



Planning Commission Agenda

Comprehensive Planning Manager:
Sandy Belson 541.736.7135
Administrative Specialist:
Sarah Weaver 541.726.3653
City Attorney's Office:
Kristina Kraaz 541.744.4061

City Hall
225 Fifth Street
Springfield, Oregon 97477
541.726.3610

Planning Commissioners:

Isaac Rhoads-Dey, Chair
Andrew Buck, Vice-Chair
Matt Salazar
Seth Thompson
Steven Schmunk
Alan Stout
Bruce Webber

Come in person or join by Zoom as an Attendee:

Please click the link below to join the webinar:

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To view agenda packet materials or view a recording after the meeting, go to

SpringfieldOregonSpeaks.org

May 21st, 2024

7:00 p.m. Regular Session

Council Chambers (City Hall) & via Zoom

Council Chambers is ADA accessible. For meetings in the Council Meeting Room, a "Personal PA Receiver" for the hearing impaired is available, as well as an Induction Loop for the benefit of hearing aid users.

CALL TO ORDER

ATTENDANCE

Chair Rhoads-Dey _____, Vice Chair Buck _____, Salazar _____,
Thompson _____, Schmunk _____, Stout _____, and Webber _____.

PLEDGE OF ALLEGIENCE

APPROVAL OF THE MINUTES

- May 7th, 2024

BUSINESS FROM THE AUDIENCE

ITEM FOR DELIBERATIONS

1) Major Variance for Proposed Marijuana Retailer at 1853 2nd Street
Staff: Tom Sievers, Senior Planner
5 Minutes

- Planning Commission Deliberations – discussion of the proposal including testimony and evidence addressing the applicable approval criteria
- Motion to approve as presented, approve with modifications, or deny the application based on the Commissions’ findings of fact contained in the staff report, oral and written testimony, and other evidence submitted into the record

REPORT ON COUNCIL ACTION

BUSINESS FROM THE PLANNING COMMISSION

BUSINESS FROM THE DEVELOPMENT AND PUBLIC WORKS DEPARTMENT

ADJOURNMENT

Draft Planning Commission Minutes – May 7th, 2024

Springfield Planning Commission **Draft Minutes for Tuesday, May 7th, 2024** **Regular Session**

Meeting held in Council Chambers (City Hall) and via Zoom

Planning Commissioners Present: Chair Rhoads-Dey, Vice Chair Buck, Stout, Salazar, Thompson, and Schmunk

Excused absence – Webber

Staff: Sandy Belson, Comprehensive Planning Manager; Sarah Weaver, Planning Commission Assistant; Kristina Kraaz, Assistant City Attorney; Andy Limbird, Senior Planner; Tom Sievers, Senior Planner; Mark Rust, Current Planning Manager

Chair Rhoads-Dey called the Regular Session to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE – Led by Commissioner Chair Rhoads-Dey.

APPROVAL OF THE MINUTES

April 2nd, 2024 – **Approved** Joint Springfield and Lane County Session

April 2nd, 2024 – **Approved**

April 16th, 2024 - **Approved**

BUSINESS FROM THE AUDIENCE – None

Item(s):

- **Major Variance for Proposed Marijuana Retail Outlet at 1853 2nd Street**
Staff: Tom Sievers, Senior Planner
20 Minutes

Kristina Kraaz, Assistant City Attorney, read a brief statement regarding conflicts of interest.

Chair Rhoads-Dey opened the public hearing and asked Commissioners for any conflicts of interest:

- Rhoads-Dey – has a potential conflict of interest as he is an active real-estate broker in the community. He has no ex parte contact or independent knowledge.
- Buck – has no ex parte contact or independent knowledge. He has a potential conflict of interest as a commercial insurance agent practicing in the area and a homeowner.
- Stout – has no conflict of interest, no ex parte contact or independent knowledge.

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- Thompson – has no conflict of interest, no ex parte contact or independent knowledge.
- Salazar – has no conflict of interest, ex parte contact, or independent knowledge.
- Schmunk – has no conflict of interest or bias.

Chair Rhoads-Dey: asked if there were any challenges as to the Commission’s impartiality or the jurisdiction about the item before it. Hearing none, he called on Staff to present the staff report.

Tom Sievers / Staff: gave a PowerPoint presentation on the Major Variance for a proposed marijuana retail outlet at 1853 2nd Street. Staff detailed that the retail outlet is 940-feet from Hamlin Middle School, which is 60-feet short of meeting the code requirement of 1000-feet of separation from a school. The marijuana retail outlet request for a major variance in the relief of 60-feet from the code standard is also supported by State law that allows marijuana retail outlets within 1000-feet of a school but cannot be within 500-feet of school buildings. Staff cited the presence of geographic and physical barriers that impede pedestrian access between the two sites, which further supported the State law exception. Staff found that the major variance request satisfied all approval criteria.

Rainey Byrd, Applicant: based on Planning Commission findings A through E, the Major Variance for her proposed Dispensary should be approved.

Testimony from interested parties:

In Favor – None

Neutral – None

Against:

Nathan Keepers, 1881 2nd Street: He and his wife own the business two doors north of the proposed Marijuana Dispensary site. The thousand-foot rule is to minimize the exposure of children from Dispensaries like the one being discussed this evening. He is a witness to children walking by the proposed site on their way to school. The freeway has been listed as a physical barrier preventing children from walking past the site, when in fact it concentrates the path for those children living north of the school forcing them to walk past the proposed site. There is also a day care 300 feet from the proposed site. There are two preschools 900 feet away on 5th street, Willamette Leadership Academy lets children off within 900 feet, all of which produces a lot of foot traffic by children in the area. Voters in the community wanted to keep children from being exposed to marijuana dispensaries, which we should all keep in mind.

Tom Sievers / Staff: confirmed that State law mandates marijuana retail outlets to be a minimum of 500 feet from a day care and preschool facilities. As Mr. Keeper mentioned, the preschool facilities are located further than the 500-foot minimum distance. Daycare facilities

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are not listed in State law, meaning they can be inside the 500-foot minimum distance. The application meets the approval criteria as stated.

