



Hearing Administrator's Memorandum

P21-13-005

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TO: The Honorable Board of Supervisors
Tom Drzazgowski, Pima County Deputy Chief Zoning Inspector

FROM: Jim Portner, Hearing Administrator

DATE: May 6, 2013

RE: **P21-13-005 -- 100 ESTRELLA, LLC – N. AJO GILA BEND HIGHWAY
Conditional Use Permit Request for a Medical Marijuana Dispensary**

Special Condition No. 1, as stipulated by the Pima County Planning & Zoning Commission in conjunction with its May 27, 2013 recommendation for approval of the above-referenced conditional use permit, states the following:

- 1. The applicant shall, within fourteen (14) days of the Planning & Zoning Commission public hearing on this matter, provide a written certification that addresses each and every item enumerated in Section 18.45.040.D of the Pima County Zoning Code and which describes how each of these various standards and performance requirements are met.*

The applicant submitted a memorandum to address the above on April 2, 2013 (copy attached). The Hearing Administrator has reviewed the memorandum in conjunction with staff of the Development Services Department and offers the finding below.

HEARING ADMINISTRATOR'S FINDING

The Hearing Officer finds that the applicant has satisfactorily addressed the various items enumerated in Section 18.45.040.D of the Pima County Zoning Code, and further finds nothing in the responses offered by the applicant that would merit a modification or addition to any of the recommended Special Conditions as recommended by the Pima County Planning & Zoning Commission.

April 2, 2013

Pima County Development Services Department
201 N. Stone Ave.
Tucson, Arizona 85701

RE: Case #P21-13-005
100 Estrella, LLC – N. Ajo Gila Bend Highway (Ajo, AZ)

Dear Sir/Madam:

Please find below Arizona Natural Remedies' response to the Special Conditions as set forth by the Pima County Planning & Zoning Commission at the March 27, 2013 hearing. Our response to each item as enumerated is typed in bold lettering so as to distinguish it from the special condition.

Special Conditions

1. The applicant shall, within fourteen (14) days of the Planning & Zoning Commission public hearing on this matter, provide a written certification that addresses each and every item enumerated in Section 18.45.040.D of the Pima County Zoning Code and which describes how each of these various standards and performance requirements are met.

Please see responses in bold below:

18.45.040 – conditional uses

- D. **Medical marijuana dispensary:** If the Arizona Revised Statutes are amended to allow medical marijuana dispensaries, as long as the law remains in full force and effect, a medical marijuana dispensary is permitted as a type III conditional use subject to the following conditions:
 1. **Minimum notification area:** The minimum notification area for a conditional use permit for a medical marijuana dispensary is two thousand six hundred forty feet.

The proposed medical marijuana dispensary met the notification requirements.

2. **Supplemental application:** In addition to the application required by Chapter 18.97, an applicant for a conditional use permit for a medical marijuana dispensary must complete a supplemental application that includes all of the following information:
 - a. If the application is by an agent for the owner the authorization must include explicit acknowledgment from the owner that the owner knows that the proposed use of the property is as a medical marijuana dispensary.

Owner's explicit acknowledgment that the proposed use of the property is a medical marijuana dispensary is included in the staff report prepared by the Pima County Planning & Zoning Department for the March 27, 2013 hearing.

- b. The legal name of the medical marijuana dispensary.

The legal name of the medical marijuana dispensary is Arizona Natural Remedies, Inc. dba Route 85 Wellness Center.

- c. The name address and date of birth for each principal officer and board member of the nonprofit medical marijuana dispensary and the name, address, and date of birth of each medical marijuana dispensary agent.

A list including the name, address and date of birth for each principal officer and board member is included in the staff report prepared by the Pima County Planning & Zoning Department for the March 27, 2013 hearing. Each person listed is both a principal officer and a board member.

- d. A copy of the operating procedures adopted in compliance with A.R.S. Section 36-2804(B)(1)(c).

A copy of each operating procedure adopted in compliance with A.R.S. Section 36-2804(B)(1)(c) is included in the staff report prepared by the Pima County Planning & Zoning Department for the March 27, 2013 hearing.

