



STAFF REPORT

Planning Commission

CASE NUMBER: CU-99-12-14

PC Date:	December 4, 2013	Case Planner:	Paul Workman
CC Date:	January 6, 2014		
Location:	5500 Colorado Boulevard, Commerce City, Colorado 80022		
Applicant:	iVita Wellness	Owner:	Andy Weiss
Address:	5500 Colorado Boulevard Commerce City, CO 80022	Address:	25 S. Clermont Street Denver, CO 80246

Case Summary

Request:	iVita Wellness is requesting the approval of a Conditional Use Permit for a Medical Marijuana Dispensary (MMD).
Project Description:	iVita Wellness has proposed to convert an existing 1,100 square foot office space on the subject property into a Medical Marijuana Dispensary (MMD).
Issues/Concerns:	Compliance with the State of Colorado requirements.
Key Approval Criteria:	<ul style="list-style-type: none"> • Compliance with the State of Colorado requirements. • Compliance with the Comprehensive Plan. • Compliance with the Land Development Code requirements.
Staff Recommendation:	Approval, subject to conditions
Current Zone District:	I-2 (Medium-Intensity Industrial Zone District)
Comp Plan Designation:	Industrial/Distribution

Attachments for Review: *Checked if applicable to case.*

- | | |
|---|---|
| <input checked="" type="checkbox"/> Applicant's Narrative Summaries
<input checked="" type="checkbox"/> Development Plan
<input checked="" type="checkbox"/> State licenses for the existing facilities | <input checked="" type="checkbox"/> Vicinity Map
<input checked="" type="checkbox"/> MMD Location Restrictions Map |
|---|---|

Background Information

Site Information

Site Size:	7.57 acres +/-
Current Conditions:	The property is currently developed with office space, warehouse space, and an outdoor storage area.
Existing Right-of-Way:	Colorado Boulevard to the west and E. 56 th Avenue to the north
Neighborhood:	Sand Creek
Existing Buildings:	There are two existing warehouse buildings and two existing office buildings.
Buildings to Remain?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Site in Floodplain	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Surrounding Properties

<u>Existing Land Use</u>		<u>Occupant</u>	<u>Zoning</u>
North	Right-of-Way	Not Applicable	None
South	Industrial	JCB Precision Tool & Mold	I-2
East	Industrial	SpeedCo.	I-2
West	Right-of-Way	Not Applicable	None

Case History

The following list is the relevant case history for the subject property:

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
AP-15-12	11/5/12	The applicant appealed staff's decision that the requested Conditional Use Permit for a Medical Marijuana Dispensary did not meet the separation requirements required by the Land Development Code.	Denied

AP-15-12:

On November 5th of 2012, the City Council denied the applicant's appeal of staff's determination that the requested Medical Marijuana Dispensary (MMD) did not meet the separation requirements found in the Land Development Code (LDC). Specifically, the proposed MMD was within 1,000-feet of a park. Subsequently, City Council directed staff to amend the LDC to exclude a trailhead from being included in the definition for a park as it relates to MMDs.

Applicant's Request

The applicant seeks a Conditional Use Permit (CUP) to operate a 1,100 square foot medical marijuana dispensary in an existing building that is vacant on the subject property. The applicant states; *"iVita Wellness was founded by a group of professional business entrepreneurs who have over 30 years of experience in medicine, law, real estate, and financial services. The combination of diverse business experiences have allowed iVita Wellness to build an efficient model that not only is in full compliance with Colorado Amendment 20 HB 1284, but delivers high quality effective medical cannabis to the Denver markets. In order to achieve our mission of compassionate patient care while providing the highest quality medicine at an affordable price, we recognize the importance of creating a strong professional environment that is fully compliant with our State's constitution. We are one of the first to be licensed by both the City of Denver and the State of Colorado"*.

Within the narratives that have been submitted, the applicant has noted the fact that they currently operate two dispensaries in the City of Denver. *"iVita wellness currently operates two other medical marijuana dispensaries at 1660 Pearl Street and 3980 Franklin Street, Denver, Colorado. iVita was one of the first companies to be licensed by both the City and County of Denver and the State of Colorado... Once the City approves the conditional use permit for the dispensary the Applicant will apply for all applicable state and City licenses necessary to operate a dispensary within the City"*.

In terms of specifics for this facility, the applicant states that it would operate between 9am and 7pm daily with 5 employees at the facility and that the applicant anticipates roughly 100 patients at this facility. However, there is no consumption of products on site. Additionally, this facility will be regulated by the Medical Marijuana Enforcement Division, which is under the Colorado Department of Revenue who will inspect the facility on a quarterly basis.

