

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
September 8, 2020

I. ROLL CALL

Michael LeVine, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:03p.m.

Commissioners present: All Commissioners present via video conferencing – Michael LeVine, Chairman; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Assistant Clerk; Ken Alper; Weston Eiler; Josh Winchell; Erik Pedersen

Commissioners absent: Dan Hickok

Staff present: Jill Maclean, CDD Director; Laurel Christian, Planner II; Emily Wright, LAW

Assembly members: Greg Smith

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA - None

III. APPROVAL OF MINUTES

A. August 11, 2020 Draft Minutes – Planning Commission Regular Meeting

MOTION: *by Mr. Voelckers to approve the Planning Commission September 8, 2020, Planning Commission Committee of the Whole Meeting minutes.*

The motion passed with no objection.

IV. BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION - Mr. Levine explained the process for public participation within Zoom

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS- None

VI. **ITEMS FOR RECONSIDERATION**- None

VII. **CONSENT AGENDA**- None

VIII. **UNFINISHED BUSINESS**

USE2020 0016: A modification to a Conditional Use Permit (USE2016 0006) to include on-site consumption of edible marijuana products

Applicant: Rainforest Farms, LLC

Location: 201 Seward Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and APPROVE WITH CONDITIONS the requested Special Use Permit. The permit would allow the modification of a Use Permit (USE2016 0006) to include on-site consumption of Marijuana products with the following condition:

1. ~~Prior to commencement of the proposed use, the applicant must make the doors to the patio emergency only exits and post emergency exit signage.~~(removed on amendment)
2. All waste containing marijuana product shall be stored in a locked enclosure until transported to the CBJ landfill.
3. **Prior to operation the applicant must receive the required state endorsement; by approval of the modification this special use permit the Planning Commission does not take a position as to whether the application to the State satisfies the requirements of the endorsement, including if the facility is housed in a freestanding building.** (added on amendment)

The approval is also subject to conditions listed in the Notice of Decision for USE2016 0006 (Attachment D).

STAFF PRESENTATION – Ms. Christian presented **USE2020 0016**

QUESTIONS FOR STAFF –

Mr. Winchell asked what we know about consumption on site with inebriation and driving and how the servers are trained to determine the inebriation level of customers that might be driving. Ms. Christian explained that that is not under the purview of Title 49. However, marijuana servers are required to obtain special licenses similar to servers in a bar.

Mr. Arndt asked about the disposal requirements for the marijuana waste product. Specifically, he asked if it is necessary for a CBJ requirement beyond the state requirements. Ms. Christian

was not aware of the specific state requirements but explained that this requirement is commonly included in all marijuana permits.

Mr. Eiler asked about the rationale on the requirements for the doors. Ms. Christian explained the doors are not to be used for patrons to go in and out and the condition is included to be clear that they will not be operable or for emergency exiting only.

Mr. Dye asked why a new license is needed. Ms. Christian explained that with the original license was reviewed and approved based on the original conditional USE permit terms and conditions. With changes to the original use permit they will need a new license. Ms. Maclean explained the new license will fully replace the old one.

Mr. LeVine asked for an explanation of the steps it will take from today to onsite consumption including the order of events of approval of CUP, award of City License, award of State endorsement, and then operation. Ms. Maclean explained steps for the CUP and the State endorsement could be taken concurrently and the applicant is not obligated to get one or the other first. Once the State endorsement and the CUP are approved, then they come back to the City for their Marijuana business license.

Mr. LeVine asked for clarification of the sentence stating if Ms. Maclean determines substantive inconsistencies between the State license application and the City USE Permit application then the commission shall review the development for consistency with Title 49. Ms. Maclean explained because the State and City permits can run concurrently, one could be amended that would make them different by the time it gets to the business license step, it could be significantly different and this is where they would catch it. Mr. LeVine asked if that happened, would it come back to the Planning Commission for review. Ms. Maclean answered if there was an inconsistency, then it could come before the Commission but if there was a denial from the State, then there would be nothing for the Commission to do; it would go no further.

