



City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311

www.mcminnvilleoregon.gov

EXHIBIT 3 - STAFF REPORT

DATE: December 21, 2017
TO: Planning Commissioners
FROM: Ron Pomeroy, Principal Planner
SUBJECT: VR 3-17 – 1214 SW Baker Street

Report in Brief:

This is a public hearing to consider an application for a variance to allow a commercial recreational marijuana retail business to operate within 478.5 feet of another commercial recreational marijuana retail business rather than maintaining a minimum distance separation of 1,000 feet between such facilities as is currently required in the McMinnville City Code (Section 17.64.040(5)).

The property is located at 1208, 1212 and 1214 SW Baker Street, and is more specifically described as Tax Lots 3400, 3900 and 4000, Section 29AB, T. 4 S., R. 4 W., W.M. While there are three addresses listed for the commercial building sited on tax lot 4000, the main address for the site, and referenced by this document, is 1214 SW Baker Street.

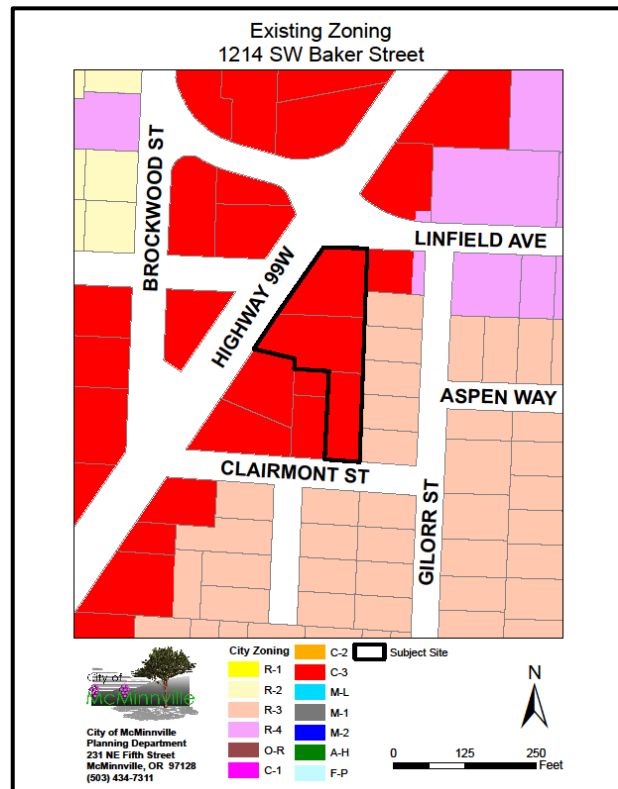
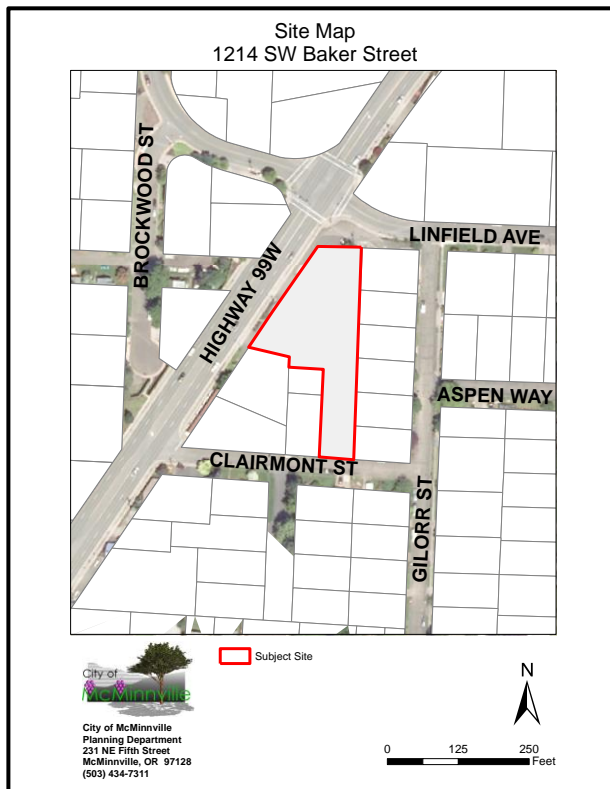
Background:

The subject site is currently vacant and is the former site of Green Heart, a commercial recreational marijuana related business that relocated to a new site 478.5 feet south on Highway 99W. Previous to that use, this site was the decades-long location of Jake's Deli. The main portion of the site is located at the southeast quadrant of the intersection of South Baker Street and SE Linfield Avenue. The site is comprised of three tax lots and extends south from the existing commercial building to SE Clairmont Street. While the commercial building is located on the northerly tax lot (tax lot 4000) most of the parking that supports this site is located on the remaining two tax lots to the south (tax lots 3400 and 3900).

The subject site is zoned C-3 (General Commercial) and is designated on the comprehensive plan map as Commercial. The site is surrounded by commercial properties on the west and north, and residential on the east and south. Properties immediately adjacent to the subject site to the west are zoned C-3 (General Commercial) and developed with commercial uses except the southernmost lot which fronts SE Clairmont Street and hosts a single-family residence. The northernmost adjacent parcel to the east is also zoned C-3 and commercially developed. All other land to the east is zoned R-3 (Two-Family Residential) and is developed with single-family residence. Please see Site Map and Zoning Map on the next page.

Attachments:

Attachment A -- Decision, Findings of Fact and Conclusionary Findings for the Denial of a Variance request to reduce the 1,000 foot spacing requirement for commercial recreational retail marijuana businesses to 478.5 feet at 1214 SW Baker Street.



The subject site had a long history in the community as the location of Jakes Deli. In 2015, after the adoption of local marijuana related activity regulations (Chapter 17.64 of the McMinnville Zoning Ordinance), the restaurant transitioned to become the location of Green Heart Oregon, a marijuana related commercial business. Since that time, Green Heart Oregon vacated the site and is now in the process of reopening as The Green Heart at a commercial site on property located at the northeast corner of S. Baker Street and SE Taft Street. The City of McMinnville approved a LUCS form for a commercial recreational marijuana retail business, The Green Heart, on February 3, 2017, allowing them to move forward toward opening at this new location. At this time, the commercial building located at the subject site currently remains vacant.

The site plan provided with the application submittal identifies uses for the site in three phases:

- Phase 1 – Remodel existing Banquet Hall - permitted use – Pharmacy
- Phase 1.5 – Remodel existing Kitchen – permitted use – Kitchen
- Phase 2 – Remodel existing Restaurant – 48 occupants

While these phases and uses are identified on the applicant’s site plan, this is the only location in the application packet where these phases and uses are referenced.