Rainey Byrd / Applicant: Oregon State law states that preschools must be at least 500 feet away from the proposed site, which is the case for this site.

Commissioner Salazar: wanted to know if outreach was made to either the Springfield School District or directly with Hamlin Middle School or any outreach outside of the minimum requirements?

Tom Sievers / Staff: replied that there was no additional outreach made outside of the minimum requirements.

Rainey Byrd / Applicant: agreed with his statement.

Vice Chair Buck: wanted to know from the Applicant how we could come together as a community and keep children safe. Currently, children can walk by liquor stores and venues that sell cigarettes. The community should work together to educate children to make good decisions.

Rainey Byrd / Applicant: The marijuana industry in Oregon is highly regulated to assure public safety, especially for children. There is no advertising or product allowed outside of the dispensary and children are not allowed inside the dispensary. The dispensary will also provide job opportunities for community members. Medical marijuana offers an alternative to standard medical treatment.

Commissioner Thompson: Are there historical cases that are comparable to the case before the Commission?

Tom Sievers / Staff: replied no.

Krisitana Kraaz / Staff: stated that these regulations were adopted by the City during her tenure as City Assistant Attorney and she has no recollection of a similar case of Major Variance during this time.

Commissioner Schmunk: except for the proposed site being 60 feet short of the mandated 1,000 feet, is there any other conditions that are not being met? Are there any other dispensaries near the proposed site?

Tom Sievers / Staff: confirmed that the only condition that this major variance is seeking relief from is the 60 feet. The site is 940 feet away from the school as the crow flies. State law requires dispensaries to be 1,000 feet away from schools. There are no other dispensaries near the proposed site.

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Commissioner Stout: noted that the original letter from the applicant stated that if the Oregon Liquor Control Commission (OLCC) declared that there is a physical barrier to a dispensary between the 500 feet and 1,000 feet, then it could receive approval. Does OLCC make this designation or the State? Is the 1,000-foot rule measured as the crow flies?

Tom Sievers / Staff: The 1,000-foot rule is measured as the crow flies. He deferred the first part of the questions to Kristina Kraaz.

Kristina Kraaz / Staff: There are two steps for a marijuana dispensary to receive licensing. The City needs to make a land-use compatibility statement, which is written in Springfield's Municipal Code. These standards parallel the State's standards but are not verbatim identical. One standard that is similar is that there must be 1,000-foot separation from schools. The State's standards only apply to public not private schools in contrast to the City's code that has that mandate for both public and private schools. The Planning Commission will have to decide if the variance is appropriate as well as OLCC, which will have to agree that the physical barriers are in accordance with their standards.

Commissioner Salazar: wanted to know, if preschools are not included in the Municipal Code standards for the 1,000-foot rule.

Kristina Kraaz / Staff: The recommended interpretation of the Code is that it's public or private elementary (K-5), secondary, or vocational school attended by minors. Preschools and daycare are not mentioned in the code and do not fall within the classification of a school.

Rainey Byrd / Applicant: confirmed that they provided the City with the evidence in their original application that the dispensary was in compliance with all of the applicable standards.

Chair Rhoads-Dey gave members of the audience the opportunity to speak before the Commission with the understanding that anyone can speak, and the Applicant would be able to rebut if they want to.

Patrick Ewing, 474 Brookdale Avenue, Springfield, OR 97477, site property owner. He ran a business at the proposed site for 23 years and knows the neighborhood and the community near it. If someone wanted to open a marijuana dispensary near the Safeway store, it is closer to Hamlin Middle school and is more than 1,000 feet away. He was originally hesitant to rent to a marijuana dispensary, but Ms. Byrd knew exactly what the State required and is following the standards for approval, which include enhanced security measures such as specialty cameras, locked windows and doors. Product needs to be locked up and secured. The State also mandates that there is an obstruction between the 1,000-foot line of travel and the school, which is present for this site.

Rainey Byrd / Applicant: stated that she had nothing to add.

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Commissioner Salazar made a motion to close the public record and the public hearing. Vice Chair Buck seconded the motion.

Roll call vote:

Rhoads-Dey – Aye

Buck – Aye

Thompson - Aye

Schmunk – Aye

Salazar – Aye

Stout – Aye

Motion carries unanimously.

Sandy Belson / Staff: Staff would like to know how the Commissioners are viewing the evidence and the public comment given during the meeting. Staff would like to incorporate the Commission's reasonings in the findings, which can be voted on at the next Commission meeting.

Vice Chair Buck moved that they approve the Major Variance as presented during tonight's meeting. Commissioner Schmunk seconded the motion.

Commissioner Stout: The site does not meet 1,000-foot requirement. He doesn't believe that the geographic barrier is substantial enough to deter all pedestrian traffic from going past the dispensary. He will be voting no.

Commissioner Schmunk: The concept of children getting marijuana is of great concern, but he doesn't believe that the applicant is doing anything different than the State and the law requires. Since it's only 60 feet off from the 1,000-foot requirement, he is not concerned with the Major Variance being approved.

Commissioner Thompson: believes the 60 feet variance is negligible based on the evidence provided by Staff and the Applicant.

Vice Chair Buck: agrees with Mr. Keepers that children will be going to the surrounding stores and that is a concern, but there are vape stores that are less regulated in the area. He believes that the Applicant understands the community's concerns and will be careful to undertake measures to protect the community. For this reason, he is in favor of the Major Variance.

Commissioner Salazar: Staff has made a clear case that the applicant has met all the conditions of approval and that is what we are here to decide. He believes that Mr. Keepers made a very good point that the conditions of approval don't factor in the pedestrian flows, but the conditions of approval are not at the discretion of the Commission to change. Without taking an

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illegal route to the dispensary, the route for pedestrians is considerably more than the 1,000 feet required. He will be voting in favor.