- e. A notarized certification that none of the principal officers or board members has been convicted of one of the following offenses:
- i. A violent crime as defined by A.R.S. Section 13-901.03(B) that was classified as a felony in the jurisdiction where the person was convicted;
 - ii. A violation of state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted except an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten or more years earlier or an offense involving conduct that would be immune from arrest, prosecution or penalty under A.R.S. Section 36-2811 except that the conduct occurred before the effective date of that statute or was prosecuted by an authority other than the state of Arizona.

A copy of the Arizona Department of Health Services principal officer and board member attestation indicating that said officer or board member has not been convicted of any offense as listed above is included in the staff report prepared by the Pima County Planning & Zoning Department for the March 27, 2013 hearing for each and every principal officer and board member of Arizona Natural Remedies. Also included in the staff report is a notarized certification stating the same.

- f. A notarized certification that none of the principal officers or board members has served as a principal officer or board member for a registered nonprofit medical marijuana dispensary that has had its registration certificate revoked.

A notarized certification that none of the principal officers or board member has served in a capacity as indicated above is included in the staff report prepared by the Pima County Planning & Zoning Department for the March 27, 2013 hearing.

- g. A floor plan showing the location, dimensions and type of security measures demonstrating that the medical marijuana dispensary will meet the definition of enclosed locked facility contained in A.R.S. Section 36-2801(6).

A floor plan indicating the security measures outlined above is included in the staff report prepared by the Pima County Planning & Zoning Department for the March 27, 2013 hearing. All equipment will be installed by a professional security provider and fully inspected by the Arizona Department of Health Services prior to the dispensary becoming operational.

- 3. **Prohibited locations:** A medical marijuana dispensary is not permitted in the gateway overlay zone, buffer overlay zone or a historic zone.

The medical marijuana dispensary meets these zone requirements.

- 4. **Community impacts:** The board may not approve a medical marijuana dispensary at a site if substantial evidence is presented that locating the dispensary at the proposed site will negatively impact neighboring property values or if substantial evidence is presented that shows that locating the dispensary at the proposed site will create an unreasonable risk to the health, safety or general welfare in the area.

The medical marijuana dispensary will not negatively impact property values in the community or cause unreasonable risk.

- 5. **Developmental standards:**
 - a. A medical marijuana dispensary must be located in a permanent building and may not be located in a trailer, cargo container or motor vehicle.

The medical marijuana dispensary will be located in a permanent building as indicated in the photos included in the staff report prepared by the Pima County Planning & Zoning Department for the March 27, 2013 hearing.

- b. A medical marijuana dispensary shall be setback a minimum of two thousand feet from all other medical marijuana dispensaries measured from the parcel boundaries;

The medical marijuana dispensary meets this setback requirement.

- c. A medical marijuana dispensary shall be setback a minimum of one thousand feet from a public, private, parochial, charter, dramatic, dancing, music, or other similar school or educational or activity center where children may be enrolled, measured from the parcel boundaries.

The medical marijuana dispensary meets this setback requirement.

- d. A medical marijuana dispensary shall be setback a minimum of one thousand feet from a public, private, parochial, or charter school bus stop.

The medical marijuana dispensary meets this setback requirement.

- e. A medical marijuana dispensary shall be setback a minimum of one thousand feet from a childcare center, measured from the parcel boundaries.

The medical marijuana dispensary meets this setback requirement.

- f. A medical marijuana dispensary shall be setback a minimum of one thousand feet from a library or public park.

The medical marijuana dispensary meets this setback requirement.

- g. A medical marijuana dispensary shall be setback a minimum of one thousand feet from a church.

The medical marijuana dispensary does not meet this setback requirement; however, a variance was sought and granted by the Pima County Board of Adjustments.

- h. A medical marijuana dispensary shall be setback a minimum of one thousand feet from a residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.

The medical marijuana dispensary meets this setback requirement.

- i. A medical marijuana dispensary may not have a drive-through service.

