



# Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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## **MEMORANDUM**

**Date:** December 29, 2015

**To:** Robert Best, Chairman, & Members, Planning Board

**From:** Timothy J. Thompson, AICP, Community Development Director

**Subject:** **Prime Alternative Treatment Center (applicant) and ZJBV Properties LLC. (owner)** – Review for acceptance and consideration of Final Approval for an application for a Conditional Use Permit and waiver of full site plan review to permit a Medical Cannabis Alternative Treatment Center (Non-Cultivation). This site is located at 105 D.W. Highway in the I-1 (Industrial) & Aquifer Conservation District. Tax Map 2D. Lot 021-01.

**Background:** The subject parcel is located at 105 DW Highway. The parcel contains a total of approximately 5.5 acres of land and is abutted by a variety of residential, commercial, and industrial development, including BAE Systems. The subject property is located in the I-1 (Industrial) and Aquifer Conservation Zoning Districts.

The subject lot is the location of the former Digital Federal Credit Union, and is currently vacant after DCU relocated to Premium Outlets Blvd in 2012/2013. The applicant is requesting approval for a Conditional Use Permit (CUP) and a waiver of full site plan review to allow a medical cannabis Alternative Treatment Center (ATC) – Non-cultivation, as defined in the Zoning Ordinance.

As the Board is aware, the legislature approved, and the Governor signed into law, new statutes regarding the legalization of medical cannabis. In response to the new State laws, and upon learning of the interest of ATC providers in possibly locating within Merrimack, the Town amended the Zoning Ordinance in September 2015 to add definitions and establish a CUP process for ATCs within the commercial and industrial districts. The applicant was selected by the State of NH Department of Health and Human Services (DHHS) in May 2015 as the ATC “dispensary” provider for “Geographic Area 2” (comprising both Hillsborough and Merrimack Counties). The applicant has chosen to propose the facility at the subject parcel. Staff understands that the cannabis products will be supplied to the ATC from the applicant’s cultivation facility in the Town of Peterborough.

Please find attached to this memo the required Security Plan (with floor plans and narrative) which is required for the Board to grant the CUP.

There are two parts to this application, first the Conditional Use Permit to allow for the Alternative Treatment Center in the I-1 (Industrial) District, and secondly, site plan approval for the change of use from a bank to the ATC.

**Conditional Use Permit** (*staff commentary appears in italics for each item reviewed*)

**Criteria for Granting a Conditional Use Permit (Section 2.02.2(D)(3), which is the applicable section referenced by Section 2.02.4(C)):**

The following criteria must be satisfied in order for the Board to grant the Conditional Use Permit:

- 1. An Alternative Treatment Center shall not be located within a pre-existing designated drug free school zone:**
  - *The parcel is located beyond 1000' of the Charter School located on Henry Clay Dr., and is not in a pre-existing drug free school zone.*
  
- 2. The Alternative Treatment Center shall be located in a permanent structure and may not be located in a trailer, manufactured home, cargo container, or any structure that has axles with wheels. Drive-Thru services at an Alternative Treatment Center are prohibited:**
  - *The proposed ATC is to be located within the former Digital Federal Credit Union building, which is a permanent structure. The applicant understands that the former drive-thru for the bank cannot be utilized for the ATC use. Staff suggests that the Board and the applicant discuss how to ensure that the drive-thru is not used and if any modifications are needed to the site to address this criterion.*
  
- 3. The Alternative Treatment Center shall provide for the proper disposal of cannabis remnants or byproducts, which remnants or byproducts shall not be placed in the facility's exterior refuse containers:**
  - *As described on page 12 of the Security plan, the applicant will dispose of all cannabis containing waste in accordance with DHHS Administrative Rule He-C402.22. Any and all unusable cannabis will be stored in the limited access Vault until disposed. Any unsealed or tampered package of cannabis from its original production packaging that is found in the Dispensary will be immediately placed in an appropriate container, sealed and stored for report and future disposal in accordance with He-C402.22. All waste/products to be disposed of will be transported to the Cultivation facility for disposal. During actual disposal, an ATC Agent will be accompanied by a Prime ATC Security Officer who will witness the incident and follow reporting procedures as outlined in He-C402.22.*
  