With regard to security, the applicant has confirmed that the facility will be secured by *Safenet*. Specifically, they say; *"The dispensary will be secured by Safenet. The security system will include CCTV video monitoring with video cameras located in the parking lot, on the exterior and on the interior of the building as required by the Colorado regulations governing medical marijuana dispensaries. The reception area will be open to the public, but the dispensary where the product is located, will be locked. Each customer will be accompanied by a dispensary employee while in the dispensary area. An alarm system will be installed at the dispensary. If the alarm system is triggered, it will notify the Applicant and the Commerce City police. The security at the dispensary may be modified based on changes in Colorado state law"*.

As part of the submitted application, iVita Wellness has addressed each of the CUP approval criteria. Their application indicates the following:

Approval Criteria #1 – *"This use will not result in a substantial or undue adverse effect on adjacent property or the character of the neighborhood because the surrounding uses are industrial uses and/or commercial businesses and the zoning in the area is I-2 or I-3. There will be no changes to the exterior footprint of the building so there will be no change on the character of the neighborhood. The medical marijuana dispensary will likely generate approximately 100 car trips a day and there will be three parking spaces (recently revised to five) on the property to serve the dispensary". Thus this use will not have a substantial adverse effect on the traffic conditions or parking. There are no new public*

improvements needed to support this dispensary because it will be served by existing utilities and roadways. Thus, there is no adverse effect on public improvements”.

Approval Criteria #2 – *“There are no adverse effects from this proposed use that need to be mitigated”.*

Approval Criteria #3 – *“The characteristics of the site are suitable for the dispensary because the dispensary will be located within one of the existing buildings at the Property. The other business on the site is Harris Rebar, which is an industrial business, so the dispensary will not have a detrimental effect on this business. The dispensary will be served by existing improvements and utilities, so there will be no need for additional public infrastructure due to this use”.*

Approval Criteria #4 – *“This dispensary will be located in an existing building which is already served by existing utilities and roadways. The existing utilities and roadways are sufficient for the proposed dispensary use and it will not generate the need for larger utility lines or roadway infrastructure”.*

Approval Criteria #5 – *“The dispensary will be located in an existing building with existing parking and utilities. The applicant will maintain the building as well as required parking and landscaping as required by the city code”.*

Approval Criteria #6 – *“A medical marijuana business is an allowed use within the City pursuant to Section 21-5249 of the city code and is allowed under the laws for the State of Colorado”.*

Approval Criteria #7 – *“There are no medical marijuana dispensaries in the city; thus, this is a use that is needed within the city” or “The city code allows for the operation of medical marijuana dispensaries within the boundaries of the city. Thus, this is a use that fits within the goals and objectives established by the City Council”.*

Development Review Team Analysis

The Development Review Team (DRT) began the review of this Conditional Use Permit (CUP) by evaluating it against the adopted Comprehensive Plan. That analysis is provided in the table below.

Comprehensive Plan

The DRT recommendation for this case is supported by the following Comprehensive Plan Goals:

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use and Growth	LU 1a	Future Land Use Plan (FLUP) as a Guide: Use the FLUP to guide development patterns and mix of uses and amendments to the LDC.
<u>Analysis:</u>	The FLUP designates this property for Industrial/Distribution uses. The requested use is only allowed in the industrial zone districts. Therefore, the industrial request is consistent with the industrial FLUP designation.	

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Economic Development	ED 3a	FLUP to Guide Decisions: Use the Future Land Use Plan to guide land use decisions.
<u>Analysis:</u>	The FLUP designates this property for Industrial/Distribution uses. The requested use is only allowed in the industrial zone districts. Therefore, the industrial request is consistent with the industrial FLUP designation.	

Once it was determined that the request was consistent with the Comprehensive Plan as outlined above, the DRT reviewed the request in further detail as provided below.

Request History:

As was briefly described above, the applicant submitted a CUP application in order to operate a Medical Marijuana Dispensary (MMD) at the subject property in the summer of 2012. After performing the initial review of the application, staff notified the applicant that the subject property was located within 1,000 feet of a trailhead to the Sand Creek Regional Greenway. At that time, the trailhead was defined as a park, which is one of the uses that precludes a MMD from locating within 1,000-feet. The applicant appealed staff's decision to City Council where staff's interpretation was unanimously upheld. Subsequent to Council's affirmation of staff's interpretation, Council directed staff to revise the LDC to no longer include trails in the buffer requirements for MMDs. Therefore the applicant has continued to pursue the CUP approval for a MMD.

