



CITY OF TALENT • COMMUNITY DEVELOPMENT

PO Box 445, Talent, Oregon 97540
Phone: (541) 535-7401 Fax: (541) 535-7423 www.cityoftalent.org

GENERAL LAND USE APPLICATION

Project Description:
Property Owner: Sandra Berman Trustee
Mailing Address: 162 N. Pioneer Street, Ashland, OR
Street Address: 103 N. Pacific Hwy Unit B, C
Email Address: greenvalleywellness@gmail.com
Applicant/Consultant: Green Valley Wellness
Mailing Address: 103 N. Pacific Hwy Unit B
Phone: 541-535-3022

Table with 4 columns: Assessor's Map Number, Tax Lot Number, Acres, Zone. Row 1: 38-1W- 23DC, 500, 0.35, CBD. Row 2: 38-1W-

Subzone (if applicable)

Pre-Application Meeting Completed? [ ] Yes [X] No [ ] N/A Date Completed:

Type of Application (check all boxes that apply)

Grid of checkboxes for application types: Site Development Plan Review, Variance, Conditions Modification, Annexation, Accessory Dwelling Unit, Appeal, Conditional Use Permit, Home Occupation, Code Interpretation, Comprehensive Plan Amendment, Comprehensive Plan Map/Zoning Map Change, Development Code Amendment.

APPLICATION DEPOSITS (Application fees are calculated by ACTUAL PROCESSING COSTS)

Non- Conforming Uses of Structure

I hereby certify that the statements and information contained in this application, including the enclosed drawings and the required findings of fact, are in all respects, true and correct. I understand that all property pins must be shown on the drawings and visible upon the site inspection. In the event the pins are not shown or their location is found to be incorrect, the owner assumes full responsibility.

Applicant's Signature (handwritten signature)

Date: 3/2/16

Property Owner's Signature (required)

Date



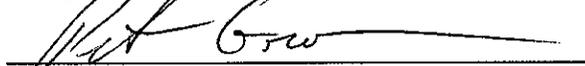
**APPLICATION FEES & DEPOSITS**

Fees and deposits are intended to cover the full cost for processing applications. Applicants seeking development which requires more than one type of review (such as site plans and conditional use permits) must pay all applicable fees and deposits.

**Application Deposits:** Certain application fees are represented by a deposit amount. Applicants shall be charged for actual processing costs incurred by the City. The actual costs charged to the City for technical review of land use applications, including but not limited to City's planning, public works, engineering, administration, legal, wetland specialists, geologists, biologists, arborist, and any other services provided in processing applications, shall be charged to Applicant, at the rate(s) charged to the City. In addition, the actual costs of preparing and mailing notices to abutting property owners or others required to be notified, the costs of publishing notices in newspapers, and any other mandated costs shall be charged to applicant. Any additional costs incurred beyond the deposit amount shall be charged to and paid by the applicant on a monthly basis. The applicant agrees that any deficiencies shall be collected from applicant, and that applicant's failure to pay these amounts triggers the City's option to pursue any or all remedies, as listed below.

**Fixed Fee Applications:** Fees are non-refundable and are based on average application processing costs rounded to the nearest dollar.

Applicant acknowledges and agrees that Applicant's failure to pay City costs over the deposit fee amounts, as charged monthly by the City, may result in the City pursuing any or all legal remedies available, including but not limited to liening property in the amount owed; prosecution for violation of the City's current fee resolution and City land development or division ordinances; issuance of a stop work order, non-issuance of building permits for property, or cessation of related proceedings; set-off against any reimbursement owed; and turning amounts owed over to a collection agency.

  
 Applicant's Signature \_\_\_\_\_ Date: 3/2/16

\_\_\_\_\_  
 Property Owner's Signature (required) \_\_\_\_\_ Date \_\_\_\_\_

I hereby acknowledge that my applications may be consolidated. When an applicant applies for more than one type of land use or development permit (e.g., Type-II and III) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: (1) City Planner, (2) the Planning Commission, and (3) the City Council. Joint meetings between governing bodies may be held to streamline the decision process.

\_\_\_\_\_  
 Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
 Property Owner's Signature (required) \_\_\_\_\_ Date \_\_\_\_\_

<i>FOR OFFICE USE ONLY</i>			
Deposit Paid (Amount): \$ 555 <sup>00</sup>	Date: 3-2-16	Received By: CBradley	File Number: 20N16-014

In compliance with the Americans with Disabilities Act, if you need special assistance, please contact TTY phone number 1-800-735-2900 for English and for Spanish please contact TTY phone number 1-800-735-3896.

*The City of Talent is an Equal Opportunity Provider*

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**BEFORE THE PLANNING COMMISSION  
FOR THE CITY OF TALENT, OREGON**

<b>IN THE MATTER OF:</b>	)	<i>ZON</i>
	)	File No. 2016- <u>014</u>
A NON-CONFORMING USE DETERMINATION	)	
FOR CONTINUING RETAIL ESTABLISHMENT USE	)	
(OLCC - LICENSED RMJ) IN EXISTING LOCATION	)	APPLICANT'S
	)	SUPPLEMENTAL
<b>APPLICANT:</b> Green Valley Wellness LLC	)	FINDINGS of FACT &
<b>ADDRESS:</b> 103 N. Pacific Hwy.   Units B & C	)	CONCLUSIONS of LAW
<b>MAP:</b> 38-1W-23DC, Tax Lot 500	)	
<b>ZONING:</b> Central Business District (CBD)	)	
<b>PROPERTY OWNER:</b> Sandra Berman, Trustee	)	
<b>APPLICANT'S ATTORNEYS:</b>	)	
Davis Hearn Anderson & Turner PC	)	
_____	)	

**APPLICANT'S SUPPLEMENTAL FINDINGS OF FACT | CONCLUSION OF LAW**

**Summary of Action Requested by Application.**

1. Applicant Green Valley Wellness LLC ("Applicant") hereby respectfully supplements its application materials submitted to City of Talent Department of Community Development ("City").
2. Applicant seeks only to continue serving its local customers by maintaining its state-regulated retail cannabis sales operation at Applicant's current business location at 103 N. Pacific Hwy., Units B & C ("Applicant's Retail Space").
3. Applicant's Retail Space is located on the same property as the Talent Liquor Store (38-1W-23DC, Tax Lot 500). Applicant's store also shares front and rear on-site parking lots with Talent Liquor Store.
4. Applicant's Retail Space is located within City's Central Business District ("CBD") zone.
5. Applicant has conducted state-regulated retail cannabis sales in Applicant's Retail Space since June, 2014.