The site plan identifies 34 onsite vehicle parking stalls that exist in various locations throughout the property. However, the applicant’s submitted materials do not identify the square footage of the existing building or the portion of the building intended for commercial recreational marijuana retail business use. This lack of information does not allow for a calculation of the minimum number of parking stalls required to support the intended retail use.

The vehicle parking standard for retail use is based on a requirement of one space for each 250 square feet of floor area. The 34 existing spaces then would be sufficient to support a retail use of up to 8,478.5 square feet based on commercial retail use. While the square footage of the existing facility is

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not provided in the submitted materials, it appears that the existing building is approximately 4,478.5 square feet in size. Existing onsite parking would be sufficient to support a general commercial retail use at site even if the entire building was utilized for retail use. Additionally, as the zoning ordinance allows up to 35 percent of vehicle parking stalls to be sized for compact use only, eleven compact vehicle parking stalls are identified on the site plat which equates to 32 percent of the existing parking stalls being identified as compact stalls. Two handicapped accessible parking spaces are also required for the number of spaces provided.

The only substantive comments were returned by the Oregon Department of Transportation (ODOT) and are provided in full in the Comments section of the VR 3-17 Decision Document. ODOT's comments state that while there is no access permit on record for the site's vehicular opening onto South Baker Street (OR Hwy 99W), that under 2014 Oregon Administrative Rule (OAR) ODOT can grant a Presumption of Written Permission for an Existing Private Connection such as has been authorized by ODOT in this case. Any future work affecting the Hwy 99W right-of-way must first receive ODOT approval.

Discussion:

The Planning Commission's responsibility regarding this type of land use request is to conduct a public hearing and, at its conclusion, render a decision to approve, approve with conditions, or deny the Variance request. The Planning Commission should rely upon the criteria of Section 17.74.100, "Variance – Planning Commission Authority", and Section 17.74.110, "Conditions for Granting Variance", of the McMinnville Zoning Ordinance to review the proposal and render a decision.

The applicant is requesting a variance from Section 17.64.040(5) of the McMinnville City Code, which states "Commercial recreational retail businesses may not be located within 1,000 feet of another state licensed commercial recreational retail business." Specifically, the applicant is requesting that this standard be reduced to a separation requirement of 500 feet for the purpose of the applicant being able to establish a commercial recreational retail marijuana related business at the subject site. However, a straight line measurement from the southwestern corner of the subject site (tax lot 3400 that fronts SE Clairmont Street) to the northeast (closest) corner of the site that Green Heart has been licensed to operate from (tax lot 5600 located at the corner of South Baker and Taft Streets) is a separation distance of 478.5 feet (Decision Document Attachment 2). The applicant provided email to the Planning Department on December 12, 2017, modifying the variance request to allow a marijuana related commercial recreational retail business to operate with 478.5 feet of another such business (Decision Document Attachment 3).

Section 17.74.100

Variance – Planning Commission Authority:

The Planning Commission may authorize variances from the requirements of the zoning ordinance where it can be shown that, due to unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship. However, no variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of the zoning ordinance.

The applicant provided a response in regards to the unnecessary hardship that would be avoided by granting the variance. The applicant stated "With no real purpose for this ordinance. And no known problems in over a year. With the new marijuana law. Restricting fair trade is not serving the population of McMinnville with reduced retail choices. There are several properties that could benefit from a reduced restriction. The hardship is lost lease value." The applicant provided an additional response related to

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the unnecessary hardship, which was that the variance “would allow an increased lease base and eliminate lost land and lease value”.

The applicant’s response does not speak to any unusual circumstances that are related to the specific piece of property in question, which results in the specific unnecessary hardship at the subject property. The applicant’s response speaks to land lease opportunities and reduced retail choices. However, the applicant provides no information to substantiate the hardship that exists uniquely to this property due to strict application of the Zoning Ordinance.

Variance Review Criteria

In reviewing variance requests, the Planning Commission must determine whether, owing to special and unusual circumstances related to a specific piece of property, strict application of the McMinnville Zoning Ordinance would cause an undue or unnecessary hardship.

When an applicant applies for a land-use decision, the burden of proof is on the applicant to provide the findings as to why their application should be approved. Below is a summary of the applicant’s findings relative to the criteria for the land-use decision. The full application is included as an attachment of the Decision Document.

Section 17.74.110

A variance may be granted only in the event that the following circumstances substantially exist.

- A. *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of the ordinance codified in this title, topography, or other circumstance over which the applicant has no control;*

Applicant’s Finding: The applicant responded to this criterion by stating, “There is two times as much commercially zoned property on the north side of McMinnville. Based on the available land in south McMinnville the distance limit should be half as much. This would allow equal land lease and property value to the property at 1208, 1212 and 1214 Baker Street.”

Staff Response: The applicant’s response does not speak to any exceptional or extraordinary circumstance relative to the subject site that other properties in the same zone or vicinity do not have, resulting from lot size or shape, topography or other circumstance over which the applicant has no control. The applicant’s response speaks to land lease opportunities and property valuations based on the number of commercially zoned properties located in one portion of the McMinnville as opposed to another. However, the applicant provides no information to substantiate the inference of unequal property lease opportunities or financial valuation relative to the subject site. Further, matters of property lease opportunities or property valuation do not speak to a land use property right. If the argument is that commercial land supply on the south side of McMinnville is the exceptional or extraordinary circumstance applicable to this particular property that same argument would hold for all commercially zoned properties in south McMinnville and not just this particular property. The applicant did not provide a finding to substantiate how this approval criterion has been satisfied.

- B. *The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;*

Applicant’s Finding: The applicant responded to this criterion by stating, “Property value. Lease rates”

Staff Response: The applicant does not make a clear distinction as to how the spacing standard which is applied to all properties in the C-3 zone equally, takes away a property right of the applicant that is

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substantially different from owners of other property in the same zone or vicinity possess. As the applicant has provided no other information, this criterion has not been satisfied.

C. The variance would not be materially detrimental to the purpose of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy;

Applicant's Finding: The applicant responded to this criterion by stating, "The City has no clear purpose for this ordinance. It was enacted because other cities did the same. Reducing the 1000 ft would not be detrimental to the surrounding properties it would increase land lease or sale values."

Staff Response: The applicant claims that the variance, which would set a precedent of reducing the spacing standards for commercial recreational marijuana facilities would be beneficial to surrounding properties by adding a free market component to all properties and eliminate any perceived restrictions. However the applicant's response is relative to a precedent and not a specific variance request for the subject site and how that specific variance impacts surrounding properties. Based upon the applicant's response it is not clear how the variance requested would not be materially detrimental to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy. Conversely though, if the variance is granted it sets a precedent for the spacing standard that is in the city ordinance that is not property specific or tied to any particular unique circumstances associated with the property, thereby in effect setting the stage for the variance to be applicable to all other properties in the C-3 zone. This criterion was not satisfied by the applicant's finding.

