



CITY OF TUMWATER HEARING EXAMINER CONDITIONAL USE PERMIT

STAFF REPORT

Hearing Date: October 25, 2023

Project Name: Blomberg 99-2 Conditional Use Permit

Case Number: TUM-23-1327 Conditional Use Permit. Additional permits associated with this project; TUM-23-0794 Site Plan Review, and TUM-23-1328 SEPA Determination

Applicant: Blomberg LLC, 4220 S 164th St., Suite #101, Tukwila, WA 98188

Type of Action Requested: The applicant is requesting approval of a Conditional Use Permit to operate a marijuana producer/processor operation in an existing building complex. (Exhibits 2 & 3)

Project Location: The property is located at 9630 Blomberg Street SW, Tumwater, WA 98512, within Section 21, Township 17N, Range 2 W.W.M. Parcel #12721230500. (Exhibit 4)

Notice of Application: Pursuant to the State Environmental Policy Act, the City of Tumwater Community Development Department, after review of a SEPA environmental checklist and other information, issued a Notice of Application with Optional DNS on September 1, 2023. The notice mailed to property owners within 300 feet of the subject property and various agencies, posted on-site and on the City's website on August 31, 2023, and published in The Olympian on September 1, 2023. (Exhibit 6)

SEPA Determination: The City of Tumwater Community Development Department, after review of a SEPA environmental checklist and other information, issued a Determination of Non-significance on September 18, 2023. (Exhibit 7)

Notice of Hearing: A notice of public hearing was issued and mailed to property owners within 300 feet of the subject property and various agencies, posted on-site and on the City's website on October 13, 2023, and published in The Olympian on October 13, 2023 in conformance with Tumwater Municipal Code (TMC) 14.06. (Exhibits 6 & 8)

Staff Recommendation: Approval of the Conditional Use Permit, subject to conditions.

Tumwater City Hall
555 Israel Road SW
Tumwater WA 98501

www.ci.tumwater.wa.us

BACKGROUND INFORMATION

Application and Review Process

The Conditional Use Permit application was submitted on August 16, 2023. The application was deemed complete on August 22, 2023. Under TMC 2.58.090, review authority for Conditional Use Permit applications falls under the purview of the Hearing Examiner.

Existing Conditions

The topography of the property is flat. The property is approximately 4.74 acres in size. There are 3 existing warehouse buildings that were constructed between the years 2004 - 2010. The most eastern 25,000 square foot building was approved for a marijuana processor prior to annexation into the City. The two other buildings, an 18,000 square foot shell and a 25,000 square foot warehouse have been used for manufacturing and storage of engineered wall panel systems and or lumber.

The site is surrounded by industrial zoned properties to the north, east, and south, and a Washington State Department of Natural Resources Agricultural tree farm to the west.

Project Description

The applicant is requesting approval of a Conditional Use Permit for a marijuana producer/processor in two existing warehouse buildings. (Exhibits 2 & 3)

REGULATORY FRAMEWORK

Conditional Uses

Conditional Uses listed in TMC 18.56 may be permitted upon granting of a Conditional Use Permit by the Hearing Examiner after notice and public hearing per TMC 18.56.030 and a finding that the proposed use is consistent with the intent of the comprehensive plan and zoning requirements, per TMC 18.56.035. (Exhibit 11)

Conditional Use Permit Review

TMC 18.56.035

A. The hearing examiner shall be guided by the following criteria in granting a conditional use permit:

1. The proposed use shall be in keeping with the goals and policies of the Tumwater comprehensive plan, including subarea plans, and applicable ordinances;

The comprehensive plan land use designation for the subject property is Light Industrial. The Land Use Element of the City of Tumwater Comprehensive Plan states that the Light industrial designation provides for the location of a broad array of activities, including manufacturing, wholesale trade, and distribution activities. The purpose of the Light Industrial designation is to provide lands for industrial development that will allow for attraction of new industries and expansion of existing ones while maintaining a high quality environment.

Staff Analysis and Recommended Finding:

The project is an industrial use, and surrounded by existing industrial uses and activities. The project is consistent with the Comprehensive Land Use Plan.

The Neighborhood Appendix to the Comprehensive plan - SW Tumwater Neighborhood envisions the area located near the Interstate 5 and 93rd Avenue interchange as light industrial development, with supporting information in the Economic Development Element. The area includes good access to Interstate 5 at the 93rd Avenue interchange, close to the Olympia Regional Airport, with primarily flat topography, and availability of municipal utilities.

Staff Analysis and Recommended Finding:

The project is an industrial use, located on the west side of Interstate 5 and south of 93rd Avenue, on a site with existing structures and infrastructure. The project is consistent with the Comprehensive Land Use Neighborhood Appendix.

The subject property is located within the Light Industrial zone district TMC 18.24.