***APPLICANT'S SUPPLEMENTAL FINDINGS OF FACT & CONCLUSIONS OF LAW***

***Applicant: Green Valley Wellness LLC | 103 N. Pacific Hwy., Units B & C***

***Page -1-***

- 1 6. Amendments to City's Zoning Code enacted November 6, 2014, now prohibit new  
2 state-regulated retail cannabis sales establishments in City's CBD zone, including  
Applicant's Retail Space. *TZC 8-3D.230(B.)*.
- 3 7. Because Applicant first commenced state-regulated retail cannabis sales in  
4 Applicant's Retail Space prior to adoption of City's prohibition against  
5 establishing retail cannabis uses in the CBD zone, Applicant seeks a  
6 determination by City's Planning Commission that it's use qualifies as a legal  
7 prior non-conforming use in Applicant's Retail Space, consistent with the  
8 provisions of Talent Zoning Code ("TZC") 8-3M.250(C) – Non-Conforming Uses.
- 9 8. Applicant will suffer great injustice if it is required to close its business after  
10 almost two continuous years conducting responsible state-regulated retail  
11 cannabis sales at Applicant's location.
- 12 9. The Planning Commission has the power to avoid this injustice through adoption  
13 of findings consistent with TZC 8-3M.250(C).
- 14 10. Applicant has successfully conducted state-regulated retail cannabis sales in  
Applicant's Retail Space since June, 2014.
- 15 11. City determined Applicant's planning application should be reviewed under the  
16 criteria in City of Talent Zoning Code ("TZC") Sec. 8-3, Div. M, Art. 2 (Non-  
17 Conforming Uses, Lots and Structures). *See: TZC, pgs. M-27 through M-29.*
- 18 12. More specifically, City's criteria reflected in TZC 8-3M.250(C) is applicable to the  
19 Planning Commission's determination.

15 **Chronology.**

- 16 13. **June, 2014:** Applicant Green Valley Wellness began conducting legal state-  
17 regulated retail medical cannabis sales at its current location (103 N. Pacific Hwy.,  
18 Units B & C) in June, 2014. Applicant's cannabis sales have at all times been conducted  
in accordance with its licensure by, and under the auspices of, the State's regulatory  
authority for medical cannabis sales – the Oregon Health Authority ("OHA").
- 19 14. Applicant Green Valley Wellness received a business license from City in 2014. At the  
20 time Applicant commenced its operations at 103 N. Pacific Hwy. in June of 2014, it's  
21 operations were in compliant with the criteria established by City's then-current TZC  
provisions.

- 1 15. **October 1, 2015.** In October, 2015, Applicant Green Valley Wellness began selling  
2 limited cannabis productions to recreational consumers over 21 years of age -- when the  
3 Oregon Liquor Control Commission ("OLCC") rolled out the recreational cannabis retail  
4 sales program. Applicant has now been selling state-regulated limited cannabis products  
5 to recreational consumers at its current location for over five (5) months.
- 6 16. Applicant Green Valley Wellness did not find it necessary to undergoing any changes or  
7 modifications to its store in order to accommodate the transition from medical to  
8 recreational cannabis sales.
- 9 17. Applicant Green Valley Wellness has seen very little change in its operations or customer  
10 traffic since it added recreational cannabis retail sales to its ongoing medical cannabis  
11 retail sales on October 1, 2015.
- 12 18. The increase in consumer traffic has been nominal in the five and a half months since  
13 Applicant included recreational retail cannabis sales to its pre-existing medical retail  
14 cannabis sales.
- 15 19. Applicant has not changed or expanded its space within its existing building (which is on  
16 the same tax lot as Talent Liquor Store). The only difference between Applicant's  
17 recreational cannabis sales during the past five months, and Applicant's future OLCC-  
18 licensed recreational sales at the location is that Applicant will the eventually addition of  
19 OLCC-regulated edible cannabis products and extracts. This is merely an addition of  
20 new cannabis products for sale in Applicant's Retail Space; not a change or expansion of  
21 use.
20. The state regulatory jurisdiction will shift from OHA to OLCC; and Applicant will start  
changing the 25% tax on recreational cannabis products as required under Measure 91  
and HB 3400. The tax money will be distributed back to the state, and will be utilized to  
pay for state and local services.
21. Overall, Applicant does not see much meaningful change in its retail business activities  
at its store since it opened in June of 2014. The physical space occupied by Applicant's  
store has not expanded.

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22. **Executive Summary.**

A. **Location:** 103 N. Pacific Hwy., Units B & C | Talent (the "Property" or "Site")

B. **Assessor's Map:** 38-1W-23DC, Tax Lot 500.

C. **Zoning:** "CBD" (Central Business District).  
TZC 8-3, Div. D, Art. 2.

D. **Property Owner:** Sandra Berman, Trustee.  
162 N. Pioneer St. | Ashland, OR 97520

E. **Applicant:** Green Valley Wellness LLC  
103 N. Pacific Hwy., Unit B | Talent, OR 97540

F. **Applicant's Attorneys:** Chris Hearn (OSB #911829)  
DAVIS HEARN ANDERSON & TURNER PC  
515 E. Main St. | Ashland, OR 97520

G. **Proposal: Continuation of Use in Existing Retail Space (no material modifications to existing space).** Applicant proposes no new construction or material modification to the existing retail space constructed on the Property in 1964.

23. **ATTACHMENTS:**

**Exhibit "A":** Declaration of Peter Gross, Applicant's chief operating officer (with sub-Exhibits 1 through 3).

**RELEVANT SUBSTANTIVE REVIEW CRITERIA:**

**TALENT ZONING CODE.** *City of Talent Municipal Code, Title 8, Chapter 3 (as amended).*

*8-3 Division D. Article 2.*  
**COMMERCIAL ZONE**  
**CENTRAL BUSINESS DISTRICT (CBD)**

1 **8- 3 D. 210 DESCRIPTION AND INTENT**

2 *The Central Business District (CBD) Zone shall serve as the hub of government, public services*  
3 *and social activities; shall permit retail trade, personal and business services; and shall include*  
4 *residential uses to strengthen and enliven the community core. The CBD shall be pedestrian*  
5 *oriented and shall highlight and incorporate historic places and structures, parks and public*  
6 *transit facilities and opportunities.*

7 **FINDINGS / CONCLUSION:** Applicant’s retail business is located in the CBD zone,  
8 on the same tax lot as the long-existing Talent Liquor Store (an OLCC-regulated  
9 operation). Applicant has conducted state-regulated retail cannabis sales at this location  
10 since June, 2014.

