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503-588-6173*

DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE / CLASS 3 SITE PLAN REVIEW CASE NO. CU-SPR17-05

APPLICATION NO. : 17-108354-ZO & 17-108355-RP

NOTICE OF DECISION DATE: JUNE 1, 2017

SUMMARY: Conversion of an existing medical marijuana grow site to a facility for production of recreational marijuana, a conditional use in the IC (Industrial Commercial) zone.

REQUEST: Conditional Use and Class 3 Site Plan Review for a change of use for marijuana production facility within an existing building, on a property approximately 0.28 acres in size, zoned IC (Industrial Commercial), and located at 1215 Wilbur St SE (Marion County Assessors Map and Tax Lot number: 073W35BB / 10000).

APPLICANT: Yak Inc.

LOCATION: 1215 Wilbur Street SE

CRITERIA: Conditional Use: SRC Chapter 240.005(d)
Class 3 Site Plan Review: SRC Chapter 220.005(f)(3)

FINDINGS: The findings are in the attached Order dated June 1, 2017.

DECISION: The Hearings Officer **APPROVED** Conditional Use / Class 3 Site Plan Review Case No. CU17-05, subject to the following conditions of approval:

Condition 1: Marijuana production shall be conducted indoors.

Condition 2: The marijuana production facility shall utilize an air filtration system to ensure that odor impacts upon neighboring properties are minimized.

The rights granted by the attached decision must be exercised, or an extension granted, by **June 17, 2019** or this approval shall be null and void. A copy of the decision is attached. A copy of the decision is attached.

Application Deemed Complete:	<u>April 20, 2017</u>
Public Hearing Date:	<u>May 24, 2017</u>
Notice of Decision Mailing Date:	<u>June 1, 2017</u>
Decision Effective Date:	<u>June 17, 2017</u>
State Mandate Date:	<u>August 18, 2017</u>

Case Manager: Amy Dixon, adixon@cityofsalem.net; 503.540.2304

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, **no later than 5:00 p.m., Friday, June 16, 2017.** Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section in SRC Chapter 240. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

CONDITIONAL USE AND CLASS 3 SITE PLAN REVIEW FOR A CHANGE OF USE FOR A MARIJUANA PRODUCTION FACILITY WITHIN AN EXISTING BUILDING, ON PROPERTY APPROXIMATELY 0.28 ACRES IN SIZE, ZONED IC (INDUSTRIAL COMMERCIAL), AND LOCATED AT 1215 WILBUR STREET SE (MARION COUNTY ASSESSORS MAP AND TAX LOT NUMBER: <u>073W35BB/1000</u>	} } } } } } } } }	CU-SPR17-05 FINDINGS OF FACT, CONCLUSIONS AND DECISION
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DATE AND PLACE OF HEARING:

Wednesday, May 24, 2017, Council Chambers, Room 240, Civic Center, 555
Liberty St. SE, Salem, OR.

APPEARANCES:

<u>Staff:</u>	Amy Dixon, Case Manager
<u>Neighborhood Association:</u>	N/A
<u>Proponents:</u>	Trevor J. Cartales, Loney Law Group, Applicant's Attorney
<u>Opponents:</u>	N/A

SUMMARY OF THE APPLICATION AND HEARING

The City of Salem held a duly authorized and noticed public hearing on May 24, 2017. The Applicant filed and the City accepted an application requesting a Conditional Use and Class 3 Site Plan Review for a change of use for a recreational marijuana production facility within an existing building, on property approximately 0.28 acres in size, zoned IC (industrial Commercial), and located at 1215 Wilbur Street SE, Salem. The current use of the building is for medical marijuana production.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) designation

The Salem Area Comprehensive Plan (SACP) map designation for the subject property is "Industrial Commercial." The subject property is within the Urban Growth Boundary and the Urban Service Area.

2. Zoning and Surrounding Land Uses

The subject property is zoned IC (Industrial Commercial). The zoning and use of surrounding properties is as follows:

North: IC (Industrial Commercial);

East: IC (Industrial Commercial);

South: (Across Wilbur Street SE) CG (General Commercial);

West: IC (Industrial Commercial);

3. Site Analysis

The subject property consists of a rectangular interior lot, 89 feet wide and 135 feet deep, on the north side of Wilbur Street SE. The block is bounded on the east and west sides by 12th Street SE and 13th Street SE, both designated as Major Arterials in the Transportation System Plan. Together, these streets form a couplet carrying traffic north and south between southeast Salem and the eastern edge of the city center. The subject property has street frontage on Wilbur Street SE, which is developed with paved travel lanes and sidewalk.