APPLICANT PRESENTATION -

Giano Barrett, applicant, spoke saying their license is in good standing, and this is what the public seems to want. They are 100% about following regulations and they understand public safety is a concern. Mr. Barrett said it would be a huge violation of state regulation if someone was overserved. He is in support of the 10mg limitation, imposed by the State, and believes this will prevent people from being overserved.

QUESTIONS FOR APPLICANT -

Mr. Winchell said consumables don't usually 'hit' for about an hour. What do you look for and how do you train to recognize over-consumption? Mr. Barrett explained the State has done a great job of providing the public with information. At the consumption level, it is limited to 10mg. That is the active level for most people to just begin to feel the effects. Mr. Winchell asked to confirm what would happen if there was 'cross-consumption' of someone taking another person's edibles or under the influence of other intoxicants. Mr. Barrett answered they are already not allowed to serve a patron who appears to be under the influence of any substance.

Mr. Voelckers asked about the patio doors shown in the diagrams as non-operable. Mr. Barrett confirmed the doors are permanently sealed and bolted shut and there is no plan at the moment to change that.

PUBLIC TESTIMONY -

- Dr. Jo Jorgensen – non-resident, Libertarian Presidential Nominee – Spoke in support of the permit stating that there is onsite consumption of alcohol and that is a more dangerous drug.

There were no public comments received via email

APPLICANT CLOSING STATEMENT -

James Barrett, brother to Giano Barrett, confirmed the French doors will not be made operable. There will be a dividing wall to split the store into two areas and they will work with the fire department regarding fire doors, emergency exits, etc.

ADDITIONAL QUESTIONS FOR STAFF -

Mr. Arndt asked if there is a need for the doors or would it be acceptable to leave the bolted shut as a window wall. Ms. Christian and Ms. Maclean said it is acceptable to them but they would defer to the fire marshal.

Mr. Dye asked the definition of 'free standing' as defined between the State and the Planning Commission. Ms. Maclean explained that 'free standing' is not within the purview of Title 49.

MOTION: *by Mr. Eiler to accept staff's findings, analysis and recommendations and approve USE2020 0016.*

MOTION TO AMEND: *by Mr. Dye to include a new condition stating "Prior to operation the applicant must receive the required state endorsement; by approval of the modification this special use permit the Planning Commission does not take a position as to whether the application to the State*

satisfies the requirements of the endorsement, including if the facility is housed in a freestanding building.”

Mr. Dye spoke to the proposed amendment saying he wants the condition to clarify that the Commission is not evaluating the building as free-standing.

Mr. Winchell pointed out that Mr. Dye’s amendment sounds like it is telling the State to do something it is already doing and said that if it was reworded then he could support it. Mr. Dye explained it is just a double check and not telling the state what to do.

Ms. Maclean said this seems like an advisory condition and asked for clarification how it is not and how she could enforce it. Mr. Dye explained that if the applicant started operating without the State license, then it would inherent under the CUP as it is written or through the city licensing process to revoke it. Ms. Wright answered, this is enforceable by CDD by her understanding, this is telling the steps that must be met prior to the approval going into effect.

Mr. Arndt said that while he understands the intention of the amendment, he does not support the amendment because there are a lot of things they did not consider and it is unnecessary to specify one thing they did not look at.

Mr. Dye restated his motion and said that while he would normally agree with Mr. Arndt’s comments, in this particular case, there is no precedent for on-site consumption and the process has been a little messy. Since this is all new, he felt in this instance including the amendment makes sense.

ROLL CALL VOTE:

*Yes: Mr. Dye, Mr. Voelckers, Mr. Eiler, Mr. Alper, Mr. Winchell, Mr. Pedersen, Mr. LeVine
N: Mr. Arndt*

The amendment passed on roll call vote.