Chair Rhoads-Dey: concurs with Commissioner Salazar's statement and he will be voting in favor as well.

Kristina Kraaz / Staff: suggested that the Commission put this order of business on the Agenda of the next meeting in order for Staff to revise the Staff Report to reflect the public comment and the Commissioners input on public comment since the comments related to the criteria of approval.

Vice Chair Buck: requested that Staff reach out to the Springfield School District and Hamlin Middle School for their comments and have those comments included in the revised Staff Report findings.

Kristina Kraaz / Staff: reminded the Commissioners that they will need to reopen the written record and submit a written record open time to allow the public to comment or they could continue the hearing until the next meeting and then close the record and the hearing and vote on it during that time.

Chair Rhoads-Dey: stated that this item will be postponed to the next meeting and the Commission will move on to the next item.

2) Discretionary Use for Short Term Rental at 921 S. 67th Street

Staff: Andy Limbird, Senior Planner

Kristina Kraaz, City Attorney, read a brief statement regarding conflicts of interest.

Chair Rhoads-Dey: opened the public hearing and asked Commissioners for conflicts of interest:

- Rhoads-Dey – has a potential conflict of interest since he is an active real-estate broker in the community. He has no ex parte contact or independent knowledge.
- Buck – has no ex parte contact or independent knowledge. He has a potential conflict of interest as a commercial insurance agent practicing in the area and a Springfield homeowner.
- Stout – has no conflict of interest, no ex parte contact or independent knowledge.
- Thompson – has no conflict of interest, no ex parte contact or independent knowledge.
- Salazar – has no conflict of interest, ex parte contact or independent knowledge.
- Schmunk – has no conflict of interest or bias.

Chair Rhoads-Dey: asked if there were any challenges as to the Commission's impartiality or the jurisdiction about the item before it. Hearing none, he called on Staff to present the staff report.

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Andy Limbird / Staff: gave a brief PowerPoint presentation on the Discretionary Use for Short Term Rental at 921 S. 67th Street. There are two types of short-term rentals in the Development Code. The first type 1 short-term rental is owner occupied and second type 2 short-term rental is non-owner occupied, which necessitates a Discretionary Use Permit. Mr. Limbird directed the Commissioners' attention to Springfield Oregon Speaks where there were two public comments made on this item. The most applicable comments about the criteria of approval concerned parking. Staff is recommending two conditions of approval:

1. The property is listed as a four-bedroom home under the Tax Assessor's report. It should be limited to rent four rooms equating to the number of bedrooms.
2. There are four onsite parking places: A double attached garage plus a driveway. Therefore, no more than four vehicles associated with the rental would be allowed to park there. This condition of approval does not preclude on-street parking but intends to minimize the impact on the neighborhood.

Adrian Sherrod / Applicant: Informed the Commissioners about the intended use of the short-term rental. He explained that he had spoken with all the neighbors about their intent. With staff's guidance, they followed the rules in the Development Code in applying for the Discretionary Use Permit. They have found a property management firm to manage the rental. He intends to be onsite almost daily to assure that everything is in order.

Testimony from interested parties:

In Favor – None

Neutral – None

Against – None

Vice Chair Buck: Were you able to speak to the neighbors about the parking situation.

Adrian Sherrod / Applicant: confirmed that they are following the recommendations from staff and that the neighbors have been informed.

Commissioner Thompson: understands that there shall be no more than four rooms rented. Is there an occupancy limit? If the rental exceeds four vehicles is the consequence that the City's Code Enforcement become involved?

Andy Limbird / Staff: There is no clear occupancy limit, but it would be self-limiting by the number of rooms that can be rented. If the four-vehicle limit was exceeded than that would be a Code Enforcement issue and the consequence could be possible rescindment of the Discretionary Use Permit.

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Commissioner Schmunk: Is this type of rental unique to Springfield? Does staff have the capacity to manage complaints and possible rescindment of the permits? If there are continued violations, it is possible for the City to take action?

Andy Limbird / Staff: This is the first Discretionary Use Permit for short-term rentals since the Development Code added this provision in 2022. There will be undoubtedly more applications for this type of permit coming before the Commission. The City has Code Enforcement staff that would investigate complaints and the Springfield Police would also address certain issues. The City can take action, if there are continued violations. All short-term rentals predating the Development Code update are already contributing to the room tax base, if they list their property on an Air BnB website.

Commissioner Stout: is there a limitation as to whom could request a Discretionary Use Permit for this use?

Andy Limbird / Staff: Anyone can apply for this type of permit. Just as anyone can have a long-term rental.

Adrian Sherrod / Applicant: had nothing to add further.

Commissioner Salazar moved to close the hearing and the public record. Commissioner Thompson seconded the motion.

Roll call vote:

Rhoads-Dey – Aye

Buck – Aye

Thompson - Aye

Schmunk – Aye

Stout – Aye

Salazar – Aye

Motion passes unanimously.

Vice Chair Buck moved to approve the application as presented here with the addition of attachment 3 with the changes to the Findings as presented on the screen.

“Replacing the sentence stating no public testimony with the following: Two public comments were received on Springfield Oregon Speaks from residents adjacent to the subject property. The comments raised concerns regarding traffic and parking impacts that are relevant to the criteria of approval. Traffic and parking impacts from the proposed short-term rental is adequately mitigated by the conditions of approval explained herein. Comments unrelated to the criteria of approval include concerns

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about crime and enforcement; criminal enforcement and code enforcement will apply to the subject property on the same conditions as any other property in City limits. Comments also expressed concerns about loss of transient lodging taxes associated with short term rentals vs. hotel stays for overnight guests; however, short term rentals are subject to payment of transient lodging taxes imposed by Springfield Municipal Code section 7.700 et seq and are collected by the Oregon Department of Revenue under intergovernmental agreement.”

Commissioner Salazar seconded the motion.

Roll call vote:

Rhoads-Dey – Aye

Buck – Aye

Thompson - Aye

Schmunk – Aye

Stout – Aye

Salazar – Aye

Motion passes unanimously.