D. The variance requested is the minimum variance which would alleviate the hardship."

Applicant's Finding: The applicant states: "750 ft would eliminate the zoning obstacle. However 478.5 ft would be fair for all property owners."

Staff Response: The applicant does not provide information as to how or why modifying the subject separation standard to 750 feet would eliminate the "zoning obstacle." Neither does the applicant provide information as to how or why the granting of this variance to allow a site specific 478.5 foot separation standard would be fair for all property owners. However, approval of this variance request to allow a 478.5 foot separation standard for this site is the minimum variance request that would alleviate the claimed hardship. This criterion is therefore satisfied.

Fiscal Impact:

None.

Commission Options:

- 1) Close the public hearing and **APPROVE** the application, providing findings of fact for the approval in the motion to approve.
- 2) **CONTINUE** the public hearing to a specific date and time.
- 3) Close the public hearing, but **KEEP THE RECORD OPEN** for the receipt of additional written testimony until a specific date and time.
- 4) Close the public hearing and **DENY** the application, per the decision document provided which includes the findings of fact.

Recommendation/Suggested Motion:

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The Planning Department recommends that the Commission make the following motion to deny VR 3-17:

THAT BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR DENIAL IN THE DECISION DOCUMENT FOR VR 3-17, AND THE MATERIALS SUBMITTED BY THE APPLICANT, THE PLANNING COMMISSION DENIES VR 3-17.

RP:cd

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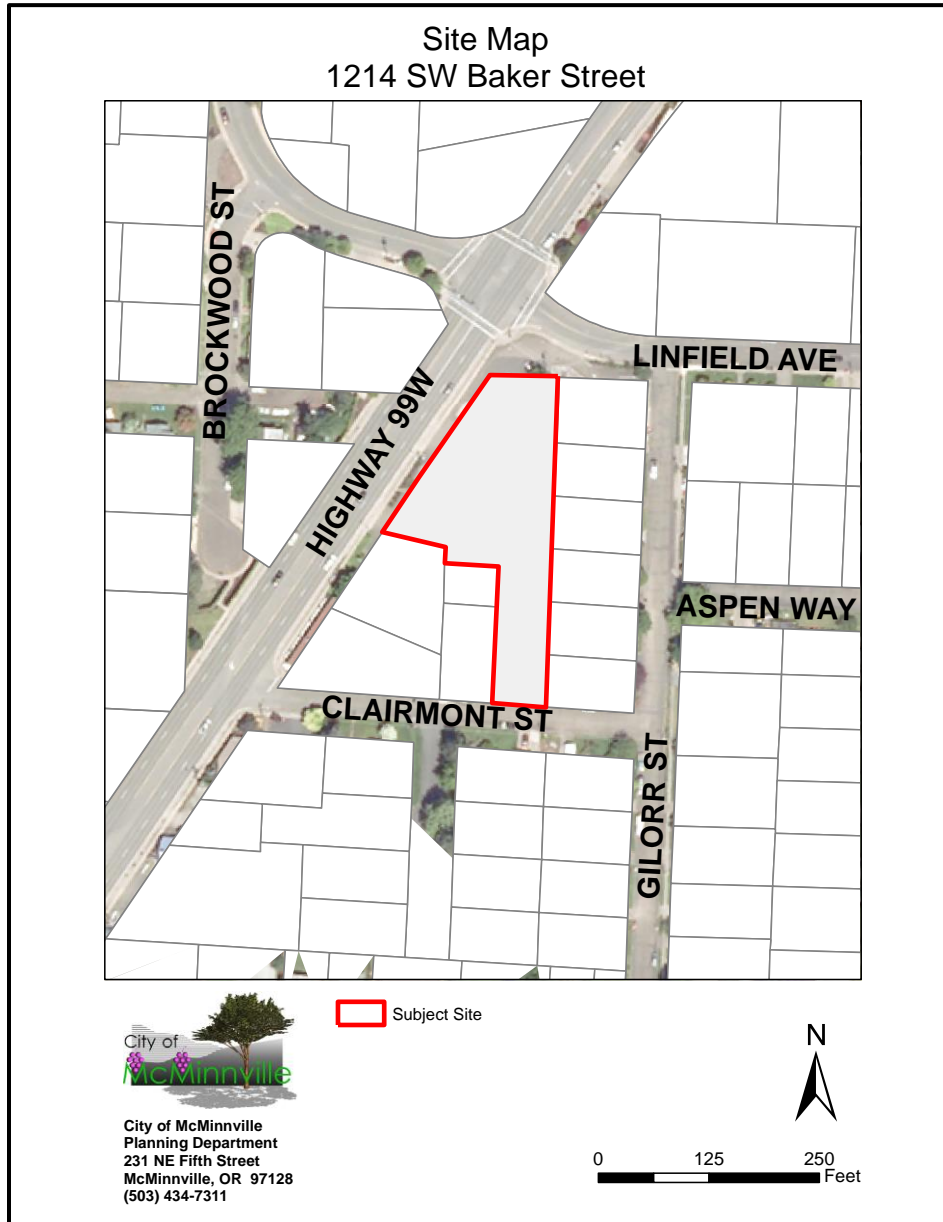
DECISION, CONDITIONS OF APPROVAL, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE DENIAL OF A VARIANCE FOR A REDUCTION OF THE MINIMUM 1,000 FOOT SEPARATION REQUIREMENT BETWEEN COMMERCIAL RECREATIONAL RETAIL MARIJUANA FACILITIES TO 478.5 FEET.

- DOCKET:** VR 3-17 (Variance)
- REQUEST:** Waynes World LLC is requesting approval of a zoning variance to allow a reduction in the minimum 1,000 foot separation requirement between commercial recreational retail marijuana facilities to a minimum separation requirement of 478.5 feet.
- LOCATION:** The property is located at 1214 SE Baker Street, and is more specifically described as Tax Lots 3400, 3900 and 4000, Section 29AB, T. 4 S., R. 4 W., W.M.
- ZONING:** The subject site’s current zoning is C-3 (General Commercial).
- APPLICANT:** Waynes World, LLC
- STAFF:** Ron Pomeroy, Principal Planner
- DATE DEEMED COMPLETE:** November 14, 2017
- HEARINGS BODY:** McMinnville Planning Commission
- DATE & TIME:** December 21, 2017. Meeting held at the Civic Hall, 200 NE 2nd Street, McMinnville, Oregon.
- COMMENTS:** This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Public Works Department, Wastewater Services, Building Department, Parks Department, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Northwest Natural Gas; Recology Western Oregon; and the Oregon Department of Transportation. Their comments are provided in this decision document.