The footprint of the existing building covers most of the site. The remaining 3,910 square feet of area, between the front of the building and the Wilbur Street right-of-way, is developed with a paved parking area.

The entire depth of the abutting property to the west is developed with a building which is developed to the side property line abutting the subject property. The parcel to the west is zoned IC. Within this corridor, the Comprehensive Plan Map likewise designates properties abutting 12th Street SE and 13th Street SE as "Industrial Commercial".

4. Neighborhood and Citizen Comments

The subject property is located within the Southeast Salem Neighborhood Association (SESNA). Notice was provided to SESNA and surrounding property owners within 250 feet of the subject property and adjoining lot under common ownership.

The Hearings Officer notes no comments have been received from SESNA or surrounding property owners.

5. City Department and Public Agency Comments

The Salem Building and Safety Division reviewed the proposal and identified no issues. The Salem Fire Department reviewed the proposal and indicated that they will have requirements when plans are submitted for building permits depend on activities. The Public Works Department reviewed the proposal and provided a memo.

6. Analysis of Conditional Use Criteria

SRC Chapter 240.005(a)(1) provides that:

No building, structure, or land shall be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this Chapter.

SRC Chapter 240.005(d) establishes the following approval criteria for a conditional use permit:

Criterion 1:

The proposed use is allowed as a conditional use in the zone.

SRC Chapter 551, Table 551-1 provides that Marijuana Production is allowed in the IC (Industrial Commercial) zone with a conditional use permit. The Hearing Officer finds that the proposal meets this criterion.

Criterion 2:

The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

The Hearings Officer notes that staff identified several potential impacts on the immediate neighborhood that could be generated by the proposal,

including increased parking demand, odor, waste disposal, and criminal activity due to the high value of the end product and prevalent use of cash in marijuana business transactions. The marijuana production process described in the applicant's operating plan does not describe use of heavy machinery or give other indications that noise impacts would result. The Hearings Officer finds that no comments or testimony were received from adjacent property owners or the Southeast Salem Neighborhood Association, and therefore no additional impacts have been raised as a concern by residents in the vicinity.

The Hearings Officer notes that State law requires facilities for the commercial production of recreational marijuana to obtain a license from the Oregon Liquor Control Commission (OLCC) and meet specific standards for site security, record keeping, waste disposal, inventory control, access control, and other operational requirements which address potential site impacts at a greater level of detail than the land use process for granting a conditional use. The Hearings Officer notes that staff's recommendations consequently focus on mitigating the impact of the potential use on surrounding properties and ensuring implementation of OLCC requirements where they may overlap with conditional use approval criteria.

The Hearings Officer notes that marijuana production facilities in general industrial and exclusive farm use zones are subject to special use standards which reflect concern for visual and odor impacts. These standards, which mandate that marijuana production in these zones take place indoors, with an air filtration system to mitigate odors, also provide the basis for conditions to minimize these potential impacts in the IC (Industrial Commercial) zone. The Hearings Officer notes that the Applicant's written statement indicates that all marijuana production activities would be conducted indoors, and that five-foot-tall carbon filter air scrubbers are in place from the current medical marijuana production facility to prevent odors from spreading beyond the premises. The City Staff recommends and the applicant agrees that the Hearings Officer should impose conditions to ensure that these visual and odor control protocols are implemented by the present applicant and any subsequent operator of the proposed conditional use.

In order to ensure that visual and odor impacts from facility operations are minimized, the Hearings Officer imposes the following conditions:

Condition 1: Marijuana production shall be conducted indoors.

Condition 2: The marijuana production facility shall utilize an air filtration system to ensure that odor impacts upon neighboring properties are minimized.

The Hearings Officer finds that with these two conditions, the proposal satisfies this criterion.

Criterion 3:

The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

The subject property has been developed as an industrial building for several decades. While subject to different classifications in state licensing programs and city zoning classifications, little or no change in operations, and no changes in appearance or traffic impacts is expected as a result in the proposed change of production from medical to recreational marijuana.