REPORT OF COUNCIL ACTION

Commissioner Salazar reported on the City Council Meeting of April 2nd.

BUSINESS FROM THE PLANNING COMMISSION - None

BUSINESS FROM THE DEVELOPMENT AND PUBLIC WORKS DEPARTMENT

Sandy Belson / Staff: confirmed that the Planning Commission will meet on May 21st for the deliberations of the Major Variance Item.

Chair Rhoads-Dey adjourned the regular session.

ADJOURNMENT – 8:26 p.m.

AGENDA ITEM SUMMARY

Meeting Date: 5/21/2024
Meeting Type: Regular Meeting
Staff Contact/Dept.: Tom Sievers, DPW
Staff Phone No: 541-726-2333
Estimated Time: 5 Minutes
Council Goals: Encourage Economic Development and Revitalization through Community Partnerships

**SPRINGFIELD
PLANNING COMMISSION**

ITEM TITLE: REQUEST FOR MAJOR VARIANCE TO SDC 4.7.177(B)(2) FOR 0.24 ACRE COMMUNITY COMMERCIAL PROPERTY AT 1853 2nd STREET FOR PROPOSED MARIJUANA RETAILER WITHIN 1000-FEET OF A SCHOOL, CASE 811-24-000037-TYP3

ACTION REQUESTED: Deliberate and adopt a final order to grant a variance, grant a variance with conditions, or not grant the variance to SDC 4.7.177(B)(2) to allow a marijuana retailer use within 1000-feet of a school.

ISSUE STATEMENT: The applicant plans to establish a marijuana retailer at 1853 2nd Street, but the location is 940-feet from Hamlin Middle School, which is within the 1000-foot straight-line-distance as required in the Springfield Development Code (SDC) 4.7.177(B)(2). The major variance request aims to consider geographic and physical barriers between the proposed marijuana retailer and Hamlin Middle School, as well as state law that supports the use within 1000-feet of a school.

ATTACHMENTS:

1. Planning Commission Final Order – Major Variance 811-24-000037-TYP3
Exhibit A – Updated Staff Report and Findings for Major Variance
2. Presentation

DISCUSSION: The subject property is a rectangular parcel owned by Patrick Ewing located approximately 180-feet north of the 2nd Street & Q Street intersection. The site comprises approximately 0.24 acres and is currently developed with a commercial business. The property is zoned and designated Community Commercial (CC). It is addressed as 1853 2nd Street (Map 17-03-26-24, Tax Lot 01300).

The applicant is working with the owner of the property to establish a marijuana retailer. However, the site is within 1000-feet (approximately 940-feet) of Hamlin Middle School in a straight-line distance. SDC 4.7.177(B)(2) prohibits marijuana retail outlets within 1,000-feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors. The major variance seeks to consider physical and geographic barriers to allow a deviation of 60-feet (6%) from the standard. ORS 475C.101 provides that a marijuana retailer may be located within 1000-feet of a school given that the marijuana retailer is not located within 500-feet of a building utilized by the school district for public prekindergarten and kindergarten programs, a public elementary or secondary school for which attendance is compulsory, or a private or parochial elementary or secondary school; and the Oregon Liquor and Cannabis Commission determines that there is a physical or geographic barrier capable of preventing children from traversing to the premises of the marijuana retailer; or the marijuana retailer was established before August 1, 2017, in accordance with a city or county ordinance adopted under section 29b, chapter 83, Oregon Laws 2016.

The Planning Commission conducted a public hearing on May 7, 2024, heard testimony, closed the public hearing, began deliberations, and directed staff to include additional information to address the testimony.

The Planning Commission is requested to adopt a final order to grant, grant with conditions, or not grant the major variance request at the regular meeting on May 21, 2024.

**BEFORE THE PLANNING COMMISSION OF SPRINGFIELD, OREGON
FINAL ORDER FOR:**

REQUEST FOR A MAJOR VARIANCE TO SDC 4.7.177(B)(2)]	
TO ALLOW A MARIJUANA RETAILER AT 1853 2ND STREET,]	811-24-000037-TYP3
WITHIN 1000-FEET OF A SCHOOL (ASSESSOR'S MAP]	
17-03-26-24, TAX LOT 1300)]	

NATURE OF THE PROPOSAL

Proposed Major Variance:

- Grant a variance to the standard in SDC 4.7.177(B)(2) requiring a marijuana retailer to be located at least 1000-feet straight-line distance of a school, to allow a marijuana retailer at 1853 2nd Street within 940-feet of Hamlin Middle School. The subject property is generally depicted and more particularly described in **Exhibit A** to this Order.

Timely and sufficient notice of the public hearing has been provided, pursuant to SDC 5.1.425-440.

On May 7, 2024, the Springfield Planning Commission held a public hearing and began deliberation on the proposed Major Variance. The Commission continued deliberations on May 21, 2024. The staff report, written comments, and testimony of those who spoke at the public hearing meeting were entered into the record.

CONCLUSION

On the basis of this record, the proposed Major Variance is consistent with the criteria of SDC 5.21.130. This general finding is supported by the specific findings of fact and conclusions as stated in the staff report and findings attached hereto as **Exhibit A** to this Order.

ORDER/RECOMMENDATION

It is ORDERED by the Springfield Planning Commission that Case Number 811-24-000037-TYP3, Major Variance, be approved. This ORDER was presented to and approved by the Planning Commission on May 21, 2024.

Planning Commission Chairperson

Date

ATTEST
AYES:
NOES:
ABSENT:
ABSTAIN:

**Staff Report and Findings
Planning Commission
Major Variance Application for
Rainey Byrd, 1853 2nd Street**

Hearing Date: May 7, 2024

Case Number: 811-24-000037-TYP3

Applicant: Rainey Byrd

Property Owner: Patrick Ewing

Report Update – All updated material that has been added in response to public testimony received at the public hearing on 5/7/24 is highlighted in yellow within this report.

