.

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 project strives to offer a nice design, with great parking on an existing site with an existing building on it. We are increasing the landscaping on the site to meet the local ordinances as well as refinishing the exterior and interior of the building to improve the overall value of this building and the neighborhood as a whole. There is ample parking available on the site, a new dumpster enclosure, and site lighting and security to ensure the space is well lit and secure.

williams&works

engineers | surveyors | planners

MEMORANDUM

To: City of Lowell Planning Commission
Date: October 8, 2021
From: Andy Moore, AICP
Whitney Newberry
RE: **Exclusive Brands LLC Special Land Use**

Exclusive Brands LLC, represented by Kimberly Klein, has submitted an application for site plan review and special land use approval to open an adult use marihuana establishment at 2384 W. Main Street (PPN 41-20-03-370-031). 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 1.4 acres. The property is split zoned between the C3 General Business district and the I Industrial district, with most of the property in the C3 district. All site improvements proposed are also in the C3 district. An application was submitted in July 2021 to establish a marihuana retail establishment on this site, but was withdrawn before approval. The applicant has proposed a similar marihuana retail establishment, which involves the use of the existing building. By definition, "marihuana retailer" is a type of adult use marihuana establishment. Adult use marihuana establishments are permitted in the C3 and I districts only with special land use approval by the Planning Commission.



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. The following items were not included:

- The location of all existing structures, driveways, and parking areas within one hundred (100) feet of the subject property's boundary.

- Unloading area.
- Location and pavement width of all access easements within 100 feet of the subject property.
- Size of all proposed landscaping.
- Size and location of existing/proposed utilities.
- Existing and proposed topographic contours at a minimum of two (2) foot intervals.
- Size, location, and type of all surface water drainage facilities.

Although the applicant is proposing to utilize an existing building and some items identified above may remain unchanged, the Planning Commission may 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 marihuana establishments. The applicant included some of the additional site plan materials; however, the following items were not received:

- Consent document that agrees to hold harmless the city against all liability arising out of or in connection to the operation of a marihuana establishment and includes approval for the city to inspect the establishment at any time during normal business hours.
- A map, drawn to scale, containing all preschools and K-12 public or private schools near the proposed marihuana establishment location and a 1,000-foot isolation radius drawn around the proposed location to show an appropriate setback distance.
- Narrative describing how permitted individuals will be given access to marihuana.
- Window calculations and descriptions of glass to be used.
- The applicant's procedures for accepting delivery of marihuana at the establishment, including procedures for how and where it is received and where it is stored.

SITE PLAN REVIEW

Setbacks and Dimensional Requirements. The applicant is proposing to use an existing building, which meets the setback, height, and lot requirements for the C3 district (Section 12.04). Although not identified on the site plan, it would also meet the setback requirements for the I district in the rear yard.

Landscaping. There are existing trees along the rear property line, which are proposed to remain and appears to function as a buffer between the subject property and an adjacent residential use. The Planning Commission may find the existing vegetation sufficient in meeting the landscape buffer between uses, as required in Section 4.26 E(1).

Front yard landscaping is required in Section 4.26 E(2), which is not proposed on the site plan. Based on the lot width, five canopy trees and 15 shrubs are required. The Planning Commission may discuss front yard landscaping with the applicant.

The applicant is proposing to resurface the entire parking lot. Section 4.26 E(3)(a) requires parking lot landscaping for major changes to a parking lot. Resurfacing without any other modifications does not constitute a major change for the purposes of the landscape requirement. Therefore, additional parking lot landscaping does not appear necessary. However, the extent of parking lot modifications should be confirmed with the applicant to ensure this interpretation is correct, as landscaping in accordance with Section 4.26 E(3) would be required if drainage structures or other modifications are proposed.

The applicant has proposed seven maple trees along the eastern property line, which is adjacent to the LMCU. Due to the existing parking lot design and necessity to keep drive aisles open between the subject property and adjacent properties, landscape design may be difficult in the front yard, however, some attempt should be made to landscape the site consistent with the LMCU to the east. The Planning Commission may discuss whether the proposed maple trees would meet the intent of the landscape requirements of Section 4.26 or if additional landscaping should be required. The City may modify landscape requirements when it finds circumstances that warrant a change in the requirements of this section, or in finding that existing landscaping or screening, or existing conditions on the site, will be preserved and would meet the intent of Section 4.26 (Section 4.26 B).