The Hearings Officer finds that the proposal satisfies this criterion.

7. Analysis of Class 2 Willamette Greenway Permit Criteria

SRC 220.005(f)(3) establishes the following approval criteria for a Class 3 Site Plan Review:

Criterion 1:

The application meets all applicable standards of the UDC.

The proposed development includes a change of use and parking space striping for a recreational marijuana production facility.

Development Standards – IC Zone:

SRC 551.005(a) - Uses:

The permitted, special, conditional and prohibited uses in the IC zone are set forth in Table 551-1.

The proposed development includes a change of use for a recreational marijuana production facility. A recreational marijuana production facility use is classified as an Agriculture use and is allowed in the IC zone per SRC 551.005, Table 551-1 as a Conditional Use.

SRC 551.010(a) – Lot Standards:

In the IC zone, no minimum lot area, width, or depth is required and a minimum street frontage of 16 feet is required for an Agriculture use.

The subject property has approximately 88 feet of frontage on Wilbur Street SE and complies with the applicable lot standards of the IC zone.

SRC 551.010(b) - Setbacks:

North, East, and West (interior): The abutting properties in all directions are zoned IC (Industrial Commercial). Abutting the IC zone, no minimum setback of is required for buildings and a minimum setback of 5 feet is required for vehicle use areas.

South (abutting street): Adjacent to the south is Wilbur Street SE. A minimum 5-foot setback is required for buildings and a minimum 6- to 10-foot setback is required for vehicle use areas.

The Hearings Officer findings is that the proposed recreational marijuana production facility would be within an existing building, and the building setbacks are not changing. The proposed parking spaces would be located within an existing paved area that is adjacent to the building and which has been used for vehicle use and parking. The subject property and drive aisle are fully paved. No additional setbacks are required.

The Hearings Officer notes that the proposal complies with all applicable setback requirements of the IC zone.

SRC 551.010(c) - Lot Coverage, Height:

No maximum lot coverage standard is applicable. The maximum building height for is 70 feet.

No changes are proposed to the height or footprint of the existing building. The proposed development complies with the maximum height standard.

SRC 551.010(d) - Landscaping:

Required setbacks shall be landscaped, and landscaping shall conform to the standards set forth in SRC Chapter 807. Vehicle use areas shall be landscaped as provided under SRC Chapter 806 and SRC Chapter 807. Development site shall be provided.

The Hearings Officer notes that the existing building setback is not changing. Perimeter landscaping abutting Wilbur Street SE and abutting property lines would be required for the development of new off-street parking areas; expansion of existing off-street parking areas where additional paved surface is added; alteration of existing off-street parking areas, where the existing

paved surface is replaced with a new paved surface; and paving of an un-paved area. The applicant indicates that the proposed parking spaces are within an existing paved area. No perimeter landscaping is required for the proposed parking lot striping.

Off-Street Parking, Loading, and Driveways SRC 806

SRC 806.005 - Off-Street Parking: When Required.

Off-street parking shall be provided and maintained for each proposed new use or activity; any change of use or activity, when such change of use or activity results in a parking ratio requiring a greater number of spaces than the previous use or activity; and for any intensification, expansion, or enlargement of a use or activity.

The Hearings Officer notes that the proposed recreational production of marijuana is classified as an Agriculture use. Agriculture uses require 5 parking spaces when retail sales are involved. No retail sales will occur at this site. Therefore, no parking spaces are required and this standard is met.

Bicycle Parking

SRC 806.045 - General Applicability.

Bicycle parking shall be provided and maintained for each proposed new use or activity; any change of use or activity, when such change of use or activity results in a parking ratio requiring a greater number of spaces than the previous use or activity; and for any intensification, expansion, or enlargement of a use or activity.

FINDING: The Hearings Officer notes that the proposed recreational production of marijuana is classified as an Agriculture use. Agriculture uses require the 2 bike parking spaces when retail sales are involved. No retail sales will occur at this site. Therefore, no parking spaces are required and the Hearings Officer finds this standard is met.

Off-Street Loading Areas

SRC 806.065 - General Applicability.

Off-street loading shall be provided and maintained for each proposed new use or activity; any change of use or activity, when such change of use or activity results in a parking ratio requiring a greater number of spaces than the previous use or activity; and for any intensification, expansion, or enlargement of a use or activity.