Application Summary:

The applicant is requesting approval of a zoning variance to allow a reduction in the minimum 1,000 foot separation requirement between commercial recreational retail marijuana facilities to a minimum separation requirement of 478.5 feet.

A site reference map is provided below:



ATTACHMENTS

- 1: VR 3-17 Application and Attachments
- 2: Separation Distance Graphic
- 3: December 12, 2017 Email from Applicant modifying variance request, received December 12, 2017

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Attachment 2 – Separation Distance Graphic

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COMMENTS

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville Parks Department, McMinnville School District No. 40, McMinnville Water and Light, McMinnville Public Works, Wastewater Services, Yamhill County Planning Department, Frontier Communications, Comcast, Oregon Department of Transportation, Northwest Natural Gas, and Recology. The following comments have been received:

McMinnville Engineering Department:

We have reviewed proposed VR 3-17, and have no comments.

McMinnville Water and Light:

MW&L has no comment on this application.

Oregon Department of Transportation:

ODOT staff has completed a review of the submitted application and has the following comments.

The property abuts the Pacific Highway West, No. 91, State Route OR-99W, and is subject to state laws administered by the Oregon Department of Transportation. These laws may require the applicant to obtain one or more state permits to carry out the intended use of the property, or to otherwise comply with state law without need for a permit. ODOT has reviewed its access permit records and determined there is not an existing permit for the highway access.

In June 2014 new administrative rules were adopted by the Oregon Legislature related to the issuance of access permits for connections (driveways) to the state highway system. The rule contained a new section related to existing private connections that do not have an access permit issued by ODOT; OAR 734-051-3015, Presumption of Written Permission for an Existing Private Connection. This portion of rule gives ODOT the ability to acknowledge existing connections as if they had legal status similar to an access permit. ODOT makes this determination based on documentation that indicates a connection was in existence as of January 1, 2014. Specific to the highway connection associated with this land use notice, ODOT has verified that the connection meets the administrative rule criteria and thereby can be viewed as permitted. No further access permitting action is necessary at this time provided the existing OR-99W connection is not physically modified or relocated in any manner.

Please note if the applicant or their contractor is required to occupy state highway right-of-way to relocate or reconstruct franchise utilities, A Permit To Occupy Or Perform Operations Upon A State Highway will be necessary. The permit can be obtained by contacting Tom Sagers, District 3 Permit Specialist at 503.986.2876. The applicant or their contractor shall obtain the permit 30 calendar days prior to commencing any activities within state highway right-of-way.

If you have any questions please feel free to contact me at 503.986.2732. Gerry Juster

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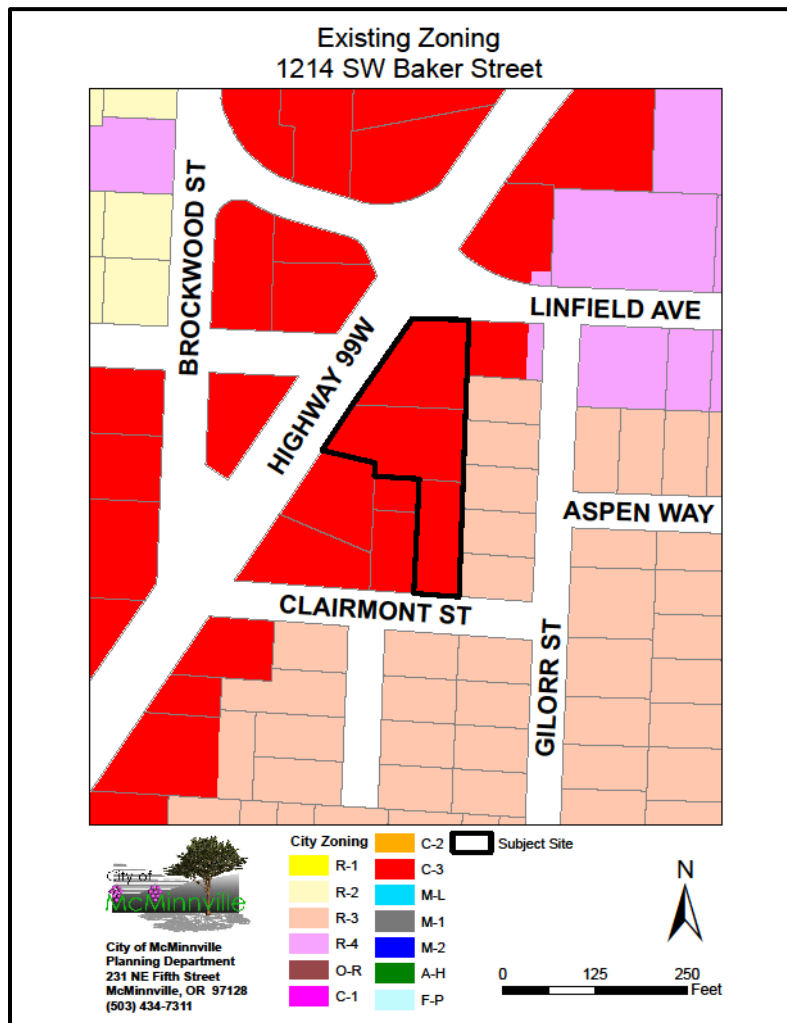
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FINDINGS OF FACT

1. Waynes World LLC is requesting approval of a zoning variance to allow a reduction in the minimum 1,000 foot separation requirement between commercial recreational retail marijuana facilities to a minimum separation requirement of 478.5 feet. The property is located at 1214 SE Baker Street, and is more specifically described as Tax Lots 3400, 3900 and 4000, Section 29AB, T. 4 S., R. 4 W., W.M.
2. The site is currently zoned C-3 (General Commercial), and is designated as Commercial on the McMinnville Comprehensive Plan Map, 1980. The site is comprised of three tax lots and extends south from the existing commercial building to SE Clairmont Street. While the commercial building is located on the northerly tax lot (tax lot 4000) most of the parking that supports this site is located on the remaining two tax lots to the south (tax lots 3400 and 3900).

Properties immediately adjacent to the subject site to the west are also zoned C-3 (General Commercial) and developed with commercial uses except the southernmost lot which fronts SE Clairmont Street and is developed with a single-family residence. The northernmost adjacent parcel to the east is also zoned C-3 and commercially developed. All other land to the east is zoned R-3 (Two-Family Residential) and is developed with single-family residences.



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3. Sanitary sewer and municipal water and power can serve the site. The municipal water reclamation facility has sufficient capacity to accommodate expected waste flows resulting from development of the property.
4. This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Public Works Department, Wastewater Services, Building Department, Parks Department, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Northwest Natural Gas; Recology Western Oregon; and the Oregon Department of Transportation. Their comments are provided in this decision document.
5. The applicant has submitted findings (Attachment 1) in support of this application. Those findings are herein incorporated.

