



City of Prineville

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT REVISED STAFF REPORT

FIRST HEARING DATE: July 21st, 2015
SECOND HEARING DATE: August 4th, 2015

PROJECT NUMBER: CU-2015-102

APPLICANT: Charles Laughlin (Get Some Meds)
3433 SE 97th Pl
Everett WA 98208

OWNER: Terry Sofich

PROJECT REVIEWER: Joshua Smith
Senior Planner

APPLICABLE CRITERIA:

(1) City of Prineville Code of Ordinances, Title XV – Chapter 153A, & Chapter 153 Sections 153.014, 153.020, 153.062, 153.136.

FINDINGS OF FACT:

1. **LOCATION:** The proposed conditional use is located at 1190 NW Lamonta Rd. Map and Tax lot 14-16-31DB 0600.
2. **ZONING:** The subject property is zoned Light Industrial (M1) and designated Heavy Industrial on the Comprehensive Plan Map.
3. **SITE DESCRIPTION:** The proposed location is in an existing building previously used as an equipment rental business. The picture below is a 2014 aerial view.



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4. **REVISED PROPOSAL:** A change of use from an equipment rental business to a Medical Marijuana Dispensary including clones and nursery supplies such as soils, pots, lights, and nutrients.
5. **LOT OF RECORD:** The property has been determined to be a legal lot based on deed and a recorded boundary line adjustment survey recorded June 16th 2004 (CS-2353).
6. **REVISED COMMENTS:** Prior to the hearing verbal comments were received from a neighboring property primarily concerned with security and loitering. At the hearing two citizens spoke. One who operates another dispensary in the City provided testimony in opposition based on his understanding that the City wanted all dispensaries located on the grade in the industrial parks where the existing overlay is designated. He also had concerns about the submitted layout of the facility. The other Citizen had questions about water rates, and whether clones could be grown along with the retail sales of growing equipment. She also stated her desire to have all dispensaries located on the grade in the existing overlay.

REVISED FINDINGS SUMMARY: This application is being processed concurrently with zone amendment application AM-2015-102. This application is contingent upon AM-2015-102 being approved by City Council and adopted by Ordinance. A Medical Marijuana Facility is a Type I conditional use within the Medical Marijuana Overlay Zone. The use of selling marijuana grow supplies including the sale of clones is most closely related to Garden supply or Plant Nursery, which are allowed uses in the M1 zone. The traffic impact of the proposed uses is similar to the previous use of an equipment rental business, therefore; design review improvements are not required. Staff finds that a change of use with similar impacts to the previous use does not warrant significant site improvements above what the applicant is proposing. The growing of clones that are not flowering and less than 12" tall and 12" wide are not considered a grow operation by the State. The applicant has stated that they have no intention of using this location as a grow site. Should the applicant choose to grow on site a separate application for a grow site will be required. All required licensing from the State shall be submitted prior to occupancy. A separate license from the City is not currently available and is therefore not required at this time. The applicant can meet all operational requirements and does meet all location requirements of Chapter 153A.

Criteria: 153A.002 – GENERAL PROVISIONS

All Medical Marijuana activities shall comply with the provisions of this chapter and Oregon State Law as may be amended from time to time. State laws regarding Medical Marijuana can be found in Oregon Revised Statutes 475.300 through 475.346.

Medical Marijuana activities may be allowed, subject to the Medical Marijuana Overlay zone adopted as part of this Chapter and the underlying zone criteria in Chapter 153 of the Code of Prineville. No growing, processing or dispensing of Medical Marijuana shall be located within the City unless the reviewing authority finds that it satisfies all the requirements of this Chapter and State law.

Finding 1: This application is being processed concurrently with zone amendment application AM-2015-102 to expand the Medical Marijuana Overlay zone on this property. This application is contingent upon AM-2015-102 being approved by City Council and adopted by Ordinance. A final approval from the State shall also be submitted prior to occupancy.

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Criteria: 153A.004 – STANDARDS FOR MEDICAL MARIJUANA ACTIVITIES

The following standards are in addition to laws and regulations set forth by the State of Oregon.

A. License/Registration.

1. An applicant shall provide proof of being registered with the State in accordance with the Medical Marijuana Act as stated in ORS 475.300 – 475.346 as amended.

2. An applicant shall obtain a license from the City of Prineville as applicable.

B. Location.

1. A MMA shall be located within the approved MM overlay.

2. A MMA shall not be mobile.

3. A MMD shall not be located at the same address as a MMG.

4. A MMD shall not be located within 1000ft. of another MMD.

5. A MMA shall not be located:

a. Within 1,000 feet of the real property comprising a:

1. Public or private preschool, elementary, secondary or career school attended primarily by minors; or,

2. Licensed daycare center; or

3. County Court House or City Hall; or,

4. Public library; or,

5. Public park; except industrially zoned properties above the rimrock.

C. Operation.

1. Marijuana plants and products shall not be visible to the public other than within the facility itself.

2. Marijuana products shall not be sold through a drive through window.

3. There shall be no burning of plant waste. Plant waste may be composted or disposed of at the County landfill with the County's approval.