The medical marijuana dispensary building currently has a drive through service window; however, this drive through service window will be disabled and not used.

j. A medical marijuana dispensary may not have outdoor seating areas.

There will be no outdoor seating areas on the premises.

k. The maximum floor area of a medical marijuana dispensary is two thousand square feet.

The floor area of the proposed building is 1,960 sq. ft.

l. The secure storage area for the medical marijuana stored at the medical marijuana dispensary shall not exceed four hundred square feet.

All medical marijuana stored at the medical marijuana dispensary will be in a 100 sq. ft. storage area.

m. The permitted hours of operation of a medical marijuana dispensary are between the hours of nine a.m. and five p.m.

The medical marijuana dispensary hours of operation will not be outside of the hours of 9 a.m. and 5 p.m.

b. Permit conditions: The board may include any conditions it finds necessary to conserve and promote the public health, safety, convenience and general welfare. The board must include the following permit conditions for issuance of the conditional use permit for a medical marijuana dispensary:

- a. An expiration date for the conditional use permit that requires re-application or renewal of the permit after a specified period of time.
- b. A requirement that the medical marijuana dispensary meets security requirements adopted by the Arizona Department of Health Services.

All security equipment will be professionally installed as specified by the Arizona Department of Health Services (AZDHS) and said equipment will be inspected and tested by AZDHS personnel during the inspection process. No operation certificate will be issued by AZDHS if any equipment is found to be outside of their specifications.

c. A requirement that the storage facilities for the medical marijuana stored or grown on site prevent the emission of dust, fumes, vapors, or odors into the environment.

All medical marijuana in the facility will be in stored in sealed glass jars; thereby, causing no emission of dust, fumes, vapors or odors into the environment.

- d. A requirement that the owner secure a certification from the State Fire Marshall or from another acceptable entity responsible for fire safety in the area in which the medical marijuana dispensary is to be located stating that the structure complies with all fire code requirements and supply that certification to the development services department.

The medical marijuana dispensary will be inspected by Fire Chief David Hood of the Ajo Gibson Volunteer Fire Department and said certificate will be delivered to the development services department once obtained.

- e. A prohibition on the medical marijuana dispensary offering services that provide onsite delivery of the medical marijuana.

The medical marijuana dispensary will not provide delivery services.

- f. A requirement that the medical marijuana dispensary is prohibited from permitting anyone to consume marijuana on the premises.

Per requirement by the Arizona Department of Health Services, all persons purchasing medical marijuana from the dispensary must sign a document acknowledging that the use of medical marijuana is prohibited in any public place, including inside the dispensary building, outside on the dispensary sidewalk, in the dispensary parking lot or any automobile whether parked or in motion. A copy of said acknowledgment is included in the staff report prepared by the Pima County Planning & Zoning Department for the March 27, 2013 hearing.

- g. A requirement for a reasonable setback from a zoning district other than CB-2, CI-1, CI-2, and CI-3 or any existing, established, residential use in those zones.

The medical marijuana dispensary will meet this setback requirement.

- h. A requirement for a reasonable setback from a zoning district in a city or town other than classifications that permit densities and uses greater than or equal to those permitted CB-2, CI-1, CI-2, and CI-3.

The medical marijuana dispensary will meet this setback requirement.

- i. A requirement that the medical marijuana dispensary comply with applicable sections of Title 8 of the Pima County Code.

The medical marijuana dispensary will comply with applicable sections of Title 8 of the Pima County Code.

7. Enforcement: The provisions of this section may be enforced through the use of the civil penalty procedure provided by Section 18.95.030 or by injunction or other civil proceedings as provided by A.R.S. Section 11-808(H). Notwithstanding any other provisions of this code, this subsection shall not be enforced under A.R.S. Section 11-808(C) as a misdemeanor.
 8. Fees: The fee for application and hearing is a combination of the existing fees for conditional use permit application filing fee, the site analysis submittal fee and the notice of public hearing fee included in the most current development services department fee schedule.
2. Prior to issuance of the conditional use permit, the applicant shall submit a final site plan to Pima County, which must be reviewed by the Deputy Chief Zoning Inspector, for adequate compliance with the following:
- a. The existing asphalt pavement area on the property shall be striped appropriately to provide for the full required number of vehicular spaces as stipulated by the Pima County Zoning Code.