The Commerce City Process for Regulating MMDs:

Prior to reviewing the details of the request, the DRT felt it was important to understand how MMDs are regulated in Commerce City. In Commerce City, MMDs are required to be approved through two separate processes. The first process is a land use process (the requested CUP) and the second process is a licensing process through the City Clerk's office and is much like the liquor licensing process. All applicants are required to be approved through the land use process first and the licensing process second. Therefore, even if the applicant is approved for their requested CUP, they cannot begin operations until they are approved through the license process as well. It was important for the DRT to understand the city's entire process for approving MMDs to ensure that the DRT focused on the relevant information for the requested land use approval.

LDC requirements for MMDs:

MMD land use regulations are specifically governed by Section 21-5249 of the LDC. This section states:

- 1) **Location.** No medical marijuana business or primary caregiver shall be located within 1,000 feet of the following:
 - a) Any residential zone district;
 - b) Any existing or occupied mobile home;
 - c) Any lot on which there is located a single-family or multi-family residence, whether located within or outside the city;
 - d) Any church or religious institution;
 - e) An educational institution or school, either public or private;
 - f) Any licensed child care facility;
 - g) Any alcohol or drug treatment rehabilitation facility;
 - h) Any group home for the developmentally disabled;
 - i) Any other medical marijuana business whether such business is located within or outside of the city;
 - j) Any half way house or correctional facility; or
 - k) Any fire station, community center, fairground, recreation center, other publically owned building open for public use to the general public, and any other public or private park; provided however, that for purposes of this section, the term park shall exclude any trail.

- 2) **Indoor Use.** All business related to, or consumption of medical marijuana shall be conducted indoors, and all building openings, entries, and windows shall be located, covered, or screened in such a manner as to prevent a view into the interior; and for new construction, the building shall be constructed so as to prevent any possibility of viewing the interior from the exterior of such structure.

The DRT analysis of 21-5249(1):

In reviewing the buffer requirements as they relate to the requested MMD, staff began by identifying all properties within 1,000-feet of the boundaries of the subject property. This process identified that there are 27 properties within the buffer area. Once all of the properties within 1,000 feet were identified, the Planning staff asked the city's Business Licensing Agent to provide the business licensing information for each of the properties. This was done in order to determine what the city's records were as to what businesses were located on the 27 properties within 1,000-feet of the proposed MMD. The provided business license information indicates that the businesses that are within 1,000-feet of the subject property are not businesses that are listed in Section 21-5249(1). In an effort to further research the nature of the uses within 1,000-feet of the subject property, staff drove by each property and performed a 'windshield survey' of existing uses. In performing the 'windshield survey' staff did not observe any uses that are listed in Section 21-5249-(1). Based on this analysis, it appears that the requested MMD meets the seperation requirements that are identified in Section 21-5249(1).

The DRT analysis of 21-5249(2):

In reviewing the requirements related to the indoor use of the request, staff ensured that the information that has been provided by the applicant meets this requirement. Specifically, the applicant's narrative states; *"There will not be consumption of medical marijuana at the dispensary and medical marijuana will not be grown at the Property. The windows and any glass doors will be screened with a two pane window or glass door that includes a reflective film. The reflective film*

allows persons on the inside of the building to see outside, but persons on the outside of the building cannot see inside.” Additionally, the applicant has indicated that the business will be conducted within the existing building.

Limitations to Locating a MMD in Commerce City:

Due to the buffer requirements that are listed in Section 21-5249(1), there are a limited number of areas in the city that can accommodate a MMD. The attached map was created by staff shortly after City Council adopted regulations related to MMDs in 2009 to help identify potential windows where properties may be able to meet the buffer requirements of the Code. This map has been used by staff to determine that the subject property appears to be located in one of just a few areas where a MMD may be located. To date, there are no approved MMDs in the City of Commerce City.

Existing Conditions of the Area and the Subject Property:

In an effort to understand the context of the request and provide an analysis of potential impacts to the adjacent properties and the character of the neighborhood, it was important for the DRT to understand the existing conditions of the subject property and the neighborhood in general. In conducting this research, the DRT was able to determine that the neighborhood that surrounds the subject property is industrial in nature and accommodates a variety of uses. Within the 1,000-foot buffer of the subject property, the uses range from truck repair, to an auto auction, to contractor operations, as well as a restaurant. The DRT concluded that there are a variety of uses around the subject property and the requested retail dispensary would not conflict with the other commercial and industrial uses in the area.

The DRT also analyzed the characteristics of the subject property and how the proposed use would fit on the property. Currently, the subject property is used by Harris Rebar for outdoor storage, indoor storage, and office space. The nature of the existing business on the property is such that the eastern portion of the property is used for outdoor storage of construction related materials and the western portion of the property is generally used for office related purposes and the pickup and delivery of items that are housed in the warehouse. The proposed dispensary would be located on the western portion of the subject property and the DRT felt that the retail nature of the dispensary would be compatible with the existing office use.