Finding 2: All required licensing from the State shall be submitted prior to occupancy. A separate license from the City is not currently available and therefore not required at this time.

The purposed facility is not located within the Medical Marijuana Overlay Zone. This application is contingent upon AM-2015-102 being approved by City Council and adopted by Ordinance.

The facility is not proposed to be mobile, the facility is not within 1000 feet of another Medical Marijuana Dispensary and the facility is not within 1000 feet of real property as list above in section(B)(5)(a).

The facility is proposing to provide immature cloned plants. According to the State (OHA) the growing of clones that are not flowering and less than 12" tall and 12" wide are not considered a grow operation. The applicant has stated that they have no intention of using this location as a grow site. Should the applicant choose to grow on site a separate application for a "grow site" will be required. The State's licensing process will dictate how the clones are managed.

The applicant shall prevent products from being visible to the public. The applicant is not proposing a drive through and plant waste shall not be burned. Staff finds that the purposed facility can comply with the criteria in Chapter 153A listed above.

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Criteria: 153.014 GENERAL CRITERIA.

In determining whether or not any application shall be approved or denied, it shall be determined that the following criteria are either met or can be met through compliance with specific conditions of approval.

(A) The proposal is compatible with the City Comprehensive Plan and applicable policies set forth thereby.

(B) The proposal is in compliance with the requirements set forth by the applicable primary zone, by any applicable combining or overlay zone, and other provisions set forth by this chapter that are determined applicable to the subject use.

(C) That, for a proposal requiring approvals or permits from other local, state and/or federal agencies, evidence of the approval or permit compliance is established or can be assured prior to final approval.

(D) The proposal is in compliance with specific standards, conditions and limitations set forth for the subject use in the applicable zone, this section and this chapter.

(E) That no approval be granted for any use which is or expected to be found to exceed resource or public facility carrying capacities.

(F) For any use which is found to require compliance with air, water, land, solid waste and/or noise pollution standards, that the compliance be a condition of approval and compliance therewith shall be a continuing condition.

(G) As applicable, a city business license shall be required, and if a requirement, the continual maintenance of the license shall be a continuing condition of approval and failure to maintain the compliance shall constitute grounds for permit revocation.

(H) Boats, trailers, travel trailers, pick-up campers, recreational vehicles, motor homes and similar recreational vehicles and equipment may be stored on a lot, but shall not be used for permanent occupancy other than that permitted in 153.095 (D)(E)(F).

Finding 3:

A) This proposal is compatible with the comprehensive plan by meeting policies in Chapter 2, to allow marijuana facilities in industrial zones. It is also compatible by meeting the zoning requirements of the M1 zone.

B) The proposal can meet the requirements of the zone as a conditional change of use.

C) All required licensing from the State shall be submitted prior to occupancy.

D) Specific standards are listed in Chapter 153A, which are discussed in Findings 1 & 2. The proposal can meet the requirements of the M1 zone through conditions of approval.

E) The proposal is not expected to exceed resource carrying capacity. The use is considered of equal or lesser impact than the previous industrial use.

F) The proposed use shall comply with any and all pollution standards.

G) The City does not have a business license at this time.

H) This section is not relevant to the proposed use.

Criteria: Type 1 Conditional Use in accordance with Chapter 153A – section 153A.006(C):
Outright use - Accessary use in support of Primary industrial use.
Outright use – Retail in support of Primary industrial use.
Outright use – Farm, feed, garden supply
Type 1 Conditional Use – Plant Nursery

153.060 LIGHT INDUSTRIAL M-1 ZONE.

In an M-1 Zone, the following regulations shall apply.

(A) Purpose. The purpose of the Light Industrial M-1 Zone is to provide for a wide range of industrial uses, but limiting or excluding those industrial uses which are generally not considered compatible with adjoining commercial or residential areas and which, in many cases, involve industrial uses which involve hazardous or nuisance creating conditions.

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Finding 4: A Medical Marijuana Facility is a Type I conditional use for proposals located within the Medical Marijuana Overlay Zone. The use of selling marijuana grow supplies could fit in several categories within the M1 zone. The Garden supply and Plant nursery uses are the most appropriate. Notice was sent as required to neighboring properties within 200 feet and no objections were received prior to the first hearing.