The Hearings Officers finds that the proposed recreational production of marijuana is classified as an Agriculture use. Agriculture uses do not require loading spaces. The Hearings Officer finds that the proposal meets this standard.

Landscaping

All required setbacks shall be landscaped with a minimum of 1 plant unit per 20 square feet of landscaped area. A minimum of 40 percent of the required number of plant units shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees. Plant materials and minimum plant unit values are defined in SRC Chapter 807, Table 807-2.

All building permit applications for development subject to landscaping requirements shall include landscape and irrigation plans meeting the requirements of SRC Chapter 807.

No landscaping is proposed or required. The Hearings Officer finds that the proposal meets this standard.

Natural Resources

SRC 808 - Preservation of Trees and Vegetation: The City's tree preservation ordinance, under SRC Chapter 808, provides that no person shall remove a significant tree (Oregon White Oak greater than 24 inches in diameter at breast height) (SRC 808.015) or a tree or native vegetation in a riparian corridor (SRC 808.020), unless the removal is excepted under SRC 808.030(a)(2), undertaken pursuant to a permit issued under SRC 808.030(d), undertaken pursuant to a tree conservation plan approved under SRC 808.035, or permitted by a variance granted under SRC 808.045. No protected trees have been identified on the site plan for removal.

SRC 809 - Wetlands: The Salem-Keizer Local Wetland Inventory (LWI) does not show any wetland or hydric soil areas mapped on the property.

SRC 810 - Landslide Hazards: A geological assessment or report is required when regulated activity is proposed in a mapped landslide hazard area. The applicant's proposal does not disturb any portion of a mapped landslide hazard area; therefore, a geological assessment is not required.

The proposed development would not cause removal of protected trees or vegetation and does not occur in wetlands or landslide hazard areas. The Hearings Officer finds that this standard is met.

Because the proposal meets all applicable standards from the UDC, the Hearings Officer finds that this criterion is satisfied.

Criterion 2:

The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately.

The existing street system is adequate to serve the proposed development and the development is not proposing a building addition pursuant to 803.040(a); therefore, no right-of-way dedication or street improvements are required. The Hearings Officer finds that this criterion is satisfied.

Criterion 3:

Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians.

The driveway access onto Wilbur Street SE provides for safe turning movements into and out of the property. The Hearings Officer finds that this criterion is satisfied.

Criterion 4:

The proposed development will be adequately served with City water, sewer, stormwater facilities, and other utilities appropriate to the nature of the development.

The Hearings Officer notes that the Public Works Department has reviewed the applicant's preliminary plan for this site. The water, sewer, and storm infrastructure are available within surrounding streets/areas and appear to be adequate to serve the proposed development. The applicant does not propose any new connections to public infrastructure. Accordingly, the Hearings Officer finds that this criterion is satisfied.

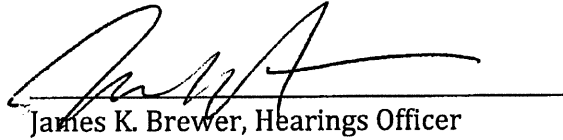
DECISION

The Hearings Officer APPROVES the Application for a Conditional Use and Class Three Site Plan for change in use to a Recreational Marijuana Production Facility located at 1215 Wilbur Street SE, subject to the following two conditions of approval:

Condition 1: Marijuana production shall be conducted indoors.

Condition 2: The marijuana production facility shall utilize an air filtration system to ensure that odor impacts upon neighboring properties are minimized.