- 4. The applicant shall provide a detailed narrative and floor plan, as well as any other relevant documentation, describing how the Alternative Treatment Center shall be secured. The security plan must take into account the measures that will be taken to ensure the safe delivery of any product to the facility (including permitted times for delivery), how the product will be secured on site, and how patient transactions will be facilitated in order to ensure safety. The security plan shall be reviewed and approved by the Merrimack Police Department:**
  - *The applicant has provided the required materials under this criterion, which have been reviewed by the Police Department (see attached). The Police Department will need to provide their approval to the Community Development Department and Planning Board before the Board can find that this criterion has been satisfied.*
  
- 5. The use of cannabis on the premises is prohibited:**
  - *The applicant has committed to enforcing this restriction on those that purchase medical cannabis at the ATC. This is part of their operating procedures and part of the security plan.*
  
- 6. The Alternative Treatment Center shall emit no cannabis related fumes, vapors or odors which can be smelled or otherwise perceived from beyond the lot lines of the property where the facility is located:**

- *The applicant has committed to enforcing this restriction on those that purchase medical cannabis at the ATC. This is part of their operating procedures and part of the security plan.*

### **Site Plan**

#### **Completeness**

**Staff recommends that the Board vote to accept the site plan application**, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow the Board to make an informed decision.

#### **Waiver**

The Applicant has requested a waiver of full site plan review, as the proposal does not call for any site changes. The work associated with the ATC requires renovations to the interior of the facility. The applicant has provided an updated plan for the site, but has not conducted a full boundary survey.

#### **Recommendation**

**Staff recommends that the Board vote with respect to the requested waiver utilizing the criteria from RSA 647:44:**

- Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or
- Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

**Staff recommends that the Board grant the Conditional Use Permit and grant conditional final approval of the site plan with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified:**

1. Final plans to be signed by the Applicant and Property Owner;
2. Applicant shall obtain all required State permits (including an updated NHDOT Driveway Permit or written verification from NHDOT District 5 that the permit does not need to be updated), provide copies of the permits to the Community Development Department and note the approvals in the notes on the plan;
3. Any waivers granted (including Section and date granted) or any changes requested by the Board shall be listed and fully described on the final plan, as applicable;
4. Applicant shall address any forthcoming comments from the Conservation Commission, Assessing Department, Building Department, Fire Department, Police Department, Wastewater Division, and Pennichuck Waterworks, as applicable;
5. The applicant shall address the following staff technical comments:
  - a. The plan indicates that the entry and exit directional signs are not within the property, and are in the DOT right-of-way. Based on correspondence from the applicant, the signs will be removed from the right-of-way. The plan should be updated to reflect this;

- b. Please note on the plan that all depicted lighting is existing and is not proposed to be modified by this application;
- c. Please add the parking requirement (1 space per 250 square feet) to the parking note;
- d. Please add a note to the plan indicating that the site plan, security plan and all related application documents are on file with the Merrimack Community Development Department;
- e. Please add notes and/or clarify the plans to indicate the drive-thru will not be used by the facility, and provide for any changes to the drive-thru area as may be directed by the Planning Board;
- f. Please add a traffic flow arrow (or arrows) to the southerly driveway to clarify the intent of the access as either one-way or two-way access;
- g. Please note the water and sewer source on the plan (currently on a separate page included with the application);
- h. Assuming the Board grants the waiver of full site plan review, the plan will not be recorded at the registry. Please remove the "reserved for us by the Registry of Deeds" "box" which can be utilized for additional notes as recommended herein.

**Staff also recommends that the following general and subsequent conditions be placed on the approval:**

1. Any proposed signage shall comply with the requirements of Section 17.10 of the Zoning Ordinance (including the requirement for all required sign permits) and shall be subject to the applicable requirements of the NH Health & Human Services Department (DHHS) Administrative Rules (He-C 400, as most recently published or amended by DHHS) pertaining to Advertising Restrictions.
2. The building on this property shall comply with all current NFPA codes for its intended use. This includes emergency lighting, fire alarm and sprinkler system additions/changes and fire extinguisher placement.

cc: File  
Correspondence  
John Glowick & Brett Sicklick, Prime Alternative Treatment Center; Applicants  
Brian Thibeault, ZJBV Properties, LLC; Property Owner

ec: Ted Wright; Wright Survey, PLLC  
Dan Crandlemire, Shaheen & Gordon, P.A.  
Mark Doyle, Chief of Police  
Michael Currier, Fire Chief  
John Manuele, Fire Marshall  
Kyle Fox, PE, Town Engineer/Deputy Public Works Director  
Fred Kelley, Building Official  
Carol Miner, Building Department