CONCLUSIONARY FINDINGS

McMinnville's Comprehensive Plan:

The following Goals and policies from Volume II of the McMinnville Comprehensive Plan of 1981 are applicable to this request:

GOAL X 1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF MCMINNVILLE.

Policy 188.00: The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of information on planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.

Finding: Goal X 1 and Policy 188.00 are satisfied in that McMinnville continues to provide opportunities for the public to review and obtain copies of the application materials and completed staff report prior to the McMinnville Planning Commission and/or McMinnville City Council review of the request and recommendation at an advertised public hearing. All members of the public have access to provide testimony and ask questions during the public review and hearing process.

McMinnville's City Code:

The following Sections of the McMinnville Zoning Ordinance (Ord. No. 3380) are applicable to the request:

General Provisions:

"17.03.020 Purpose. The purpose of this ordinance is to encourage appropriate and orderly physical development in the City through standards designed to protect residential, commercial, industrial, and civic areas from the intrusions of incompatible uses; to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services; to provide adequate open space, desired levels of population densities, workable relationships between land uses and the transportation system, and adequate community facilities; to provide assurance of opportunities for effective utilization of

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the land resource; and to promote in other ways public health, safety, convenience, and general welfare."

Finding: Section 17.03.020 (Purpose) of the McMinnville Zoning Ordinance is satisfied by the request in that the continued commercial use of this existing building for one or more of the permitted types of commercial uses specified in the zoning ordinance promotes appropriate, efficient and orderly physical development in the city. Further commercial utilization of this site would continue a cohesive pattern of viable economic uses of existing commercial buildings and support mutually beneficial economic relationships with the area. Competent administration of state and local building codes and adequate utility provision promote the public health, safety, convenience and general welfare of the community.

Chapter 17.64 – Marijuana Related Activities

17.56.040 (5)

5. "Commercial recreational retail businesses may not be located within 1,000 feet of another state licensed commercial recreational retail business."

Finding: The variance request is to reduce this 1,000 foot separation requirement to 478.5 feet relative to the subject site.

Off-Street Parking and Loading:

"17.60.060 Spaces – Number Required.

C. Commercial land use category

18. Retail store [..]

One space per 250 square feet of floor area."

Finding: Section 17.60.060(C)(18) of the McMinnville Zoning Ordinance is satisfied by the request in that based on the square footage of the existing building being approximately 4,500 square feet in size, the maximum number of parking spaces required to sufficiently serve this site for retail use would be 18 spaces. This site currently provides 34 existing spaces which greatly exceeds the maximum number of spaces that would be required should this variance request be approved.

"17.74.100 Variance-Planning Commission Authority. The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship, except that no variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title."

Finding: The applicant provided a response in regards to the unnecessary hardship that would be avoided by granting the variance. The applicant stated "With no real purpose for this ordinance. And no known problems in over a year. With the new marijuana law. Restricting fair trade is not serving the population of McMinnville with reduced retail choices. There are several properties that could benefit from a reduced restriction. The hardship is lost lease value." The applicant provided an additional response related to the unnecessary hardship, which was that the variance "would allow an increased lease base and eliminate lost land and lease value".

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The applicant's response does not speak to any unusual circumstances that are related to the specific piece of property in question, which results in the specific unnecessary hardship at the subject property. The applicant's response speaks to land lease opportunities and reduced retail choices. However, the applicant provides no information to substantiate the hardship that exists uniquely to this property due to strict application of the Zoning Ordinance.

Section 17.74.100 is satisfied in that the Planning Commission is provided with decision making authority to consider a zoning variance request such as this current request (VR 3-17). The Planning Commission finds that the applicant did not provide findings to support the authorization of the variance requested, which is described in more detail below in the findings for the specific variance review criteria.

"17.74.110 Conditions for Granting Variance. A variance may be granted only in the event that the following circumstances substantially exist:

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstance over which the applicant has no control;"

Finding: The applicant's response does not speak to any exceptional or extraordinary circumstance relative to the subject site that other properties in the same zone or vicinity do not have, resulting from lot size or shape, topography or other circumstance over which the applicant has no control. The applicant's response speaks to land lease opportunities and property valuations based on the number of commercially zoned properties located in one portion of the McMinnville as opposed to another. However, the applicant provides no information to substantiate the inference of unequal property lease opportunities or financial valuation relative to the subject site. Further, matters of property lease opportunities or property valuation do not speak to a land use property right. If the argument is that commercial land supply on the south side of McMinnville is the exceptional or extraordinary circumstance applicable to this particular property that same argument would hold for all commercially zoned properties in south McMinnville and not just this particular property. The applicant did not provide a finding to substantiate how this approval criterion has been satisfied. The Planning Commission finds that this criterion has not been satisfied.

- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;

Finding: The applicant does not make a clear distinction as to how the spacing standard which is applied to all properties in the C-3 zone equally, takes away a property right of the applicant that is substantially different from owners of other property in the same zone or vicinity possess. As the applicant does not provide this information for consideration, the Planning Commission finds that this criterion has not been satisfied.

- C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;

Finding: The applicant claims that the variance, which would set a precedent of reducing the spacing standards for commercial recreational marijuana facilities, would be beneficial to surrounding properties by adding a free market component to all properties and eliminate any perceived restrictions. However the applicant's response is relative to a precedent and not a specific variance request for the subject site and how that specific variance impacts surrounding properties. Based upon the applicant's response it is not clear how the variance requested would not be materially detrimental to property in

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the zone of vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy. Conversely though, if the variance is granted it sets a precedent for the spacing standard that is in the city ordinance that is not property specific or tied to any particular unique circumstances associated with the property, thereby in effect setting the stage for the variance to be applicable to all other properties in the C-3 zone. The Planning Commission finds that this criterion has not been satisfied.

D. The variance requested is the minimum variance which would alleviate the hardship.

Finding: The applicant does not provide information as to how or why modifying the subject separation standard to 750 feet would eliminate the “zoning obstacle.” Neither does the applicant provide information as to how or why the granting of this variance to allow a site specific 478.5 foot separation standard would be fair for all property owners. However, approval of this variance request to allow a 478.5 foot separation standard for this site is the minimum variance request that would alleviate the claimed hardship. This criterion is therefore satisfied. The Planning Commission finds that this criterion is satisfied.