11 **8- 3 D. 220 BUILDINGS AND USES PERMITTED SUBJECT TO**  
12 **TYPE- 1 PERMIT REVIEW**

13 *No building structure or land shall be used, and no building or structure shall be hereafter*  
14 *erected, enlarged or structurally altered except for the following uses, none of which shall*  
15 *include drive-in, drive-up, or drive-through facilities:*

16 \* \* \*

17 C. *Use of existing structures for the permitted uses listed in Sections 230 and 240 of this*  
18 *Article, where all the provisions of the Zoning Ordinance and any amendment thereto*  
19 *are met.*

20 \* \* \*

21 **8- 3 D. 230 BUILDINGS AND USES SUBJECT TO**  
**TYPE- 2 SITE DEVELOPMENT PLAN REVIEW**

*No structure shall be erected, enlarged or structurally altered, nor shall land be*  
*developed, except for the following uses or structures, which shall not include drive-in,*  
*drive-through or drive-up facilities. The following uses are permitted subject to the*  
*provisions of Article 8-3L.1 and review by the Planning Department.*

\* \* \*

B. *Retail stores (excluding sales of medical or recreational marijuana by*  
*producers, wholesalers, processors and retail outlets)* and offices; personal,  
business and repair services, not including automotive repair. Such uses may  
not exceed 6,000 square feet. Automotive parts and sales are permitted  
provided that the activity happens fully within enclosed buildings. (*Emphasis*  
*added.*)

1 **FINDINGS / CONCLUSION:** Until November 6, 2014, “retail stores” generally were a  
2 permitted use in City’s CBD zone. However, pursuant to revisions to City’s Zoning Code  
3 (amendments to TZC 8 - 3D.230(B), adopted by City November 6, 2014), while “retail  
4 stores” remain a permitted uses in the CBD zone, those retail stores conducting sales of  
5 medical or recreational cannabis products are not a permitted use in the CBD zone.  
6 Therefore, under the amended criteria adopted by City in November, 2014, Applicant’s  
7 continued retail sale of cannabis products at Applicant’s store are neither an outright  
8 permitted use, nor a conditionally permitted use. Absent findings establishing  
9 Applicant’s use as a non-conforming use pursuant to the provisions of TZC 8 -3 Div. M.,  
10 Art. 2, Applicant’s state-regulated recreational retail cannabis business cannot continue  
11 in the CBD zone.

12 \* \* \*

13 **8- 3 D. 250 BUILDINGS AND USES PERMITTED SUBJECT TO CONDITIONAL  
14 USE REVIEW**

15 *The planning commission may grant or deny a conditional use permit in accordance with the  
16 procedure and provisions set forth in Article 8-3L.2.*

- 17 A. *Any uses permitted conditionally in the Neighborhood Commercial Zone (CN).*
- 18 B. *Brewery, Distillery, Winery not exceeding 6,000 square feet (pub or tasting room  
19 required).*
- 20 C. *Commercial or trade schools.*
- 21 D. *Wireless communication towers.*
- E. *Buildings over two-and-a-half (2½) stories or thirty (30) feet in height, whichever is the  
lesser. Buildings more than 30 feet in height are permitted only if they include residential  
uses.*

\* \* \*

- H. *Other buildings or uses that the planning commission determines to be similar to other  
uses permitted conditionally in the CBD zone.*

**FINDINGS / CONCLUSION:** Applicant’s use is not listed among the  
conditionally permitted uses in City’s CBD zone. *TZC 8-3D.250.*

1 **8-3 Division M. Article 2. NON-CONFORMING USES, LOTS AND STRUCTURES**

2 **8-3 M.210 INTENT**

3 *Within the zones established by this Chapter, or amendments thereto, there exist lots,*  
4 *structures, and uses of land and structures which were lawful before this Chapter was enacted*  
5 *or amended by ordinance, but which would be prohibited, regulated, or restricted under the*  
6 *terms of this Chapter or amendments thereto. Such uses are generally considered to be*  
7 *incompatible with the permitted uses in the zone in which they are located, and their*  
8 *continuance shall therefore be permitted only in strict compliance with the restrictions of this*  
9 *Article. However, existing single-family residential uses shall not be treated as non- conforming*  
10 *uses, unless such use is voluntarily discontinued [amended by Ord. no. 777; 12/01/2004]. Subject*  
11 *to the provisions of this Article, a non-conforming structure or use may be continued and*  
12 *maintained in reasonable repair, but shall not be altered or extended except as provided herein.*  
13 *The extension of a non-conforming use to a portion of a structure, which was arranged or*  
14 *designed for the non-conforming use at the time of passage of this ordinance, is not considered*  
15 *an enlargement or expansion of a non- conforming use.*

16 \* \* \*

17 **FINDINGS / CONCLUSION:** Applicant has conducted state-regulated retail sales of  
18 cannabis products at it's location since June, 2014. City's TZC did not prohibit retail sale  
19 of cannabis products in the CBD zone until November, 2014. Applicant does not  
20 propose to modify, expand or enlarge the existing building (constructed in 1964).  
21 Applicant proposes to continue to conduct retail sales of cannabis products in the same  
space where it has conducted retail sales of cannabis products since June, 2014.

\* \* \*

16 **8-3 M.240 NON-CONFORMING USES OF LAND**

17 *Where, at the effective date of adoption or amendment of this Chapter, lawful use of land exists*  
18 *that is made no longer permissible under the terms of this Chapter, such use may be continued,*  
19 *so long as it remains otherwise lawful, subject to the following provisions:*

20 8- 3M.240 A. *No such non-conforming use shall be enlarged or increased, nor*  
21 *extended to occupy a greater area of land than was occupied at the*  
*effective date of adoption or amendment of this Chapter; and*

**APPLICANT'S SUPPLEMENTAL FINDINGS OF FACT & CONCLUSIONS OF LAW**

**Applicant: Green Valley Wellness LLC | 103 N. Pacific Hwy., Units B & C**

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1 **FINDINGS / CONCLUSION:** Applicant proposes neither to enlarge, nor to  
2 increase, nor to extend its existing use to occupy a greater area of land than it  
3 occupied in November, 2014 (the effective date of the relevant amendments to  
4 the City's TZO). Applicant proposes to continue retail sales of cannabis products  
5 in compliance with all relevant State of Oregon laws and regulations. Applicant  
6 opened its retail store within Applicant's existing leased space in June of 2014,  
7 and at that time commenced retail sales of cannabis products to local medical  
8 cannabis patients. On October 1, 2015, applicant commenced retail sales of  
9 recreational cannabis to all adults over the age of 21, pursuant to the provisions of  
10 HB 3400 (effective June 30, 2015). Applicant's retail sales of cannabis from  
11 applicant's existing space have complied with state and local regulations as they  
12 existed upon Applicant's commencement of such retail sales. Applicant does  
13 propose to enlarge or increase it's activities. Applicant may add new "product  
14 lines" when recreational sales of edibles and extracts become legal for  
15 recreational sale. Selling some additional products does not constitute a new or  
16 expanded use of Applicant's space. Since June of 2014, Applicant has been  
17 conducting retail sales of cannabis products in exactly the same location and  
18 space which Applicant now occupies. Applicant seeks only to continue this use  
19 within its Retail Space. Applicants use may continue as a non-conforming use, as  
20 long as it is not enlarged, nor increased, nor extended to occupy a greater area of  
21 land than Applicant currently occupies within Applicant's Retail Space.