Site: The 0.24-acre subject property is municipally addressed as 1853 2nd Street (Assessor's Map 17-03-26-24, Tax Lot 01300). The property is designated Commercial, and zoned Community Commercial (CC) in accordance with the *Metro Plan Diagram* and Zoning Map. The property is designated Community Commercial in the Q Street Refinement Plan.

REQUEST

The Planning Commission is asked to conduct a public hearing and deliberations, and approve, approve with conditions, or deny a request for Major Variance for a marijuana retailer within 1000-feet of a school. The applicant plans to establish a marijuana retailer at 1853 2nd Street, but the location is 940-feet from Hamlin Middle School, which is within the 1000-foot straight-line-distance required in the Springfield Development Code (SDC) 4.7.177(B). The major variance request aims to consider geographic and physical barriers between the proposed marijuana retailer and Hamlin Middle School.

SITE INFORMATION/BACKGROUND

The applicant is working with the owner of the property located at 1853 2nd Street (Assessor's Map 17-03-26-24, Tax Lot 01300) to establish a marijuana retailer. However, the site is within 1000-feet (approximately 940-feet) of Hamlin Middle School in a straight-line distance. The major variance seeks to consider physical and geographic barriers to allow a deviation of 60-feet (6%) from the standard. ORS 475C.101 provides that a marijuana retailer may be located within 1000-feet of a school given that the marijuana retailer is not located within 500-feet of a building utilized by the school district for public prekindergarten and kindergarten programs, a public elementary or secondary school for which attendance is compulsory, or a private or parochial elementary or secondary school; and The Oregon Liquor and Cannabis Commission determines that there is a physical or geographic barrier capable of preventing children from traversing to the premises of the marijuana retailer; or the marijuana retailer was established before August 1, 2017, in accordance with a city or county ordinance adopted under section 29b, chapter 83, Oregon Laws 2016.

As pictured below, the proposed marijuana retail location is outlined in red, and Hamlin Middle School is outlined in yellow. The green line depicts the 940-foot straight-line separation between the two locations. As can be seen, physical barriers such as Highway 126, the ramps that serve the highway, interceding businesses, and Q Street impede access between the two sites. In addition to the physical barriers, the school itself is entirely fenced with designated points of ingress and egress at L Street, Moffitt Lane, and Centennial Boulevard. Geographic barriers such as the Q Street channel and the physical rise of the land that creates the Highway 126 right-of-way also impedes straight-line access between the two sites. Furthermore, taking measured distances into consideration that do not rely on straight-line distance (walking routes), measurements from the two nearest points of ingress and egress at Hamlin Middle School (Moffitt Lane and Centennial Boulevard) results in approximately 2,332-feet from Moffitt Lane and 3,634-feet from Centennial Boulevard to the subject site. Both routes are circuitous and indirect.



Notification and Written Comments

Notification of the May 7, 2024, Planning Commission public hearing was sent to all property owners and residents within 300 feet of the outer boundary of the subject site on April 9, 2024. Staff posted notices on the subject site, the City’s website, and the Digital Displays located in City Hall by April 16th. Notification was also published in the April 11th and April 18th editions of *The Chronicle*. Staff received no public comments regarding this application.

* * *

The May 7th public hearing is being conducted via online meeting platform that allows members of the public to listen to the meeting online or by calling a toll-free number. Members of the public may provide testimony to the Planning Commission by joining the online meeting remotely or in person. Details regarding how to join the online meeting were provided in the Planning Commission meeting agenda and posted on the SpringfieldOregonSpeaks online platform¹.

At the public hearing on May 7th, the Planning Commission heard testimony. One person testified in opposition who is a nearby property owner (Mr. Keepers) and one person testified in support, the subject property owner (Mr. Ewing).

Mr. Keepers testified that the 1,000 foot rule works to minimize exposure of children to controlled substances. He further testified that children walk by the proposed location regularly on school days and that physical barriers serve to actually concentrate student traffic from the school to residential areas north of the site. He pointed out that three options to travel north exist: Fifth Street is only option to get to residences to the north, and Second Street is one of three possible routes. He also described that a daycare is within 300 feet, preschools within 900 feet, and Willamette Leadership Academy has a drop-off at Fred Meyer.

Response: Mr. Keepers' testimony is noted, and a full response is provided below as Findings 6 & 7 of this report.

Mr. Ewing, the property owner of the subject site, testified in favor of the major variance and cited that he is confident in the applicants' professionalism and deep understanding of the OLCC requirements and regulations for marijuana retail outlets in the State of Oregon. He described that operations at retail outlets require high quality security cameras, door and window security, no direct access of product to customers, and the inability to advertise or market products that would illicit interest from minors. Lastly, Mr. Ewing noted that state law does not require a variance for the location within 1,000 feet of a school because the state already has it codified as an allowance through ORS 475C.101.

In addition to public testimony, the Commissioners asked if notice was provided to the school district. Staff responded that the minimum level of notice was provided for this case. To be clear, referral agencies do not receive 'public' notice, rather they receive direct requests for comments. The School District is part of the Development Review Committee (DRC) meeting invited to provide comments as required by SDC 5.1.445. The DRC meeting invitation and call for comments was sent on February 7, 2024, and the meeting itself was held on February 27, 2024. Springfield Public Schools was provided an invitation to the DRC meeting to provide comments. Springfield Public Schools ultimately did not provide comment, so staff proceeded as usual with processing the application.

Criteria of Approval

A Major Variance may be approved only if the Planning Commission finds that the proposal conforms with the criteria of approval in SDC 5.21.130.

ORS 227.178 requires that the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete. If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted. Introduced and approved through Ordinance 6463, the Springfield Comprehensive Plan is amended to adopt the Springfield Comprehensive Plan Map, Springfield Comprehensive Plan Land Use Element, and conforming text amendments. Ordinance 6463 takes effect on March 1, 2024. This application was first received on February 6, 2024, and deemed complete on February 27, 2024, which was prior to March 1, 2024, and is subject to the applicable standards and criteria at the time of submittal.

