

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

B-2b Mixed Use Zone Conditional Use Appeal

DECISION

Date of public hearing: February 15, 2024

Name and address of appellant: Highly CannaCo Retail #7, LLC
638 Wiscasset Road
Boothbay, Maine 04537

Name and address of owner: William C. Rowell Family Limited Partnership
c/o Peggy Keaney
PO Box 3615
Portland, Maine 04104

Location of property under appeal: 301 Forest Avenue
CBL 112 F004001

INTRODUCTION

The applicant is seeking conditional use approval to operate a marijuana retail store at 301 Forest Avenue which is in the B-2b zone. Marijuana retail stores are allowed as a conditional use in the B-2b zone so long as they meet the requirements of City Code Sections 14.6.5.2 and 14-6.4.11. The ZBA has jurisdiction to consider conditional use applications pursuant to Sec. 14.6.5.1 (A).

FINDINGS

City Code § 14-6.5.2 general conditional use standards direct the Board shall, after review of the application, approve a conditional use upon a finding that the proposed conditional use will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zone. The review authority shall find that this standard is satisfied if it finds that:

- A. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone.

The applicant has indicated that the volume and type of vehicular traffic and hours of operation will be consistent with other commercial uses in the vicinity of the proposed use. The applicant has also indicated that there will not be a substantial change in the parking arrangement or additional pavement required. Therefore, the Board finds this standard has been met.

VOTED: 4-0 in favor.

- B. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter.

The applicant has indicated that the proposed use is comparable to nearby commercial use and will not create any of the harmful conditions noted in this standard. The applicant has indicated that operations should be odorless based on their mitigation plan. Therefore, the Board finds this standard has been met.

VOTED: 4-0 in favor.

- C. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

The applicant has indicated that the design and operation of the proposed use will not add landscaping, screening, signs or other structures that would create a substantially greater impact than other allowable uses in the zone. The applicant indicates that trash and waste generation will not be substantially greater than other allowable uses in the zone. Therefore, the Board finds this condition has been met.

VOTED: 4-0 in favor.

City Code § 14-6.4.11 requires the following use-specific standards apply to Marijuana Retail Stores:

B. Location criteria

1. No marijuana cultivation facility, marijuana manufacturing facility, marijuana testing facility, small-scale marijuana caregiver, marijuana store, or registered dispensary may be located within 500 feet of a preexisting public school, private school, or a public preschool program, as defined by 20-A M.R.S. § 1. Distance shall be measured from the nearest property line of the respective marijuana-related use and the property line of the lot containing the public school, private school, or public preschool program.

The applicant provided un rebutted testimony that this location is not within 500 feet of any public school, private school or public preschool program. Therefore, the Board finds this condition has been met.

VOTED: 4-0 in favor.

C. Supplemental standards

1. Marijuana-related uses may only be permitted within a fully enclosed building.

The applicant provided un rebutted testimony that this will be a fully enclosed building. Therefore, the Board finds this condition has been met.

VOTED: 4-0 in favor

2. No outside storage of marijuana, marijuana products, or related supplies is permitted.

The applicant provided un rebutted testimony that there will be no outside storage of marijuana, marijuana products or related supplies. Therefore, the Board finds this condition has been met.

VOTED: 4-0 in favor.

3. No drive-through service is permitted for marijuana-related uses.

The applicant provided un rebutted testimony that there will not be drive-through service available. Therefore, the Board finds this condition has been met.

VOTED: 4-0 in favor.

4. No marijuana or marijuana product shall be smoked, eaten, or otherwise consumed or ingested on the premises where sold.

The applicant provided un rebutted testimony that no marijuana or marijuana product will be smoked, eaten, or otherwise consumed or ingested on the premises. Therefore, the Board finds this condition has been met.

VOTED: 4-0 in favor.

5. Marijuana-related uses shall provide odor control measures so that odor generated on site is mitigated at the property line of the lot containing the marijuana-related use. Applications must demonstrate appropriate measures, such as carbon filtration, ventilation and exhaust systems, facility plans, or other additional practices adequate to mitigate odors for the scale of operations for the uses proposed.

The applicant has proposed mitigation measures including but not limited to carbon filters and other extensive odor control measures. Therefore, the Board finds this condition has been met.

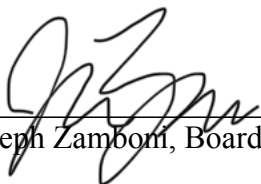
VOTED: 4-0 - in favor.

DECISION

The Board finds that all of the standards described above **have** been satisfied, and therefore **GRANTS** the conditional use permit for a period of two years.

VOTED: 4-0 in favor.

Dated: February 15, 2024



Joseph Zamboni, Board Chair