RP:cd

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231 NE Fifth Street ◦ McMinnville, OR 97128
 (503) 434-7311 Office ◦ (503) 474-4955 Fax
www.ci.mcminnville.or.us

Office Use Only:

File No. VR 3-17
 Date Received 10/19/17
 Fee 990⁰⁰
 Receipt No. 17MD223
 Received by [Signature]

Zoning Variance Application

Applicant Information

Applicant is: Property Owner Contract Buyer Option Holder Agent Other RENTER

Applicant Name WAYNES WURLD LLC Phone _____

Contact Name WAYNE STOCKS Phone 503 434-1716
 (If different than above)

Address PO BOX 297

City, State, Zip McMinnville, OR 97128

Contact Email WKSTOCKS@PROXIMATE.com

Property Owner Information

Property Owner Name Steve & Mary Allen DBA Great LLC Phone 971-237-1461
 (If different than above)

Contact Name STEVE & MARY ALLEN Phone _____

Address 1208 BAKER ST 1212 & 1214

City, State, Zip McMinnville, OR 97128

Contact Email _____

Site Location and Description

(If metes and bounds description, indicate on separate sheet)

Property Address 1214 SW BAKER ST McMinnville, OR 97128

Assessor Map No. R4 4429-AB-04000 Total Site Area .31 acres

Subdivision Gilson Subdivision Block 1 Lot 4000 12

Comprehensive Plan Designation COM Zoning Designation L-3

Please indicate the type of variance requested:

- Lot Size Requirement _____ Reduction to _____
- Setback – Front, Rear, Side Requirement _____ Reduction to _____
- Other ZONING STANDARDS

1. Describe the nature of the request in detail: _____
SEE ATTACHED SHEETS

2. What exceptional or extraordinary circumstances apply to the property which do not apply generally to other property in the same zone or vicinity, and result from lot size or shape legally existing prior to the date of this ordinance, topography, or other circumstance over which the applicant has no control? _____

3. What property right would be preserved by granting the variance? _____

4. What unnecessary hardship would be avoided by granting the variance? _____

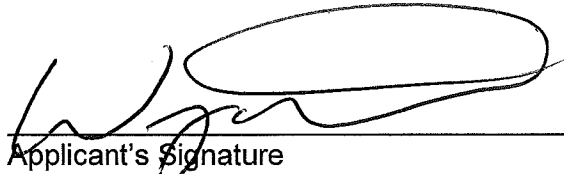
5. Why won't this request be detrimental to the surrounding area? _____

6. Please explain how this would be the minimum variance necessary to alleviate the hardship? _____

In addition to this completed application, the applicant must provide the following:

- A site plan (drawn to scale, with a north arrow, legible, and of a reproducible size), indicating existing and proposed buildings, dimensions, and adjacent street(s), distances from property lines, access, and any other information that would help substantiate or clarify your request.
- Payment of the applicable review fee, which can be found on the Planning Department web page.

I certify the statements contained herein, along with the evidence submitted, are in all respects true and are correct to the best of my knowledge and belief.



Applicant's Signature

10-19-17

Date



Property Owner's Signature

10.19.17

Date

#1, WE REQUEST LOWERING THE 1000 FT RESTRICTION BETWEEN SAME TYPE MARIJUANA DISPENSARY TO A MINIMUM DISTANCE OF 500 FT.

#2, THERE IS TWO TIMES AS MUCH COMMERCIAL ZONED PROPERTY ON THE NORTH SIDE OF McMinnville. BASED ON THE AVAILABLE LAND IN SOUTH McMinnville THE DISTANCE LIMIT SHOULD BE HALF AS MUCH. THIS WOULD ALLOW EQUAL LAND LEASE VALUE TO BOTH NORTH AND SOUTH McMinnville

#3, PROPERTY VALUE, LEASE RATES.

#4, WITH NO REAL PURPOSE FOR THIS ORDINANCE, AND NO KNOWN PROBLEMS IN OVER A YEAR. WITH THE NEW MARIJUANA LAW, RESTRICTING FAIR TRADE IS NOT SERVING THE POPULATION OF McMinnville WITH REDUCED RETAIL CHOICES. THERE ARE SEVERAL PROPERTIES THAT COULD BENEFIT FROM A REDUCED RESTRICTION. THE HARSHIP IS LOST LEASE VALUE.

#5. THE CITY HAS NO CLEAR PURPOSE FOR THIS ORDINANCE, IT WAS PASSED BECAUSE OTHER CITIES DID THE SAME. REDUCING THE 1000 FT WOULD NOT BE DETRIMENTAL TO THE SURROUNDING PROPERTIES IT WOULD INCREASE LAND LEASE OR SALE VALUES.

#6. 750 FT WOULD ELIMINATE THE ZONING OBSTACLE. HOWEVER 500 FT WOULD BE FAIR FOR ALL PROPERTY OWNERS.

TO: RON POMEROY

Amended

- ① PROPERTY SITE LOTS ARE 03400, 03900 AND R4429-AB-0400
- ② PROPERTY OWNERS ADDRESS IS 835 SW HILARY ST McMol.
- ③ THERE ARE THREE ADDRESSES AT THIS SITE 1208, 1212 AND 1214. ALL BAKER ST
- ④ COMPREHENSIVE PLAN IS COMMERCIAL ZONING DESIGNATION IS C-3
TOTAL SITE AREA IS 25,000 SQ. FT.
- ⑤ AMEND TO ADDRESS ZONING ORDINANCE 17.64.040 A.(5) WE REQUEST THE VARIANCE TO BE 500 FT FOR THIS LOCATION.
- ⑥ THE RESPONSE TO APPLICATION QUESTION #2. THE LAST SENTENCE SHOULD READ; THIS WOULD ALLOW EQUAL LAND LEASE AND PROPERTY VALUE TO THE PROPERTY LOCATED AT 1208, 1212 AND 1214 BAKER ST.
- ⑦ CHANGE RESPONSE TO #4 OF VARIANCE APPLICATION TO READ AS FOLLOWS,
WOULD ALLOW AN INCREASED LEASER BASE AND ELIMINATE LOST LAND AND LEASE VALUE.