CRITERIA OF MAJOR VARIANCE APPROVAL:

SDC 5.21.130 contains the Major Variance criteria that are applicable to this application. The applicable criteria from this section are as follows:

¹ SpringfieldOregonSpeaks can be accessed at <https://springfielddoregonspeaks.org>

A. An unusual condition exists that is unique to: a lot/parcel, building or structure; lot/parcel size, shape or topography; the location or size of physical improvements; or other similar circumstances not anticipated by this Code but related to the property that would deprive the owner of rights commonly enjoyed by other property owners similarly situated in the same zoning district;

Finding 1: The applicant has proposed a marijuana retailer at 1853 2nd Street. The location is approximately 940-feet in a straight-line distance from Hamlin Middle School to the south. Hamlin Middle School is a secondary school for which attendance is compulsory as defined in ORS 339.020.

ORS 475C.101 provides that a marijuana retailer may be located within 1000-feet of a school given that the marijuana retailer is not located within 500-feet of a building utilized by the school district for public prekindergarten and kindergarten programs, a public elementary or secondary school for which attendance is compulsory, or a private or parochial elementary or secondary school; and the Oregon Liquor and Cannabis Commission determines that there is a physical or geographic barrier capable of preventing children from traversing to the premises of the marijuana retailer; or the marijuana retailer was established before August 1, 2017, in accordance with a city or county ordinance adopted under section 29b, chapter 83, Oregon Laws 2016.

Finding 2: Staff did not find the presence of any buildings within 500-feet of the subject location that are utilized by the school district as listed above.

Finding 3: There are two factors that present unusual conditions at this site as it pertains to straight-line separation of uses: physical and geographic barriers. Physically, Highway 126, the ramps that serve the highway, interceding businesses, and Q Street impede pedestrian access between the two sites. The school itself is also entirely fenced with designated points of ingress and egress at L Street, Moffitt Lane, and Centennial Boulevard. Geographically, barriers such as the Q Street ditch and the physical rise of the land that creates the Highway 126 right-of-way also impedes straight-line access between the two sites.

Finding 4: Taking measured distances into consideration that do not rely on straight-line access (walking routes), measurements from the two nearest points of ingress and egress at Hamlin Middle School (Moffitt Lane and Centennial Boulevard) result in approximately 2,200-feet from Moffitt Lane and 3,000-feet from Centennial Boulevard to the subject site. Both walking routes are circuitous, indirect, and are more than double the required distance of straight-line separation.

Finding 5: The major variance request is supported by the existence of physical and geographic barriers as unusual conditions that hinder pedestrian access in a straight-line distance between the subject site and Hamlin Middle School. Actual walking routes were found to be more than double the allowable distance from a school. The major variance request is further supported by State law (ORS 475C.101) that allows marijuana retailers within 1000-feet of a school under certain circumstances. Staff found that no such circumstances existed that would preclude the State law from being invoked in this case.

Finding 6: In opposition of the major variance request, Mr. Keepers testified to the Planning Commission stating that the 1,000-foot separation standard should be maintained, stating that it works to separate uses and that minors walk by the location regularly. Indeed, operationally speaking, the 1,000-foot rule works to separate uses where minors congregate from marijuana retail outlets, but the City code and State law does not regulate or prohibit foot traffic past said uses. State absolutely prohibits marijuana retail outlets within 500 feet of a school but allows marijuana retail outlets between 500 and 1,000 feet of a school use under special circumstances, such as those present in this application. The Springfield Development Code and state regulations would allow outright the marijuana retailer to be located 60 feet further to the north. Mr. Keepers' testimony indicated no significant difference between minors walking past the subject property vs other property that is 60 feet further to the north along 2nd Street. Thus, granting this variance does not significantly affect minors' potential contact with a marijuana retail outlet as compared to a location that does not require a variance.

Finding 7: Mr. Keepers also noted the presence of a daycare around 300 feet away, a preschool around 900 feet way, and a drop-off location for the Willamette Leadership Academy at Fred Meyer. State law says that a marijuana retail outlet cannot be within 500-feet of a building with a prekindergarten program and SDC 4.7.177(B) only states that elementary, secondary, and career schools cannot be within 1000-feet. Furthermore, the drop-off location for the Willamette Leadership Academy (a public charter school) at Fred Meyer that Mr. Keepers referred to is located approximately 1,600-feet from the proposed marijuana retail outlet to the east and is also not applicable to siting of marijuana retail outlets in SDC 4.7.177. The Willamette Leadership Academy is located in Goshen, OR approximately 7 miles south of the subject site.

Conclusion: As proposed, this proposal meets Criterion A for Major Variance review.

B. The Variance shall not be inconsistent with the development standards of this Code or of any applicable Refinement Plan diagram, Plan District map, Conceptual Development Plan, or other applicable plans or studies;

Finding 8: The subject site is zoned Community Commercial which is consistent with the Commercial designation on the *Metro Plan* diagram. No changes of zoning or *Metro Plan* designation are needed to support the major variance and there are no policies of the Springfield Transportation System Plan that apply to the request.

Finding 9: The subject site is located in the Q Street Refinement Plan and designated Community Commercial in the Refinement Plan. There are no additional standards specific to commercial uses at the subject site in the Q Street Refinement Plan. The Q Street Refinement Plan has no policies specific to marijuana uses or the required minimum separation from schools.

Conclusion: As proposed, this proposal meets Criterion B for Major Variance review.

C. The Variance shall have no significant adverse effects on other properties in the same zoning district and/or vicinity, or the request can be conditioned so that there are no significant adverse effects;

Finding 10: The proposed variance does not have a significant negative effect on adjacent properties because there are no off-site changes to existing access, emergency response, and traffic circulation. This criterion allows for some adverse effects, just not significant adverse effect. Impacts from the proposed use will also be addressed through a Minimum Development Standards or Site Plan Review application for the change of use if this variance is approved. Staff did not receive comments indicating concern about significant adverse effects associated with a change of use to a marijuana retailer at the proposed site.