The proper size and number of parking spaces as required by the Pima County Zoning Code will be appropriately striped on the existing asphalt pavement by Mark Wright Construction of Tucson, Arizona.

- b. The size/dimension of all parking spaces and parking area access lanes (PAAL's) shall be in accordance with Pima County standards.

The proper size and number of parking spaces, including PAAL's, will be installed in accordance with Pima County standards by Mark Wright Construction of Tucson, Arizona.

- c. Disabled parking space(s) and a designated pedestrian route from them to the building entrance shall be provided in accordance with Pima County standards.

The required number of disabled parking spaces and designated pedestrian route will be installed in accordance with Pima County standards by Mark Wright Construction of Tucson, Arizona.

- d. A minimum six-foot (6') tall, continuous screening element shall be installed along the site's entire eastern boundary so as to provide a visual screen of the facility from the adjacent residences directly to the east.

A six-foot (6') tall and continuous screening element shall be erected along the entire eastern boundary of the property to provide a visual screen of the facility from the adjacent residences directly to the east of the dispensary. Such fencing will be installed by Mark Wright Construction of Tucson, Arizona.

- e. The existing open vehicular access along the site's State Route 85 and W. 1st Street frontages shall be maintained in its current state so as to allow free and open visibility into the site from these frontages by law enforcement personnel.

Frontage along State Route 85 and W. 1st Street will remain free and open to allow clear visibility by law enforcement.

3. The items enumerated in Item #2 above shall be physically installed on the site prior to the facility being opened for business.

The medical marijuana facility acknowledges this stipulation.

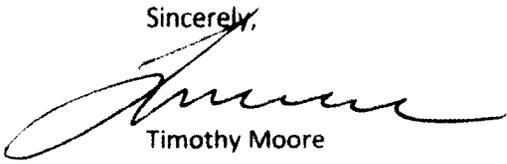
4. In consideration of Pima County Zoning Code Section 18.45.040.D.6 (Permit Conditions), which prescribes certain options and obligations to the Board of Supervisors in the interest of conserving and promoting the public health, safety, convenience, and general welfare, the enumerated items of subsection D.6.a through D.6.i are hereby incorporated, as follows, as further special conditions and requirements on this conditional use permit:

- a. This conditional use permit shall expire two (2) years from the date of issuance; the applicant is required to file a new conditional use permit application and procure approval of same prior to the expiration date in order to preserve uninterrupted operation of the facility.
- b. The medical marijuana dispensary shall meet all security requirements adopted by the Arizona Department of Health Services.
- c. The storage facilities for the medical marijuana stored or grown on site shall prevent the emission of dust, fumes, vapors or odors into the environment.
- d. The owner/operator shall secure a certification from the State Fire Marshall, or from another acceptable entity responsible for fire safety in the area in which the medical marijuana dispensary is to be located, stating that the structure complies with all fire code requirements and must supply that certification to the development services department.
- e. The medical marijuana dispensary is prohibited from providing or offering any service that furnishes offsite delivery of the medical marijuana.
- f. The medical marijuana dispensary is prohibited from permitting anyone to consume marijuana on the premises.
- g. The medical marijuana dispensary building shall be setback a minimum of one hundred twenty-five feet (125') from any adjacent lot or parcel containing an established residential use.
- h. The medical marijuana dispensary building shall be setback a minimum of one hundred twenty-five feet (125') from any adjacent property with a residential zoning classification.
- i. The medical marijuana dispensary shall comply with applicable sections of Title 8 of the Pima County Code.

The medical marijuana facility acknowledges these stipulations.

It is my belief that Arizona Natural Remedies has fully and completely addressed each and every item as enumerated. Please feel free to contact me at the information below should you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy Moore', written in a cursive style.

Timothy Moore

President

Arizona Natural Remedies

1519 W. Sunrise Drive

Phoenix AZ 85041

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