RECEIVED

NOV 13 2017

COMMUNITY DEVELOPMENT
CENTER

THANK YOU


WANDA STOCKS

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

NW 1/4 NE 1/4 SEC 29 T4S R4W W.M.
YAMHILL COUNTY
1" = 100'

4 4 29AB
MCMINNVILLE

SEE MAP 4 4 20CD

SEE MAP 4 4 20DC

CANCELLED
400

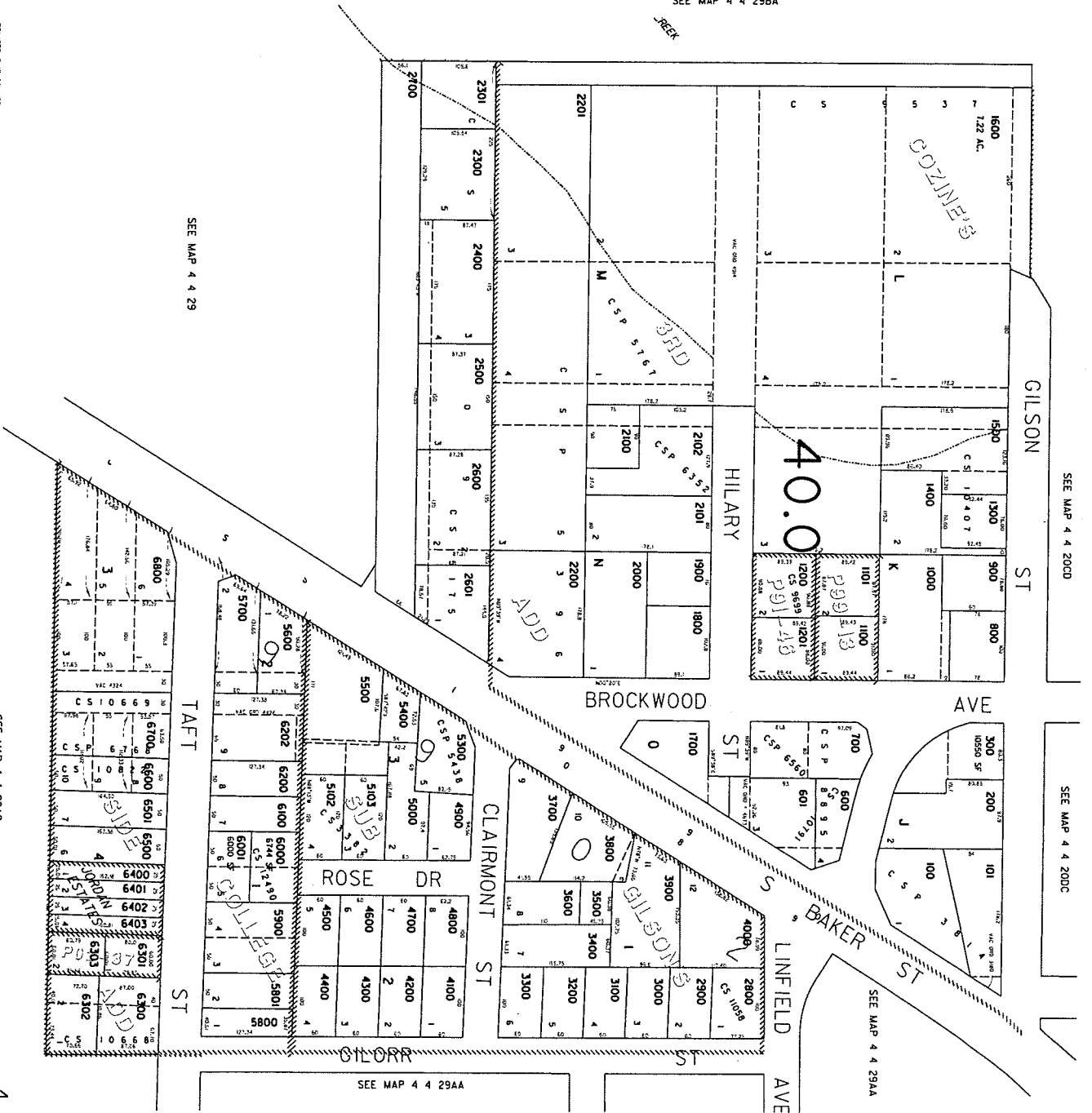
SEE MAP 4 4 29BA

SEE MAP 4 4 29

REVISED 5-14-09 SB

SEE MAP 4 4 29AC

4 4 29AB



LINFIELD WAY

FILE ON L ME

APPROXIMATE LOCATION OF EXISTING SLOPED PAVING

VAN PARKING SPACE STRIPE 12'-0" X 19'-0"

NEW STRIPING: 6'-0" X 19'-0" ACCESS AISLE ON EXISTING CONCRETE

PORTION OF SITE NOT INDICATED ON SURVEY ASSUMED R.O.W.

REPAIR EXIST STRIPE FOR 6 STD. SPACES 8'-6" X 19'-0"

EXISTING SERVICE POLE AND YARD VAULT
EXISTING ELECTRIC METER AND CABINET

EXISTING SOLID WOOD FENCE

REPAIR EXISTING WOOD DECK FOR COFFEE SHOP

PHASE 2: REMODEL EXISTING RESTAURANT 48 OCCUPANTS

PHASE 1.5: REMODEL EXISTING KITCHEN: PERMITTED USE:: KITCHEN

PHASE 1: REMODEL EXISTING BANQUET HALL PERMITTED USE:: PHARMACY

EXISTING SERVICE POLE 4429 : 224

EXISTING CONCRETE HALF WALL AROUND TRASH BINS

NEW 36" WIDE ACCESS ROUTE WIDE WHITE LINES EACH SIDE

ACCESSIBLE PARKING SPACE STRIPE 9'-6" WIDE X 19'-0"

NEW STRIPING: 8'-0" WIDE SHARED ACCESS AISLE

VAN PARKING SPACE STRIPE 9'-0" X 19'-0"

CONFIRM/REPAIR EXISTING PARKING STRIPE FOR 9 STAND SPACES 8'-6" X 19'

EXISTING SOLID WOOD FENCE



99W / BAKER STREET

EXISTING SIDEWALK
EXIST. PAVED R.O.W.

12'-6" ONE WAY

512 sq.ft EXIST LANDSCAPE

EXIST. DECK COFFEE SHOP

CONFIRM EXIST. SAN SEWER

2828 sq ft EXISTING LANDSCAPE

ACCESS TO PUBLIC WAY

EXISTING LIGHT AND STREETLIGHT

CONFIRM MAXIMUM 1:48 SLOPE ANY DIRECTION AT ALL PEDESTRIAN ACCESS ROUTES, PUBLIC ENTRANCES AND ACCESS AISLES

116 sq.ft EXIST. LANDSCAPE

ABANDON EXISTING SPACE SIGNED AS ACCESSIBLE: LOCATE NEW WOOD FENCE SCREEN AROUND CARDBOARD DUMPSTER

EXISTING LIGHT

RE-STRIPE FOR 11 COMPACT SPACES 8'-0" X 16'