8- 3M.240 (B). *No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Chapter.*

16 **FINDINGS / CONCLUSION:** Applicant does not propose to move, in whole  
17 or in part, to any other portion of the lot or parcel occupied by such use in  
18 November, 2014 (the effective date of the relevant amendments to the TZO).  
19 Applicant proposes to continue retail sales of cannabis products in compliance  
20 with all relevant State of Oregon laws and regulations and in exactly the same  
21 space where Applicant has conducted retail medical marijuana sales since June,  
2014; and recreational cannabis sales since October 1, 2015. Applicant shall not  
move its existing non-conforming use in whole or in part to any other portion of  
the lot or parcel currently occupied by Applicant's Retail Space.

1 8-3M.240 (C). If any such non-conforming use of land ceases for any reason for a  
2 period of more than forty-five (45) days, any subsequent use of such  
3 land shall conform to the regulations specified by this Chapter for the  
4 zone in which such land is located.

5 **FINDINGS / CONCLUSION:** Applicant has not ceased using the space as  
6 described above for a period of more than forty-five (45) days. This criterion does  
7 not apply.

8 **8-3 M.250 NON-CONFORMING USES OF STRUCTURES AND PREMISES.**

9 *A lawful use of a structure, or of structure and premises in combination, existing at the effective  
10 date of adoption or amendment of this Chapter, and which does not conform to the use  
11 regulations for the zone in which it is located, shall be deemed to be a non-conforming use and  
12 may be continued only in compliance with the following regulations:*

13 8-3 M.250 A. **Completion of structure.** *Nothing in this Chapter shall be deemed to  
14 require a change in the plans, construction, or designated use of any  
15 building for which a building permit was issued prior to the effective  
16 date of this Chapter and upon which construction has commenced,  
17 provided the building, if non-conforming or intended for a  
18 non-conforming use, is completed and in use within one (1) year of the  
19 date of issuance of the building permit.*

20 **FINDINGS / CONCLUSION:** The building housing Applicant's Retail Space  
21 was constructed in 1964. Applicant has not modified, nor does applicant propose  
any modifications, to the existing building or space. This criterion does not apply.

8-3 M.250 B. **Repairs and maintenance.** *Routine maintenance and repairs, including  
repair or replacement of non-bearing walls, fixtures, wiring or plumbing,  
may be performed on structures and premises, the use of which is  
non-conforming. Nothing in this Chapter shall be deemed to prevent the  
strengthening or restoring to a safe condition any building or part  
thereof declared unsafe by any official charged with protecting the  
public safety, upon order of such official.*

1 **FINDINGS / CONCLUSION:** Applicant has not modified, nor does applicant  
2 propose any modifications, to the existing building or space. Applicant may, in  
3 the future, conduct routine maintenance and repairs consistent with the  
4 provisions of this subsection. The provisions of this subsection do not apply to  
5 Applicant's proposal.

6 8-3 M.250 C. ***Change of non-conforming use.*** *If a non-conforming use involving a*  
7 *structure is replaced by another use, the new use shall conform to this*  
8 *Chapter unless the planning commission determines that the proposed*  
9 *use is of the same or of a more restrictive classification, that the*  
10 *proposed use is of the same or of a more restrictive classification, that*  
11 *the proposed use will not affect the character of the area in which it is*  
12 *proposed to be located more adversely than the existing or pre-existing*  
13 *use, and that the change of use will not result in the enlargement of the*  
14 *cubic space occupied by a non-conforming use, except as provided in*  
15 *subsection (d) below. An application for a change of use must be filed in*  
16 *accordance with the provisions of Article 16, including the payment of*  
17 *required fee.*

18 **FINDINGS / CONCLUSION:**

19 **Criterion :** *"The new use shall conform to this Chapter unless the Planning Commission*  
20 *determines that the proposed use is of the same or of a more restrictive*  
21 *classification ...":*

Applicant does not propose replacing its state-regulated retail cannabis sales use with a new use. Applicant's "use" is of the same classification as the use Applicant has conducted in the space since June, 2014, when Applicant began offering state-regulated medical cannabis products to the public. On October 1, 2015, Applicant commenced retail sales of recreational cannabis products to adults over the age of 21, pursuant to the provisions of HB 3400 (effective June 30, 2015), but Applicant's offering of state-regulated recreational cannabis products really amounted to adding an additional product line to Applicant's existing retail sales operation . City adopted amendments to its TZC in November, 2014. City's November, 2014 amendments prohibit establishment of new medical or recreational cannabis sales in the CBD zone. Applicant's space is on the same tax lot as the long-existing Talent Liquor Store, an OLCC-

1 regulated retail establishment. Applicant is unique because it is the only  
2 existing cannabis retail business located within City which would be  
3 required to cease its ongoing business due to amendments to City's TZO  
4 adopted in November, 2014 (after Applicant opened its existing state-  
5 regulated cannabis retail sales location). Applicant may continue retail  
6 sales of medical and recreational cannabis products as a legal non-  
7 conforming use established prior to adoption of City's amendments to the  
8 list of permitted and conditionally permitted uses allowed within the CBD  
9 zone. By way of a hypothetical example, if an Applicant's retail use was  
10 retail clothing sales, but Applicant historically had not offered any shoes  
11 for sale, then later adding "shoe sales" to Applicant's product line would  
12 not constitute a new or expanded use.

13 **Criterion:** *"... that the proposed use will not affect the character of the area in which it is  
14 proposed to be located more adversely than the existing or pre-existing use, ..."*

15 **FINDINGS / CONCLUSION:** Applicant has been conducting retail cannabis  
16 sales at its existing location since June, 2014. Applicant shares the site (Tax Lot  
17 500) with the only OLCC-regulated liquor store located within the City.  
18 Similarly, applicant will be an OLCC-regulated retail sales location. Applicant's  
19 existing use, which has included state-regulated cannabis sales since June, 2014,  
20 will not affect the character of the area where Applicant's use is located.

21 **Criterion:** *"... and that the change of use will not result in the enlargement of the cubic  
space occupied by a non-conforming use, except as provided in subsection (d)  
below."*

**FINDINGS / CONCLUSION:** Applicant proposes no enlargement of the cubic  
space occupied by its retail sales operations, ongoing since June, 2014. This  
criterion does not apply to Applicant's proposal.

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8-3 M.250 D. **Enlargement of non-conforming use.** No existing structure that is wholly or partially occupied by a non-conforming use shall be structurally altered, move, extended, constructed, reconstructed, or enlarged in cubic space unless the alteration or enlargement will result in the elimination of non-conforming use; except that such building may be enlarged when authorized in accordance with the procedure and provisions set forth in Article 16, including the payment of the required fee.

**FINDINGS / CONCLUSION:** Applicant proposes no enlargement of the cubic space occupied by its retail sales operations, ongoing since June, 2014. This criterion does not apply to Applicant's proposal.

\* \* \*

**CONCLUSION:** For the foregoing reasons, along with any additional evidence, arguments, and testimony provided in support of Applicant's Application in connection with the Planning Commission's public hearing, the Planning Commission finds that Applicant's use is a qualifying non-conforming use at Applicant's retail location, pursuant to the provisions of City's TZC 8-3, Div. M., Art. 2.