The proposed use provides a unique industry to the area that can be a clean and attractive use with no known impacts due to noise, odor, glare, lights, smoke, dust or visual types of impacts. Odors from marijuana facilities have been issues in other places primarily associated with burning waste at grow sites. Odor is not expected to be an issue with this proposal.

The proposal is a change of use, the structure already exists. The outward appearance of the building will generally remain the same with some aesthetic improvements.

Criteria: 153.020 SITE PLAN AND DESIGN REVIEW PROVISIONS.

(A) Purpose.

(1) *The purpose of the design review provisions of this chapter is to ensure that development within the city complies with standards and limitations set forth within the applicable zoning regulations, other city standards and requirements, and with applicable county, state and federal regulations. It is also the intent of these provisions that some level of review be exercised regarding the aesthetics of developments for the goal of maintaining the desirable character and living quality of the community or of specific areas within the community. The overall community character and living quality is defined by the following: keeping buildings in scale; honoring the beauty and ecology of the city's natural setting; and recognizing that historical and natural features are an integral part of the community's overall character.*

(B) Applicability. *The following uses and developments shall be subject to the provisions of this section:*

(1) *All new development and changes of use. A building permit shall not be issued prior to approval by the City. Site clearance activities such as grading, excavation or filling shall not be permitted unless specifically allowed by the City prior to approval.*

(C) Exemptions. *The following are exempt from the site and building design review process.*

(4) *Changes of uses that occupy an existing building or site that is either similar to the previous use or of equal or lesser impact to the site with regard to water, sewer and traffic as determined by the Planning Director and City Engineer. A change of use application may be required to make this determination (converting a residence to a commercial use is always considered a greater impact). Conditional use procedures still apply for those applications that require it. As a conditional use improvements may be required that are exempted in this section.*

Finding 5: This application is for a change of use in a building that has previously been used for general light industrial uses, most recently an equipment rental business. This change of use has been determined to be of equal or lesser impact than the previous use. This application is therefore considered exempt from the design review criteria. Being exempt from design review also exempts the application from other improvements such as parking and landscaping requirements that would normally be required for new construction or changes of use that are a greater impact to the site. Improvements associated with the conditional use may still be required through section 153.136 "Specific Conditions" for conditional uses, which is outlined later in this report.

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Criteria: *(B) Specific Conditions. Section 153.083 contains a list of uses with specific conditions that may apply to specific types of uses.*

Finding 6: There are no specific conditions sited in section 153.083. Specific Standards are listed in Land Use Chapter 153A, which are addressed in Findings 1 & 2.

Criteria: *(J) Signs. In an M-1 Zone, signs are permitted in accordance with the provisions set forth in Chapter 152 as amended.*

Finding 7: Signs may be provided in accordance with the City's sign code. A wall sign is proposed within the existing sign cabinet as well as a green cross above the door. This decision shall serve as the approval for those signs.

Criteria: *(K) Use limitations. In an M-1 Zone, permitted uses shall be subject to the following limitations and standards.*

(1) No use shall be permitted which has been declared a nuisance by action of the City, County, State, or Federal government, or by a court of competent jurisdiction.

(2) No use is permitted which is reasonably expected to create a nuisance because of noise, smoke, odor, dust or gas.

(3) For uses requiring pollution or contaminant discharge permits by an agency other than the city, final approval for the use shall not be issued by the city prior to review and approval by the applicable permit reviewing authority(ies).

(4) Materials shall be stored and grounds maintained in a manner as to prevent the attraction of or aid in the propagation of insects or rodents, or in a manner as to not otherwise create a public health hazard or attractive nuisance hazard.

(5) Points of access from a public right-of-way to properties and uses in this zone shall be so located, constructed, maintained and controlled as to minimize traffic congestion, noise and dust pollution, and shall avoid directing traffic onto residential streets or onto streets passing directly through residential, school, hospital or other noise sensitive use areas and safety zones.

(6) All uses permitted in this zone may be required to be screened from abutting residential zones.

(7) Building entrances or other openings adjacent to or across the street from a residential zone shall be prohibited if they cause glare, excessive noise or otherwise adversely affect land uses in the affected residential zone.

(8) Except as approved otherwise by the city in accordance with applicable access management provisions, there shall not be more than 1 ingress and 1 egress from properties accommodating uses permitted by this section. To minimize the number of the accesses within any given street section, permitted uses may be required to provide for shared ingress and egress or provide frontage roads.

Finding 8: The proposed use is not expected to create a public nuisance or violate any of the use limitations of the M1 zone.