Lighting. Currently, the site only contains building lighting. The applicant is proposing to install new building lighting, with eight wall lights. No parking lot lighting is proposed. All lights would be downward facing with 100% cutoff features. Section 4.24 E(1) requires that light shall not exceed 0.5-foot candle on adjoining private property. While a photometric plan wasn't submitted, placement of lighting on the building is not expected to exceed this intensity at lot lines. However, if deemed necessary the Planning Commission may request a photometric plan.

Parking/Circulation. The applicant is proposing to redevelop the parking lot to allow 32 parking spaces. Based on the building size of approximately 4,3,443 sq. ft., 18 spaces are required for a retail establishment. Therefore, the applicant has exceeded this requirement. The City has required parking beyond the minimum number of spaces for most marihuana facilities, so this number of spaces is likely adequate. 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.

Ten of these spaces are located along the front lot line adjacent to the sidewalk, which would ordinarily be an area where landscaping is required. This should be discussed in connection with the landscaping requirements of the Zoning Ordinance.

The applicant has proposed two ADA spaces. The dimensions both meet the standard for a car accessible space, but do not meet the standard for a van accessible space. At least one space must be van accessible in accordance with 2010 ADA Standards

One loading/unloading space is required in Section 19.08. This is not indicated on the site plan and may be addressed with the applicant.

Signage. A wall sign is indicated on the building elevation plans. The specific design will be approved through a separate permit. The Planning Commission may include this as a condition of approval.

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. Following are those standards and our remarks on each:

- A. The uses proposed will not adversely affect the public health, safety or welfare. Uses and structures located on the site shall be planned to take into account topography, size of the property, the uses on adjoining property and the relationship and size of buildings to the site. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this ordinance.

Remarks: The applicant is proposing a marihuana retail establishment in an existing building. Updates would be made to the building exterior with new materials, additional landscaping to the east, and a resurfaced parking lot. The site is relatively flat and topography would remain unaltered from the previous use. Surrounding land uses are generally business or industrial, with adjacent properties also in the C3 and I districts. A residential use is adjacent to the southeast; however, existing trees appear to function as a significant buffer between uses. Considering the generally commercial and industrial land use pattern along W. Main Street at this location, the proposed use is not expected to impede the normal and orderly development or improvement of surrounding properties.

- B. Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation shall be provided for ingress/egress points and within the site. Drives, streets, and other circulation routes shall be designed to promote safe and efficient traffic operations within the site and at ingress/egress points.

Remarks: The subject property shares curb cuts with adjacent properties to the east and west, though the Garage of Lowell does not allow cross access to or from the subject property. The marihuana use may increase traffic, and access is proposed to be taken from the AutoZone/LMCU driveway. The Planning Commission may request a copy of the shared easement agreement with these adjacent properties.

The property also contains a gravel two-track access drive off Bowes Road. While this is largely unimproved, the Planning Commission may inquire whether this access point would be used for any business purposes. It is our preference that this be closed.

Pedestrian traffic is primarily accommodated through a concrete sidewalk along the front of the building. Additional sidewalks or pathways are not proposed. The Planning

Commission may consider whether a sidewalk is necessary along the building exterior to accommodate pedestrians from parking spaces to the front doors.

- C. The arrangement of public or private vehicular and pedestrian connections to existing or planned streets in the area shall be planned to provide a safe and efficient circulation system for traffic within the City of Lowell.

Remarks: The site currently shares curb cuts with adjacent properties and the applicant is proposing to maintain this arrangement. The Planning Commission may request a copy of the cross access agreement, but otherwise may find that this standard is met.

- D. Removal or alteration of significant natural features shall be restricted to those areas, which are reasonably necessary to develop the site in accordance with the requirements of this ordinance. The planning commission requires that approved landscaping, buffers and/or greenbelts be continuously maintained to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property.