DATED: March 14, 2016

Respectfully submitted,  
DAVIS HEARN ANDERSON & TURNER PC



Christian E. Hearn (OSB #911829)  
Attorneys for Applicant | Green Valley Wellness LLC

**EXHIBIT "A"**

**DECLARATION OF PETER GROSS (GREEN VALLEY WELLNESS LLC)  
IN SUPPORT OF PLANNING COMMISSION INTERPRETATION  
("Nonconforming Use" at 103 N. Pacific Hwy., Units B & C)**

I, PETER GROSS, declare as follows:

1. If called to testify as a witness at a quasi-judicial land use hearing, I would testify to the following facts from my own personal knowledge.
2. I am one of the managing members of Green Valley Wellness LLC ("Green Valley"). Green Valley's place of business is located at 103 N. Pacific Hwy., Units B & C ("Green Valley" or the "Premises"). Green Valley's store is located on the same tax lot as the OLCC-regulated Talent Liquor store. See *attached Exhibit "1"*.
3. On June 27, 2014, Green Valley began legal retail sales of Medical Marijuana at the Premises. Attached as *Exhibit "2"* is a copy of Green Valley's City of Talent Business License Application, submitted to City on 12/02/2014. Following approval of the City of Talent Business License Application attached as Exhibit "2", I believe Green Valley has twice renewed its City Business License.
4. At the time Green Valley began retail sales of medical marijuana at Green Valley's Store in 2014, my understanding is that the provisions of City of Talent's Zoning Code (8-3 Div. D. Art. 2) permitted legal sale of marijuana in the relevant Commercial Zone – Central Business District ("CBD" Zone).
5. Green Valley has continuously sold legal state-regulated marijuana at its store (Units B & C at 103 N. Pacific Hwy.) since June of 2014.

6. On October 1, 2015, Green Valley also began selling legal recreational marijuana at its store in Units B & C – as part of the state’s legal limited recreational marijuana sales program.
7. After Green Valley received all required approvals and began selling state-regulated marijuana at its store in Units B & C, I understand that City amended certain provisions in the City of Talent Zoning Code, including City of Talent Zoning Code 8-3 Div. D Art. 2 (CBD district permitted and conditional uses).
8. I understand the recent amendments to 8-3D.230(B), still allow retail stores as a Type-2 Site Development Plan Review, but now exclude “sales of medical or recreational marijuana by ... retail outlets”. *8-3D.230(B)*.
9. In the course of recent discussions with City’s Community Development Director, a question of interpretation arose concerning whether Green Valley’s request to continue its retail sale of recreational marijuana in Units B & C is “grandfathered-in” as a “non-conforming use” under the provisions of City’s Zoning Code. *Courtesy copy of current City of Talent Zoning Code provisions (8-3 Div. D, Art. 2; and 8-3 Div. M, Art. 3) are attached as Exhibit “3”.*
10. Green Valley believes it is “grandfathered-in” as a non-conforming use for the following reasons:
  - A. Since June of 2014, Green Valley has continuously operated a state-regulated retail sales establishment selling marijuana to qualifying adults in Green Valley’s existing space in Units B & C.

B. While Green Valley's state-regulated sales of marijuana were limited to "medical" marijuana sales to qualifying customers from June of 2014 to the present (and have only included "recreational" marijuana sales to qualifying customers since October 1, 2015), the fact remains that Green Valley is still doing the same thing, and in the same space, as it has done since 2014. Namely, selling state-regulated marijuana to retail customers.

C. The fact that the state now allows cannabis to be sold to customers over the age of 21 who do not have a "medical marijuana card" does not change the nature or scope of the activity which has continued in Green Valley's Units B & C ever since June of 2014.

D. Green Valley does not plan to expand the space or the scope of its retail sales to customers. It will continue to do the same thing in exactly the same space as before the Zoning Code was amended.

E. Green Valley does not plan to hire additional employees, and the impact of Green Valley's use has not changed.

11. Based on the facts, and in light of the specific circumstances presented, Green Valley respectfully requests the Planning Commission find that Green Valley's sale of state-regulated recreational cannabis in its existing space

constitutes neither a "new use", nor an "expansion" of use sufficient to disqualify ongoing state-regulated adult-use cannabis sales (for both recreational and medical purposes) as a non-conforming use.

Pursuant to ORCP 1E, I hereby declare the facts above are correct based on my knowledge and belief.

Dated: February 8, 2016

*See next page (signature page)*

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Peter Gross  
Chief Operating Officer, Green Valley Wellness LLC

**From:** P&M Holdings  
**To:** Chris Hearn  
**Subject:** Re: Declaration of Peter Gross re PC Interpretation - Nonconforming Use at 103 N. Pac. Hwy.- 02-08-2016  
**Date:** Monday, February 08, 2016 3:31:03 PM

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Here is the signature page:

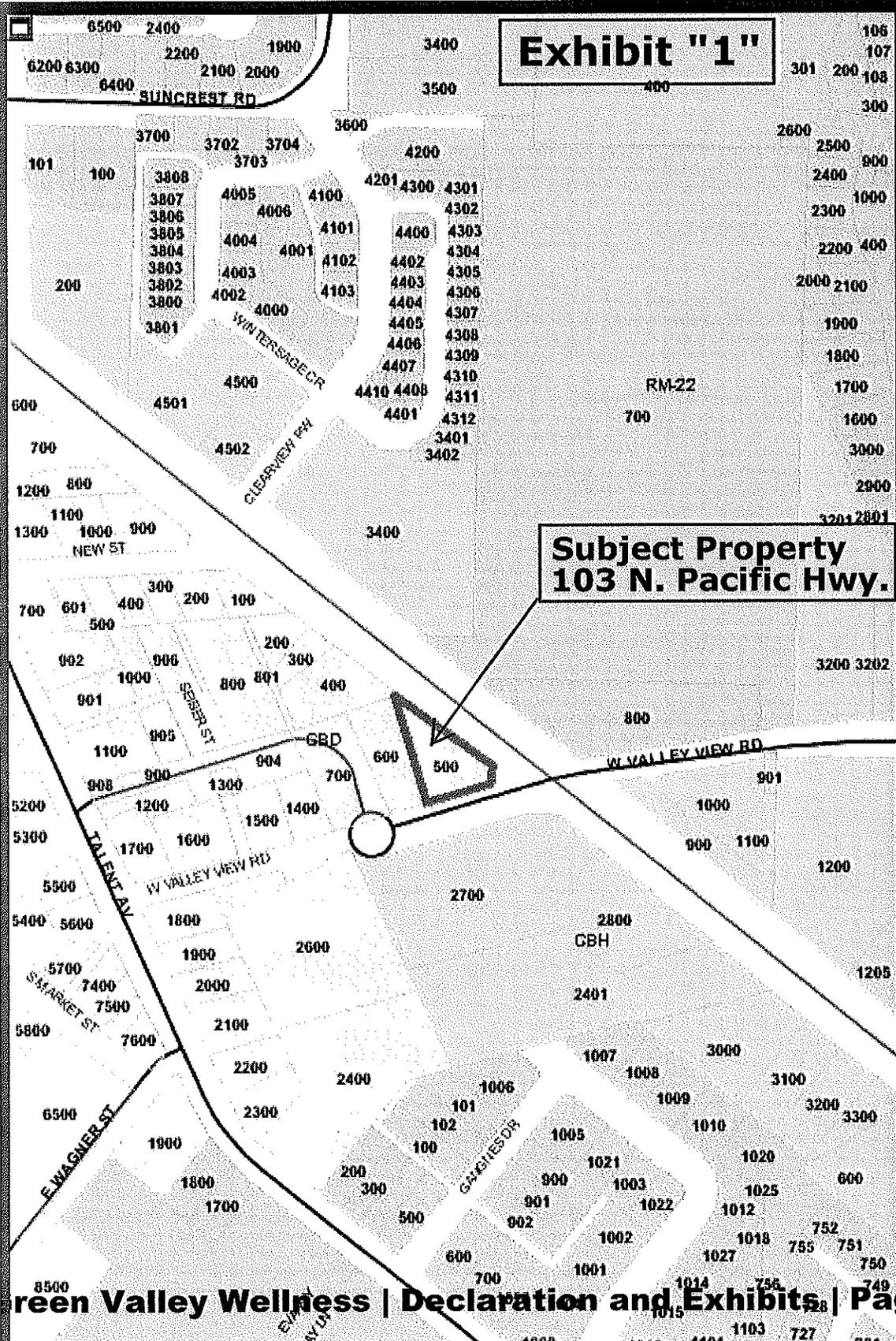
constitutes neither a "new use", nor an "expansion" of use sufficient to disqualify ongoing state-regulated adult-use marijuana (for both recreational and medical purposes) as a non-conforming use.