DATED: June 1, 2017

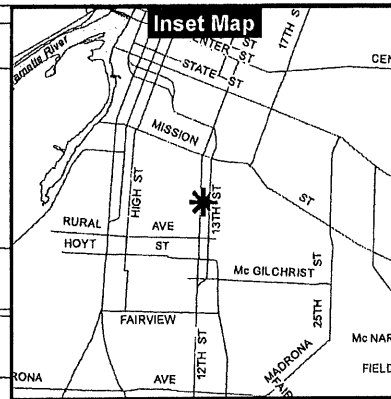
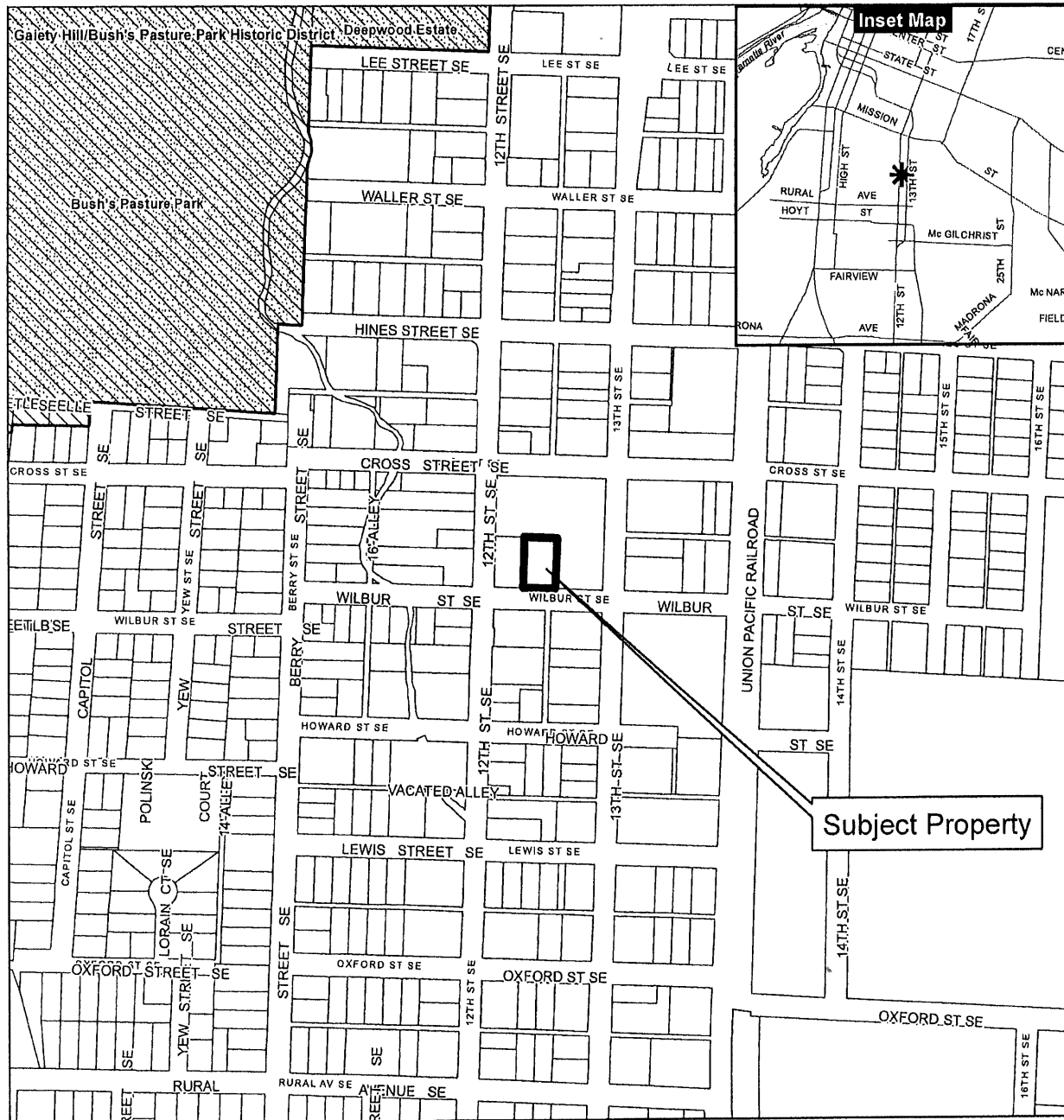


James K. Brewer, Hearings Officer

Vicinity Map

1215 Wilbur St SE

Tax Lot #073W35BB / 10000



Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools

Parks

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Community Development Dept.

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0 100 200 400 Feet



Conditional Use Permit: 1215 Wilbur St SE,
Yak, Inc., 3/22/17

50 ft



Building height: 14'-4"
Area: 8280 square ft.

Loading dock

Parking Area

Approx. 10-foot chain link fence

1215 Wilbur St SE, Salem, OR 97302

Site Plan (Floor Plan)

N
W E
S

Heater for House to
Building (attached)