Remarks: The applicant is not proposing the removal or alteration of any natural features on the site. Existing trees are proposed to remain as a buffer between the building and an adjacent residence. Additional trees are proposed on the eastern property boundary. The Planning Commission may include continual maintenance of landscaping as a condition of approval.

- E. Satisfactory assurance shall be provided that the requirements of all other applicable ordinances, codes, and requirements of the City of Lowell will be met.

Remarks: The proposed development is the reuse of an existing building. A condition of approval can stipulate continual compliance with applicable codes and ordinances.

- F. The general purposes and spirit of this ordinance and the Comprehensive Plan of the City of Lowell shall be maintained.

Remarks: The purpose of the C3 General Business district is to permit a mixture of residential, office, and commercial uses that do not necessarily adhere to the style of downtown buildings. This district offers more automobile-related uses that would not always be compatible with residential uses. The building was previously approved for this site and the proposed site improvements are expected to remain compatible with this district. The proposed use is permitted by special land use in the C3 district and appears to align with this district's intent to accommodate automobile-related uses, including commercial goods.

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 in the Highway Business future land use category. This district is intended for "retail, office, and service uses that are oriented towards automobile traffic" and primarily corresponds with the C3 zoning district. The proposed use appears compatible with this future land use category. The Planning Commission may find that this standard is met.

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 applicant is proposing to resurface the parking lot, increase landscaping, and re-side the building. The exterior improvements are expected to remain appropriate in appearance and construction to the surrounding commercial properties. The general land use pattern is commercial, with an orientation towards automobile traffic. The proposed use is not expected to change the essential character of the area.

While the site design and the presence of a retail operation are expected to remain compatible, the operation may be further considered in relation to more specific operational impacts such as traffic. Because the site does not contain its own curb cut, cross access agreements are necessary to accommodate traffic through adjacent properties. Copies of these agreements should be submitted to the City.

Further, additional landscaping along Main Street should be considered to be consistent with the intended character of the vicinity.

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

Remarks: See comments under Site Plan Review, F above. The Planning Commission may find 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: Essential public facilities and services have been previously established in coordination with the existing building. The applicant is not proposing to grow or cultivate marihuana on the site; therefore, additional public facilities and services are not expected to be necessary beyond a typical retail operation.

The applicant is proposing to resurface and stripe the parking lot, which is expected to enhance circulation on the site. This includes one-way traffic around the building. The Planning Commission may defer to the Fire Department for comments regarding emergency vehicle accessibility in the new parking lot layout.

The proposed measures for security indicated on the floor plan and associated notes are expected to mitigate impacts that may impact the local police department, and the fee charged by the City for an operating license will help offset any costs incurred.

Subject to any comments from the City Police Department, the Planning Commission may find this standard met.

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

Remarks: The site plan states that the utilities currently connected to the building are to remain, though it is not clear if the site would connect to public water and sewer services. The operation is not expected to require utility services beyond a typical retail operation. Nevertheless, utility plans should be reviewed by the City DPW and all applicable permits from the Kent County Health Department or City must be obtained. 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: As a marihuana retailer, the proposed establishment is not authorized to allow on-site consumption of products and the applicant's narrative states that this would be strongly enforced. An odor control plan is also proposed in the application narrative, which is expected to maintain minimal odor on the site. Specific details pertaining to this plan will be addressed under standard 17.04 FF (5)(c), below.

- 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 the isolation radius from preschools, child care centers, public/private schools, or the Central Business District. Based on our knowledge of the area, this site would meet separation distances as required in this standard. However, the Planning Commission may request a map be submitted to confirm compliance with this standard. This may be addressed as a condition of approval.

- 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 has submitted an odor control plan, which details the establishment's controls to mitigate odor associated with the use. The applicant's approach involves engineering and administrative controls. These include negative building air pressure; an activated carbon filter tied directly into the HVAC system; compliance with manufacturer recommendations for operation, maintenance, and filter changes; enforcing the prohibition of any marihuana use on the property; temperature and humidity controls; requiring doors and windows to remain shut; and training staff to implement these practices. These practices meet the requirements of this standard, except that the ratio of negative air pressure was not stated and may be discussed with the applicant to confirm compliance.