Finding 11: The proposed use is in conformance with and is a permitted use in the Community Commercial zone. No changes to zone or plan designation is required to grant the use.

Finding 12: As designated as a condition for consideration of marijuana retailer within 1000-feet of a school, staff did not find that there are any buildings utilized by the school district for public prekindergarten and kindergarten programs, a public elementary or secondary school for which attendance is compulsory, or a private or parochial elementary or secondary school within 500-feet of the subject site. As described previously, the proposed variance would not result in a pedestrian path of travel from Hamlin Middle School to the proposed marijuana retailer that is less than or equal to the required separation under SDC 4.7.115(C) of 1,000 feet. The proposed marijuana retailer will not be visible from the school property due to the intervening Highway 126.

Finding 13: The applicant testified during the public hearing about the presence of vape and cigarette stores in the vicinity. The closest cigarette and vape store is located next to Safeway at the intersection of Pioneer Parkway and Q Street, which has exterior advertisements for vape and tobacco products that are visible from pedestrian accessways. This is not applicable or relevant to the criteria of approval, however, in contrast to the marijuana retail

outlet, the tobacco shop's advertisements and visibility of controlled substances is less regulated than that of a marijuana retail outlet. There is no concern that the applicant is unaware of OLCC regulations regarding exterior facing advertisements or advertising related to minors. Therefore, potential advertising at the proposed marijuana retail outlet would not have significant adverse effect to the surrounding area.

Conclusion: As proposed, this proposal meets Criterion C for Major Variance review.

D. The unusual condition described in Subsection A. above shall not arise from a previous Code violation or rely only on loss of profit or financial need;

Finding 14: The request for a major variance did not arise from a code violation. The proposed marijuana retailer constitutes a new use and tenant in a pre-established commercial zone where the use is permitted.

Finding 15: The circumstances around the request to locate the marijuana retailer on this property was not based on a loss of profit or financial need for either the City or the property owner. Granting the proposed variance will not change the cost associated with locating a marijuana retailer at the subject property.

Conclusion: As proposed, this proposal meets Criterion D for Major Variance review.

E. The Variance requested is the minimum necessary to alleviate the unusual condition.

Finding 16: The applicant filed the major variance request to seek minimum necessary relief from existing conditions at or around the subject site, that being a 60-foot (or 6%) deviation from the 1000-foot of separation required of marijuana retail uses in relation to schools. The applicant has requested consideration of physical and geographic barriers as unusual circumstances that impede pedestrian access between the two sites, and State law that supports such uses within 1000-feet of schools, as detailed in part A of this report.

Finding 17: Staff did not find the presence of more suitable commercial properties for lease in the immediate area that would have reduced or eliminated the need for this variance request, and there is no evidence that the applicant had other options for locating the proposed marijuana retailer further from Hamlin Middle School.

Finding 18: The major variance would not significantly affect how children would walk past the proposed location as compared to a location 60-feet further away where this variance would not be needed to implement the proposed use.

Conclusion: As proposed, this proposal meets Criterion E for Major Variance review.

CONDITIONS OF APPROVAL

SDC 5.21.135 allows for the Approval Authority to attach conditions of approval to a Minor or Major Variance review request to ensure the application fully meets the applicable criteria of approval:

SUMMARY OF CONDITIONS:

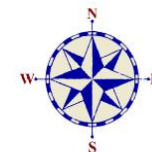
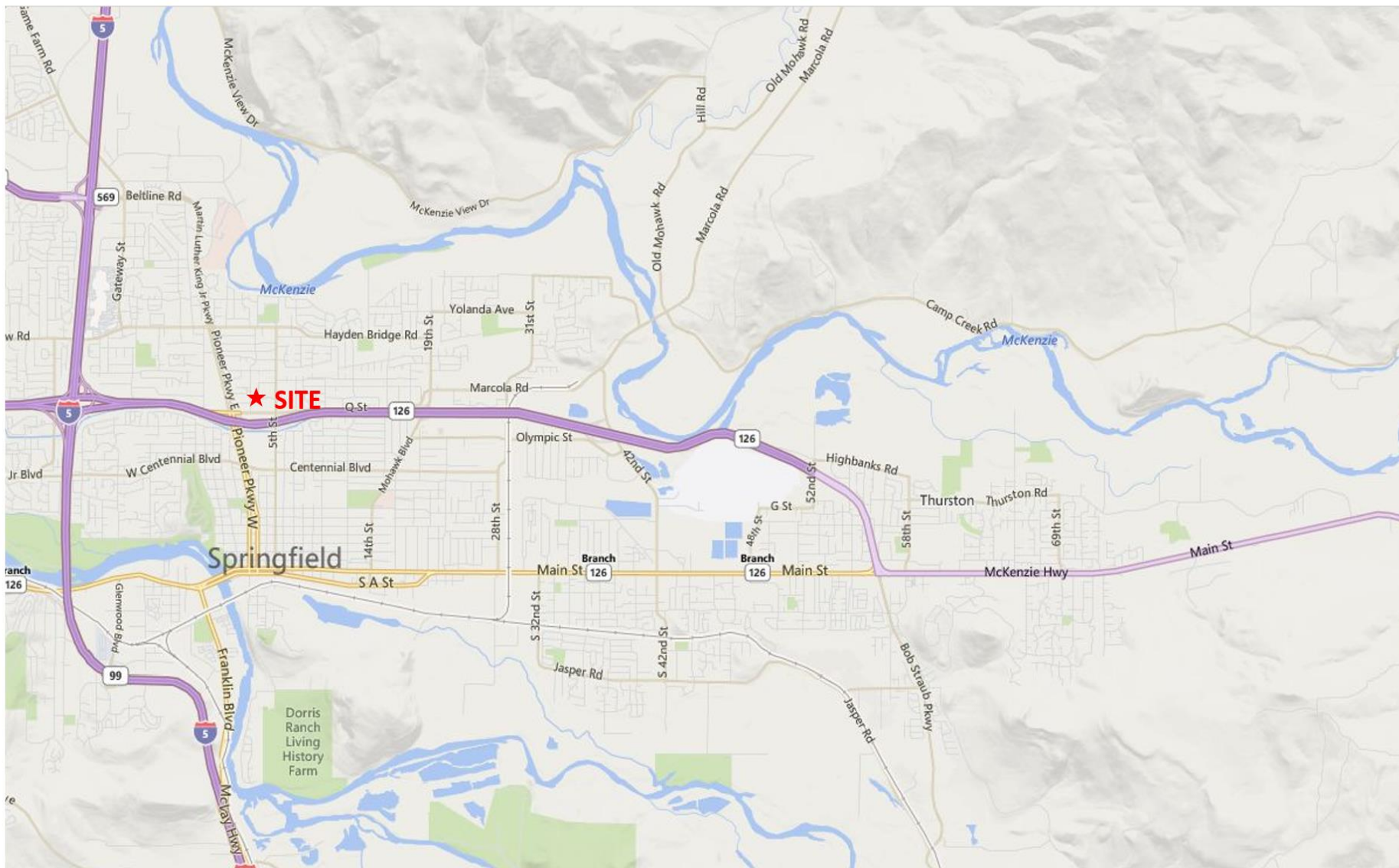
No conditions of approval.