MOTION TO AMEND: *by Mr. Voelckers to remove Condition #1 stating the doors are already sealed. Mr. Voelckers explained the Condition, as written, has the unintended consequence of forcing the owners to incur extra costs modifying and securing doors that are already inoperable.*

Mr. Dye asked if the amendment were to go through would it affect conditions on doors going forward if there are modifications to the structure in the future such as the planned addition of an interior wall. Mr. Arndt asked if there would be a new building permit required for that addition. Ms. Christian said she believes a permit would be required for the building of the interior wall.

The amendment passed unanimously on roll call vote.

Mr. Winchell, Mr. LeVine, and Mr. Dye spoke in support of the application and the amended motion.

The amended motion passed with no objection.

IX. REGULAR AGENDA- None

X. BOARD OF ADJUSTMENT- None

XI. OTHER BUSINESS –

At the Planning Commission meeting on August 25, 2020, a revision to the Rules of Order was discussed regarding public comment deadlines as follows:

The following Rule are Suspended:

Rules 9(F), 10(A)(3), 10(B)(2)(a), 10(B)(3), 16(A), and 16(B).

The Suspended Rules are Replaced by the Following Process:

1. **Telephonic** participation is mandatory for any commissioners and members of the public attending the meeting;
2. The **call-in number** will be provided to the commissioners and the public with the Agenda Packet and will be published online;
3. Members of the public wishing to comment on non-agenda items are encouraged to **call-in** within 5 minutes of the meeting start time to ensure their testimony is taken;
4. Materials must be submitted electronically to CDD no later than the Thursday before the meeting, if it is not possible to submit materials electronically, the applicant is directed to call CDD to arrange delivery of materials;
5. **Public comment will be received via email until the close of the public comment period on an individual item.**

Ms. Maclean briefly explained the changes to the suspended rules and process.

MOTION: *by Mr. Voelckers to approve the Director's modification to the rules adopted April 14, 2020 with the memo dated September 2, 2020*

The motion passed with no objection.

XII. STAFF REPORTS

Ms. Maclean reported

- Title 49 will be meeting Thursday at noon will cover downtown parking, landscape cover and vegetative cover.

- Wednesday 5:00 pm there will be a zoom meeting to discuss buildings available for sale to CBJ for cold weather sheltering. When a building is chosen, it will need to be approved and in use by December 31, 2020.
- There is only one permit under the ADOD downtown at the next meeting. Considering making this a work session with a COW.
- CDD has hired a new planner who will be starting in October

Mr. Voelckers asked about Downtown zoning upgrades. Ms. Maclean believes it is at the COW level currently and suggested maybe discussing downtown, Auke bay and Douglas area plans at the next meeting.

Mr. LeVine asked members whether the COW meeting should start at 6 with regular meeting to follow or hold the regular meeting with the COW to follow. With no objections, it was decided to hold the COW at 6:00 and the regular meeting to follow at 7:00.

LAW gave an update on the Tyson Lee Appeal. Assembly has gone into executive session to discuss the case; she is anticipating a draft decision soon. Once the draft comes from the assembly then she can share it with the Commission. If there are no objections then it will be adopted at the next assembly meeting.

XIII. COMMITTEE REPORTS

- Mr. Pedersen is the new liaison to the Douglas Area Plan Steering Committee

XIV. LIAISON REPORTS

Mr. Smith reported on activities of the assembly

- Bears, childcare, back to school, and how to spend the remainder of the CARES money were discussed at the Committee of the Whole recently and the CARES discussion will continue at the next Committee of the Whole
- Baranof and other local businesses have closed recently
- Approved mandatory real estate disclosure and the repeal of on-board cruise sales tax exemption and the Valley Glory Hall have been before the Finance Committee recently

XV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS- None

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS- None

XVII. EXECUTIVE SESSION- None

XVIII. ADJOURNMENT - 8:41