- 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's waste disposal plan includes destruction of any product prior to disposal so it is unrecognizable and unusable. Several disposal methods were proposed based on the type of product. After rendered unusable the product would be stored in a secure, locked container that cannot be readily moved until it is sent to the landfill or a compost facility. An outdoor dumpster is indicated on the site plan, which includes detail with a six-foot enclosure and lockable latch. 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 or the storage of any toxic or flammable materials that are regulated by a federal, state, or local authority. 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 sale of alcoholic beverages or tobacco products is not proposed. The Planning Commission may find this standard met.

- 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 requirements were addressed under Landscaping, above. Front yard landscaping requirements are not met; however, the access easements with adjacent properties appear to limit available space for landscaping. Nevertheless, in our opinion some attempt should be made to add landscaping to the front of the property along Main Street. Existing trees appear to function as a buffer between the proposed use and adjacent residential use. Therefore, the Planning Commission may discuss whether the intent of Section 4.26 is met by the proposed and existing landscaping and may require additional landscaping if deemed necessary.

- 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 submitted an Inventory & Recordkeeping Plan as well as a Technology Plan, which describe how records will be maintained. These include use of METRC, LeafLogix, and FlowHub. As a condition of approval, the Planning Commission may include the right for the City to examine, monitor, and audit such records and documentation upon request.

- 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 will not be growing or harvesting 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 October 11 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, 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. Utility plans should be reviewed by the City DPW and all applicable permits from the Kent County Health Department, City, and/or other applicable agencies shall be obtained prior to occupancy.
6. 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 or Zoning Enforcement Officer.
7. The applicant shall comply with all landscape standards of Section 4.26 of the Zoning Ordinance, unless specifically modified by the Planning Commission.
8. The applicant shall maintain a buffer between the subject property and adjacent residential use through existing vegetation or an equivalent buffer that meets the standards of Section 4.26 E(1) of the Zoning Ordinance.
9. Lighting shall not exceed an intensity of 0.5-foot candle at adjoining private property boundaries, in accordance with Section 4.24 E of the Zoning Ordinance.
10. The applicant shall update the site plan to include at least one van accessible parking space on the site that meets 2010 ADA Standards.
11. The applicant shall update the site plan to designate one loading/unloading space that meets the requirements of Section 19.08 of the Zoning Ordinance.
12. The applicant shall receive a sign permit for any signage on the site in accordance with Chapter 20 of the Zoning Ordinance.
13. 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.

14. The applicant shall submit a copy of shared access agreements with Lake Michigan Credit Union (east) to allow access to the site through these properties.
15. 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.
16. Upon request, the city shall have the right to examine, monitor, and audit the establishment's records and documentation that demonstrate that all cannabis or cannabis products have been obtained from and are provided to other permitted and licensed cannabis operations.
17. The applicant shall install an activated air scrubbing and carbon filtration system in the building and maintain negative air pressure in the building, in accordance with Section 17.04 FF (5)(c) of the Zoning Ordinance.
18. Negative air pressure in the building shall be maintained at a ratio of 1:4 between the air intake (CFM) and exhaust fan (CFM), a minimum negative pressure of 0.01" water column relative to the building exterior, or a minimum exhaust rate of 0.2 CFM per square foot floor area, in accordance with Section 17.04 FF(5)(c) of the Zoning Ordinance.
19. 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.
20. 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.
21. The security plan shall address the items outlined in our confidential memo dated October 8, 2021, and any other items identified by the City's law enforcement personnel.
22. 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 MTRMA 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	
08/09/2021	08/10/2021	1510 Carol Lynne	Jack/Nancy Rutledge	Back Entry Enclosure	
08/19/2021	08/19/2021	301 Elizabeth Dean	Tyler Dykhous	Garage	
09/21/2021	09/21/2021	508 W. Main	Anthony Lawrence	Remodel	