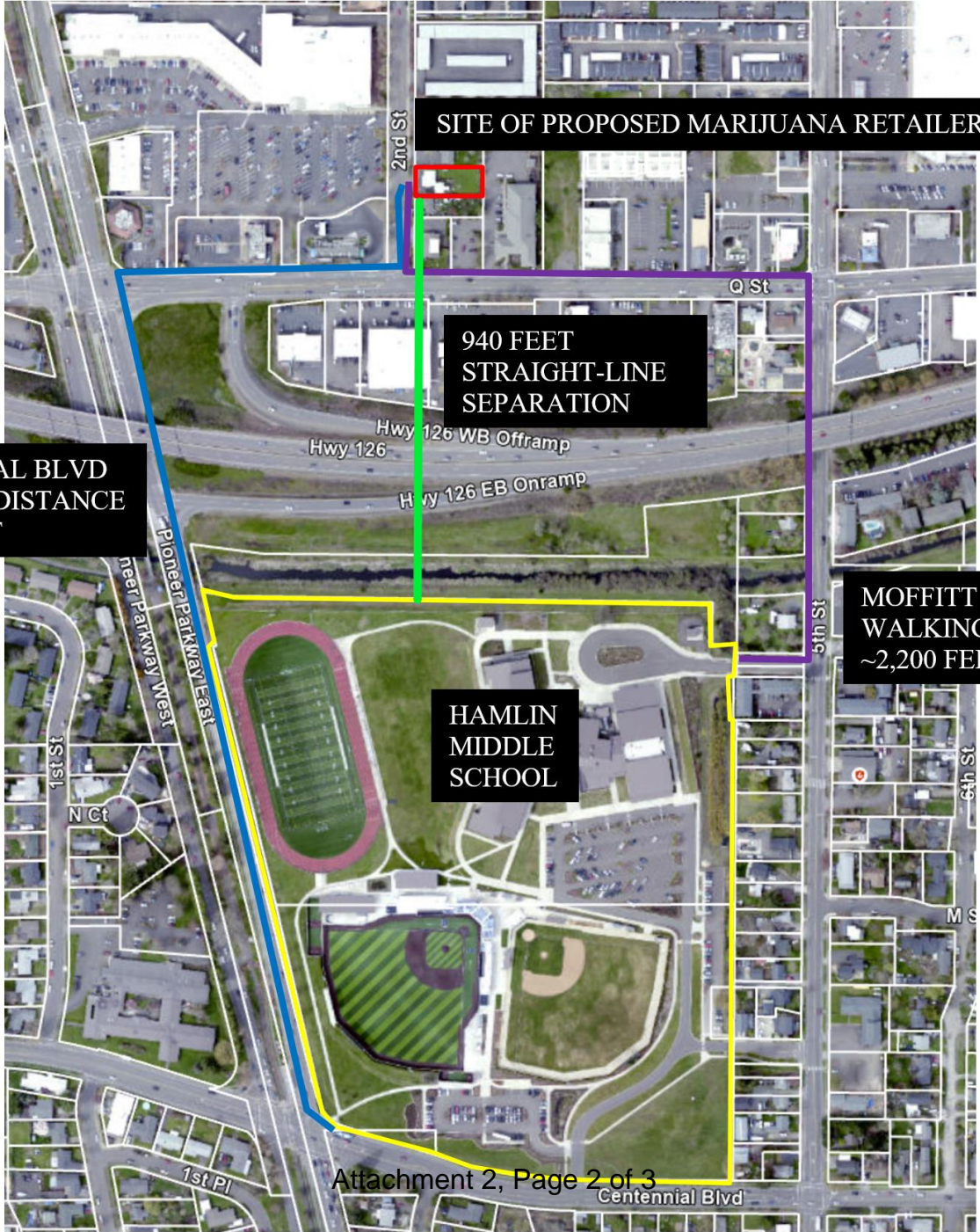
DEVELOPMENT ADVISORY NOTES:

None.

CONCLUSION: Based on the above-listed criteria, the proposal meets the Major Variance criteria as listed in SDC 5.21.130.

LOCATION OF PROPERTY SUBJECT TO MAJOR VARIANCE REQUEST





SITE OF PROPOSED MARIJUANA RETAILER

**940 FEET
STRAIGHT-LINE
SEPARATION**

**CENTENNIAL BLVD
WALKING DISTANCE
~3,000 FEET**

**MOFFITT LANE
WALKING DISTANCE
~2,200 FEET**

**HAMLIN
MIDDLE
SCHOOL**