TMC 18.24.040.D allows a marijuana processor within a fully enclosed secure indoor structure only as a Conditional Use, and TMC 18.24.040.E allows a marijuana producer within a fully enclosed secure indoor structure only as a Conditional Use (Exhibit 11).

According to TMC 18.04.130.M, “marijuana processor” means a person licensed by the State Liquor and Cannabis Board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers. A “marijuana producer” means a person licensed by the State Liquor and Cannabis Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

Staff Analysis and Recommended Finding:

Marijuana producer/possessor within a fully enclosed secure structure is an allowed use in the Light Industrial zone, subject to Conditional Use Permit. The use is proposed to occur within 2 existing buildings.

2. The proposed use shall not be materially detrimental to the public health or welfare, the environment, or injurious to the property or improvements near the proposed use or in the zone district in which the subject property is situated. The following shall be considered in making a decision on a conditional use permit:
 - a. The generation of noise, noxious or offensive odors or emissions, light, glare, traffic, surface water or groundwater pollution, electronic interference, impacts to environmentally sensitive areas or protected species, impacts to historic or cultural resources, or other impacts or nuisances that may be injurious to the public health or welfare or to property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated;

Staff Analysis and Recommended Finding:

The producing/processing is proposed to occur entirely within fully enclosed structures. HVAC equipment will be located outside of building setbacks, with engineered odor control systems. The proposed use is similar to the existing uses, retaining existing traffic patterns. Producing/processing occurs within enclosed buildings, with no impacts to environmentally sensitive areas or species.

- b. Availability of public services, which may be necessary or desirable for the support of the proposed use. These may include, but shall not be limited to,

availability of utilities, transportation systems, education, police and fire facilities, and social and health services; and

Staff Analysis and Recommended Finding:

The site is served by City of Tumwater water service, as well as City of Tumwater police and fire. The buildings are served by an onsite septic system approved by Thurston County to accommodate a maximum of 33 employees.

- c. The adequacy of landscaping and screening consistent with TMC Chapter 18.47, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the proposed use upon neighboring properties;

Staff Analysis and Recommended Finding:

The site has existing perimeter landscaping, and the project proposes to add wooden fencing for additional screening of mechanical equipment.

3. The proposed use shall meet or exceed the performance standards that are required in the zone district it will occupy; and

Staff Analysis and Recommended Finding:

The proposal, as conditioned by the Formal Site Plan Review Approval, dated October 9, 2023, meets the zoning requirements of TMC Chapter 18.24.

4. Any additional minimum conditions identified for a particular type of proposed use in TMC 18.56.100 through TMC 18.56.350.

Staff Analysis and Recommended Finding:

The proposal, as conditioned, below meets minimum conditions identified in TMC Chapter 18.56.100 through TMC 18.56.350.

Zoning

The subject property is located within the Light Industrial zone district TMC 18.24. Marijuana processor and/or producer, within a fully enclosed secure indoor structure is a conditional use in TMC Chapter 18.24.

Staff Analysis and Recommended finding:

The proposed use will be operated in within existing enclosed structures.

Analyses of the proposal reveals the following with respect to minimum conditions for a marijuana processor/producer. The following minimum conditions for siting the proposed use within a Light Industrial zone district can be found in TMC 18.42.080.A, (Exhibit 11) and are as follows:

- a. Meet Washington State licensing requirements (WAC 314-55).

Staff Analysis and Recommended finding:

The applicant has an existing active state license, No. 417201, for non-retail cannabis processor at this location. The applicant or his successor(s) will have to demonstrate that they meet this requirement for the new structures prior to issuance of a certificate of occupancy.

- b. Comply with all building, fire safety, health code, and business licensing requirements.

Staff Analysis and Recommended finding:

The applicant currently has an active City of Tumwater Business License, No. 87378 for the existing processor building. The applicant or his successor(s) will be required to secure applicable building permits for any required improvements to the two added structures, and receive a certificate of occupancy.

- c. Lot size, building size, setbacks and lot coverage conform to the standards of the zone district except if the structure is a legal nonconforming structure.

Staff Analysis and Recommended finding:

The structures are existing, and comply with the lot-size, building size, setbacks, and lot-coverage standards of the Light industrial zone district.

- d. Signage, if any, will conform to TMC 18.44.

Staff Analysis and Recommended finding:

No signage is proposed with this project. Any new signage will be required to secure the applicable permit(s) in compliance with TMC 18.44 and Washington State Liquor and Cannabis Board requirements.

- e. Be within a fully enclosed secure indoor structure.

Staff Analysis and Recommended finding:

The proposed use will be operated inside the three existing buildings.

- f. All buildings must be equipped with ventilation/air filtration systems so that no odors are detectable at the property line.

Staff Analysis and Recommended finding:

The applicant will be required to secure the applicable permit(s) for any required improvement(s) to the structure(s). Also, the applicant will be required to efficiently maintain the ventilation/air filtration system(s) so that no odors are detectable at the property line.