Pursuant to ORCP 1E, I hereby declare the facts above are correct based on my knowledge and belief.

Dated: February 8, 2016



Peter Gross  
Chief Operating Officer, Green Valley Wellness LLC



**Exhibit "1"**

**Subject Property  
103 N. Pacific Hwy.**

**Layer | Legend**

**Property Data Online Legend**

- Highlighted Feature
- Tax Lot Outlines
- Tax Lot Numbers
- I-5 (Interstate)
- I-5 N
- I-5 S
- Talent Zoning
- CN
- CBD
- CBH
- CH
- CI
- IL
- RS-MH
- RS-5
- RS-7
- RM-22
- Rivers and Lakes
- Primary
- Secondary
- Street Names
- Streets
- Trail
- Unimproved County Road
- Major Road
- Major USFS / BLM Road
- On/Off Ramp
- Freeway
- Highway

Exhibit "1" pg. 1



Green Valley Wellness  
103 N. Pacific Hwy., Units "B" and "C"

**CITY OF TALENT 2015 BUSINESS LICENSE APPLICATION**

110 E. MAIN STREET PO BOX 445, TALENT, OR 97540  
Main (541)535-1566 FAX (541) 535-7423 Email: talent@cityoftalent.org

*Submitted on: 12/2/14*

PLEASE PRINT OR TYPE

Name of Business or Corporation: GREEN VALLEY WELLNESS LLC **Exhibit "2"**

Business phone #: 541-~~621-1840~~ 535-3022 Email: greenvalleywellness@gmail.com

Business address: 103 N. Pacific Hwy Units B & C

City: Talent State: OR Zip code: 97540

Mailing address: 489 Euclid St.

City: Ashland State: OR Zip code: 97520

Type of business: Retail MMF State License #: MA1067166 Expires: 5/12/2015  
(please be specific)

Existing Talent Business  New Business  Home Occupation  Industrial

Owner(s): (if more than 2 attach a separate page)

1: P & M Holdings LLC 541-621-1840 2: \_\_\_\_\_  
Full name Contact# Full Name Contact#

*MM*(Initials) Approval of a business license application shall not be construed to constitute a permit to engage in any activity prohibited by a law or a waiver of any other regulatory license requirement imposed by federal, state, or local law. A business license does not imply or indicate the City's endorsement of any business or business activity. An approved business license is required before conducting business within the City.

*MM*(Initials) If this application concerns a business establishing a new location within the City or changing the use for a location within the City, pursuant to zoning code Section 8-3J.150, the City will perform a use classification to verify that the proposed use is an allowed use at the proposed location. The Community Development Department will provide the applicant the results of the use classification.

Issuance of this business license does not substitute any other applicable federal, state or local laws, ordinances or regulations.

Applicant's signature: 1: *M. M. Morris* 2: \_\_\_\_\_

FEE SCHEDULE			2015
Initial fee: License period	\$60.00 (Jan.-Dec.)	\$30.00 (Jul.-Dec.)	<b>\$ 60.00</b>
# of employees working within the City limits over 2,	<u>(3 x \$5.00)</u>		<u>15.00</u>
Late Fee (Renewals only):	\$10.00 per month for payments made after Feb. 1 <sup>st</sup>		
Total enclosed			<b>\$ 75.00</b>

\*\*\*\*\* OFFICE USE \*\*\*\*\*

Land Use Review: Complete      N/A      Comm. Dev. Review:      Date:      City Mgr. Review:      Date:     

YEAR	DATE	RECEIPT No.	AMOUNT PAID	LICENSE # ISSUED
2015				

In compliance with the Americans with Disabilities Act, if you need special assistance, please contact TTY phone number 1-800-735-2900 for English and for Spanish, please contact TTY phone number 1-800-735-3896

**Exhibit "3" (Talent Zoning Code 8-3D. Art. 2; and 8-3M. Art 2)**

8-3 Division D. Article 2.

**COMMERCIAL ZONE**

**CENTRAL BUSINESS DISTRICT (CBD)**

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**8-3D.210 DESCRIPTION AND INTENT**

The Central Business District (CBD) Zone shall serve as the hub of government, public services and social activities; shall permit retail trade, personal and business services; and shall include residential uses to strengthen and enliven the community core. The CBD shall be pedestrian oriented and shall highlight and incorporate historic places and structures, parks and public transit facilities and opportunities.

**8-3D.220 BUILDINGS AND USES PERMITTED SUBJECT TO TYPE-1 PERMIT REVIEW**

No building structure or land shall be used, and no building or structure shall be hereafter erected, enlarged or structurally altered except for the following uses, none of which shall include drive-in, drive-up, or drive-through facilities:

- A. Existing residential uses, without any increase in density, or any expansion of use, floor area or improvements.
- B. Dwelling units, provided the units are above non-residential uses and the ground floor is devoted entirely to a commercial use or uses permitted in this Article. One dwelling unit is allowed at ground level behind a non-residential use, and cannot exceed 50 percent of the total ground floor space of buildings on the parcel.
- C. Use of existing structures for the permitted uses listed in Sections 230 and 240 of this Article, where all the provisions of the Zoning Ordinance and any amendment thereto are met.
- D. Uses and structures customarily incidental to the above uses, including the usual accessory buildings and structures provided in the low- and medium-density residential zones.
- E. Paving, surfacing, or resurfacing of existing parking lots subject to city staff review for conformance with the provisions of Article 8-3J.5. If a question arises as to conformance with said provisions, the City Planner shall subject the project to a site plan review without a public hearing.