EXISTING CB

EXISTING PARKING AREA

EXISTING SOLID WOOD FENCE

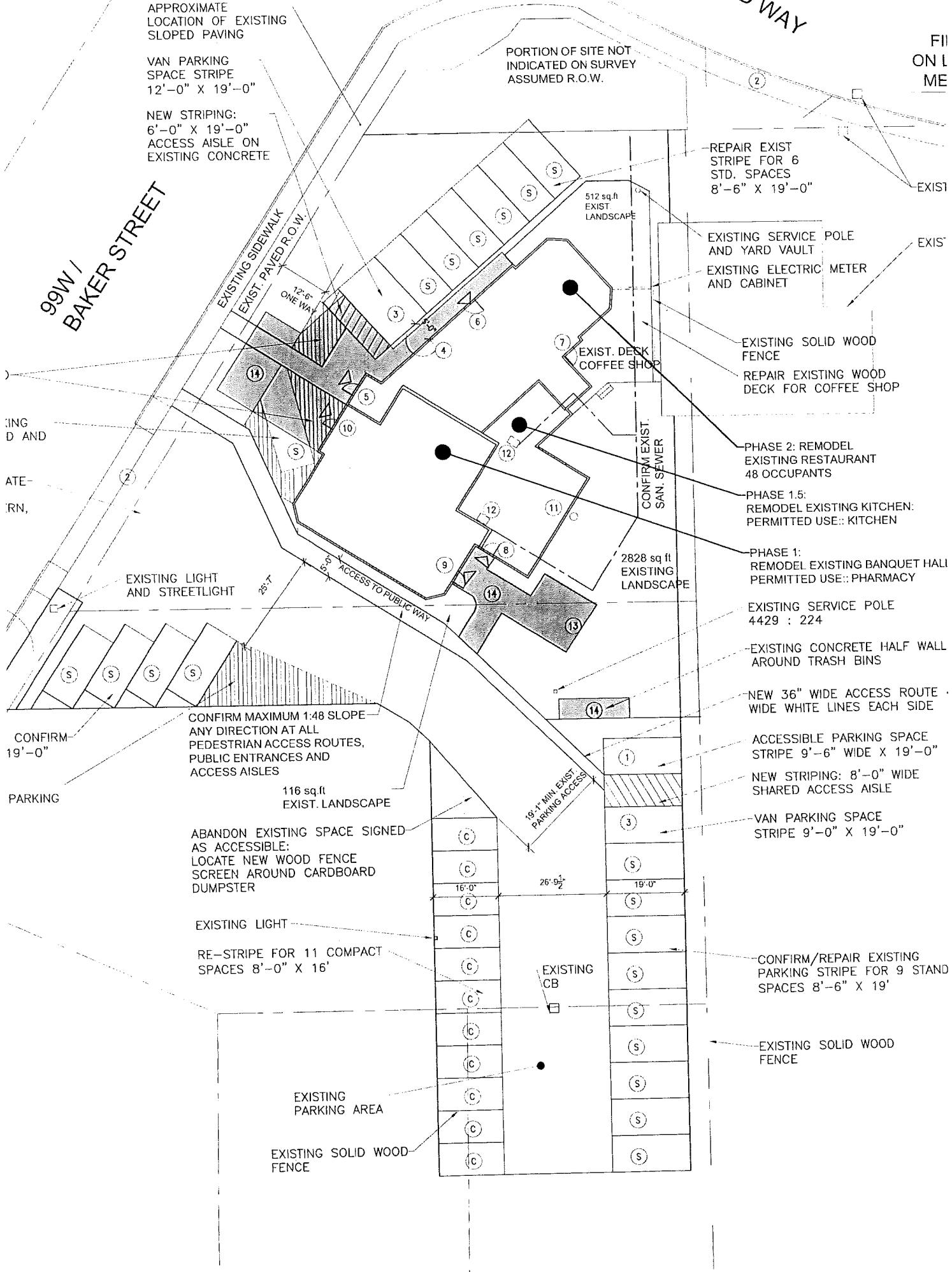
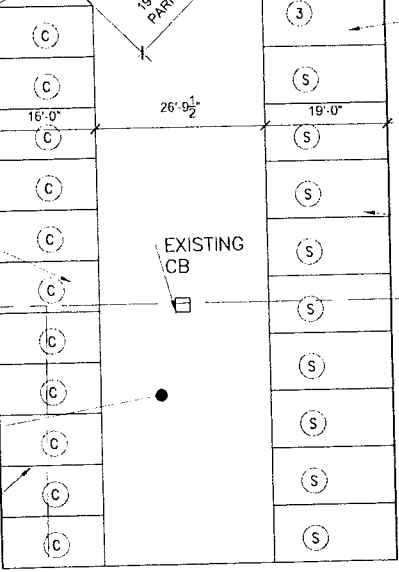
EXISTING LIGHT AND STREETLIGHT

EXISTING SERVICE POLE

EXISTING CONCRETE

CONFIRM 19'-0"

PARKING



VR 3-17 - 1214 SW Baker Street



Distance Between Subject Site and Existing Dispensary Site



- VR 3-17 Subject Site
- Existing Marijuana Dispensary Site
- 1500 SW Baker - 1000 Foot Buffer
- Distance Between Sites - 478.5 Feet

0 200 400 Feet



City of McMinnville
 Planning Department
 231 NE Fifth Street
 McMinnville, OR 97128
 (503) 434-7311

From: [\(null\) wkstocks](#)
To: [Ron Pomeroy](#)
Subject: Re: Information regarding your Variance request (VR 3-17) - Distance Map
Date: Tuesday, December 12, 2017 11:39:07 AM

I would like to modify my request to allow a commercial recreational marijuana retail business to operate within 478.5 feet of another commercial recreational marijuana retail business rather than maintaining a minimum distance separation of 1000 feet between such facilities as it is currently required in the McMinnville City code section 17.64.040(5).

Thank you
Sent from my iPhone

On Dec 12, 2017, at 11:17 AM, Ron Pomeroy <Ron.Pomeroy@mcminnvilleoregon.gov> wrote:

Wayne,

In reviewing your materials submitted for your variance request (VR 3-17), it appears that the 500-foot reduction in the separation requirement is not sufficient, if approved, to allow your facility to meet that spacing standard.

Specifically, the distance from your subject site to the new location of Green Heart is 478.5 feet measured property line to property line as shown on the attached graphic.

If you are in agreement with this graphic and distance measurement, would you please send a response email to me indicating that you would like to modify your request to “allow a commercial recreational marijuana retail business to operate within 478.5 feet of another commercial recreational marijuana retail business rather than maintaining a minimum distance separation of 1,000 feet between such facilities as is currently required in the McMinnville City Code (Section 17.64.040(5)).”

I apologize for this just coming to light now. However, with your agreement to modify the distance as noted above, your request will still move forward to the Commission hearing on December 21st and the distance needed for your request to be beneficial to you will be clear.

Thank you.

Best regards,

Ron Pomeroy

Ron Pomeroy, AICP
Principal Planner
City of McMinnville

231 NE Fifth Street
McMinnville, OR 97128
Department: 503.434.7311
Direct: 503.474.5108
Fax: 503.474.4955
ron.pomeroy@mcminnvilleoregon.gov

<1214 SW Baker - Distance to Existing Dispensary.pdf>