State Licensing:

The Department of Revenue is the regulating agency at the state level. Specifically, the Medical Marijuana Enforcement Division within the Department of Revenue is charged with regulating this industry. As part of the review of the request, staff required the applicant to provide a copy of their licenses for their existing facilities (copies of these licenses have been provided). Staff also contacted Mr. Dave Questa with the Medical Marijuana Enforcement Division to discuss the history of the applicant. During the course of this conversation, Mr. Questa indicated that the applicant is *“currently in good standing and has no pending violations”*.

Neighborhood Meeting:

On October 29th, the applicant held a neighborhood meeting for all property owners within 500-feet of the subject property. One individual attended the meeting and did not indicate either support or objection to the application. They were in attendance to get additional information on the request.

The Commerce City Police Department response:

The city's police department was included on the referral for this request and has not indicated either opposition or support for the request. They have acknowledged the request and indicated that if the request were to include a marijuana growing operation, they would have additional security concerns.

The DRT's Analysis Summary:

The DRT understands that the requested CUP is the first step in approving a MMD in the City of Commerce City and that prior to beginning any operations, the applicant will also need to be approved through the city's licensing process. As part of the review of this application, the DRT has determined that it appears that the subject property meets the criteria for a MMD identified in Section 21-5249 and the subject property can accommodate the proposed use. Additionally, the applicant is currently in good standing with the State of Colorado and there were no objections to the proposed use voiced at the neighborhood meeting. Given the applications compliance with the adopted Comprehensive Plan, Section 21-5249 of the LDC, and the CUP approval criteria listed below, the DRT is recommending that Planning Commission forward a favorable recommendation for the request, subject to certain conditions.

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
☒	The proposed use will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they are envisioned to exist in any adopted City plan, program or ordinance;	This area is industrial in nature with a variety of businesses and the site itself is able to accommodate a retail user without impacting adjacent property's parking, traffic conditions, or any public improvements.
☒	Any adverse effect has been or will be mitigated to the maximum extent feasible, including but not limited to sufficient landscaping and screening to ensure harmony for adjoining uses;	The applicant is proposing to make façade improvements to the building as well as repair work on the parking surface. Additionally, the applicant is proposing to install new landscaping around the building.
☒	The characteristics of the site are suitable for the proposed use;	The site is already developed and the proposed retail space already exists. With the improvements and repairs, the site will accommodate the additional retail use.
☒	The proposed use will be adequately served by and will not impose an undue burden on any of the existing improvements, facilities, and services of the city or its residents or the applicant has committed to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use;	As previously stated, the site is currently developed and the all of the referral agencies have replied to the request with an ability to accommodate the retail use.
☒	The applicant has provided adequate assurances of continuing maintenance;	The applicant has provided assurance of continued maintenance.
☒	No evidence suggests that the use violates any federal, state, or local requirements; and	There is currently a direct conflict between State and Federal law on this type of activity. As a political subdivision of the State of Colorado, the city is bound to adhere to our state laws, which allow for the operation of a Medical Marijuana Dispensary. If the applicant receives approval for the requested CUP, they will be compliant with local requirements.
☒	The use complies with the general purposes, goals, objectives, policies, and standards of the comprehensive plan and all other plans or programs adopted by the City.	As detailed above, the request is compliant with the city's adopted Comprehensive Plan.

Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the application meets the criteria for a Conditional Use Permit set forth in the Land Development Code and recommends that the Planning Commission forward the Conditional Use Permit request to the City Council with a favorable recommendation, subject to the following conditions:

CONDITIONS:

- A. The applicant shall provide a copy of their state license to the City after any renewal of the state license.
- B. The applicant shall be restricted to providing medical marijuana only.
- C. There shall be no growing operations on the subject property without an amendment to this Conditional Use Permit.

Recommended Motion

To recommend approval subject to condition(s):

I move that the Planning Commission enter a finding that, subject to certain conditions, the requested Conditional Use Permit for the property located at 5500 Colorado Boulevard contained in case CU-99-12-14 meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit subject to the following conditions:

- A. The applicant shall provide a copy of their state license to the City after any renewal of the state license.
- B. The applicant shall be restricted to providing medical marijuana only.
- C. There shall be no growing operations on the subject property without an amendment to this Conditional Use Permit.

Alternative Motions

To recommend approval:

I move that the Planning Commission enter a finding that the requested Conditional Use Permit for the property located at 5500 Colorado Boulevard contained in case CU-99-12-14 meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit.

To recommend denial:

I move that the Planning Commission enter a finding that the requested Conditional Use Permit for the property located at 5500 Colorado Boulevard contained in case CU-99-12-14 fails to meet the following criteria of the Land Development Code:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny the Conditional Use Permit.