**8-3D.230 BUILDINGS AND USES SUBJECT TO TYPE-2 SITE DEVELOPMENT PLAN REVIEW**

No structure shall be erected, enlarged or structurally altered, nor shall land be developed, except for the following uses or structures, which shall not include drive-in, drive-through or drive-up facilities. The following uses are permitted subject to the provisions of Article 8-3L.1 and review by the Planning Department.

- A. Any use permitted subject to site plan review without a required public hearing in the Neighborhood Commercial Zone (CN).
- B. Retail stores (excluding sales of medical or recreational marijuana by producers, wholesalers, processors and retail outlets) and offices; personal, business and repair services, not including automotive repair. Such uses may not exceed 6,000 square feet. Automotive parts and sales are permitted provided that the activity happens fully within enclosed buildings.
- C. Eating and drinking establishments (which may include entertainment) not exceeding 6,000 square feet.
- D. Churches and other religious institutions not exceeding 6,000 square feet.
- E. Guest lodging, not exceeding 10 rooms.
- F. Performing arts theaters and motion picture theaters (not including drive-ins), not exceeding 6,000 square feet.
- G. Public and commercial off-street parking lots or structures, not exceeding 200 parking spaces.
- H. Wireless communication antennae subject to the provisions of Section 8-3J.910.
- I. Other uses similar to those listed above, where permitted by the City Planner after written application. Where there is question as to similarity, the Planner shall refer the matter to the Planning Commission for a determination.
- J. Uses and structures customarily incidental to the above uses.
- K. Live-work units.

**8-3D.240 BUILDINGS AND USES PERMITTED SUBJECT TO TYPE-3 SITE DEVELOPMENT PLAN REVIEW**

No structure shall be erected, enlarged or structurally altered, nor shall land be developed, except for the following uses or structures, which shall not include drive-in, drive-through or drive-up facilities. The following uses are permitted subject to the provisions of Article 8-3L.1 and review by the Planning Commission in a public hearing. Although permitted, the following uses have characteristics that may negatively impact nearby properties.

- A. Any use permitted subject to site plan review with a required public hearing in the Neighborhood Commercial Zone (CN), excluding utility substations.
- B. Any use listed in Section 230, above, that exceeds the listed size/capacity threshold.

- C. Craft Manufactory & Retail, provided the structure housing the manufactory is sound and suitable for the intended use (refer to definition in Article 8-3B.1 for further information).
- D. Public parks, playgrounds and other similar publicly owned recreational areas.
- E. Passenger terminals for bus or rail.
- F. Public and semi-public buildings essential to the physical welfare of the area, such as fire and police substations, libraries, and government offices. Such uses, which may be developed in campus-like settings, are exempt from the dimensional requirements of the zone, except for parking lot setbacks.
- G. Other uses similar to those listed above, or under Sections 220 or 230, where permitted by the planning commission after written application.
- H. Uses and structures customarily incidental to the above uses.

**8-3D.250 BUILDINGS AND USES PERMITTED SUBJECT TO CONDITIONAL USE REVIEW**

The planning commission may grant or deny a conditional use permit in accordance with the procedure and provisions set forth in Article 8-3L.2.

- A. Any uses permitted conditionally in the Neighborhood Commercial Zone (CN).
- B. Brewery, Distillery, Winery not exceeding 6,000 square feet (pub or tasting room required).
- C. Commercial or trade schools.
- D. Wireless communication towers.
- E. Buildings over two-and-a-half (2½) stories or thirty (30) feet in height, whichever is the lesser. Buildings more than 30 feet in height are permitted only if they include residential uses.
  - 1. The maximum height allowed through conditional use review is forty (40) feet. The proposed building must include site design and architectural elements such that it is compatible with the small town character of Talent. Building elements to be considered include, but are not limited to, size, proportion, massing, articulation, detailing and location. Landscaping, buffering, fencing and similar elements may also be considered, but not as the only method of ensuring compatibility.
- F. Temporary uses.
- G. Pump stations and water reservoirs.

- H. Other buildings or uses that the planning commission determines to be similar to other uses permitted conditionally in the CBD zone.

**8-3D.260 YARDS REGULATIONS**

A. Front yard.

1. Minimum: Zero (0) feet.
2. Maximum: Ten (10) feet for no more than 50 percent of the ground-floor width.
3. Parking lots: Ten (10) feet, which shall be landscaped to provide screening.

B. Side yard.

1. Minimum: Zero (0) feet.
2. Maximum: Ten (10) feet for no more than 50 percent of the ground-floor width on street-facing sides; ten (10) feet on alley-facing sides.
3. Parking lots: 10 feet, which shall be landscaped to provide screening.

C. Rear yard. No rear yard is required between commercially zoned properties.

D. General provision applying to all setbacks: Where public utility or similar easements exist on or across property lines, setbacks shall be measured from the lot-interior edge of the easement.

E. Adjacency to residential zones: Where lots abut residentially zoned lots, all setbacks shall be twenty (20) feet on the side(s) abutting said lots. This includes front setbacks in order to provide a transition.

F. Exceptions to setback provisions shall be made and shall be required on corner lots where vision clearance for automobiles would be impaired by strict observance of the provisions.

**8-3D.270 LOT AREA AND DIMENSIONS**

For dwelling units above the ground floor of a business, there shall be a minimum of 1,200 square feet of total lot area for each dwelling unit. For all other permitted uses, there shall be no minimum lot size or lot width.

**8-3D.280 LOT COVERAGE RESTRICTIONS**

In the CBD zone there shall be no lot coverage restrictions except as provided in the yard setback and off street parking regulations.

**8-3D.290 PARKING AND LOADING REQUIREMENTS**

- A. Off-street loading spaces shall be provided as prescribed in Article 8-3J.5. Off-street parking spaces adequate to serve commercial establishments shall be made available, but may be provided on a district-wide or joint use basis rather than adjacent to each commercial use. If adequate public or commercial parking areas are not available, the individual business shall be responsible for providing adequate off-street parking in conformance with the requirements of Article 8-3J.5.
- B. On-site parking is prohibited between the building and the street, with the exception of sites with three or more frontages. Access to parking lots shall be from alleys wherever possible.

**8-3D.295 LANDSCAPING, FENCES, WALLS AND SIGNS**

All areas not occupied by structures, roadways or parking areas, walkways, bicycle paths, patios or other specific uses shall be landscaped and maintained. Fences, walls, hedges and screen plantings shall be permitted in conformance with Article 8-3J.3. In all cases, and at all times, they shall not exceed four (4) feet in height within front and street-side yards. All fences, walls, hedges and screen plantings shall be properly maintained. Signs shall be permitted and in conformance with Article 8-3J.7.