Criteria: *153.136 SPECIFIC CONDITIONS.*

In addition to the standards and conditions set forth in a specific zone, this subchapter, this chapter and other applicable local, county, state and/or federal regulations, additional conditions may be imposed which are found to be necessary to avoid a detrimental impact on adjoining properties, the general area or the city as a whole, and to otherwise protect the general welfare and interests of the surrounding area, the city as a whole and the general public. No condition may be imposed which violates federal or state law with regard to needed housing. The conditions may include, but are not limited to, the following.

(A) Limiting the manner in which the use is conducted, including restricting the time an activity may take place, and restrictions to minimize environmental impacts such as noise, vibration, air or water pollution, glare and odor.

(B) Establishing a special setback or other open space requirements, and increasing the required lot size or other dimensional standards.

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(C) Limiting the height, size or location of a building or other structure or use.

(D) Increasing street width and/or requiring improvements to public streets and other public facilities serving the proposed use, even including those off-site but necessary to serve the subject proposal.

(E) Designating the size, number, improvements, location and nature of vehicle access points and routes, and requiring pedestrian and/or bicycle ways.

(F) Limiting or otherwise designating the number, size, location, height and lighting of signs and outdoor or security lighting, and the intensity and/or direction thereof.

(G) Requiring diking, screening, fencing or other improvements or facilities deemed necessary to protect adjacent or nearby properties, and establishing requirements or standards for the installation and maintenance thereof.

(H) Protecting and preserving existing trees, other vegetation and water, scenic, historic, archaeological, unique, landmark or other natural or manmade significant resources.

Finding 9: As a conditional use, additional conditions may be imposed other than those required by code as described above. The City received verbal comments from one of the properties that received notice. The use is proposed within an existing building. There is some paved parking in the front of the building and around the side, though the pavement is old. Vehicles shall not park within the street right-of-way. There is no need to widen the street at this time, streets may be required to be widened with future development or property division. There are no pedestrian amenities along any portion of Lamonta Road or in the surrounding area. There is little vegetation on site to preserve and screening neighboring properties is unnecessary due to the surrounding industrial uses. The applicant is proposing some aesthetic improvements to the building such as re-establishing the planter boxes. Having an active business can also have a positive effect on the outward appearance of a property. Staff finds that a change of use with similar impacts to the previous use does not warrant significant site improvements above what the applicant is proposing. The Planning Commission may have a different view or other concerns that warrant some site improvements.

RECOMMENDED CONDITIONS OF APPROVAL: Based on the foregoing Findings and those conditions contained within, application CU-2015-102 for a change of use to a medical marijuana dispensary and nursery supplies sales is hereby recommended for **approval** with the following conditions.

1. This application is contingent upon AM-2015-102 being approved by City Council and adopted by Ordinance. If the approval of AM-2015-102 is restricted to a certain type of marijuana use, this application shall also be restricted to that use.
2. The applicant shall comply with all necessary Fire Department requirements. The applicant shall coordinate with the Crook County Rural Fire and Rescue. Should Crook County Fire and Rescue determine that additional conditions are necessary the applicant shall meet those conditions.
3. The applicant shall not allow vehicles to park within the street right-of-way. Should parking become a problem other areas shall be opened for parking and improved if necessary.
4. The applicant shall submit all required licensing from the State prior to occupancy.

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5. The applicant shall prevent products from being visible to the public other than within the facility itself.
6. A sign change within the existing sign cabinet and a green cross above the door is approved as part of this application. The proposed sign shall be submitted for review to determine compliance with City code.
7. The applicant shall comply with all applicable requirements of Chapter 153A, the M1 zone and relevant portions of the City of Prineville Code of Ordinances.
8. The Applicant shall comply with the Crook County Building Code including that which may be required for ADA parking and access.
9. The applicant shall submit a new application if any part of the business constitutes a grow operation under State law.

PLEASE NOTE: IT IS VERY IMPORTANT THAT THE WORDING OF A MOTION FOR DECIDING ON A LAND USE APPLICATION BE STATED AS PROVIDED BELOW, PRIMARILY TO ENSURE THAT THE STAFF REPORT AND PUBLIC RECORD ARE INCORPORATED INTO THE DECISION AS PART OF THE FINDINGS OF FACT.

MOTION IN FAVOR

The Staff Report and record of tonight's proceedings are hereby incorporated as Findings of Fact in Favor of this Application. I Move that the application be **APPROVED**, subject to the Conditions of Approval as they have been finalized, and based upon the Findings of Fact in favor of the application.

MOTION IN OPPOSITION

The Staff Report and record of tonight's proceedings are hereby incorporated as Findings of Fact in Opposition to this Application. I Move that the request be **DENIED** based upon Findings of Fact in opposition to the application.

Date this 28th day of July 2015

Written By:


Joshua Smith
Senior Planner