- g. All buildings associated with the production of marijuana must be set back a minimum of 300 feet from RSR, SFL, SFM, MFM, MFH, MU, CBC, TC, BD, GB, OS, and MHP zone districts.

Staff Analysis and Recommended finding:

The project site meets this requirement.

- h. The City may suspend or revoke conditional use permits based on a finding that the provisions of this section have not been met.

Staff Analysis and Recommended finding:

The above provisions are listed among the conditions of approval of this conditional use permit, if approved by the Hearing Examiner.

Public Notice

Tumwater Municipal Code TMC 14.06 requires the City to provide public notification of certain application types by issuing a Notice of Application (TMC 14.06.010) and a Notice of Open Record Hearing. (TMC 14.06.070).

Staff Analysis and Recommended Finding:

The Notice of Application with Optional DNS was posted on site, on the City website, mailed to property owners within 300', and published in the Olympian on September 1, 2023.

Public notice for the October 25, 2023 open record hearing was mailed to property owners within 300 feet of the subject property, affected agencies, posted on-site and on the City website, and published in The Olympian on October 13, 2023 (Exhibits 6 & 8).

Comments from other agencies and citizens:

The Nisqually Indian Tribe and Squaxin Island Tribe provided comment that they have no specific concerns regarding archaeological and cultural resources. (Exhibit 10)

The Washington State Department of Ecology provided two comments. Comment on the notice of application is in regards to possible contamination on a site within a quarter mile of this project. Comment on the DNS suggested a requirement to determine management of waste if/when generated.

Staff Comment:

The possibility of contamination on the adjacent site is noted. The representative for the applicant confirmed with Ecology that the applicant does not intend to extract THC oils, so no THC waste will occur. (Exhibit 10)

Comment from Carly Christiansen with concern about adding offensive odor to an area that already smells very bad.

Staff Comment: *The City responded that state requires specific ventilation to prevent odor from leaving the site, and that there are other producer/processors in the area that may be operating under older regulations. (Exhibit 10)*

Site Plan Review:

The applicant attended preliminary and formal site plan review with the City of Tumwater Development Review Committee. The Formal Site Plan Review Approval provides conditions of approval to meet City zoning and design review requirements, along with a condition for an approved Conditional Use Permit. (Exhibit 9)

The zoning code places minimum conditions on siting a marijuana processor/producer in the Light Industrial zone district. In addition, the Hearing Examiner may impose any additional conditions deemed necessary to ensure the protection of adjacent uses, health, safety and general welfare in accordance with TMC 18.56.090. (Exhibit 11)

The Hearing Examiner may impose appropriate restrictions and conditions on the use, which may include time limits, increased setbacks, suitable landscaping, off-street parking, and any other restrictions, conditions or safeguards that would uphold the spirit and intent of the zoning requirements and mitigate any adverse effects upon neighborhood properties, per TMC 18.56.040. (Exhibit 11)

RECOMMENDATION

Pursuant to TMC 2.58.110, staff recommends approval of the Conditional Use Permit request for the marijuana producer/processor described herein with the following conditions:

1. TUM-23-0794 Formal Site Plan Review Approval with conditions, dated October 13, 2023, is hereby referenced and considered conditions of this approval.
2. The applicant or his successor(s) shall meet Washington State licensing requirements (WAC 314-55). A copy of the most current license shall be submitted to the City of Tumwater, prior to issuance of a certificate of occupancy.

3. The proposed facility/project shall comply with all building, fire safety and health code requirements.
4. The applicant or his successor(s) shall maintain a State of Washington Business License with a City of Tumwater endorsement.
5. All existing and new sign(s) shall conform to TMC 18.44 and Washington State Liquor and Cannabis Board requirements.
6. The proposed facility/project shall be conducted entirely within fully enclosed secure indoor structure(s).
7. All buildings must be equipped with ventilation/air filtration systems and efficiently maintained so that no odors are detectable at the property line.
8. Building plans and specifications shall be prepared and stamped by an architect and engineer licensed to practice in the State of Washington.

**Submitted on Behalf of
the Community Development
Department by:**

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Report Issue Date: October 9, 2023

List of Exhibits:

- Exhibit 1. Staff Report, dated October 9, 2023
- Exhibit 2. Conditional Use Permit Application with Narrative, dated August 16, 2023
- Exhibit 3. Formal Site Plan Amended, dated August 30, 2023
- Exhibit 4. Vicinity Map
- Exhibit 5. Zoning Map
- Exhibit 6. Public Notice Certification, dated October 9, 2023
- Exhibit 7. Determination of Non-Significance with attachments, dated September 18, 2023
- Exhibit 8. Public Hearing Notice, dated October 13, 2023
- Exhibit 9. Tum-23-0794 Formal Site Plan Review Approval, dated October 9, 2023
- Exhibit 10. Public comments
- Exhibit 11. Tumwater Municipal Code Excerpts