**8-3D.296 BUFFERING**

When a development or use is proposed on property within the CBD zone which abuts or is adjacent to a conflicting land use zone or an incompatible but permitted use within the same zone, the planning commission shall require a buffer sufficient to protect the intent of the adjacent zone or the integrity of the incompatible use. In many cases a fence, wall, hedge or screen planting along the property line closest to the conflicting use or zone will be sufficient. However, the type of buffer shall be considered in relation to existing uses, and the amount of permanence desired. Buffers may consist of spatial separation, physical barriers, landscaping, natural topography or other features. The greatest amount of buffering shall be required where necessary to protect an agricultural resource. Proposed buffers shall be subject to the approval of the planning commission, who shall review the buffering for adequacy and appropriateness as part of the site plan review.

When the Planning Commission determines that buffering is required to promote compatibility between a CBD property or use and an adjacent use (in any zone), buffering may be required in accordance with Section 8-3J.460(B). Similarly, the Planning Commission may waive buffering that would otherwise be required by Section 8-3J.460(B) if it finds that the need to fulfill the intent of the CBD zone outweighs the need for buffering.

## 8-3 Division M. Article 2.

# NON-CONFORMING USES, LOTS AND STRUCTURES

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### **8-3M.210 INTENT**

Within the zones established by this Chapter, or amendments thereto, there exist lots, structures, and uses of land and structures which were lawful before this Chapter was enacted or amended by ordinance, but which would be prohibited, regulated, or restricted under the terms of this Chapter or amendments thereto. Such uses are generally considered to be incompatible with the permitted uses in the zone in which they are located, and their continuance shall therefore be permitted only in strict compliance with the restrictions of this Article. However, existing single-family residential uses shall not be treated as non-conforming uses, unless such use is voluntarily discontinued [amended by Ord. no. 777; 12/01/2004]. Subject to the provisions of this Article, a non-conforming structure or use may be continued and maintained in reasonable repair, but shall not be altered or extended except as provided herein. The extension of a non-conforming use to a portion of a structure, which was arranged or designed for the non-conforming use at the time of passage of this ordinance, is not considered an enlargement or expansion of a non-conforming use.

A use or structure which, on the date this ordinance takes effect and Ordinance Number 146 and amendments thereto are repealed, violates that ordinance as it then reads, shall not be regarded as non-conforming but shall remain in violation under this ordinance.

### **8-3M.220 NON-CONFORMING LOTS OF RECORD**

In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of the Zoning Chapter. This provision shall apply even though such lot fails to meet the requirements for area or width, or both. Yard dimensions and other requirements not involving area or width or both shall conform to the regulations for the zone in which such lot is located. For purposes of this Section, the pre-existing status of a lot must be clearly established by separate tax lot in the records of the Jackson County Assessor. No division of any parcel shall be permitted which leaves remaining any lot with width or areas below the requirements stated in this Chapter.

### **8-3M.230 NON-CONFORMING STRUCTURES**

A structure that houses a conforming use, but that does not conform with height, setback, lot coverage, or structural requirements, may be altered or extended, if the alteration or extension does not deviate further from the standards of this Chapter. If a structure that does not meet minimum setback requirements is altered or extended under this provision, special construction standards may be required for fire safety, pursuant to the building code.

**8-3M.240 NON-CONFORMING USES OF LAND**

Where, at the effective date of adoption or amendment of this Chapter, lawful use of land exists that is made no longer permissible under the terms of this Chapter, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Chapter; and
- B. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Chapter; and
- C. If any such non-conforming use of land ceases for any reason for a period of more than forty-five (45) days, any subsequent use of such land shall conform to the regulations specified by this Chapter for the zone in which such land is located.

**8-3M.250 NON-CONFORMING USES OF STRUCTURES AND PREMISES**

A lawful use of a structure, or of structure and premises in combination, existing at the effective date of adoption or amendment of this Chapter, and which does not conform to the use regulations for the zone in which it is located, shall be deemed to be a non-conforming use and may be continued only in compliance with the following regulations:

- A. Completion of structure. Nothing in this Chapter shall be deemed to require a change in the plans, construction, or designated use of any building for which a building permit was issued prior to the effective date of this Chapter and upon which construction has commenced, provided the building, if non-conforming or intended for a non-conforming use, is completed and in use within one (1) year of the date of issuance of the building permit.
- B. Repairs and maintenance. Routine maintenance and repairs, including repair or replacement of non-bearing walls, fixtures, wiring or plumbing, may be performed on structures and premises, the use of which is non-conforming. Nothing in this Chapter shall be deemed to prevent the strengthening or restoring to a safe condition any building or part thereof declared unsafe by any official charged with protecting the public safety, upon order of such official.
- C. Change of non-conforming use. If a non-conforming use involving a structure is replaced by another use, the new use shall conform to this Chapter unless the planning commission determines that the proposed use is of the same or of a more restrictive classification, that the proposed use will not affect the character of the area in which it is proposed to be located more adversely than the existing or pre-existing use, and that the change of use will not result in the enlargement of the cubic space occupied by a non-conforming use, except as provided in subsection (d) below. An application for a change of use must be filed in accordance with the provisions of Article 16, including the payment of required fee.

- D. Enlargement of non-conforming use. No existing structure that is wholly or partially occupied by a non-conforming use shall be structurally altered, move, extended, constructed, reconstructed, or enlarged in cubic space unless the alteration or enlargement will result in the elimination of non-conforming use; except that such building may be enlarged when authorized in accordance with the procedure and provisions set forth in Article 16, including the payment of the required fee.
- E. Discontinuance of non-conforming use.
1. Any structure, or structure and premises, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the requirements for the zone in which such structure is located, and the non-conforming use may not thereafter be resumed.
  2. If a non-conforming use of a structure is discontinued for a period of more than ninety (90) days, the further use of the property shall conform to this Chapter.
- F. Destruction of Non-Conforming Use. If a structure containing a non-conforming use is destroyed by fire, flood, explosion or other calamity to an extent exceeding seventy-five percent (75%) of the appraised value of the structure, as determined by the records of the county assessor for the year preceding destruction, a future structure or use on the property shall conform to the regulations for the zone in which it is located.

#### **8-3M.260 IMPROVEMENT OF CERTAIN NON-CONFORMING USES**

A use which is non-conforming with respect to provision for screening or buffering shall provide such screening or buffering within a period of three (3) years from the date this Chapter is adopted.

#### **8-3M.270 CERTAIN USES NOT CONSIDERED NON-CONFORMING**

Any use for which a conditional use permit or variance has been granted shall not be deemed a non-conforming use, and may be conducted only on the terms of the original permit and subject to all limitations under which the permit or variance was awarded.

